



Top 10 Tips on Appealing Your Case to the SDRCC

by Alexandre Maltas, Meredith McGregor, lawyers, and Heena Han, articling student

The Sport Dispute Resolution Centre of Canada is designed so that individuals can navigate the appeal system without lawyers. However, this process can be daunting. This article provides practical tips to athletes, coaches, officials, sport organizations, and their representatives embarking on the appeal process. You can click on the [embedded hyperlinks](#) throughout this document to access the respective resources that may help you during the appeal.

To get started, seek as much help and information as you can using the resources available to you. Some of these resources include:

Sport Solution - for athletes to get free information, assistance, and guidance on sports-related legal issues such as selection, carding, and discipline disputes. Click [here](#)¹ for their contact information.

SDRCC Pro Bono Program - obtain free legal advice and services. You can receive summary advice; representation at mediation or arbitration; procedural information; and necessary form completion assistance. Click [here](#)² for the list of *Pro Bono* volunteer lawyers.

Other Lawyers - similar services as pro bono lawyers but they may charge legal fees. Click [here](#)³ for a list of lawyers on the SDRCC website.

Tip # 1: Act Quickly

First and foremost, determine your deadline to file an appeal to ensure you do not miss your opportunity. Fill in the [Request Form](#)⁴, and notify all parties within the appropriate deadline to make a Request to the SDRCC. Unless your NSO appeal policy states otherwise, this is 30 days following the later of (1) when you become aware of the dispute, (2) when you become aware of the decision being appealed, and (3) when the last step in attempting to resolve the dispute occurred (i.e. an initial decision has been rendered on the issue). Is there an upcoming competition? If so, the appeal must be heard and the decision rendered prior to the deadline to submit a team list. An SDRCC appeal can be heard on

an expedited basis if you indicate the urgency on your form.

Tip #2: Evaluate the Merits of your Case

Evaluate your case at an early stage to develop a strategy and determine your likelihood of success. Steps to assessing your case include: (1) Speak to your athlete representatives; (2) Assemble the applicable policies, rules, competition results, email correspondence to ensure that you are properly informed and have access to the necessary information and evidence to argue your case; and (3) Seek legal information and advice at this early stage.

Tip #3: Consider Resolution Facilitation

Perhaps using the free [Resolution Facilitation](#)⁵ process before engaging in any formal means of dispute resolution may be more appropriate for your case. Parties can work collaboratively with the assistance of a neutral third party in order to resolve their dispute or partially settle some underlying issues to their dispute. Even if you do not reach a settlement, you can sort out the issues, narrow down questions to be arbitrated and better understand your options with the SDRCC. This process is confidential and the information shared cannot be used against the parties or released publicly without agreement. This Resolution Facilitation process is available FREE of charge to parties under the jurisdiction of the SDRCC, and can be used : (1) as a preventative measure to resolve a dispute in an early stage before arbitration; (2) as a mandatory step in arbitration; or (3) in the form of early Resolution Facilitation, before an internal appeal is even conducted by your sport organization.

Tip #4: Fulfill the Required Conditions for an SDRCC Appeal

Who rendered the decision you wish to appeal? Is this decision appealable to the SDRCC? A decision of a sport organization may be appealed to the SDRCC if any of the following conditions are met:

- a sport organization has rejected the right to an internal appeal;

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- a final decision was rendered in the internal appeal process;
- the sport organization has failed to apply its internal appeal within a reasonable time; or
- the parties have agreed to come to the SDRCC together.

Tip #5: Use the Free Resources Available to you

To determine whether you have met the conditions to appeal, consult the *Access to SDRCC Resolution Services* (in a pdf⁶ or interactive version⁷).

To determine what needs to be submitted to commence an appeal, consult the "File an Appeal"⁸ tab accessible from the SDRCC's home page. Consult the *Guide to SDRCC Proceedings*, which provides more detailed information for every step of the hearing process, before, during, and after the hearing.

Familiarize yourself with the rules of the SDRCC by reading "the Code"⁹ (The Canadian Sport Dispute Resolution Code), which outlines the procedural rules that must be followed when proceeding with an appeal to the SDRCC.

Tip #6: Prepare for your Preliminary Phone Call

A preliminary telephone call is a key opportunity to ask questions and seek direction from the arbitrator regarding the exchange of documents, witnesses and experts. It is during the preliminary hearing that the format of the hearing is discussed (in person, telephone conference or videoconference) as well as the timing of submissions and the scheduling of the hearing. The SDRCC procedure is flexible in order to accommodate the schedules and often distance between the parties. You may request additional preliminary phone calls to resolve any issues arising prior to arbitration.

Tip #7: Know the Rules that Support your Position

Research and know the policies, rules, and law in the area of the dispute. This may include team selection policies, carding criteria, code of conduct, discipline policy, athlete agreement, organizational bylaws or previous SDRCC decisions.

Refer to *Previous Cases*¹⁰ decided by the SDRCC that are similar to yours - past decisions are available on the SDRCC website and may contain critical information on the law that supports your arguments. Familiarize yourself with legal lingo - refer to the Definition section of the Code or review some previous cases to learn basic legal terms that you may need to argue your case such as: "de novo" vs "judicial review", "correctness" vs "reasonableness", "onus of proof", "balance of probabilities", "jurisdiction", "affidavits", "without prejudice", "deference", "standard of review", etc.

Tip #8: Determine what Evidence you Need to Support your Claim

Determine what information you will need to support your claim. Then determine how you will obtain that information and put it before an arbitrator.

Documents – Obtaining documentary evidence can be a significant issue in many appeals as the Code does not provide for

mandatory disclosure of relevant documents. Consider what documents you have that support your position as well as what documents the other party may have. Some examples of relevant documents are meeting minutes, recordings and email correspondence. Also, ask the other party for any documentation that can serve as evidence to support your case. Alternatively, upon request, an arbitrator may order the other party to produce specific documents prior to the arbitration hearing.

Witnesses – There are two main types of witnesses: fact witnesses and opinion witnesses. Fact witnesses give evidence of what they have personally observed. Opinion witnesses generally have a particular expertise and can give evidence of what they think and can infer from specific facts.

“Evaluate your case at an early stage to develop a strategy and determine your likelihood of success”

Tip #9: Apply the Evidence to the Rules

This is the point in which you must convince an arbitrator, or if in a mediation, the other party, that the facts applied to the rules support your position. In setting out a legal argument, a useful framework to follow is:

- State the main issue or issues;
- Describe the facts and relevant events (ensure these are supported by the documents and witnesses);
- Set out the relevant rules;
- Explain how the rules apply to the facts to support your position;

Think about some arguments that could be made against your submissions. What could the other side say and how would you respond to such an argument that may arise? Think about what you would say to respond to any arguments made against your position. The *SDRCC guide What are Submissions*¹¹ is a useful resource at this stage.

Tip #10: Prepare for the Hearing: Provide Reliable Expert or Witness Evidence

Prepare opening and closing statements and a short statement of your position. After identifying your witnesses, discuss the issues with your witnesses and prepare questions to guide them through their statements. Make sure that your witnesses feel comfortable to speak at the hearing and are ready to answer any potential questions that may be asked. Consider what information the other party's witnesses may have and prepare questions to ask them at the hearing.

Conclusion

Preparing for a hearing will not guarantee success, but it will definitely improve your chances of success. Whether you are seeking to be selected for a team, to receive carding, or to otherwise be given the opportunities you deserve, there are numerous resources and people ready to help. Do not hesitate to ask for assistance. ■

(End note links on page 3)



SDRCC Roster Member Profile: Learning More About our Arbitrators and Mediators

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 50 mediators and arbitrators and we will slowly be introducing you to some of them through our regular installments of "SDRCC Roster Member Profiles". In this edition we would like to present, **Janie Soublière Arbitrator** from **Montreal, Quebec**.

What Led you to a Career in ADR?



As a lawyer, I have always been a strong advocate of extra-judiciary dispute resolution. It saves everyone time, money and energy. Although I have acted as a lawyer both for athletes and for sport federations before arbitral tribunals, there came a point in my career where I could no longer wear both hats. I had to choose one or the other, and after due consideration, I chose arbitration, which, as it turns out, was the right decision for me.

Specialization/Area of Expertise:

I specialize in sport law with an expertise in anti-doping. My International Sport Law Master's dissertation was on respecting athletes' rights to natural justice in disciplinary procedures under the World Anti-Doping Code and I have been actively working as legal counsel and consultant in the field of anti-doping since the creation of WADA. Since becoming an arbitrator, I have been appointed and been an active member of various sports arbitration bodies rosters including CAS, the SDRCC, Sport Resolutions UK, the AIU (the IAAF'S new disciplinary tribunal), the IBU and the IPF. I have dealt with all kinds of sport disputes, but my expertise remains anti-doping.

As an Arbitrator with the SDRCC, I...

... am happy to have been given the opportunity to become involved and familiar with our exemplary Canadian sport system. I had worked mostly at the international level prior to being named to the SDRCC's roster of arbitrators (already 8 years

now!!!) Since, I have had the opportunity to work more actively in Canada and to both share and learn from athletes, NBGs (National Governing Bodies), counsel and fellow arbitrators. I am also proud to work with the outstanding SDRCC staff. From my extensive experience with various sport dispute resolution panels over the years I can state with certainty that the SDRCC operates one of the best dispute resolutions programs in the world.

Favorite Sport(s):

That's a trick question! I am an athlete and a sport fanatic. I have an affinity for many sports and have over the span of my life been very active, coaching and competing in team handball, soccer, ultimate frisbee, road biking, mountain biking, triathlons, swimming, road races, downhill-skiing, Nordic skiing, tennis etc. But my favorite summer sport remains tennis and my favorite winter sport, downhill skiing.

Dispute Prevention Tip for Athletes and Federations:

Prior to being involved in a dispute, read all applicable rules carefully so as to become fully familiar with their substance and implications for you, and any opposing party to the dispute. Be honest with yourself and take a step back. Have you been wronged? Or are you in error? ■

In our next edition, look for the profile of an SDRCC mediator.

Links Contained in the Feature Article:

1. <https://athletescan.com/en/athlete-zone/programs/sport-solution>
2. <http://www.crdsc-sdrcc.ca/eng/probonoprogram>
3. <http://www.crdsc-sdrcc.ca/eng/lawyers>
4. <http://www.crdsc-sdrcc.ca/eng/dispute-resolution-forms>
5. <http://www.crdsc-sdrcc.ca/eng/dispute-resolution-facilitation#rf>
6. http://www.crdsc-sdrcc.ca/eng/documents/access_to_sdrcc_services_en.pdf
7. http://www.crdsc-sdrcc.ca/eng/documents/access_interactive_to_sdrcc_services_en.pdf
8. <http://www.crdsc-sdrcc.ca/eng/file-an-appeal>
9. http://www.crdsc-sdrcc.ca/eng/documents/annotated_code_2015_final_en.pdf
10. <http://www.crdsc-sdrcc.ca/eng/case-summaries>
11. http://www.crdsc-sdrcc.ca/eng/documents/sdrcc_submissions_en_final_web.pdf



SDRCC Sport Law Connect Program

An Initiative to Assist with Dispute Resolution at the Provincial Level

The Centre is partnering with Canadian law faculties to offer affordable dispute resolution alternatives to provincial sport organizations. Under the Sport Law Connect Program (SLCP), students with an interest in alternative dispute resolution and/or sports law will be able to enroll to assist, on a volunteer basis, in informally facilitating the resolution of disputes or in acting as chairpersons of internal appeal panels.

The first pilot is set to be launched in British Columbia, in partnership with viaSport BC, University of British Columbia, University of Victoria, Thompson Rivers University and the ADR Institute of British Columbia. The university students in law or ADR will be offered training to complement their academic programming, in order to allow them to handle sports-related cases such as discipline, team selection, resource allocation or governance matters. Minimum qualifications and a strict set of guidelines and policies will govern the administration of the program to ensure quality control. Where the nature in scope of a dispute requires the intervention of more advanced skills, the parties will benefit from services offered by professionally trained mediators and arbitrators through the ADR Institute of British Columbia.

In Quebec, a modified version of the SLCP is also being tested in collaboration with SportsQuebec and the University of Sherbrooke. **Stay tuned for more information about the SLCP and its expansion in other provinces/territories!** ■

New employee at SDRCC



Martin Gariépy joined the SDRCC on June 11 as communication and promotion officer. He is responsible for the communication activities of the SDRCC, including through its website, its social media platform and its publications.

He is also in charge of the promotion of the SDRCC fee-for-service offerings. Die-hard fan of tennis and American football, Martin is a member of the Quebec Bar and possesses a certification in communications. ■

2018 SDRCC Public Conference Announcement

The 2018 SDRCC Mediator and Arbitrator Conference will be held at The Fairmont Winnipeg on November 1-3, 2018. In partnership with the ADR Institute of Manitoba (ADRIIM), the public sessions will take place on Friday, November 2, 2018. Registration information will be available soon on the Centre's website at www.sdrcc.ca.

Focussing on the *Protection of Rights in Sport Dispute Resolution* and specifically tailored to the sport and law communities, the conference program will provide attendees with exciting sessions and networking opportunities. The student pairing program will be offered again to students wishing to enhance the professional networking impact of their participation. As in previous editions, it is anticipated that the program will be recognized by various bar associations for continuing education credits. Special registration rates for students, ADRIIM members and early birds are only offered **until September 10.** ■

Notable Dates:

- **June 5:** SDRCC kiosk at the 2018 U SPORTS Conference and Annual Meeting (Vancouver, BC);
- **June 9:** Workshop hosted by BC Hockey (Sun Peaks, BC);
- **June 13:** SDRCC kiosk at the 2018 CCAA Annual General Meeting (Quebec City, QC);
- **September 14:** Presentation at the T2 Conference for the 2019 Red Deer Canada Games (Red Deer, AB);
- **September 15:** Workshops at the Synchro Alberta annual conference (Calgary, AB);
- **September 21-23:** SDRCC kiosk at the AthletesCAN Forum (Ottawa, ON). ■



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