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## Reflections on the Resolution Facilitation Process

By Roger Gunn, SDRCC Mediator



### What is Resolution Facilitation (RF)?

In 2006 Resolution Facilitation was introduced by the SDRCC as an assistance process that allows the parties involved in a sports-related dispute to communicate more effectively and to work together towards an agreement. The RF process can be used

in three different ways:

- as a preventative measure;
- as a mandatory step before arbitration;
- in a modified form for doping cases.

### Is it successful?

Since 2006 the success rate for RFs has been growing. Thirty-three percent of cases with RFs have settled since 2006 and 41% of RFs have settled since 2010. The settlement rate will continue to grow as the process becomes better known in the sports community and as National Sport Organizations (NSOs) use it more frequently.

### How is it used?

Of the settled cases, 80% revolved around carding and selection / eligibility matters.

### What are the benefits of the RF process?

Resolution Facilitation provides the parties to a dispute, the opportunity to exchange information on their respective cases in a confidential setting. The parties communicate their perceptions on what the dispute is all about. Through the assistance of the Resolution Facilitator, who acts as a mediator, the parties hear each other's views on the matters and often new information comes to light which changes the parties' perspectives and opens up new possibilities for resolution.

### What does the Resolution Facilitator do?

The Resolution Facilitator guides the discussion ensuring each of the parties have a full and ample opportunity to state

their case. Through the use of effective questions he or she facilitates a discussion which hopefully surfaces the underlying interests and needs of the parties, and not just their stated positions. This allows the parties to gain new insight into the issues involved and the opportunity to explore options for settlement. The discussion clarifies what the parties want to achieve and their willingness to search for solutions.

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## Reflections on the Resolution Facilitation Process (continued)

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### What personal experience do you have with the RF process?

A couple of RFs in which I was involved as the Resolution Facilitator come to mind. One was a multi-party dispute related to team selection. Knowing the matters in dispute were of a sensitive nature and that there was the potential for acrimony and negativity on the part of those on the conference call, I purposely chose a positive and very respectful introductory approach with the parties. I thanked them for taking the call, and expressed my optimism the parties could work toward a mutually beneficial resolution.

All parties were given the opportunity to speak and express their concerns and aspirations. Counsel for the parties, after much discussion, proposed an alternative formula for team selection which was adopted by those on the conference call, and which was to be sent out to all those not on the line for ratification. At the end of the RF I thanked all those on the conference call for their participation and efforts at arriving at a resolution and told them I was impressed with how well things came together. Given that most of them were expecting a fight and a highly emotional conflict, they were surprised at how smooth and professional the discussion was. They came away with a more enlightened appreciation of the RF process.

Another of my RFs exemplified the modified method for doping cases. These RFs have their own peculiarities in that a doping RF is more an information exchange proc-

ess rather than a search for resolution. Before the RF began, I spoke briefly with each of the parties individually. I asked the athlete and their representative what their expectations were for the RF and what they hoped to achieve. I then talked to the CCES (Canadian Centre for Ethics in Sport) representatives about their expectations for the RF. In this way, I gained an appreciation of the concerns of the parties and knew what questions they wanted answered before they were back together on the conference call. The role of the Resolution Facilitator is to guide the discussion by bringing out questions the parties may have of each other. In particular, the athlete may not be aware of the RF and the arbitration process and may have questions about them. In a doping related RF, the issues normally surround the length of the period of ineligibility

and what if any are the mitigating factors which may modify the length of the suspension. From the point of view of the CCES they want to ensure the athlete is fully informed of their options and that, in itself, helps the parties have a dialogue around what may be expected at arbitration and the possible outcomes flowing from the arbitration.

In my particular RF, the athlete was more knowledgeable of the options available at the end of the meeting, and the CCES representatives had a better understanding of the case from the athlete's perspective.

The Resolution Facilitator in such cases raises the relevant issues in order for the parties to gain an awareness of each other's concerns. The RF assists in that information exchange process. At the end of this RF the parties kept open the possibility of a further RF session if needed, in case further discussions required the assistance of a neutral person.

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### Notable Dates:

- **April 26-27, 2013:** The SDRCC will be presenting at the 2013 Atlantic Coaching Conference (Halifax, NS);
- **May 2-4, 2013:** The SDRCC will be hosting the 2013 Arbitrator and Mediator Conference (Halifax, NS);
- **June 6-8, 2013:** Board member Frank Fowlie will be an invited speaker at the UIA Forum (Prague, Czech Republic);
- **June 17-18, 2013:** Marie-Claude Asselin will be an invited speaker at the 2013 ODR Forum (Montreal, QC).



## Online Internal Appeal Panel Orientation

by Julie Stronach, SDRCC Education and Communication Coordinator

Appeal panel members are entrusted with decisions that will likely affect members of their sport organizations and may even have a significant impact on their sport. The SDRCC recognizes that, in the Canadian sport system, internal appeal panels are often comprised of volunteers who are not always familiar with conducting appeal hearings. Members of the sport community have expressed on several occasions the need for better information and resources on the internal appeal process and the challenges they face in recruiting volunteers to act as appeal panel members. In an effort to support the sport community in better managing sports-related disputes, and as a part of its mission under the *Physical Activity and Sport Act* to “provide expertise and assistance regarding alternative dispute resolution” to the sport community, the SDRCC gladly took on the challenge of developing an Online Internal Appeal Panel Orientation.

The objective of the initiative is to provide a free, simple, general orientation that is accessible online to all members of the Canadian sport community, from sport clubs to national sport organizations. The purpose of the orientation program is to provide, to current and future panel members, information on the appeal process and on the role of an appeal panel member. It will be offered in 5 short thematic units of approximately 6 to 8 minutes each, with interactive scenarios and questions and answers (see text box for an outline of each unit).

### Overview of topics discussed in the orientation program:

#### Unit 1 – Fairness in Decision Making

- Procedural fairness (natural justice);
- Conflict of interest.

#### Unit 2 – Case Management

- The basics of the internal appeal process;
- The importance of the timelines and deadlines;
- Document filing.

#### Unit 3 – The Hearing

- The different formats of a hearing;
- The standard structure of a hearing.

#### Unit 4 – The Decision

- Principles in the decision-making process;
- Major components of the written decision;
- A proposed structure for the written decision.

#### Unit 5 – The Human Factor

- Maintaining relationships between parties once a dispute is resolved;
- Respecting differences and reducing intimidation;
- Managing your stress during the decision process.



While this program is not intended to be comprehensive nor does it constitute a skills development tool, it will be an excellent starting point to help individuals identify the areas in which they may require more information and it will refer to additional resources that may assist in their preparation to conduct an appeal process.

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Whether a resolution is achieved or not, the RF process is an important process for the parties to a sport dispute to better understand one another and, with the assistance of the Resolution Facilitator, gain insight into the concerns and needs of the other party. This can then lead to an exploration of possible solutions, knowing that the conversations involved are confidential and any proposed solutions are offered without prejudice and for discussion purposes

only. It is the parties who come up with the possible solutions, thereby increasing the likelihood they will be adhered to since it was their idea in the first place.

**What would you say to athletes and sports organizations about RF?**

Both the athletes and sports organizations should be aware of what the RF process is and the benefits of it. They should consider using it in the event there is a dispute, before it becomes escalated and gets to arbitration. ■

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The SDRCC wishes to take this opportunity to thank the members of its Working Group who have collaborated in the development of the content for this initiative. ■

***Be sure to look out for the launch of the Online Appeal Panel Orientation in the coming weeks!!***

## CURRENT SDRCC PROJECTS

### Online Database of SDRCC Library Resources

The SDRCC is currently developing a database cataloguing its existing resource library materials, to be available and searchable online on the SDRCC website. The database search tool, to be in both official languages, will link to over 25 university libraries across the country with entries matching the SDRCC library documents.

### CMP 2.0

The SDRCC staff is excited to be planning improvements to its Case Management Portal (CMP) that will have a significant impact for the portal administrators and will also make the portal even more user-friendly. Some of these changes will even allow the SDRCC to explore opportunities to share this amazing appeal management tool with interested stakeholders! ■



### **Marjha Thénor Beauchamps**

Marjha joined the SDRCC team on January 28 in the role of Case Manager. She is responsible for the management of the tribunal cases. Trained as a paralegal, Marjha also holds a certificate in administration. She has acquired diverse experience in managing real estate portfolios in real estate development and in her supporting role in judicial services. Marjha will be able to leverage her skills and vast experience to provide high-quality, professional services to SDRCC clients. She looks forward to sharing with her new team members her joie de vivre and positive spirit, which she attributes to her practising bikram yoga in her spare time. ■



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