

**Recommendations for the Implementation of a
National Alternate Dispute Resolution System
For Amateur Sport in Canada**

**Report of the Implementation Committee
To the Secretary of State (Amateur Sport)**

August 2001

(August 31, 2001)

1.0 Background

- 1.1 The Secretary of State (Amateur Sport) created a Work Group in January 2000 to develop a national Alternative Dispute Resolution (ADR) system for amateur sport in Canada. The Work Group submitted its recommendations in May 2000 in a report titled *A Win-Win Solution: Creating a National Alternative Dispute Resolution System for Amateur Sport in Canada*.
- 1.2 The Secretary of State created an ADR Implementation Committee in October 2000 to recommend a critical path for the implementation of the recommendations contained in the final report of the ADR Work Group. The Implementation Committee has met six times since its inception and this report contains its recommendations on the implementation of the Canadian Sport ADR.¹
- 1.3 The Implementation Committee has adopted and built on the ten recommendations contained in the Work Group's final report, and developed a critical path and, where warranted, a terms of reference and projected budget for their implementation.
- 1.4 The Implementation Committee has assumed that the Canadian Sport ADR will become responsible for the arbitration services associated with the Canadian Policy on Doping in Sport and thereby relieve the Canadian Centre for Ethics in Sport of this function.
- 1.5 The term National Sport Organization (NSO) is used in this document to include National Sport Federations, Multi-Sport/Service Organizations and National Sport Centres.

2.0 Key Components of the Canadian Sport ADR

- 2.1 It is recommended that the Canadian Sport ADR be implemented through the introduction of six key components:
 - i. Canadian Sport ADR Council;
 - ii. Sport Policy Resource Centre;
 - iii. the Disputes Secretariat;
 - iv. the Arbitration and Mediation Codes of Procedures;
 - v. the Ombuds Office; and
 - vi. enabling federal legislation.

¹ The title "Canadian Sport ADR" has been selected solely for the purposes of this document. It is recommended in section 7.2 that the (Canadian Sport ADR) Council ultimately name the program.

Following is a brief overview of each component.

The Canadian Sport ADR Council

- 2.2 The Council should be an independent, free-standing council that is responsible for the management of all elements of the Canadian Sport ADR, including the Sport Policy Resource Centre, the Disputes Secretariat and the Ombuds Office.
- 2.3 The Implementation Committee recommends that the Council of the National ADR System be either an incorporated not-for profit organization operating at arms-length from the federal government, or that it be established by enabling legislation as a statutory body at non-arms length to the federal government. The Implementation Committee feels that the former option is preferable in the short term in order to establish the system as soon as possible for the benefit of Canadian sport, but that the latter is the best, and preferable, option in the longer term. Annex 1 contains a partial analysis of this recommendation.
- 2.4 The Council will establish the budget for each of the components of the ADR system and provide the necessary governance, including making necessary changes to the system.
- 2.5 The members of the Council should be representative of key stakeholders in the sport community and be selected as recommended by the original Work Group.
- 2.6 The Council would include a salaried Executive Director responsible for implementing the Council=s directions for the Sport Policy Resource Centre, the Disputes Secretariat and the Ombuds Office, and managing the financial and accounting responsibilities for same.
- 2.7 A Terms of Reference and detailed projected annual budget for the Canadian Sport ADR Council as an incorporated not-for-profit arms-length organization is attached as Annex 2.

The Sport Policy Resource Centre (Resource Centre)

- 2.8 The Resource Centre will be an independent, stand-alone component of the Canadian Sport ADR responsible to the Canadian Sport ADR Council.
- 2.9 Its primary purpose will be to strengthen the capacity of sport organizations to create clear, effective policies and make fair, sound decisions. By doing so, it will reduce the number of disputes that are appealed to the Canadian Sport ADR.
- 2.10 Its primary activities will consist of:
 - i. Creating and maintaining a national repository for policies and best practices;
 - ii. Creating and maintaining a national repository of ADR decisions made in the

- Canadian Sport ADR as well as for the sport internal appeal decisions;
 - iii. Training decision-makers in sport organizations; and
 - iv. Promoting the Canadian Sport ADR throughout the sport system to ensure that the rights and responsibilities of all participants, and the benefits of the national system, are well known, including establishing a 1-800 Ahelp line≡.
- 2.11 The Sport Policy Resource Centre will be staffed by two full-time persons: a disputes subject-area expert and an administrator. The Resource Centre will also require access to web-master expertise.
- 2.12 A Terms of Reference and detailed projected annual budget for the Sport Policy Resource Centre is attached as Annex 3.

Disputes Secretariat

- 2.13 The Disputes Secretariat will be an independent, stand-alone component of the Canadian Sport ADR responsible to the Canadian Sport ADR Council. Its independence from the Sport Policy Resource Centre is essential for purposes of neutrality as it relates to the mediation and arbitration services of the Canadian Sport ADR.
- 2.14 The Disputes Secretariat will be responsible for managing the mediation and arbitration services of the Canadian Sport ADR, including: the financing and management of mediation and arbitration panels, and the selection process for panel members.
- 2.15 The Secretariat will be responsible for establishing ad hoc arbitration panels for major games= selection and related issues upon agreement with each major games= respective governing body.
- 2.16 The Secretariat will have liaison responsibilities with the International Court of Arbitration to the extent required by affiliation with this international program.
- 2.17 The Secretariat will be staffed on an as-needed basis by a subject-area expert with administrative assistance. The supply-on-demand function of the Secretariat lends itself, at least initially, to being provided on a contractual basis by an existing organization.
- 2.18 A Terms of Reference and detailed projected annual budget for the Disputes Secretariat, and its mediation and arbitration services, is attached as Annex 4.

Arbitration and Mediation Codes of Procedures

- 2.19 The Disputes Secretariat will manage the arbitration and mediation elements of the Canadian Sport ADR according to codes of procedures adopted by the National ADR Council and, if possible, enabled by federal legislation as required.

- 2.20 The Arbitration and Mediation Code of Procedures has been developed so to be aligned with the Court of Arbitration for Sport but consistent with Canadian legal and arbitration structures. It has been suggested that the proposed Code of Procedures be submitted to the International Court of Arbitration for Sport as a model for other countries to adopt in the interest of international harmonization.
- 2.21 It is recommended that arbitration hearings be limited to two days, unless a party is granted an exception by the panel hearing the dispute and pays a fee in advance for the additional days requested.
- 2.22 The Arbitration and Mediation Codes of Procedures are attached under separate cover as Annex 6.

Ombuds Office

- 2.23 The Implementation Committee supports the creation of the Ombuds Office for sport, but has not yet addressed the detail of its implementation. It has scheduled the implementation of the Ombuds Office to follow the establishment of the Council, the Sport Policy Resource Centre, the Disputes Secretariat and the Codes of Procedures, in large part because of the urgent need for a system to address the bitter disputes which too often divide people in Canadian sport, and the time and resources needed to get that up and running. But this order of priority relates only to the order of implementation and not to the order of importance: the Ombuds Office is considered to be an essential and mandatory element of the Canadian Sport ADR. In addition, this sequence may be advantageous in that it will enable the Ombuds Office to comment on the Anew≡ sport environment rather than the Aold≡ one.
- 2.24 The Ombuds Office will report to the Canadian Sport ADR Council but will need to be established through legislation in order to ensure its independence, credibility and permanence.
- 2.25 A terms of reference and detailed projected annual budget for the start-up phase of the Ombuds Office is attached as Annex 5.

3.0 Access to the Canadian Sport ADR

- 3.1 In its initial start-up stage, the Canadian Sport ADR will target National Sport Organizations and their members. It is anticipated that discussions with Provincial /Territorial Governments on the subject of system affiliation for the benefit of Provincial /Territorial Sport Organizations and their members could commence within two years when the Canadian Sport ADR Council has a better sense of program costs.
- 3.2 A definition being considered to define access to the mediation and arbitration elements of the national system is based on that used by Ringette Canada in its appeals policy:

Any member of a National Sport Organization (possibly defined as a Registered Charitable Amateur Athletic Association, which includes NSOs, MSOs and National Sport Centres) who is directly affected by a decision of the Board of Directors, or any Committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of the Association or its Board of Directors, shall have the right to appeal that decision.

- 3.3 The scope of issues eligible for mediation or arbitration would be defined by the NSO=s appeals policy to the extent that the Canadian Sport ADR could only consider those cases that had already exhausted the NSO=s internal grievance procedures (other than through agreement of the parties).

4.0 Recommended Legislation

- 4.1 Federal enabling legislation is recommended to:

- i. establish the Canadian Sport ADR Council and its respective responsibilities;
- ii. establish the responsibilities and independence of the Ombuds Office for Sport;
- iii. make it mandatory for all National Sport Organizations to offer access to the Canadian Sport ADR for its members upon exhaustion of its internal grievance procedures;
- iv. establish the Disputes Secretariat and its responsibilities, including the responsibility for arbitration relating to the Canadian Policy on Doping in Sport; and
- v. establish the Arbitration and Mediation Code of Procedures that will include a code for arbitration which will:
 - ∃ make it mandatory for all disputes relating to NSO internal grievance procedure decisions to use the Canadian Sport ADR arbitration service instead of the courts;
 - ∃ make it mandatory for NSOs to require arbitration clauses within its agreements with its members;
 - ∃ limit the normal grounds of appeal of decisions from arbitration to judicial review;
 - ∃ make third party participation in arbitration disputes mandatory; and
 - ∃ grant the right of subpoena to arbitration panels.

- 4.2 While federal enabling legislation is recommended, it is strongly recognized that the Canadian Sport ADR implemented without legislation would still offer significant benefits to amateur sport in Canada. The absence of legislation would have the most significant bearing on the following issues:

- i) NSO compliance to the condition that its members have access to Canadian Sport ADR services, and that its members must use the arbitration service of the Canadian Sport ADR if they wish to appeal a decision of the NSO=s internal grievance procedure.

This objective could be obtained for most NSOs, but not necessarily all, through:

- ∃ contract with the NSOs, as is currently done with regard to the *Canadian Policy on Doping in Sport*;
- ∃ a condition of Sport Canada funding;
- ∃ a condition of COA funding, if the COA were supportive of the objective.

- ii) Certain elements of the Arbitration Code of Procedures may not be enforceable, such as:

- ∃ limiting the normal grounds of appeal of decisions from arbitration to judicial review;
- ∃ mandatory third party participation in arbitration disputes; and
- ∃ the right of subpoena to arbitration panels.

5.0 Time Lines for Implementation

- 5.1 It is recommended that the first action of implementation would be the establishment of the Canadian Sport ADR Council according to its terms of reference. The Council would function as a Provisionary Council until it obtained its status of incorporation. During this period, however, it would hire the Executive Director and proceed with establishing the Sport Policy Resource Centre and the Disputes Secretariat.
- 5.2 The following time lines for implementation are based on the model outlined in 5.1:

Implementation Time Lines

Aug - Sept 2001	Approval by Canadian Heritage
Sept - Oct 2001	Creation of Canadian Sport ADR Council Consultation with sport community Consultation with ADR Work Group
Oct - Nov 2001	Staffing of Council Executive Director
Nov - Dec. 2001	Creation of Sport Policy Resource Centre Creation of Dispute Secretariat
Dec. 2002	Creation of Ombuds Office

6.0 Financing the Canadian Sport ADR

- 6.1 It is recommended that the federal government finance the Canadian Sport ADR Council, Sport Policy Resource Centre, and the Ombuds Office through annual contributions identified below.
- 6.2 It is recommended that the costs of the Dispute Secretariat, including those of mediation and arbitration, be shared among users, NSOs, and the federal government. In this context, it is recommended that the federal government contribute \$500,000 in the first year, and that this contribution be adjusted annually to reflect actual costs. It is suggested that an objective be established for user fees to fund at least 20% of the Disputes Secretariat within five years.

Recommended Annual Federal Contribution to Canadian Sport ADR

Canadian Sport ADR Council	\$ 150 000
Sport Policy Resource Centre	\$ 300 000
Ombuds Office in its start-up phase	\$ 60 000
Disputes Secretariat	\$ 500 000
Total annual federal contribution	\$1 000 000

6.3 It is recognized that this recommended contribution would be *pro rated* for the number of months remaining in this fiscal year 2001-02 when the Canadian Sport ADR is implemented.

7.0 Issues

7.1 The Implementation Committee is concerned that the impression of commitment to the Canadian Sport ADR can be created by the introduction of enabling legislation and funding for the arbitration element of the system, whereas it is the Sport Policy Resource Centre and the Ombuds Office which have the greatest potential to improve the policy and dispute resolution capacity of the sport system. It emphasizes that the Sport Policy Resource Centre and the Ombuds Office are two very essential components of the Canadian Sport ADR.

7.3 It is recommended that the name of the program be determined by the (Canadian Sport ADR) Council. "National ADR System" is problematic because of the word "National" and its connotation in Québec. The federal government typically avoids using "National". Alternatives for consideration include:

- ∃ Canadian ADR System;
- ∃ ADR System for Canadian Sport;
- ∃ RED Sport ADR.

National ADR System: Structure and Governance Options

1.0 Introduction

1.1 The Implementation Committee recommends that the Council of the National ADR System be either an incorporated not-for profit organization operating at arms-length from the federal government, or established by enabling legislation as a statutory body at non-arms length to the federal government. The Implementation Committee feels that the former option is preferable in the short term in order to establish the system as soon as possible for the benefit of Canadian sport, but that the latter is the best, and preferable, option in the longer term.

1.2 The *Report of the Work Group to the Secretary of State (Amateur Sport)* (May 2000) on the creation of a national ADR system recommended:

That the Secretary of State (Amateur Sport) ensure the creation of an independent, free-standing council for a national ADR program that will:

- *Develop policy for and oversee the management of the ADR and related services;*
- *Be composed of members that represent athletes, coaches, NSOs, governments (federal, provincial and territorial), National Sport Centres and Multi-Sport Organizations (national, provincial and territorial);*
- *Be responsible for establishing a panel of mediators and arbitrators composed of individuals knowledgeable in the area of sport and dispute resolution.*

The rationale for this recommendation, also taken from the Report, is included in section 4 of this Annex.

1.3 Two general options exist regarding structure: first, to create the body by legislation and, second, to associate with, or register as, a not-for-profit corporation. There is a high degree of flexibility in how the body is designed if the latter option is chosen, particularly if a new entity is created. The degree of independence that such a body would have would depend on the governance structure that is put in place and would be determined by such factors as representation on the board, means of election/nomination, and funding source. A more complete overview of the pros and cons of the various options is provided below.

2.0 Options for Structure and Governance

2.1 Although many alternatives were considered, two options are recommended as viable alternatives to form the basis for a national ADR system.

Option 1: Arms-length from federal government.

2.2 Under this option, the National ADR Council would be structured as a new non-profit corporation. It would be eligible to obtain Registered Charitable Amateur Athletic Association (RCAAA) status like the Canadian Centre for Ethics in Sport or any National Sport Federation.

2.3 Advantages:

- Perceived independence of the national ADR system from the government;
- Enabling legislation would not be required for its creation;
- Could address disputes in which Sport Canada is a party; e.g. doping infractions and AAP;
- Federal government could provide funding;
- Flexibility for selection of members of Council members.

2.4 Disadvantages:

- Less opportunity for the federal government to influence;
- If the federal government exercises too much control, the Council could be interpreted as a crown corporation *de facto* and subject to the same Charter, Bill of Rights, and procedural fairness obligations as government entities.

Option 2: Non-arms length to federal government: Statutory body similar to CITT and CRTC.

2.5 Under this option, the National ADR Council would exist as a corporate model similar to the Canadian International Trade Tribunal (CITT) and the Canadian Radio and Television Commission (CRTC). Enabling legislation would be required to create the Council as an administrative tribunal.

2.6 Advantages:

- Total independence from government in management of disputes, even in disputes where Sport Canada is a party;
- Structure, aims and purposes of tribunal would be determined by the government, dictated by its enabling legislation;
- Consistent funding for national ADR system would be secured;
- Degree of independence would be a function of provisions in its enabling legislation, related to appointment of Council members: e.g., appointments would be made by Governor in Council or Minister (the how of nominations and appointments would be enshrined in the enabling legislation);
- Special procedures for arbitration and mediation could be established.

2.7 Disadvantages:

- Perception of excessive government influence;

- National ADR System could be subject to Charter, Bill of Rights, and procedural fairness obligations;
- Enabling legislation would be required for its creation, which may cause delay in the implementation of the Council.

3.0 Organizational Framework

The following is an excerpt from the *The Report of the Work Group to the Secretary of State (Amateur Sport)* (May 2000) on the creation of a national ADR system:

- 3.1 Work Group considered a number of possible organizational structures to support the national ADR program, including:
 - Housing the program within an existing organization.
 - Housing the program within government.
 - Creating a new organization to oversee the program.
- 3.2 The need for the sport community to feel a sense of ownership over the ADR program and the desire to establish credibility and independence in the administration of the ADR program argues against establishing the ADR program within an existing entity.
- 3.3 The Work Group was absolutely convinced of the necessity to house the ADR program within a newly-created, independent organization with the sole purpose of overseeing the program. The Canadian ADR program for sports should be governed by a Council made up of members of the sport community but would be independent of any existing organization or institution.
- 3.4 The Council would be responsible for designing and implementing the structure, overseeing its administration, and ensuring that appropriate evaluation and follow up occurs.
- 3.5 The composition of the Council, as recommended by the Work Group was largely acceptable to the Implementation Committee. The revised Terms of Reference are contained in Annex 2.

Canadian Sport ADR Council**Terms of Reference****Introduction**

1. The ADR Work Group was absolutely convinced of the necessity to house the ADR program within a newly-created, independent organization with the sole purpose of overseeing the program. The program should be governed by a Council made up of members of the sport community but would be independent of any existing organization or institution.

Responsibilities

The Council would be responsible for:

2. Implementing and managing all components of the Canadian Sport ADR, - including the Sport Policy Resource Centre, the Disputes Secretariat and the Ombuds Office, - and ensuring that appropriate monitoring and evaluation occurs;
3. Establishing the budget for each of the components of the ADR system and providing the necessary governance, including making necessary changes to the system.
4. Liaising with the sport community and media on issues of dispute as required.
5. Appointing a chief arbitrator, if considered desirable.

Composition

6. The Council will be made up of individuals representing stakeholders, including:
 - Athletes
 - Coaches
 - National Sport Organizations (NSOs)
 - Sport Canada
 - Canadian Olympic Association
 - National Sport Centres
 - Government (federal/provincial/territorial)
 - Canadian Multi-sport organizations (e.g. CCES, CAAWS, CGAC, CIAU, etc.)
 - Provincial Multi-sport organizations (e.g. Sport Manitoba, Sports-Québec, Sport B.C., Sask Sport, etc.)

7. The Council will include a salaried Executive Director responsible for implementing the Council's directions for the Sport Policy Resource Centre, the Disputes Secretariat and the Ombuds Office, and managing the financial and accounting responsibilities for same.
8. These stakeholders will nominate people for appointment to the Council by the Minister. Nominees shall have the requisite expertise to ensure the ADR system serves the needs of the sport community. It is not intended that any stakeholder nominate a member representative to have a voice for that stakeholder; rather it is intended that the stakeholders will have input into the Council members and will nominate people who have expertise in ADR and/or in the maintenance of an ADR system. Council member nominees would not be required to have legal training but to have a firm understanding of disputes, how they arise and how to govern through policies.
9. The Minister responsible for amateur sport in Canada shall appoint Council members from the nominated individuals. Council members may only be appointed if first nominated to the Minister in accordance with paragraphs 8, 12 and 13. The Minister shall consider all nominees submitted but may choose not to appoint to Council any such nominee.
10. The number of Council members is recommended to be 12, which is a number large enough to allow input from the various stakeholders but small enough to contain costs.
11. Appointments to the Council will be made by the Minister through a two-stage nomination and/or application process managed by Sport Canada (or its equivalent), initially in conjunction with the ADR Implementation Committee. Organizations would be encouraged to nominate qualified individuals. Interested individuals would be invited to submit an application outlining their respective skills (perhaps using SIRC for distribution).
12. Five key stakeholders (Athletes CAN, Canadian Professional Coaches Association (as combined with Coaching Association of Canada), NSOs, Sport Canada and COA) will each have the right to nominate one representative to the Council for appointment by the Minister. Those five appointees would then select three nominees out of the nominations submitted by the other four stakeholder groups and submit them to the Minister for appointment.
13. The eight Council members would then nominate, for appointment by the Minister, four additional members out of all remaining nominations and applications, with a view to ensuring a balance among members in terms of gender, geography, official languages, persons with a disability, team/individual sports, summer/winter sports, lay/lawyers, and other factors which may arise. At least three of the 12 Council members should be athletes who are active or who have retired within the last eight years.
14. It is recommended that the terms of Council members be three years, with initial terms made on a staggered basis (four members for one year, four for two, and four for three

years) to ensure continuity. A maximum of one three-year renewal term is recommended. It is acknowledged that there is a risk of a loss of institutional memory through rapid turnover of Council members but we suggest, on balance, that it is important to have people return to their respective sport organizations, having a more complete understanding of the dispute resolution system, in order to facilitate an integration of the ADR system with sport.

Budget

15. 12 member Council

∃ assume:

- Σ 8 members outside Ottawa or Toronto region
- Σ average air travel cost @ \$1 000 per
- Σ accommodation expense for 4 @ \$125
- Σ miscellaneous costs of \$250 for each other member

- cost for 4 meetings per year @ 10 000 \$ 40 000
- miscellaneous expenses 5 000

16. Executive Director

- ∃ salary @ \$60 000 - \$70 000 plus 20 percent benefits 90 000
- ∃ office expenses (computer, rent, etc.- could be sharing space) 10 000
- administration (teleconference, phone, mailings, email, etc.)
5 000
- ∃ cost for ED 105 000

17. Total Cost for Canadian Sport ADR Council \$ **150 000**

The Sport Policy Resource Centre

Terms of Reference

Introduction

1. The Resource Centre will be an independent, stand-alone component of the Canadian Sport ADR responsible to the Canadian Sport ADR Council.
2. Its primary purpose will be to strengthen the capacity of sport organizations to create clear, effective policies and make fair, sound decisions. By doing so, it will reduce the number of disputes that are appealed to the Canadian Sport ADR.
3. The Ottawa-based Sport Information Resource Centre is currently developing a model, describing activities and cost implications, by which it could house the Sport Policy Resource Centre. Its status as a world leading private-sector disseminator of sport-related materials via the internet makes it a logical candidate for this function.

Responsibilities

The Sport Policy Resource Centre will be responsible for:

4. Creating and maintaining a repository for all NSO grievance policies and ADR practices, including model policies and clauses for dispute resolution, and ensuring the broad access to this information across Canada, through a website, partnerships with other agencies/ institutions, and a broad communication program. A draft model policy is under development for review by the Council. Assuming that partnerships with the Provinces and Territories can be worked out, the repository would include those of the PSOs as well. It is important to note that internal appeals should contain a provision for agreement to disclose and publish any decision unless otherwise agreed by the NSO and appellant in writing; otherwise, such decision may be confidential.
5. Creating and maintaining a national repository of ADR decisions made in the Canadian Sport ADR as well as for the sport internal appeal decisions.
6. Being proactive in the development of good policies and fair, effective internal dispute mechanisms, both generally, through education, research, monitoring, evaluation, training sessions, etc., and on contract with specific organizations that need more detailed help.
7. Operating a 1-800 Ahelp line service, to provide basic advice and direction to sources and services.

8. Conducting a broad educational campaign and working with the NSOs, MSOs, NSCs; such bodies as Athletes CAN, the Canadian Professional Coaches Association and the Canadian Officials Council (or comparable organization); and potentially the Provinces and Territories, to ensure that the broad outlines of rights and responsibilities for all participants in Canadian sports and the benefits of the ADR system are well known.

Staffing

9. The Sport Policy Resource Centre will be staffed by two full-time persons: a disputes subject-area expert and an administrator who will be responsible to the Executive Director of the Canadian Sport ADR Council
10. The Resource Centre will require access to web-master expertise.

Budget

11. Staff:
- one professional @ \$60 000 to \$80 000 plus 20 percent benefits 100 000
 - one administrator @ \$35 000 to \$40 000 plus benefits 50 000
(* could assist ED of Council as well)
 - web master / SIRC 50 000
12. Administrative Costs:
- ∃ office and expenses 30 000
 - promotional material/publications/research info 30 000
 - educational meetings / seminars (net of user fees) 25 000
 - travel (seems low in the first year) 15 000
13. Total cost for Sport Policy Resource Centre **\$ 300 000**

Disputes Secretariat**Terms of Reference****Introduction**

1. The Disputes Secretariat will be an independent, stand-alone component of the Canadian Sport ADR responsible to the Canadian Sport ADR Council. Its independence from the Sport Policy Resource Centre is essential for purposes of neutrality as it relates to the mediation and arbitration services of the Canadian Sport ADR.

Responsibilities

The Disputes Secretariat will be responsible for:

2. Managing the mediation and arbitration services of the Canadian Sport ADR, including: the financing and management of mediation and arbitration panels, and the selection process for panel members.
3. Establishing ad hoc arbitration panels for major games= selection and related issues upon agreement with each major games= respective governing body.
4. Liaising with the International Court of Arbitration to the extent required by affiliation with this international program.

Staffing

5. The Secretariat will be staffed on an as-needed basis by a subject-area expert with administrative assistance. The supply-on-demand function of the Secretariat lends itself to being provided on a contractual basis by an existing organization.

Budget

6. Estimate of service by existing secretariat @ \$3 000 per month including Forms, photocopy, long distance **40 000**

7. Arbitration

- estimate of current costs incurred by CCES **250 000**
- additional costs projected for national system **150 000**
- ∃ also need analysis based on:
 - anticipated number of cases per yr: 35-45
(choose midpoint of 40)

- average duration of hearing: 1 day
- prep time .5 day
- writing/decision time 1 day
- anticipated cost of panel: ***\$200/hour or \$600/hour**
(assume 50/50 for now - ave. cost \$400/hour)
- associated travel and admin costs**: \$1,500 per hearing
- income from user fees (\$250/hearing)
- Total cost of Arbitration (40x20x400+60=\$460 - \$10 =) **370,000**

* **costs for USADA are US\$190/hour (approx. \$290/hour) and for CAS are CHF240/hour (approx. \$220/hour); therefore, have chosen \$200-250/hour arbitrarily (assuming chair gets more and the panel members have fewer hours).**

** assumes most are done by conference call or most panel members in the area with no significant travel costs.

8. Mediation

∃ need analysis based on:

- anticipated number of cases 20+
- average duration of hearing 1 day (8 hours)
- anticipated cost of panel \$2000
- associated travel and administration costs \$750 (covered by ADR)
- income from user fees. (Divide panel costs between parties) **50 000**

∃ The thought is that the parties should split the \$2000 costs of the mediator but the other costs are covered by the system.

+ approximately 3 cases resolve for every 1 which goes to arbitration. Therefore, approximately 120 cases resolve along the way and it is anticipated that 1/6 will require formal mediation. Mediation is very difficult to estimate and could represent a real growth area.

9. Total cost of secretariat, mediation and arbitration **\$ 500 000**

The Ombuds Office**Terms of Reference****Introduction**

1. The Ombuds Office is critical to the success of the Canadian Sport ADR and will have close links with both the Policy Resource Centre and the ADR Secretariat. For example, it will use the materials in the Policy Resource Centre as models in its educational work and will refer some matters to the ADR Secretariat when appropriate. However, the bulk of its work will concern matters which are not appropriate for ADR resolution.
2. The sport community must both own and respect the position of Ombuds Office. A review of other jurisdictions reveals that the criticism and advice provided by the Ombuds Office is taken extremely seriously by the community served and, in most cases, prompted immediate changes to policies and procedures.
3. In order to ensure the credibility and permanence of the Ombuds Office, it should be established through legislation. While it will report to the ADR Council, the independence of the Ombuds Office must be maintained. Clear policies will need to be developed on under what conditions it can be disciplined or dismissed, so as not to undermine that independence.
4. Unlike mediation and arbitration, the Ombuds Office would have no authority to resolve disputes or render decisions. Rather it should be positioned as a critical part of, and act as a watchdog[≅] for, the sport community, ensuring that its policies are workable, fair and consistent, and that they comply with federal policy.

Roles and Responsibilities

The Ombuds Office will be responsible for:

5. Initiating investigations and reporting on issues of a systemic nature where there is reason to believe they exist.
6. Criticizing, publicizing and making recommendations on issues as warranted.
7. Documenting all complaints and inquiries received.
8. Helping organizations to improve their internal process and move towards Abest practices[≅].

9. Providing recommendations to assist in the education of participants in sport.
10. Submitting an annual report to the Canadian Sport ADR and the Secretary of State (Amateur Sport) documenting:
 - ∃ The number and type of complaints received and the outcomes;
 - ∃ Organizations whose policies do not comply with federal requirements;
 - ∃ Any policy inconsistencies or omissions identified in the course of his/her work and any other issues of non-compliance; and
 - ∃ Recommendations to sport organizations and government with respect to policy development and policy implementation.

Budget (first stage start-up)

- | | | | |
|-----|--|--|---------------|
| 11. | <u>Staffing</u> | | |
| | • | Part-time position; salary plus benefits | 50 000 |
| 12. | <u>Administration</u> | | |
| | ∃ | administration
000 | 10 |
| | | - some provided by other system components | |
| 13. | Total costs Ombuds Office (first stage start-up) | | 60 000 |

CANADIAN SPORT DISPUTE RESOLUTION CODE / CODE CANADIEN DE RÈGLEMENT DES DIFFERENDS EN SPORT

This draft of the CSDRC/CCRDS {the ACode≡} uses as its administrative body what is termed Canadian Sport Dispute Resolution Tribunal/Tribunal de règlement des différends en Sport {the ATribunal≡}. This Tribunal would in effect be the administrative body for the implementation of the Code and the overseeing of the arbitration process as implemented in any sports related dispute anywhere within Canada.

Canadian Sport Dispute Resolution / Règlement des Différends en Sport {ASDR/RDS≡}, the development of which is contemplated by the Minister=s ADR Implementation Committee, would have within it a council {the ACouncil≡} to whom the Tribunal would report. Until such time as SDR/RDS is implemented by legislation, an interim solution will have to be made for the overseeing Council.

The Council will act as the body overseeing the administration of the Tribunal and the other components of SDR/RDS contemplated in the Minister=s Working Group Report, including the Sport Resource Centre {ASRC≡} and the Ombuds Office (when implemented). Initially SDR/RDS could be established as a not-for-profit corporation with the SRC and the Tribunal operating as independent divisions within SDR/RDS. The Council would be responsible to ensure adequate financing of SRC and the appointment of arbitrators and mediators. This can be modified as required.

The above structure is intended to enable the Tribunal to begin operations as soon as the necessary contractual obligations have been entered into through the implementation process designed by Sport Canada and the Minister=s Office.

As far as the Procedural Rules within the Code are concerned we have referred to a right to Arbitration, pursuant to S8 (below). We will want to strengthen this section by referring to arbitration clauses within NSO=s, and athlete agreements and competition forms.

The issue of judicial review requires some more detailed examination by the Department of Justice (Canada). Under the provincial and federal arbitration statutes now in force, a domestic arbitration agreement may preclude an appeal to the courts except on very limited grounds. Eventually these limited grounds of appeal could be eliminated through the new omnibus new sports statute and SDR/RDS. The SDR/RDS could be given the powers to remove arbitrators and deal with process and procedure misconduct by an arbitration panel. In the transition stage those powers would continue to be lodged with the Courts under the

provincial and federal arbitration statutes.

Once the omnibus federal statute on sport in general is legislation, SDR/RDS will be established and the Council will be recognized within SDR/RDS as a standing council. At that point much of the administrative machinery of the provincial and federal arbitration acts, which is being borrowed to implement the Tribunal before the enabling legislation, can be overridden. For example, in the transition stage it would be necessary to remove an arbitrator for bias by application to the courts under the appropriate Arbitration Act. After the implementation of SDR/RDS and the Council, the latter body could fulfill all of these roles the courts would have to perform in the interim period before statutory recognition by an omnibus sports act. These rules have been drafted based upon the Council having the powers contemplated when the legislation comes into force. Nothing precludes the Council from having these powers in advance of the legislation; one needs only recognize that the courts may well have the power to override such actions which, after implementation of the sports omnibus bill, they would be precluded from doing.

In drafting this Code, numerous people were contacted and various existing codes were reviewed. Among the people contacted include a number of lawyers in the offices of Allen, Allen & Hemsley in Sydney Australia (who are the overseers of the Oceania Division of the Court of Arbitration for Sport {ACAS≅} internationally and act as the Registrar of the Court for domestic and international CAS); Richard Young, Esq. General Counsel for the United States Anti-Doping Agency {AUSADA≅}; Matthieu Reeb, the Acting Secretary General of CAS in Lausanne Switzerland; and Mike Leonard a member of the ICAS of CAS from the USA and the Chair of CAS 2001 committee. I would also like to acknowledge the considerable assistance of Jim Bunting, Western Law 2002 for his very able assistance in working on this and earlier drafts of these materials. Without his assistance there would be no report from me. I was very busy over the formative period of the creation of this document with chairing the International Independent Review Commission on Doping Control USA Track & Field. The Commission released its Report on July 11th. If Jim had not been able to do a good portion of the leg work on this document there would be no substance to consider. My hearty thanks to him for a job well done.

August 27, 2001

Richard H. McLaren
London

A Draft Canadian CAS Code

S1 Definitions

(a) TITLE: The Canadian Sport Dispute Resolution Code/Code Canadien de règlement des différends en Sport may be cited as the ACode≡. It is recognized that there are provisions of the Code which relate solely to procedural rules for arbitration or mediation of disputes and those provisions may be referred to independently as the AArbitration Rules≡ or AMediation Rules≡ or collectively as the AProcedural Rules≡.

(b) DEFINITIONS: For purposes of this Code:

- (1) Aathlete≡ means a Canadian athlete who meets the eligibility standards established by the national sports organization or paralympic sports organization for the sport in which the athlete competes.
- (2) ACanadian Arbitrators≡ means arbitrators recognized in Canada by the Council as Canadian Arbitrators who are not on the list of arbitrators maintained by ICAS but have been recommended to ICAS by the Council.
- (3) ACanadian Mediators≡ means the mediators recognized in Canada by the Council as Canadian Mediators who are not on the list of mediators maintained by ICAS but have been recommended to ICAS by the Council.
- (4) ACAS≡ means the Court of Arbitration for Sport/Tribunal Arbitral du Sport whose seat is established in Lausanne, Switzerland.
- (5) AICAS≡ means the International Council of Arbitration for Sport whose responsibility is to supervise and oversee the CAS.
- (6) ANSO≡ means a Canadian Registered Charitable Amateur Athletic Association, which includes: national sports organizations recognized by Sport Canada or the Canadian Olympic Association {COA}; multisport organizations, including the COA, Commonwealth Games Association of Canada {CGAC} and Canada Games Society {CGS}; representational sport-related groups, including Canadian Centre for Ethics in Sports {CCES} and Canadian Association for Advancement of Women in Sport {CAAWS}, umbrella sport organizations, including Aquatic Federation of Canada {AFC}, Canadian Ski and Snowboard Association {CSSA} and National Sport Centres {NSC}.
- (7) AMajor Games≡ means the Olympic Games (summer and winter), Pan American Games, Commonwealth Games and World University Games {FISU}.
- (8) AMinister≡ means the Secretary of State (Amateur Sports) or such other elected official ultimately responsible for amateur sports in Canada.
- (9) APanel≡ means an arbitration panel composed of a single arbitrator or mediator who may also be referred to as a President; or three arbitrators one of whom will be the President.
- (10) AThe Tribunal≡ means the Canadian Sport Dispute Resolution

Tribunal/Tribunal de règlement des différends en Sport Canadien for which the rules of arbitration and mediation are contained in the Code.

S2 Joint Dispositions

- (a) In order to settle, through arbitration, sports-related disputes, the following body is hereby created:
- *the Canadian Sport Dispute Resolution Council (Canada)* {the ACouncil≅}
 - the Canadian Sport Dispute Resolution Tribunal/ Tribunal Canadien de règlement des différends en Sport {the ATribunal≅}.
- (b) For the purposes of arbitration, the disputes referred to in the preceding paragraphs encompass any dispute to which an athlete or NSO is a party. The disputes specifically include those related to: (i) doping; (ii) team selection to Major Games; or (iii) where any member of a NSO is directly affected by a decision of the Board of Directors of the NSO, or any Committee of such Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of the NSO or its Board of Directors, to the extent that the NSO's internal dispute procedures had been exhausted.
- (c) For the purposes of mediation, the disputes referred to in the preceding paragraphs include only those sport disputes for which an agreement to mediate has been entered into by the parties.

S3 Composition

The Council is composed of twelve members, each well respected and knowledgeable in sport in Canada, appointed by the Minister from nominations received in the following manner:

- (a) one nomination by each of the following: (i) Athletes CAN, (ii) Coaches Association of Canada, (iii) Minister responsible for Sport in Canada, (iv) NSOs and (v) COA, chosen from within or outside their membership;
- (b) the initial five appointees would then select three nominees out of the nominations submitted by the other stakeholder groups, including government (federal, provincial and territorial sports committee), Canadian multi-sport organizations {e.g. CGAC, CCES}, national sports centres and provincial multi-sport organizations {e.g. SportBC, Sports-Quebec, Sport Alliance};
- (c) the eight Council members would then choose four additional nominees out of all remaining nominations and applications, with a view to ensuring a balance among members in terms of gender, geography, official languages, persons with a disability,

team vs. individual sports, summer vs. winter sports, lay vs. lawyers, and other factors which may arise.

- (d) At least three of the 12 Council members shall be active athletes (which shall include recently retired national team athletes within eight years of retirement and any other person appointed by Athletes CAN).

S4 Term

- (a) The members of the Council are appointed for a renewable period of three years. Initial terms made on a staggered basis (four initial appointees for three years, the four next appointees for two years and the remaining four appointees for one year) to ensure continuity. The terms after the initial appointment shall all be for three years. Appointments are renewable but no member may serve more than two consecutive terms.
- (b) The members of the Council may not appear on the list of mediators or arbitrators of the Tribunal nor act as counsel to one of the parties in a proceeding before the Tribunal.
- (c) If a member of the Council resigns, dies or is prevented from carrying out his or her functions for any reason, such member shall be replaced, for the remainder of his or her term, in conformity with the provisions applicable to such member's appointment.

S5 Independence

Members and staff of the Council shall sign a declaration undertaking to exercise their function in a personal capacity, with total objectivity and independence, in conformity with this Code.

S6 Function

The task of the Council is to facilitate the settlement of sports-related disputes through arbitration or mediation and to safeguard the independence of the Tribunal and the rights of the parties. In this regard, the Council shall:

- (a) Establish a legal commission to:
 - (i) amend the Code Procedural Rules;
 - (ii) appoint the personalities who are to constitute the list of arbitrators (maximum 50 members) and the list of mediators (maximum 20 members);
- (b) consider and act upon any challenge for removal of arbitrators and carry out any other functions conferred by the Procedural Rules of this Code;

- (c) oversee the management of the Tribunal, Sport Resource Centre, Disputes Secretariat and Ombuds Office, including allocating funds, approving budgets, appointing officers and receiving reports;
- (d) establish *ad hoc* arbitration structures, including those required for the adjudication of team selection issues for Major Games;
- (e) if it deems such action appropriate, create a legal aid fund to facilitate access to the Tribunal and outline any requirements for access;
- (f) take any other action which it considers likely to protect the rights of the parties and, in particular, to best guarantee the total independence of the arbitrators or mediators and to promote the settlement of sports-related disputes through arbitration or mediation;
- (g) be responsible for the implementation of the Canadian sport dispute resolution system.

S7 List of Arbitrators / Mediators

- (a) The Council will maintain a list of arbitrators in good standing who will facilitate the arbitral resolution of disputes arising within Canadian sport through the intermediary of arbitration provided by Panels of one or three arbitrators.
- (b) The Council will also maintain a list of mediators in good standing who will facilitate the resolution of disputes arising within Canadian sport through the intermediary of mediation provided by a Panel of one mediator.

S8 Right to Arbitration

This Code provides athletes, NSOs and other affected parties, with a right to apply to the Tribunal for resolution of a sports-related dispute through arbitration, provided all internal dispute procedures have been exhausted or the parties have specifically agreed to use the Tribunal for such dispute, or mediation, as set forth in the Code.

S9 The Tribunal Role

- (a) The Tribunal oversees the constitution of Panels which have the task of providing for the resolution by arbitration or mediation of sports-related disputes, in conformity with the Procedural Rules (Articles R14 et seq. for arbitration and Articles RM1 et seq. for mediation).
- (b) The Tribunal establishes mechanisms for the constitution of Panels and monitors the proceedings. It places at the disposal of the parties the necessary infrastructure.
- (c) Panels are to resolve a sports-related dispute properly referred. Such disputes may include: (i) doping-related disputes and team selection disputes that are referred directly to The Tribunal; (ii) appeals concerning the decisions of disciplinary

tribunals or similar bodies of NSOs, insofar as there exists a right to apply to the Tribunal to resolve such disputes after all the internal dispute procedures of the NSO have been exhausted; and (iii) other matters that have been agreed by the parties to be referred for arbitration or mediation.

S10 Complaints Procedure to the Council Process

- (a) In establishing the list of Tribunal arbitrators or mediators, and in conformity with paragraph (a) of Article S6, the Council shall call upon personalities with legal or other appropriate training, who possess recognized competence with regard to sport, are domiciled in North America and are (i) listed arbitrators of the Court of Arbitration for Sport (CAS) at Lausanne, or, (ii) are recognized Canadian Arbitrators or Canadian Mediators.
- (b) The personalities designated by the Council appear on the list of arbitrators or mediators for a renewable period of four years. The list of Tribunal arbitrators or mediators and all modifications to such list are to be published.

S11 Fees

Upon the filing of a request for arbitration or mediation, the initiator shall pay a minimum Tribunal fee of \$250, without which the Tribunal shall not proceed. This fee shall be retained by the Tribunal but shall be taken into account by a Panel if any costs are assessed. [other fees?]

S12 President

The Council may appoint a Tribunal President who shall act as President of the Tribunal and oversee the administration of the Tribunal. Any issues which arise prior to the constitution of the Panel shall be referred to the Tribunal President. In the absence of such appointment, the Council Chair shall act as Tribunal President.

S13 Miscellaneous Provisions

The present Statutes are supplemented by the Procedural Rules adopted by the Council.

S12 Idem: The Tribunal arbitration proceedings must comply with the supplementary Procedural Rules, but are not subject to the *Statutory Powers Procedure Act* or the *Federal Court Act*.

S13 Idem: The English text and the French text are authentic and shall be co-equal in their interpretation.

Arbitration Procedural Rules

General Provisions

RA-1 Application of the Rules

- (a) These Arbitration Procedural Rules apply whenever the parties bring a sports-related dispute to the Tribunal without an agreement to mediate. Such disputes may arise out of a contract containing an arbitration clause or be the subject of an arbitration clause or involve an appeal against a NSO, whose statutes, by-laws or regulations provide for an appeal to the Tribunal.
- (b) Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests brought into play in the practice or the development of sport and, generally speaking, any activity related or connected to sport. Any sport-related dispute involving allegations of doping or a finding that a doping offense has been committed can be brought before a Tribunal arbitration panel.
- (c) Where a party appeals to the Tribunal from the decision of a disciplinary tribunal or similar body of a NSO, the appellant must have exhausted the legal remedies available to them prior to the appeal, in accordance with the statutes, by-laws or regulations of the NSO.

RA-2 Language

The Tribunal working languages are French and English. In the absence of agreement between the parties, and taking into account all pertinent circumstances, the President of the Panel shall select one of these two languages as the language of the arbitration at the start of the proceedings before the Panel.

RA-3 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names addresses, telephone and facsimile numbers of the persons representing the parties shall be communicated to the Tribunal, the other parties and the Panel after formation.

RA-4 Independence and Qualifications of Arbitrators

- (a) Every arbitrator shall be and remain independent of the parties and shall immediately

disclose any circumstances likely to affect independence with respect to any of the parties.

- (b) Every arbitrator shall appear on the list drawn up by the Council and maintained by the Tribunal in accordance with this Code. No arbitrator shall have a conflict of interest in the matter before them. Every arbitrator shall not have represented on a previous occasion, within the past two years, either an athlete or a NSO in any Tribunal proceeding. For clarity, Arepresented≅ shall mean appear as an advocate of record for a party in any proceedings before the Tribunal, a disciplinary tribunal or any court in any jurisdiction within Canada. All arbitrators shall have the availability required to expediently complete the arbitration.

RA-5 Challenge

- (a) An arbitrator may be challenged if the circumstances give rise to legitimate doubts over such arbitrator=s independence or any conflict of interest. The challenge shall be brought immediately after the ground for the challenge has become known.
- (b) Challenges are in the exclusive power of the Council which may exercise such power through its Board in accordance with the Statutes which are part of this Code. The challenge shall be brought by way of a petition setting forth the facts giving rise to the challenge. The Council shall rule on the challenge after the other parties, the challenged arbitrator and the other arbitrators have been invited to submit written comments. It shall give brief reasons for its decision.

RA-6 Removal

An arbitrator may be removed by the Council if the arbitrator refuses to or is prevented from carrying out his or her duties.

RA-7 Replacement

In the event of resignation, death, challenge or removal of an arbitrator, such arbitrator shall be replaced in accordance with the provisions applicable to their appointment. Unless otherwise agreed by the parties or otherwise decided by the Panel, the proceedings shall continue without repetition of the procedure which took place prior to the replacement.

RA-8 Notifications and Communications

- (a) All notifications and communications that the Tribunal or the Panel intend for the parties shall be made through the Tribunal. The notifications and communications shall be written in French or in English and sent to the address shown in the arbitration request, statement of appeal or application for an opinion, or to any other

address specified at a later date.

- (b) All arbitration awards orders, and other decisions made by the Tribunal and the Panel shall be notified by any means permitting proof of receipt.
- (c) All communications from the parties intended for the Tribunal or the Panel, including the arbitration request, and the request for the participation of a third party as well as the reply shall be sent to the Tribunal in as many copies as there are parties, counsel and arbitrators, together with one additional copy for the Tribunal itself.

RA-9 Time-limit

- (a) Time limits fixed under the Code shall begin from the day after that on which notification by the Tribunal is received. National Statutory and Provincial holidays and non-working days are included in the calculation of time limits. The time limits are respected if the communications by the parties are sent before midnight on the last day on which such time limit expires local time of the usual or ordinary locale of the party sending the communication.
- (b) Upon application on justified grounds, either the President of the Panel or, failing that person, the President of the Tribunal, may extend the time limits provided in these Procedural Rules, if the circumstances so warrant.

RA-10 Provisional and Conservatory Measures

- (a) No party may apply for provisional or conservatory measures under these Procedural Rules before the request for arbitration has been filed with the Tribunal and in any event not before the exhaustion of internal remedies.
- (b) The Tribunal, prior to the transfer of the file to the Panel, or thereafter the President of the Panel may, upon application by one of the parties, make an order for provisional or conservatory measures. In agreeing to submit to these Procedural Rules any dispute subject to appeal arbitration proceedings, the parties expressly waive their rights to request such measures from the courts of any province or of Canada.
- (c) If an application for provisional measures is filed, the Tribunal or the Panel shall invite the party(s) not filing the application to express a position within ten days or within a shorter time-limit if circumstances so require. The Tribunal or the Panel shall issue an order within a short time. In case of utmost urgency, the Tribunal, prior to the transfer of the file to the Panel, or thereafter the President of the Panel, may issue an order upon mere presentation of the application, provided that any opponents so wishing shall be heard subsequently.
- (d) Temporary and conservatory measures may be made conditional upon the provision of security.

RA-11 Waiver of Right to Object

A party who knows that any provision of this Code from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating their objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived their right to object.

Arbitration Proceedings

RA-12 Request for Arbitration

- (a) The party intending to submit a reference to arbitration under these Procedural Rules shall file a request with the Tribunal containing:
- (1) the name and address of the respondent;
 - (2) a brief statement of the facts and legal argument(s), including a statement of the issue to be submitted to the Tribunal for determination;
 - (3) the claimant=s request for relief;
 - (4) any relevant information about the number and choice of the arbitrator(s)[RA-15];
 - (5) a copy of the applicable rules of any NSO involved in the dispute;
 - (6) Where a dispute is submitted to the Tribunal on appeal from the decision of a disciplinary tribunal or similar body of a NSO, the appellant shall submit, if applicable:
 - (i) a copy of the decision appealed from;
 - (ii) an application to stay execution of the decision appealed from, together with reasons.
- (b) Upon filing its request, the claimant shall pay the fee provided in Article S11.

RA-13 Time-limit for Appeal

Where a dispute is submitted to the Tribunal on appeal from the decision of a disciplinary tribunal or similar body of a NSO, in the absence of a time-limit set in the statutes of such body, the time-limit for appeal shall be twenty one (21) days from the communication of the decision which is appealed from or within twenty one (21) days from the matter giving rise to the sports related dispute or the same number of days following the last step in attempting to resolve the sports related dispute.

RA-14 Initiation of the Arbitration by the Tribunal and Answer

- (a) Unless it is apparent from the outset that there is manifestly no right to refer a dispute

to the Tribunal, the Council shall take all appropriate actions to set the arbitration in motion. To this effect, it in particular communicates the request to the respondent, calls upon the parties to express themselves on the law applicable to the merits of the dispute and sets time-limits for the respondent to submit any relevant information about the number and choice of the arbitrator(s), as well as to file an answer to the request for arbitration. The answer shall contain:

- (1) a statement of defense;
- (2) any defense of lack of jurisdiction;
- (3) any counterclaim;
- (4) any exhibits or specification of other evidence upon which the respondent intends to rely.

- (b) If the respondent fails to submit its responses by the given time-limit, the Panel may nevertheless proceed with arbitration and deliver the award.

RA-15 Formation of the Panel

RA-15.1 Number of Arbitrators

The Panel of Arbitrators shall be composed of a sole arbitrator where:

- (1) the parties so agree;
- (2) the Council determines that only a single arbitrator is warranted taking into account the breadth of the amount in dispute and the complexity of the dispute;
- (3) Either party may require that the Panel be composed of three arbitrators, where:
 - i) the dispute is by way of an appeal from the decision of a disciplinary tribunal or similar body of a NSO or,
 - ii) is a doping dispute, in which case the respondent party may require that the Panel be composed of three arbitrators.

RA-15.2 Single Arbitrator

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

- (a) Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, the Council shall send simultaneously to each party to the dispute a list of not more than seven (7) Tribunal arbitrators, established under S6. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the Council of their agreement.
- (b) If the parties are unable to agree upon an arbitrator, each party to the dispute shall

have fourteen (14) days from the date the list of Canadian Arbitrators was transmitted (transmittal date) in which to strike two names objected to, number the remaining names in order of preference, and return the list to the Council. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the Council shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Council shall have the power to make the appointment from among other members on the list of arbitrators established in accordance with S6, without the submission of additional lists to the parties. The Council shall choose first from within the list of seven arbitrators submitted to the parties in the dispute who have not been struck off by a party and thereafter from amongst the remaining names not struck off.

- (c) Unless the parties have agreed otherwise no later than fourteen (14) days after the commencement of an arbitration, if the notice of arbitration names two or more claimants or two or more respondents, the Council shall appoint the arbitrator.

R-15.3 Three Arbitrator Panel

The parties may agree on the method of appointment of the arbitrators. In the absence of an agreement, the claimant shall appoint its arbitrator in the request or within the time-limit set in the decision on the number of arbitrators and the respondent shall appoint its arbitrator within the time-limit set by the Council upon receipt of the request. In the absence of such appointment, the Council shall proceed with the appointment in lieu of the parties. The two arbitrators so appointed shall select the President of the Panel by mutual agreement within a time-limit set by the Council. In the absence of an agreement within such time-limit, the Council shall appoint the President of the Panel in lieu of the two arbitrators.

R15.4 Confirmation of the Arbitrators and Transfer of the File

- (a) The arbitrators selected by the parties shall only be deemed appointed after confirmation by the Council. Before proceeding with such confirmation, the Council shall ascertain that the arbitrators fulfill the requirements of Article RA-4.
- (b) Once the Panel is formed, the Council takes notice of the formation of the Panel then the Tribunal will transfer the file to the arbitrators.

RA-16 Multiparty Arbitration

RA-16.1 Plurality of Claimants / Respondents

- (a) If the request for arbitration names several claimants and/or respondents, the Tribunal shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed to by all parties. In the absence of such an agreement, the Council shall decide on the number of arbitrators in accordance with Article RA-15.1.
- (b) If a sole arbitrator is to be appointed, Article RA-15.2 shall apply. If three arbitrators are to be appointed and there are several claimants, the claimants shall jointly appoint an arbitrator. If three arbitrators are to be appointed and there are several respondents, the respondents shall jointly appoint an arbitrator. In the absence of such a joint appointment, the Council shall proceed with the appointment in lieu of the claimants/respondents. If (i) three arbitrators are to be appointed, (ii) there are several claimants and several respondents, and (iii) either the claimants or the respondents fail to jointly appoint an arbitrator, then both co-arbitrators shall be appointed by the Council in accordance with Article RA-15.1. In all cases, the President of the Panel shall be selected in accordance with Article RA-15.3.

RA-16.2 Joinder

If a respondent intends to cause a third party to participate in the arbitration, it shall so state in its answer, together with the reasons therefor, and file an additional copy of its answer. The Tribunal shall communicate this copy to the person the participation of which is requested and set such person a time-limit to state its position on its participation and to submit a response pursuant to Article RA-14. It shall also set a time-limit for the claimant to express its position on the participation of the third party.

RA-16.3 Intervention

If a third party intends to participate as a party in the arbitration, it shall file with the Tribunal an application with the reasons therefor within the time-limit set for the respondent's answer to the request for arbitration. To the extent applicable, such application shall have the same contents as a request for arbitration. The Tribunal shall communicate a copy of this application to the parties and set a time-limit for them to express their position on the participation of the third party and to file, to the extent applicable, an answer pursuant to Article RA-14.

RA-16.4 Joint Provisions on Joinder and Intervention

- (a) A third party may only participate in the arbitration if both itself and the other parties agree in writing or if the Tribunal determines it is a directly affected third party.
- (b) Upon expiration of the time-limit set in Articles RA-15.2 and RA-15.3, the Tribunal shall decide on the participation of the third party. Such decision shall be without prejudice to the decision of the Panel on the same matter.

- (c) If the Council accepts the participation of the third party, the Tribunal shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed by all parties. In the absence of such an agreement, the Council shall decide on the number of arbitrators in accordance with Article RA-15.1.
- (d) Regardless of the decision of the Panel on the participation of the third party, the formation of the Panel cannot be challenged. In the event that the Panel accepts the participation, it shall, if required, issue related procedural directions.

RA-16.5 Affected Third Parties

- (a) In circumstances where a third party could be directly affected by an arbitration award the Panel will serve notice to such party. The notice will state the issue before the panel and the potential effect the arbitration award could have on the third party. The notice will also request the third party to participate in the proceedings.
- (b) If a third party intends to participate as a party in the arbitration, the Panel shall set time limits for its application and request a number of additional copies of its answer that correspond to the number of other parties to the proceedings. The Tribunal shall communicate these copies to the other parties and set such person a time-limit to submit a response pursuant to Article RA-14.
- (c) Failure of a third party to participate in the proceedings will be a factor considered and weighed by the Tribunal should the third party raise a subsequent application for arbitration.

RA-17 Mediation

The Council, before the transfer of the file to the Panel, and thereafter the Panel may at any time seek to resolve the dispute on consent of the parties through mediation. Any settlement may be embodied in an arbitral award rendered by consent of the parties.

RA-18 Confidentiality

Proceedings under these Procedural Rules are confidential. The parties, the arbitrators and the Tribunal undertake not to disclose to any third party any facts or other information relating to the dispute or the proceedings. Awards shall be made public unless the award itself so provides to the contrary.

RA-19 Procedure before the Panel

RA-19.1 Written Submissions

- (a) The procedure before the Panel comprises written submissions, and if the Panel deems it appropriate, an oral hearing. Upon the receipt of the file, the President of the Panel, if appropriate, shall issue directions in connection with the written submissions. As a general rule, there shall be one statement of claim, one response and, if the circumstances so require, one reply and one second response. The parties may, in the statement of claim and in the response, raise claims not contained in the request for arbitration and in the answer to the request. Thereafter, no party may raise any new claim without the consent of the other party.
- (b) Together with their written submissions, the parties shall produce all written evidence upon which they intend to rely. After the exchange of the written submissions, the parties shall not be authorized to produce further written evidence, except by mutual agreement or if the Panel so permits on the basis of exceptional circumstances.
- (c) In their written submissions, the parties shall specify any witnesses and experts which they intend to call and state any other evidentiary measure which they request.

RA-19.2 Hearing

- (a) Once the exchange of pleadings is closed, the President of the Panel shall issue directions with respect to the hearing and in particular set the hearing date. As a general rule, there shall be one hearing during which the Panel hears the parties, the witnesses and the experts as well as the parties' final oral arguments, for which the applicant has the final reply.
- (b) Except in exceptional circumstances and with the approval of the Panel, no hearing shall take longer than two (2) days. If the Panel approves of an extension to the hearing, the parties must pay \$500 each in advance of each additional day of hearing, unless such amount is waived by the Panel. If a hearing is delayed due to the actions of one party, the Panel has the right to assign costs against the delaying party.
- (c) The President of the Panel shall conduct the hearing and ascertain that the statements made are concise and limited to the subject of the written presentations, to the extent that these presentations are relevant. Except if the parties agree otherwise, the hearings are not public. There shall be minutes of the hearing. To assist in the preparation of such minutes, a tape recording of the hearing may be made at the direction of the President of the Panel but any such tape shall be destroyed upon the rendering of an award and may not be used in any other procedure.
- (d) Any person heard by the Panel may be assisted by an interpreter at the cost of the party which called such person.

- (e) The parties may call to be heard by the Panel such witnesses and experts which they have specified in their written submissions. Before hearing any witness, expert or interpreter, the Panel shall solemnly invite such persons to tell the truth, subject to the sanctions of perjury.
- (f) Once the hearing is closed, the parties shall not be authorized to produce further written pleadings, except if the Panel so orders.

RA-19.3 Evidentiary Proceedings Ordered by the Panel

A party may request the Panel to issue an order that the other party produces documents in its custody or under its control. The party seeking such production shall demonstrate that the documents are likely to exist and to be relevant. If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural act. The Panel shall consult the parties with respect to the appointment and terms of reference of such expert. The expert appointed by the Panel shall be and remain independent of the parties and shall immediately disclose any circumstances likely to affect independence with respect to any of the parties. The President of the Panel shall have the authority and power to subpoena witnesses and documents.

RA-19.4 Expedited Procedure

With the consent of the parties, the Panel may proceed in an expedited manner for which it shall issue appropriate directions.

RA-20 Scope of Panel's Review, Hearing

Where a dispute involves an appeal from a disciplinary tribunal or similar body of a NSO, the Panel shall have full power to review the facts and the law. Upon transfer of the file, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. The President may also request communication of the file of the disciplinary tribunal or similar body, the decision of which is subject to appeal. Articles RA-19.2 and RA-19.3 shall apply.

RA-21 Award

- (a) The award shall be made by a majority decision, or, in the absence of a majority, by the President alone. The award shall be written, dated and signed. Unless the parties agree otherwise, it shall briefly state reasons. The signature of the President of the Panel shall suffice.

- (b) The award shall be final and binding upon the parties. It may not be challenged by way of an action for setting aside to the extent that the parties have expressly excluded all setting aside proceedings in the arbitration agreement or in an agreement entered into subsequently, in particular at the outset of the arbitration.
- (c) The award or a summary setting forth the results of the proceedings shall be made public by the Tribunal, unless the award provides that it is to remain confidential.

{NB. We need to align this with Federal and Provincial Arbitration Acts until the Sports Statute takes over this aspect of the Rules.}

RA-22 Scope of Award

- (a) The Panel may grant any remedy or relief that it deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
- (b) In addition to a final award, the Panel may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the Panel may assess and apportion the fees, expenses, and compensation related to such award as it determines is appropriate.

RA-23 Interpretation

- (a) A party may apply to the Tribunal for the interpretation of an award, whenever the holding of the award is unclear, incomplete, ambiguous or whenever its components are contradictory among themselves or contrary to the reasons, or whenever it contains clerical mistakes or a miscalculation of figures.
- (b) When an application for interpretation is filed, the Council shall review whether there is ground for interpretation. If there is ground, it shall submit the request to the Panel which has rendered the award for interpretation. If any arbitrators of the Panel are unable to act they shall be replaced in accordance with Article RA-7. The Panel shall rule on the request within one month following the submission of the request to the Panel.

RA-24 Costs of the Proceedings

- (a) Each party bears its own costs and that of its witnesses and interpreters, if any.
- (b) The Panel shall determine if there is to be any award of costs and the extent of those costs. As a general rule the prevailing party shall be granted a contribution towards its legal fees and other expenses incurred in connection with the proceedings. When granting such contribution, the Panel shall take into account the outcome of the

proceedings, the conduct of the parties and their respective financial resources.

Mediation Procedural Rules

Pursuant to Articles S3 and S8 of the Code, the Council adopts the Mediation Rules set out herein.

RM-1 Definitions

- (a) Mediation under these Mediation Rules is a non binding and informal procedure, based on a mediation agreement in which each party undertakes, with the assistance of a Tribunal mediator, to negotiate with the other party in order to resolve a sports-related dispute. All disputes related to team selection matters, as well as doping issues, are expressly excluded from such mediation.
- (b) A mediation agreement is one whereby the parties agree to submit to mediation a sports-related dispute which has arisen or which may arise between them. A mediation agreement may take the form of a mediation clause inserted in a contract or that of a separate agreement.

RM-2 Scope of application of rules

These Mediation Rules shall be deemed to form an integral part of a mediation, where mediation is provided for in a mediation agreement. Unless the parties have agreed otherwise, the version of these Mediation Rules in force on the date when the mediation request is filed shall apply. The parties may however agree to apply other rules of procedure. The parties will sign the appended standard form mediation agreement unless they have agreed to a different agreement.

RM-3 Commencement of the mediation

A party wishing to institute mediation proceedings shall address a written request for mediation both to the Tribunal Office and the other party. The request shall contain: (i) the identity of the parties and their representatives (name, address, telephone, email addresses and fax numbers), (ii) a copy of the mediation agreement and (iii) a brief description of the dispute. Upon filing its request, the party shall pay the administrative fee stipulated in Article S11 of the Code. Upon receiving a request for mediation, the Tribunal Office shall contact the parties and arrange a date on which the mediation shall commence, and shall fix the time limit by which the other party will be required to pay its share of the administrative costs pursuant to Article S11 of the Code.

RM-4 Appointment of the mediator

The Council draws up the list of mediators chosen from the list of the Tribunal mediators. The personalities whom the Council chooses appear on the list of mediators for a four-year period, and are thereafter eligible for re-selection.

RM-5 Alternate Selection of Mediator

Unless the parties have agreed between themselves on a specific person to conduct the mediation, a mediator shall be chosen by the Tribunal President from among the list of the Tribunal mediators and appointed after consultation with the parties.

RM-6 Independence and Qualifications of Mediators

- (a) Every mediator shall be and remain independent of the parties and shall immediately disclose any circumstances likely to affect independence with respect to any of the parties.
- (b) Every mediator shall appear on the list drawn up by the Council and maintained by the Tribunal in accordance with their rules and this Code. No mediator shall have a conflict of interest in the matter before them. Every mediator shall not have represented on a previous occasion, within the past two years, either an athlete or a NSO in any the Tribunal proceeding. For clarity, Arepresented≡ shall mean appear as an advocate of record for a party in any proceedings before the Tribunal, a disciplinary tribunal or any court in any jurisdiction within Canada. All mediators shall have the availability required to expediently complete the mediation.

RM-7 Challenge

- (a) A mediator may be challenged if the circumstances give rise to legitimate doubts over their independence or any conflict of interest. The challenge shall be brought immediately after the ground for the challenge has become known.
- (b) Challenges are in the exclusive power of the Council which may exercise such power through its Board in accordance with the Statutes which are part of this Code. The challenge shall be brought by way of a petition setting forth the facts giving rise to the challenge. The Council shall rule on the challenge after the other parties, the challenged mediator and the other mediators have been invited to submit written comments. It shall give brief reasons for its decision.

RM-8 Removal

A mediator may be removed by the Council if the mediator refuses to or is prevented from carrying out his or her duties.

RM-9 Replacement

In the event of resignation, death, challenge or removal of a mediator, such mediator shall be replaced in accordance with the provisions applicable to their appointment. Unless otherwise agreed by the parties the proceedings shall continue without repetition of the procedure which took place prior to the replacement.

RM-10 Language

The Tribunal working languages are French and English. In the absence of agreement between the parties, and taking into account all pertinent circumstances, the President of the Panel shall select one of these two languages as the language of the mediator at the start of the proceedings.

RM-11 Representation of parties

The parties may be represented or assisted in their meetings with the mediator. If a party is being represented, the other party and the Tribunal must be informed beforehand as to the identity of such representative. The names, addresses, telephone and facsimile number of the representative shall be communicated to the Tribunal, the other parties and the mediator. The representative must have full authority to settle the dispute alone, without consulting the party he is representing.

RM-12 Conduct of Mediation

- (a) The mediation shall be conducted in the manner agreed by the parties. Failing such agreement between the parties, the mediator shall determine the manner in which the mediation will be conducted. As soon as possible, the mediator shall establish the terms and timetable for submission by each party to the mediator and to the other party of a statement summarizing the dispute, including the following details:
 - (i) a brief description of the facts and the problem to be solved, including a list of the issues submitted to the mediator with a view to resolution;
 - (ii) a copy of the mediation agreement.
- (b) Each party shall cooperate in good faith with the mediator and shall guarantee the mediator the freedom to perform their mandate to advance the mediation as expeditiously as possible. The mediator may make any suggestions they deem appropriate in this regard. The mediator may meet separately with the parties.

RM-13 Role of the Mediator

- (a) The mediator undertakes to devote sufficient time to the mediation proceedings to ensure that the mediation is conducted expeditiously. The mediator shall promote the

settlement of the issues in dispute in any manner that the mediator believes will help the parties to determine if there are options to settle. To achieve this, the mediator will:

- (i) help the parties determine whether there are objectives to settle;
- (ii) identify the issues in dispute;
- (iii) facilitate discussion of the issues by the parties;
- (iv) assist the parties to propose solutions.

(b) However, the mediator may not impose a solution of the dispute on either party.

RM-14 Confidentiality

(a) The mediator, the parties, their representatives and advisers, experts and any other persons present during the meetings between the parties may not disclose to any third party any information given to them during the mediation, unless required by law to do so.

(b) Under their own responsibility, the parties undertake not to compel the mediator to divulge records, reports or other documents, or to testify in regard to the mediation in any arbitral or judicial proceedings.

(c) Any information given by one party in a private caucus may be disclosed by the mediator to the other party only with the consent of the party giving the information. No record of any kind shall be made of the meetings. All the written documents shall be returned to the party providing these upon termination of the mediation, and no copy thereof shall be retained. The parties shall not rely on, or introduce as evidence in any arbitral or judicial proceedings:

- (i) views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- (ii) admissions made by a party in the course of the mediation proceedings;
- (iii) documents, notes or other information obtained during the mediation proceedings;
- (iv) proposals made or views expressed by the mediator; or
- (v) the fact that a party had or had not indicated willingness to accept a proposal.

RM-15 Time Limit

Upon commencing mediation proceedings, the parties and the mediator, with a view to the issues in dispute, will agree upon a time-limit upon which the mediation proceeding will automatically terminate. In the event that the parties cannot agree on a time-limit the mediator will set a time-limit, considering the date by which the dispute must be resolved and the amount of time which would reasonably be required to resolve the

dispute should it go to arbitration.

RM-16 Termination

Either party or the mediator may terminate the mediation at any time. The mediation shall be terminated:

- (a) by the signing of a settlement by the parties;
- (b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
- (c) by a written declaration of a party or the parties to the effect that the mediation proceedings are terminated; or
- (d) upon the expiration of the time-limit agreed upon pursuant to RM-15.

RM-17 Settlement

The settlement is drawn up by the mediator and signed by the mediator and the parties. Each party shall receive a copy thereof. In the event of any breach, a party may rely on such copy before an arbitral or judicial authority. A copy of the settlement is submitted for inclusion in the records of the Tribunal Office.

RM-18 Failure to settle

The parties may have recourse to arbitration when a dispute has not been resolved by mediation, provided that an arbitration agreement or clause exists between the parties. The arbitration clause may be included in the mediation agreement. In such a case, the parties may agree to proceed on an expedited basis for which the Panel may issue procedural directions. In the event of failure to resolve a dispute by mediation, the mediator shall not accept an appointment as an arbitrator in any arbitral proceedings concerning the parties involved in the same dispute.

RM-19 Costs

- (a) Each party shall pay the Tribunal Office the administrative fees fixed by the Tribunal within the time limit provided in RM-3 of these rules. In the absence of such payment, the mediation proceedings will not be set in motion. The parties will pay their own mediation costs. Unless otherwise agreed between the parties, the final costs of the mediation, which include the Tribunal fee, the fees of the mediator calculated on the basis of the Tribunal fee scale, a contribution towards the costs of the Tribunal, and the costs of witnesses, experts and interpreters, will be borne by the parties in equal measure.
- (b) The Tribunal Office may require the parties to deposit an equal amount as an

advance towards the costs of the mediation.

SAMPLE CLAUSE FOR MEDIATION TO BE INSERTED IN A CONTRACT

Any dispute, any controversy or claim arising under, out of or relating to this contract and any subsequent amendments of or in relation to this contract, including, but not limited to, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the Canadian Sport Dispute Resolution Code. The language to be used in the mediation shall be

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ADDITIONAL CLAUSE WHERE NO SETTLEMENT OF THE DISPUTE

Alf, and to the extent that, any such dispute has not been settled within the time limit set pursuant to RM-15 of the commencement of the mediation, or if, before the expiration of the said period, either party fails to participate or continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by either party, be referred to and finally settled by arbitration pursuant to the Canadian Sport Dispute Resolution Code. When the circumstances so require, the mediator may, at his or her own discretion or at the request of a party, seek an extension of the time limit from the Tribunal President.≡

SAMPLE MEDIATION AGREEMENT

Each of X and Y, (collectively, the AParties≡ and individually a AParty≡) and Z (the AMediator≡) agree as follows:

1. Roles and Responsibilities of the Mediator

- (a) The Mediator agrees to serve as mediator in connection with this matter.
- (b) The Mediator is an impartial third party who does not represent either of the Parties. The Mediator=s role is to help the Parties to negotiate a voluntary settlement of the issues in dispute between them.
- (c) The Mediator does not offer legal advice and has no duty to assert or protect the legal rights of any Party, to raise any issue not raised by the Parties themselves or to determine who should participate in the mediation contemplated by this Agreement (the AMediation≡). The Mediator has no duty to ensure the enforceability or validity of any settlement agreement reached.

2. Roles and Responsibilities of the Parties

- (a) The Mediation is voluntarily entered into by the Parties in an attempt to resolve a dispute amongst them. The signing of this Agreement is evidence that the Parties intend to conduct this Mediation in an honest and forthright manner and to make a serious attempt to resolve the dispute.
- (b) The Parties acknowledge that the primary responsibility for resolving the outstanding issues between them rests with them and not with the Mediator.
- (c) The Parties agree to disclose all information which is pertinent to the issues which are the subject of the Mediation, including any necessary financial information.

3. Indemnity

The parties agree that the Mediator has no liability for any act or omission in connection with the Mediation and agree to indemnify and hold the Mediator harmless from any claims for damages that may arise in any way from the Mediation.

4. Confidentiality

- (a) If the Mediator believes that information disclosed in a private discussion with one party is significant to the mediation process, the Mediator may disclose the information to the other party unless the Party making the disclosure clearly and specifically states that the disclosure is confidential.
- (b) Other than to the Parties, the Mediator will not voluntarily disclose anything that is said or takes place in the Mediation, except that:
 - (i) the Mediator may discuss the Mediation and information disclosed in it with a representative of a Party (but information that is made confidential by one party in a private meeting with the Mediator will not be disclosed to the other Party=s representative);
 - (ii) the Mediator may disclose non-identifying information for research, educational or reporting purposes;
 - (iii) the Mediator may disclose information: with the written consent of both Parties; where ordered to do so by an appropriate judicial authority; where required to do so by law; or where the information disclosed suggests an actual or potential threat to human life or safety.
- (c) The Parties understand that a mediation constitutes settlement discussions and that statements made during the course of the mediation are generally inadmissible in any legal proceeding relating to the matters being mediated.
- (d) The Parties agree not to introduce into evidence in any legal proceeding, or statements made by a party or the Mediator in the Mediation. However, evidence that is otherwise discoverable or admissible does not become inadmissible or non-discoverable merely because of its use in the Mediation.
- (e) The Parties agree that neither of them may compel the disclosure of any documents received or prepared by the Mediator.
- (f) Neither of the Parties may compel the Mediator to testify in any legal proceeding regarding information disclosed during the Mediation or communicated to the Mediator in confidence.

5. Costs of Mediation

- (a) The parties agree to pay the mediator his/her fee of \$_____, all out-of-pocket expenses and applicable G.S.T.; and
- (b) The Parties are both fully liable to the Mediator for all out-of-pocket expenses in

relation with the Mediation. As between each other, the Parties agree that each is equally responsible for such costs and entitled to receive a refund of one-half of any amount paid to the Mediator.

6. Status of Matters During the Mediation

- (a) Prior to the conclusion of the Mediation, neither Party may start nor take any fresh step in a legal proceeding between the Parties.
- (b) By signing this Agreement, each of the Parties and the Mediator acknowledges that he or she has read this Agreement and agrees to proceed with the Mediation on the terms contained in it.

IN WITNESS WHEREOF, the Parties and the Mediator have executed this Agreement under seal as of the _____ day of _____, 20_____.
