

# IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



[www.sdrcc.ca](http://www.sdrcc.ca)

February 2012

## An NSO's Perspective on Appeals and Dispute Resolution

by Lorraine Lafrenière, Director General of CanoeKayak Canada (CKC)



### The Evolution of NSO Internal Appeals

National Sport Organisations (NSOs) are decision-makers; this responsibility is both a privilege and a burden for the organisation, as the decisions that are made can affect lives and influence the outcome of sport. As decision-makers,

our role is to ensure that there is a mechanism in place for individuals affected by our decisions to question them. In recent years, NSOs have been asked by Sport Canada to create more robust appeal policies which would in turn increase the organisations' accountability as decision-makers. This proved to be a challenging task for many NSOs because there was a lack of knowledge concerning appeals and the policies that govern them. A rapid evolution of the appeal process is what resulted, as members of the sport community learned from and adapted to situations as they arose.

One of the areas that has evolved most significantly for NSOs is that of the management and hearing of internal appeals. In the NSO environment, when an appeal is brought forward, it is important for the organisation to involve its own members in the process, so that they can learn to properly deal with appeals; the education and experience that comes with being involved can only strengthen the sport. It is to allow for such continued learning for the organisation and those involved that CKC will, whenever possible, fully engage in its

internal appeal process. However there are circumstances under which CKC will prefer to bypass its internal appeal process and request that the appeal be sent directly to the SDRCC: when doing so would be of greater benefit to all of those involved.

### Bypassing to the SDRCC or Not?

One of the more obvious and most common reasons for CKC to refer an appeal directly to the SDRCC would be in the interest of time. The SDRCC has the ability to take a case and hear it within days or even hours from when it is filed, something that most NSOs are simply unable to manage. An example of such a situation would be when there is a dispute on team selection and the competition is only weeks or days away.

The decision to bypass the internal appeal is also one that is based on cost; not just financial cost, but the indirect cost created by the impact of the appeal on the organisation's human resources. If the personnel and volunteers of the organisation who are engaged in managing or defending the case are at a breaking point, there is no doubt that deferring to the SDRCC is more beneficial.

Aside from the time and cost efficiencies, the nature of the appeal may also be a determining factor. Some decisions need to be decided on by the rigor of the process and they need an arbitrator that has the past experience, such as those on the SDRCC roster, to hear the case. Most NSOs do not have on their internal appeal panels individuals with sig-

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## An NSO's Perspective on Appeals and Dispute Resolution *(continued)*

nificant legal experience; when the decision made could create important jurisprudence for the organisation or for members of the sport community at large, it is imperative that the decision is in the right hands.

While there are great benefits for NSOs to be able to go directly to the SDRCC with a dispute when needed, it remains a decision that should not be taken lightly. If an NSO systematically refers disputes to the SDRCC, it can sometimes create an expectation that this is the way it should be. It can also create a lack of trust in the NSO's internal process or, even worse, create a situation where appellants or affected parties only see the SDRCC process as the one that is final and binding, thereby undermining the credibility of the internal process itself. These are perceptions that NSOs need to work on changing. By offering to their members an internal appeal process conducted with fairness, respect, and integrity, NSOs ensure that appeal processes in Canadian sport can continue to evolve and improve.

### The Benefits of Mediation

Whether an appeal is filed after the internal appeal process has been exhausted or referred directly to the SDRCC, CKC always looks to resolve the dispute as quickly and as amicably as possible. The outcome of a mediation process is a win/win situation as opposed to that of an arbitration process which is always win/lose, due to the fact that the decision is imposed onto the parties. Depending on the issues at stake, the mandatory resolution facilitation offered by the SDRCC before arbitration is generally welcome by CKC as an opportunity to settle. The mediation process creates a level of partnership with the appellant and the affected parties; in turn, this partnership fosters an atmosphere of cooperation and teamwork that helps preserve relationships, which are often strained by the dispute.

CKC is proud to have a good record of settling disputes before the SDRCC by reaching agreements during resolution facilitation or mediation. Of course not all disputes are conducive to mediated settlements to the same degree; for example, team selection disputes are usually less collaborative in nature. However in situations where mediation can be used to its fullest, the conclusion is much more positive because everyone feels as though they have ownership of the outcome. Solutions reached through collaborative efforts bring with them a sense of satisfaction to those involved which is ultimately what makes them a more desirable form of resolution.

### Critical Factors in Successful Mediations

Agreeing to enter into mediation does not automatically result in a successful settlement, as there are many critical factors to make the mediation a success. What makes the difference in successful mediation sessions are the sharing of values, the sharing of expectations, as well as neutrality of the process and respect for all individuals involved. It does not matter how much willingness there is to having an open and honest conversation; if people go into mediation thinking that the end game is to settle upon their terms, they are entering the process with blinders on and have already decided on what outcomes they believe are acceptable. The mediation process needs to be about understanding and respect of other parties' needs, which creates a new potential awareness of what the different options are. This often leads to a solution that belongs to everyone.

Entering mediation with an open mind can often be difficult given the stress of the situation. One of the advantages that mediation brings to the resolution process is that it tends to be significantly more relaxed than other forms of resolution. This relaxed environment helps the parties to feel more comfortable and more confident in the process and its outcome. Further to the common advantages associated with mediation in general, the mediation services provided by the SDRCC are unique in nature as they do well at taking away the intimidation factor for all parties (particularly the novice). The SDRCC mediators ensure that parties understand the process; they provide a structure and they mitigate some of the fear and pressure that the process naturally creates.

### Conclusion

NSOs are entrusted with decisions that have a significant impact, not only on their own internal management and short term outcomes, but also on how the Canadian sport system is perceived as a functional unit working towards a better sport. They have a responsibility to ensure that their members' rights are respected and that NSOs are accountable for what they decide. This can only be accomplished through the creation of clear and sound policies, by the fair and equitable application of those policies, and by the provision of a legitimate platform for questions and appeals.

CKC knows that this can be achieved by knowing, understanding, and taking advantage of the dispute prevention and resolution services offered by the SDRCC. ■

*"If people go into mediation thinking that the end game is to settle upon their terms, they are entering the process with blinders on..."*



## The SDRCC as Experienced by a Japanese Colleague

by Kazushige Ogawa, Expert Staff, Japan Sports Arbitration Agency  
and Adjunct Professor, Rikkyo University and Hosei University (Tokyo)

In 2011, the SDRCC and the Japan Sports Arbitration Agency (JSAA) entered into a Reciprocity Agreement to stimulate partnership and collaboration between the two organizations, including the sharing of expertise and knowledge. In the same year, the Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) granted sponsorship to JSAA to provide training opportunities for experts in the field of sport dispute resolution; the grant allowed me to visit the SDRCC as a trainee for a period of 17 weeks, from May to September 2011.

### Orientation Program for Employees

During my internship at the SDRCC, I had the opportunity to attend several orientation and education sessions for new staff members where I was able to learn about the SDRCC programs and materials; it allowed me to understand everything about the SDRCC, including its case management system and arbitration procedures, its prevention and education initiatives and resources, as well as and the Canadian sport system in general. Although all of JSAA's employees have law degrees, they would benefit from more orientation on arbitration, sport governance and sports laws more precisely. The JSAA should consider adopting a similar education system if it expands due to an increasing caseload.

### Canadian Sport Society - Values, Openness and Transparency

In July, I was graciously hosted by Sport Canada in Ottawa to learn more about the Canadian sport governing structure as well as ethics and anti-doping activities. After the presentation by Sport Canada and follow-up discussions on those topics, I realized that by disclosing information about past incidents, problems or scandals in sport through the public release of decisions, the Canadian sport community is better able to prevent future disputes. In comparison to the openness and transparency displayed by Canadian sport organizations about dispute resolution, I believe that a number of Japanese sport governing bodies often conceal the facts about misconducts, which goes against the values of the Japanese sport society.

### Efficiency and Economy of Dispute Resolution Proceedings

It is not enough to say that the most essential elements of resolving disputes through arbitration or mediation are fair and equitable proceedings. In resolving sports-related disputes, efficiency and economy are also indispensable. In my experience observing proceedings at the SDRCC, it became obvious that speedy and cost-efficient dispute resolution was made possible through several components of their case management process, such as the mandatory resolution facilitation, the conference call online management system, the new Case Management Portal and, most particularly, the administrative conference call which is quite useful to make parties feel at ease with the SDRCC process.

### A New Act in Japan

During my stay in Canada, Japan enacted a *Basic Act on Sport* which entered into force on 24 August 2011. This act provides that "the State shall take necessary measures, such as supporting bodies which conduct arbitration or mediation for disputes concerning sport, improving the quality of arbitrators, and promoting of the understandings of sport organizations about dispute resolution proceedings, which contribute to the resolution of disputes concerning sport expeditiously and properly" and further states that "sport organizations shall endeavor to settle sport disputes expeditiously and properly". By these provisions, it is expected that JSAA's role in sport society in Japan will become more important.

Finally, I would like to thank all the staff of the SDRCC, JSAA and MEXT who provided me with such an opportunity to visit and learn a lot from the SDRCC. In addition to being involved in several educational projects, I am deeply appreciative for the opportunity to fully observe SDRCC proceedings which made my internship more fruitful. I hope that the relationship between the SDRCC and JSAA will continue to grow to allow for the practice of sport dispute resolution in both countries to become more economical, efficient and just. ■

*"I am deeply appreciative for the opportunity to fully observe SDRCC proceedings which made my internship more fruitful."*

### Notable Dates:

- **February 1-3, 2012:** The SDRCC will be present with a Kiosk at the Canadian Sport for Life Summit and the World Long-Term Athlete Development Symposium (Gatineau, Québec);
- **March 2-3, 2012:** The SDRCC staff will be hosting the 2012 SDRCC Arbitrator and Mediator Conference in Calgary, Alberta;
- **April 21, 2012:** The SDRCC will be presenting at the Forum Équipe Québec (Montréal, Québec).



## The Birth of *Just Sport Ireland* Inspired by the Canadian Model

by Paddy Boyd, Executive Director of the Canadian Yachting Association and former Director of Just Sport Ireland

The Federation of Irish Sports (FIS) was established as a trade representative body by the national sport governing bodies in Ireland. At the time of its establishment in 2002, only a couple of Irish sports had dispute resolution processes that were fully independent of the governing body and many disputes ended up in the court system, with associated delays and costs. Doping hearings were under the remit of the Irish Sports Council, but no one body had jurisdiction over other disputes.

Just Sport Ireland (JSI) was formed by the FIS with the goal of providing a robust dispute resolution system that would be cost accessible to athletes and administrators. In considering the best approach to handle sports disputes, two principles were established early. Any cases to be considered would first have to exhaust the internal resolution system within that sport. Secondly, the system would allow for appeal to the international Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. There was considerable debate over this second principle and eventually it was agreed that such appeals to CAS would be optional to each individual sport.

In determining the best model for JSI, consideration was given to a possible alliance with the Irish Branch of the Chartered Institute of Arbitrators; an apparently attractive solution, particularly as the Institute was referenced in the Arbitration Act of Ireland, which would provide statutory

In 2009, Sport & Recreation New Zealand commissioned an assessment of current dispute resolution needs in the sport and recreation sector. The report includes a comparison of five sports tribunals (Sports Tribunal of New Zealand, SDRCC, JSI, Sport Resolutions in the UK, and State Sport Dispute Centre in South Australia), on various aspects such as the eligibility, scope, jurisdiction and structure, information, cost, pre-requisites and volume of business. The report can be found here: <http://bit.ly/xl2nHM>

footing to the fledgling organization. Research conducted at that time also showed that Canada, New Zealand and UK had already developed systems that could provide a basis for Ireland. Canada's system was particularly appealing as a model because of its emphasis on mediation complemented with arbitration, and because of the support it received from the legal profession.

The end result is that Ireland has, since 2007, a system that offers fair, expeditious and cost-effective sport dispute resolution similar to the Sport Dispute Resolution Centre of Canada, with the major exception that JSI does not deal with doping issues.

For more information on Just Sport Ireland, including its mediation and arbitration rules and its decisions, you can visit its website at [www.justsport.ie](http://www.justsport.ie) ■



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### Celebrating 10 years of Excellence in ADR in Canada

On January 18, 2012, the SDRCC was proud to celebrate the 10<sup>th</sup> anniversary of the official opening of the ADRsportRED program, an important milestone in Canadian sport history. To ensure the longevity of that initiative, the SDRCC endeavors to pursue its mandate for years to come by continuing to offer dispute prevention resources as well as world-class ADR services to the Canadian sport community.

The SDRCC Board and staff members would like to thank all of those individuals and organizations that have contributed to the growth and success of sport ADR in Canada since 2002. ■

### The SDRCC is BrowseAloud Enabled



The SDRCC has integrated assistive technology on to its website to allow for more Canadians to have easier access to its online resources.

BrowseAloud enhances website accessibility for those who require online reading support.

Visit the SDRCC homepage ([www.crdsc-sdrcc.ca](http://www.crdsc-sdrcc.ca)) and click on the BrowseAloud icon for additional information. ■



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