



## Managing Disputes at the NSO/MSO Level

by Paul Denis Godin, Mediator



National Sports Organizations (“NSO”) sometimes seek advice from the SDRCC on how to minimize or eliminate conflicts before they get to the SDRCC level. The old saying that “an ounce of prevention is worth a pound of cure” is fully applicable to conflict resolution, and this article will review several preventative strategies that can reduce the number and severity of disputes at the NSO level. One strategy operates at the systemic level of the NSO, one as a general process approach, and one on a more personal level for individual disputes.

### Strategy 1: Creating Clear and Fair Criteria for Carding and Team Selection

A common type of complaint at the SDRCC involves athletes challenging the criteria for either carding or team selection as being unclear or biased (a variant on this claim is that the criteria were wrongly applied, for which strategies 2 and 3 below may be more applicable).

As a preventative measure, there are steps NSOs can take to greatly reduce the likelihood of disputes challenging their established criteria. For team selection, criteria are often dependent not just on the NSO but on external organizations such as the event organizing committee, the international sport federation, and the multisport services organization (e.g., for the Olympics: the Games organizing committee, the IF, the IOC and the COC). The external organizations may also have a right of review. The size of the Canadian team can depend on a variety of external factors beyond the NSO’s control, such as performances during the previous season.

The NSO has the responsibility to be aware of all external criteria and to set its own criteria in a manner that will fairly select the appropriate athletes for the team. That responsibility is true for carding criteria as well. The SDRCC has a helpful

pamphlet with advice to NSOs on how to establish clear and fair criteria called “Selection Criteria for Major Events in Sport”, which identifies the specific external organizations relevant to most major games.

The first question is how to create appropriate criteria that achieve the NSO’s goals and that minimize disputes on the eventual selection. In some cases, the NSO’s mandate may not be to select the *best* athletes, but to select the *best team* or to select the athletes that have the most promise for the future. The SDRCC recommends a four stage process including:

1. **Background and Research:** Identify the external organizations that impact on athlete eligibility, the time limits in effect, the other conditions bearing on selection (such as citizenship), the appropriate minimum criteria for the sport and event, and the qualification period. The SDRCC database of cases on selection for carding and teams is a useful database to review, as are past experiences involving selection within the NSO.
2. **Development:** An unbiased NSO team with appropriate expertise and a proper mandate must develop the details of the selection process, bearing in mind the external criteria, the NSO goals, and NSO policies (such as athlete agreements). Other stakeholders should be involved early in this development process. The more people (from a variety of perspectives) who review the criteria design, the more likely potential problems can be spotted. Athletes, coaches, administrators, and others all bring a different eye to the criteria. Learning from the past mistakes of your NSO and other NSOs can help avoid future pitfalls. Actively seek input early both to create buy-in and to improve the selection criteria.

A consultation of athletes in 2007 revealed that most of them were not consulted when their NSOs put together criteria, a source of frustration. Athletes felt that

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they could add value in terms of their perspective on athlete needs and rights, and also in communicating decisions to the larger pool of athletes.

Minimize the use of subjective criteria and criteria that may create or be perceived to have bias (such as heavy reliance on a coach's opinion when they have had working relationships with individual athletes). Where subjective criteria are required, use them in ways that minimize potential bias (e.g., have a panel of coaches, rather than one). Consider the risks that may impact on the selection process (such as injuries, scheduling conflicts, the effect of costs on attending certain events), and deal with them accordingly.

3. **Validation.** Test the draft criteria in a variety of ways before enacting them. Doing a walk through of how the results will be calculated (e.g., based on past year performances) can help identify challenges that may occur. Let neutral parties and impacted parties (athletes, coaches, etc.) review the criteria and comment. Respond to the information received, even if not adopted (so that the affected parties can see that their concerns were considered). Be open to making appropriate changes after feedback, as no criteria are likely perfect on the first draft.

4. **Communication and Implementation.** Once criteria are in place, the NSO must take steps to educate its high performance athletes on the criteria in a timely manner. Athletes and coaches in turn have the responsibility to actively learn about the criteria, in a timely manner, so that training and competition schedules can be tailored appropriately. Communicate with a variety of methods (website, brochures, meetings) with an opportunity for questions to be answered. Translate the documents, communicate them effectively to the target audience (casting a broad net to avoid concerns that parties were unaware). Update parties immediately along the way if criteria change (athletes will need to adapt their plans).

Implement the criteria fairly and in accordance with the plan. Announce the results clearly and provide an opportunity for questions to be answered fairly and openly (see Strategy 2).

Finally, learn from experience and adapt your criteria for the coming year to deal with any potential challenges that surfaced. I highly recommend reading the brochure "Selection Criteria for Major Events in Sport", available on the SDRCC website. Following the steps outlined therein (and others you have developed over the years) will help minimize the likelihood and severity of disputes on selection for teams and carding.

### Strategy 2: Communicating to Manage Conflict

Many disputes arriving at the SDRCC have escalated levels of tension and distrust between the parties caused by communication challenges (failure to communicate, delayed responses, lack of full disclosure, defensive or aggressive tones in communications).

When athletes are upset by an NSO decision that went against them, the NSO is often seen as the enemy, as a barrier to their goals. In addition, the athlete may not know the full rationale for that decision, or the efforts that were made by the NSO in dealing with the issue. When people disagree with substantive decisions (like who should be on a team), they often fill any information void with negative speculation ("they ignored my prior year results"), baked with a healthy portion of distrust ("the decision-maker is friends with the other athlete's coach...")

Similarly, on the NSO side, there is often an instinctive reaction to defend and justify a decision that was made, which can often seem aggressive or cold to the athlete receiving the bad news. It also has the potential to make the NSO look like it is closing ranks and closing its mind (i.e., the NSO is less concerned about getting the "right result" on the merits than defending the initial decision).

Clear and open communication on problems may not make the problem go away, but can significantly reduce the level of tension, and in some cases may resolve the issue or prevent an appeal being commenced. When athletes do not clearly know what happened, they may feel that a formal appeal is the only way to find out (which involves stress, time and effort on all sides, often with a very short time frame before a deadline). Think of how it feels to sit on the airport tarmac, waiting for a takeoff that is endlessly delayed. Poor airlines let passengers sit and fester in their own increasingly rabid speculations. Good airlines make regular announcements explaining the situation. People kept in the dark tend to be much angrier people. Poor communication makes a hard problem harder. In many cases that I have dealt with over the years, a side issue, which often grows to overshadow the initial substantive issue is "the way I was treated" by the other party. That side issue is entirely preventable.

As an example of the benefits of communication, in one case the affected athletes heard for the first time at the SDRCC level that the biggest barrier to the desired team selection result was not within the NSO at all, but arose from requirements of the external International Federation and of the foreign tournament itself. The athletes were not aware that the NSO executive had contacted various stakeholders in those external organizations to seek flexibility, actively trying to get all affected athletes on the team. Once that explanation came out, the dynamic between the parties shifted to a problem solving approach and a mutually agreeable solution was found that got all athletes on the team, without the need for an arbitrated win-lose result.

When an issue arises, on the NSO side, notify all affected parties in a timely manner, and give them a full explanation. Any decision with a negative impact will generate questions, so providing an opportunity to have questions answered helps relieve tension, and create the grounding for a rational problem-solving discussion (see Strategy 3). On the NSO side, you should also be prepared to provide objective proof (e.g. minutes of

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meetings) of assertions to combat the natural veil of mistrust around decisions. Don't take it personally. You know fully what happened. The athlete generally does not. Create the trust by providing support, so they don't have to take it on faith. They will appreciate it.

Athletes, in turn, need to recognize that NSOs sometimes have to make tough calls. There may only be one spot available on the team and someone has to decide who gets it. If you or your representatives publicly and aggressively attack the decision-makers, remember you may be working against your own goal of changing the decision. When feeling attacked, people tend instinctively to defend (the issue becomes personal), and are less inclined to help you. Making it personal rarely generates flexibility and may negatively impact the public image of the sport or team. Public attacks may also backfire on you when all facts come out. Get a full explanation first. There may be legitimate reasons for the decision of which you are unaware. And if you disagree, you can disagree with NSO staff in a respectful way, maximizing the likelihood of NSO cooperation in reviewing the decision.

Creating a shared pool of background information about the issue helps minimize tension, and may genuinely change people's perspectives. Sharing information does not commit anyone to a particular course of action, but makes it more likely that the next steps taken will be appropriate. It also sets the table for effective problem solving (see Strategy 3 next).

### Strategy 3: Creative Problem Solving

When disputes arise, a joint problem solving approach can maintain and even develop trust, and may lead to creative solutions that work for all affected parties. Focusing solely on "rights" can put parties in adversarial stances that lead to a win-lose result (one athlete goes to the event, one stays home).

Begin by identifying the parties' *interests* (their wants, needs, and concerns). Identify what the affected parties want to achieve, and why those goals are important to them. It is also important to identify their concerns (for example, what are the negative consequences of the decision for them). Resistance to agreement tends to be the result of goals not being met or concerns that have not been addressed.

Peel back the layers of the initial positions with which people often start. For example, an athlete may begin by saying only that they "deserve to be on the team" but there may be a variety of goals or concerns underlying that answer. It may be the last meet at which they can make an Olympic-qualifying standard. They may want exposure to particular competitors. They may simply want to travel to a fun location. Similarly, on the NSO side, the selection

denial may be based on a variety of reasons (lack of funds to send more athletes, external IF limitations, a desire to develop younger athletes etc.)

Once the goals and concerns on each side are understood, one can generate options that may meet the interests of all parties. Brainstorm a variety of ideas and see which ones might work. If an idea meets resistance, ask why the idea won't work. Once the underlying concern is identified, try tweaking the idea to see if the concern can be addressed (for example, if the NSO can't send more athletes purely because of the cost, perhaps the athlete can cover their own costs). An athlete may want the monthly income from a card in order to pay for training leading up to the Olympics. If there is no possibility of getting the athlete a card, the NSO may be able to arrange free coaching. Both athlete and NSO have the shared interest of having the athlete do well at the Olympics. Focus on the value to each party, not just the obvious win-lose rights-based answers.

Many problems are more amenable to solution than initial appearances suggest. Even issues that appear to have only win-lose outcomes have more potential solutions than parties typically see on the front end. For example, one carding dispute was resolved not by arbitration, but by an agreed sharing of card benefits (e.g., one athlete may want the monthly income but not need the tuition remission).

Similarly, in one team selection case, the athletes in question agreed to a more old fashioned process to decide the question than legal arguments. A sporting showdown, *mano a mano*, was scheduled to decide the victor. If an older experienced athlete wants to go to the Olympics one last time but is no longer seen by the coach as a best fit for the team, perhaps room can still be made for them at the Olympics in another capacity (trainer, mentor, PR rep) where they still contribute positive value and are still part of the "team".

When parties are open to one another's goals and concerns and willing to jointly problem solve, the variety of possible solutions is often surprising. As a mediator, every single SDRCC case that I have had mediated has generated some positive ideas that were not initially considered.

### Final Thoughts

Many disputes can be prevented at an early stage by careful development and implementation of selection criteria. And when disputes do arise, if you can communicate effectively, in an atmosphere of respect and trust, you can problem solve solutions that meet people's needs and offer more satisfaction and value than rights-based solutions. ■

*“Athletes, in turn, need to recognize that NSOs sometimes have to make tough calls.”*

### Notable Dates

- **September 15-18, 2011:** The SDRCC will be present at the AthletesCAN Forum in Edmonton, Alberta.
- **September 23-25, 2011:** The SDRCC will be present at the annual conference of Sports Officials Canada in Toronto, Ontario.



## The SDRCC Welcomes a Japanese Intern



The SDRCC is proud to host as an intern Mr. Kazushige Ogawa from Japan. Mr. Ogawa graduated in 2003 from a master's degree in law at Rikkyo University (Japan) and has been Executive Staff at the Japan Sports Arbitration Agency since that year. He is also a Research Fellow of the Institute of Intellectual Property of Japan, a member of the Research Division of the Japan Association for Arbitrators, an Advisor for the International Chamber of Commerce in Japan, as well as a Japanese representative (observer) on the Advisory Group on Legal Issues of the Monitoring Group of the Anti-Doping Convention of the Council of Europe.

Until September 24, 2011, Mr. Ogawa will take part in various operations and activities of the SDRCC for the purpose of training and will assist, among other responsibilities, in the development of a project to host at the SDRCC Canadian student interns from relevant university co-op programs. All SDRCC staff members will certainly benefit from his experience and knowledge.

This internship has been made possible following an agreement reached by the SDRCC and the Japan Sports Arbitration Agency to work in partnership to create mutually beneficial opportunities for sharing expertise and knowledge to further their respective mandates. The SDRCC is proud to partake in such an amazing initiative to promote and advance Canadian values and ethics in sport abroad. ■

## Introducing the New SDRCC Team Members

### LIANE MENDELSON, since May 24



Liane joined the SDRCC team as Administrative Assistant. She holds a bachelor's degree in administration and received formal training in information technology. She is fully bilingual and she brings to the SDRCC strong office coordination experience and an expertise in database management. She will be the key staff person overseeing the increasing use of technological tools by the SDRCC, not only in its case management processes but in its internal operations and its education and communication initiatives. Liane has had a passion for sport for many years, including hockey, and is now an active competitor in triathlons and short-distance races. ■

### FRANCINE BLACK, since May 30



Francine is the new Executive Assistant in charge of the management of tribunal cases. In addition to holding a bachelor degree in kinesiology and a graduate diploma in sport administration, Francine has acquired experience as case manager in the insurance industry, which is very relevant to her new responsibilities with the Dispute Resolution Secretariat. Prior to that, she had held various sports-related jobs in university athletics, and health and sport clubs. She is also fully bilingual. Francine is a former gymnast and has recently taken on running, which led her to complete her first marathon in Ottawa last weekend. ■

### TANYA GATES, starting June 13



Tanya is the new Operations Manager. She obtained a bachelor of science in recreation with a major in sport administration and a certificate in public relations management. Tanya has gained her work experience in various settings from university athletics to the hotel industry, the most recent being as VIP & Special Events Coordinator of the 2011 Canada Games Host Society. Throughout her career, Tanya has held positions of increasing level of responsibilities in operational duties, event planning, human resources and budget management. She will hold responsibilities in the areas of risk management, evaluation and quality control, accounting, human resource management as well as business development. ■

### JULIE STRONACH, starting June 15



Julie, who will join the SDRCC team as Education and Communication Coordinator, holds a bachelor of science (athletic therapy) and a graduate diploma in sport administration. Julie's work experience combines developing learning material and an e-learning platform for sales representatives worldwide, leading training sessions in the two official languages for marketing managers. She will be in charge of creating content for SDRCC dispute prevention programs as well as travelling to key events to promote the SDRCC services. Julie is a dedicated dancer (various styles) as well as an all-round athlete, still active in basketball, soccer, ultimate frisbee and flag football. ■



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