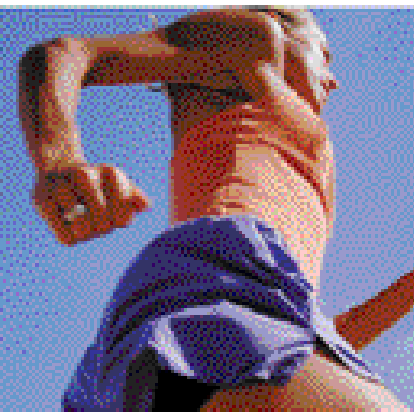




PROGRAM REPORT

March 31, 2004





A program of the
Sport Dispute
Resolution Centre
of Canada

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Table of contents

| | |
|--|----|
| Introduction | 3 |
| Executive Summary | 4 |
| Participants | 5 |
| Acknowledgements | 5 |
| Background | 6 |
| Milestones | 6 |
| Activities: What did ADRsportRED do and offer? | 7 |
| Programs and Services | 7 |
| Governance and Operations | 7 |
| Results: What did ADRsportRED achieve? | 9 |
| The Programs | 9 |
| Governance and Operations | 12 |
| Improvements to the Canadian Sport System: Did ADRsportRED make a difference? | 14 |
| Lessons learned: What did ADRsportRED and the Sport community learn? | 17 |
| Lessons learned from the operations | 17 |
| Lessons learned from the decisions | 18 |
| Lessons learned on the system | 21 |
| Summary of the recommendations from the Steering Committee | 28 |
| | |
| APPENDIX A | |
| Recommendations of the Work Group | 30 |
| APPENDIX B | |
| Recommendations of the Implementation Committee | 32 |
| APPENDIX C | |
| Selection Criteria for the Arbitrators and Mediators | 33 |
| APPENDIX D | |
| List of the Arbitrators/Mediators | 34 |
| APPENDIX E | |
| Financial Report | 36 |
| APPENDIX F | |
| Synopsis of Cases | 37 |



Introduction

The Alternative Dispute Resolution Program (ADRsportRED) was established in January 2002 to provide accessible, affordable and timely alternative dispute resolution services to Canadian athletes, coaches, and members of National Sport Federations (NSFs) and Multi-sport Organizations (MSOs). This initiative came from the recommendation of a Secretary of State (Amateur Sport) Work Group (hereinafter the Work Group). The sport community needed to be able to settle or diffuse disputes quickly and fairly. A sport system without fairness can never aspire to excellence.

Since the program's inception, many disputes have been resolved through arbitration and mediation, while others have been prevented altogether, thanks in large part to the prevention and education initiatives of the program's Resource Centre. The program has resolved 32 cases dealing with such issues as carding, disciplinary sanction, eligibility, and team selection.

This report reviews the activities and assesses the results of the interim ADRsportRED program, which ended in March 2004. The program's Steering Committee will ensure the improvements suggested under the program are transferred on April 1, 2004 to the new permanent Sport Dispute Resolution Centre of Canada (SDRCC).

Executive summary

“Australia should look carefully at the Canadian model, which I believe is an excellent model for the type of sports court which Australia requires. Having examined the relevant models, I am strongly of the view that the Canadian example is the one that Australia should (with the necessary modifications) adopt.”

John O’Callaghan 2002 Churchill Fellow.

ADRsportRED was a dispute resolution program for the Canadian sport community, providing dispute resolution solutions and resources to better prevent and resolve sport disputes. The program, provided access to recognized ADR sport experts, who devoted their time and passion to the settlement of sport disputes and the pursuit of fairness and ethical values. In two short years, ADRsportRED became a pioneer and a leader in sport, well recognized in the international sport community.

ADRsportRED had a mission – a mission to ensure that all Canadian athletes, coaches, and members of National and Multi-sport Organizations enjoy access to out-of-court dispute resolution solutions and to guarantee the right to due process and natural justice in the treatment they receive by the organizations in which they are members or participants. Two years of learning, decisions, agreements, reflection, analysis, and discussion. Two years to make a difference. And what a difference was made.

The program was able to resolve 32 difficult cases dealing with issues such as carding, disciplinary sanction, eligibility, and team selection, including cases related to selection to the Major Games. In so doing, it set a new standard for the treatment of all persons with fairness and respect in Canadian sport and brought about the fair, equitable, transparent, and timely resolution of disputes at the national level.

The ADRsportRED program also focused on education and dispute prevention. The Resource Centre provided stakeholders in Canada’s sport system with tools to help them better handle disputes or prevent them altogether. To this end, the ADRsportRED team traveled to key events, offering information and education sessions. ADRsportRED gathered more than 300 documents, drafted user-friendly booklets and responded to many queries about avoidance, prevention and resolution of sport disputes.

Highlights of these two years also included the remake of the ADRsportRED *Code of Procedures*, the drafting of the Games rules, the selection, appointment and training of 26 renowned international arbitrators and mediators but more importantly, the building of a pathway and a foundation for the new Sport Dispute Resolution Centre of Canada (SDRCC). ADRsportRED was able to analyze and discuss various issues and subjects such as the power of the arbitrators, the importance of mediation, communication, the Ombuds Office, the role of the provinces, and the upcoming inception of doping.

During the ADRsportRED initiative, the Steering Committee, users, arbitrators, mediators and the executive team gained valuable experience in implementing dispute resolution practices. The permanent SDRCC, which will open its doors in April 2004 and continue the administration of ADRsportRED, will benefit from the experience gained during the interim program. Lessons learned and recommendations concerning the operations, the decisions of the arbitrators and the system itself are summarized in this report.

PARTICIPANTS

Executive Director **Benoit Girardin** prepared this report on behalf of, and with the assistance of, the members of the ADRsportRED Steering Committee. Co-Chief Arbitrators **Richard H. McLaren** and **L. Yves Fortier, Richard W. Pound** (Chair of the Legal Commission), **Julie Duranceau** (Resource Centre Coordinator), **Odette Lagacé** (Chief Case Manager for the Dispute Secretariat), **Carla Qualtrough**, the Canadian Centre for Ethics in Sport (CCES), and various participants in the program, all provided input.

The members of the Steering Committee were:

Members

Mr. Gordon Peterson, Chair, ADRsportRED, ADR Implementation Committee

Ms. Sue Scherer, Commonwealth Games Canada

Ms. Carla Qualtrough, AthletesCAN and, subsequently, Office of the Secretary of State (Physical Activity and Sport)

Dr. Bruce Kidd, ADR Implementation Committee

Dr. Jean-Guy Ouellet, Office of the Secretary of State (Physical Activity and Sport)

Mr. Mark Lowry and, subsequently,

Mr. Marc Lemay, Canadian Olympic Committee

Ex-Officio

Mr. Victor Lachance and, subsequently,

Mr. Joseph de Pencier, Canadian Centre for Ethics in Sport (CCES)

Mr. Benoit Girardin, Executive Director

Mr. David McCrindle and, subsequently,

Ms. Carla Qualtrough, Sport Canada

Co-chief Arbitrators

Mr. L. Yves Fortier, Ogilvy Renault law firm

Mr. Richard H. McLaren, Innovative Dispute Resolutions Inc.

Co-Presidents of the Ad-Hoc Division

Mr. Charles Dubin (2002 Winter Olympic and Paralympic Games)

Mr. Victor Lachance (2002 Winter Olympic Games and Paralympic Games)

Dr. Bruce Kidd (2003 Pan American Games)

Ms. Paule Gauthier (2003 Pan American Games)

Mr. Pierre A. Michaud (2004 Summer Olympic and Paralympic Games)

Ms. Marg McGregor (2004 Summer Olympic and Paralympic Games)

Chair of the Legal Commission

Mr. Gordon Peterson and, subsequently,

Mr. Richard W. Pound, Stikeman Elliot law firm

ACKNOWLEDGEMENTS

The Steering Committee would like to acknowledge the significant input received from members of the sport community and the participants of the ADRsportRED program. Many participants took the time to review their experiences and recommend ways to improve the system.



MILESTONES

BACKGROUND

In 2000, the sport community identified the lack of a consistent approach for dealing with sport disputes, inherent conflicts and questionable outcomes. In response, the Secretary of State (Amateur Sport) appointed 22 members of the sport community to a Work Group to recommend mechanisms for solving and avoiding disputes in Canadian sport in an efficient, cost-effective, transparent, and impartial manner. They recommended the creation of an alternative dispute resolution system (see Appendix A for a summary of the recommendations).

In 2001, the Secretary of State tasked a second, 12-member committee with recommending how the ADR system would be implemented. The Implementation Committee suggested that a legal entity be created: a permanent sports dispute resolution centre. This centre would consist of a Disputes Secretariat, a Resource and Documentation Centre and an Ombuds's Office. In November 2001, the Secretary of State asked the Canadian Centre for Ethics in Sport (CCES) to create a Steering Committee to initiate the program.

In January 2002, the interim ADRsportRED program opened its doors under the auspices of the CCES. The program offered two services: a Resource Centre and a Tribunal.

2000

2001

January 2000-October 2001

National consultation system and implementation report

2002

January 2002

Interim

ADRsportRED program begins its activities under the auspices of the CCES
first training session for the ADRsportRED arbitrators and mediators

February 2002

Salt Lake City Olympic Games related cases (no Paralympic Games related cases)

Summer 2002

Commonwealth Games related cases

2003

Summer 2003

Pan-American Games related cases

March 2003

Second congress and training session for ADRsportRED arbitrators and mediators
Legislation on physical activity and sport receives royal assent— permanent ADR centre created under the Act

2004

March 2004 (31)

End of the interim program under the auspices of the CCES

April 1 2004

Inception and opening of the new Sport Dispute Resolution Centre of Canada (SDRCC), transfer and continuation of the ADRsportRED program from the auspices of the CCES to the new SDRCC.

What did ADRsportRED do and offer?

PROGRAMS AND SERVICES

The ADRsportRED program offered two services: a Resource Centre and a Tribunal.

Resource Centre

The Resource and Documentation Centre developed information tools and other services as a means of averting disputes within the Canadian sport community. The centre's role was twofold: prevention and education.

Dispute Resolution (Tribunal)

The ADRsportRED Tribunal brought together accredited arbitrators and mediators who were available at all times to members of the Canadian sport community to hear disagreements and guide parties toward mutually satisfying resolutions. ADRsportRED did not provide legal services or representation. It provided a legal structure through which parties could resolve their sport disputes in a timely and cost-effective manner.

The Tribunal included a list of arbitrators and mediators, two co-chief arbitrators and a disputes secretariat. The Tribunal was subdivided into two divisions: the ordinary division and the ad-hoc division.

The **ordinary division** dealt with all cases related to amateur sport under the program's jurisdiction with the exception of cases regarding the selection of teams to major games events.

The **ad-hoc division** ruled over the major games or special events such as Olympic, Paralympic, Commonwealth, and Pan-American Games. The ad-hoc division was composed of bilingual legal and sport experts acting as President and Vice-President and a group of arbitrators specially selected for this division.

The Steering Committee maintained a list of mediators and arbitrators to resolve disputes arising within Canadian sport. The ADRsportRED selection committee chose 26 members on the basis of duly approved selection criteria (Appendix C). (See the list of arbitrators and mediators in Appendix D)

GOVERNANCE AND OPERATIONS

ADRsportRED opened its doors in January 2002. Seven members of the Steering Committee (hereinafter the Committee), the CCES and an Executive Director were to oversee and deliver the ADR's services to the Canadian sport community.

The interim ADRsportRED program owes its success to the participation of all partners.



ADRsportRED operational structure

Steering Committee

The Committee guided the establishment and operation of all program components, including the Resource Centre and the Tribunal.

Activities

Canadian Centre for Ethics in Sport (CCES)

The CCES provided organizational accountability, structure, transparency, expertise, and management services to the program. The CCES did not house the interim ADR Program, but rather helped Sport Canada and the sport community establish an independent system. While the CCES accepted administration and fiduciary responsibilities, it was the Committee that was responsible for the full development and implementation of an independent program as proposed in the implementation report.

Administration Office, Resource Centre, Disputes Secretariat, and collaborators

Administration office

Because a fundamental principle of the ADRsportRED program was to provide unbiased dispute resolution, the Committee retained the services of independent service providers and experts. The core of this support was the administrative office, managed by lawyer and administrator Benoit Girardin, a former national tennis player and coach.

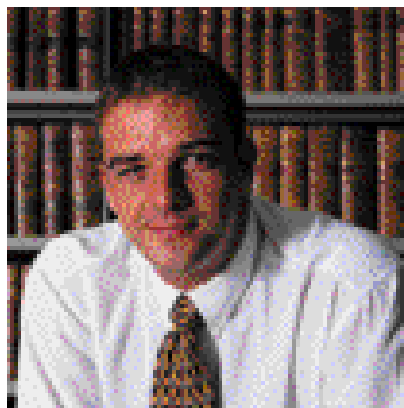
Girardin's consulting firm managed the program from its inception. It was responsible for managing and overseeing all program operations and providing logistical support, which included the Director's office and the Resource Centre. A former triathlon athlete and full time sports lawyer, Julie Duranceau, was hired to coordinate the Resource Centre.

Disputes secretariat

An external arbitration centre, the Canadian Commercial Arbitration Centre (CCAC), based in Montreal with offices in Toronto, Québec and Vancouver, managed the cases. The CCAC, totally independent from sport, coordinated the mediation/arbitration panel in accordance with a set of rules and procedures approved by the Committee, and provided support during the hearing process. The Co-chief Arbitrators of the ordinary division or the President of the ad-hoc division governed the Dispute Secretariat. ADRsportRED and CCAC were available across Canada and sessions could take place either by conference call (toll-free in North America), by written submission or in person.

Collaborators

The Centre for Sport and Law, SIRC, Derek Johnston (Face Value communication), Solutions Elyca (Trico), PR Communications, Matra translation, and Industrial Media were also key players in the establishment of the Resource Centre and the program in general.



What did ADRsportRED achieve?



THE PROGRAMS

Resource Centre

The Resource Centre developed high quality tools for education and prevention, and promoted these tools within the sport community. The ADRsportRED program focused much of its resources on establishing the ADRsportRED web-site and printed materials. It created a repository of sport arbitration decisions, making these decisions available in both official languages. In addition, the program has developed a repository of NSF appeal policies, developed sample appeal policies, sample arbitration agreements and ADR clauses, and other best practices.

ADRsportRED also developed a communications strategy to enhance program awareness. ADRsportRED staff and Steering Committee members spoke to athletes, coaches, officials, and administrators at conferences and congresses. This strategy was very successful in raising awareness of the importance of fairness and justice in sport, and familiarizing the sport community with the ADR process.

More specifically the Resource Centre:

- > Prepared and distributed ADRsportRED program information pamphlets, brochures and other visual materials to inform and raise awareness within the sport community about ADRsportRED
- > Procured and web-posted copies of internal NSF appeal policies for the reference of members and NSFs and to allow them to learn from other organizations
- > Prepared and distributed a “Q&A” on the role of ADRsportRED
- > Prepared and distributed a “Major Games Package” to better resolve or avoid Olympic or Paralympic or Panamerican issues
- > Designed and distributed an “Appeal Policy Package” to enhance the fairness and impartiality of the NSF internal appeal process
- > Designed and distributed evaluation forms for the Centre and Tribunal and installed a toll free line to answer questions and provide guidance
- > Developed and web-posted databases on doctrine and case law (ADRsportRED) specializing in sports law to enhance understanding of how disputes were resolved
- > Compiled “lessons learned” from ADRsportRED decisions to better understand the rationale of the decision-makers
- > Developed and made available a list of legal representatives to better assist members of the sport community
- > Developed online forms for the Tribunal to facilitate the use of the program
- > Prepared and presented PowerPoint summaries to facilitate consultation, raise members’ interest (case studies), and demystify legal terms
- > Held information sessions on ADRsportRED program for national sport and multisport organizations and at national sport conferences and conventions. Many of the materials produced were developed and/or revised in response to requests and inquiries made by athletes, coaches and officials.

Results

Resolving Sport Disputes

Sport opportunities cannot be postponed or relived. Team selection and event registration processes are driven by external forces and timelines. ADRsportRED was able to respond to issues that would have been difficult to resolve through the court system. For example:

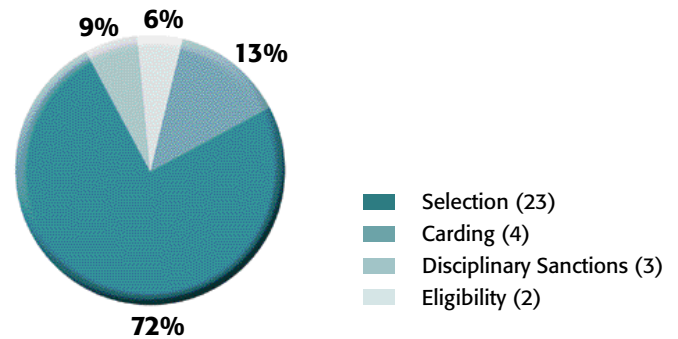
- > An athlete travelling to a world event for which he believed he had been selected learned that he was not authorized by his NSF to participate in the event; ADRsportRED provided him with an almost instant, impartial opportunity to have his case heard.
- > Communication between a national-team athlete and her NSF broke down to the point where they were only shouting at each other through the media; they appealed to ADRsportRED, and through mediation, resolved their differences.
- > A coach believed that he was unfairly punished; he appealed to ADRsportRED and received an impartial opportunity to present his side of the story.
- > An administrator felt that she had been unfairly overlooked in selection for an international team; she appealed to ADRsportRED and received an impartial hearing.

These are all examples of the necessity and the relevancy of an efficient ADR mechanism for sport. ADRsportRED resolved disputes involving athletes, coaches and administrators and NSFs or MSOs but also disputes between NSFs and MSOs.

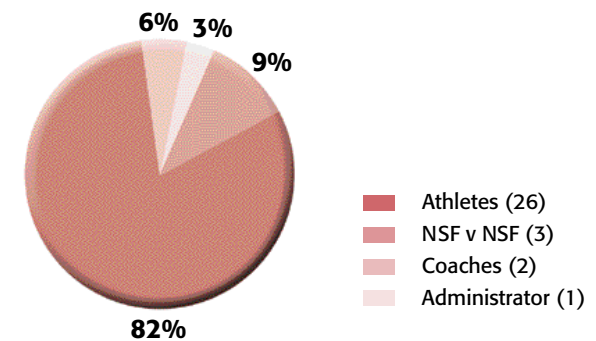
In all, ADRsportRED dealt with 32 difficult issues. Initially, cases concerned selection of athletes or coaches for major Games (Olympic, Paralympic, Commonwealth and Pan-American Games and World Cup). As awareness of the program grew, members were able to resolve disputes involving carding, disciplinary sanctions, contractual issues, and eligibility.

Most of the cases were dealt with through arbitration (31 cases) and ADRsportRED was very pleased to succeed in one mediation (1 case) where the parties reached an agreement.

The types of disputes were as follows:



The users of the system of the ADRsportRED program included:

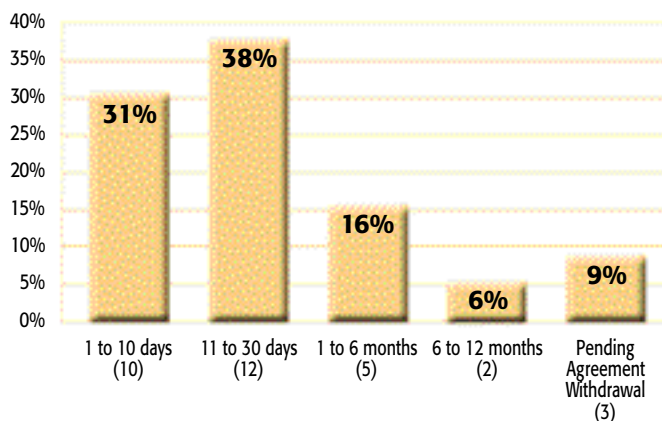


Results

Requests originated from the following sports:

| Sport | Number of Cases (Total = 32) | Percentage of Total Cases |
|----------------------|------------------------------|---------------------------|
| Alpine Skiing | 1 | 3% |
| Badminton | 1 | 3% |
| Biathlon | 1 | 3% |
| Bobsleigh | 1 | 3% |
| Boxing | 2 | 6% |
| Cross Country Skiing | 1 | 3% |
| Curling | 1 | 3% |
| Fencing | 3 | 9% |
| Hockey (CIS) | 2 | 6% |
| Snowboard | 1 | 3% |
| Speed Skating | 1 | 3% |
| Shooting | 1 | 3% |
| Swimming | 5 | 16% |
| Tae Kwon Do | 4 | 13% |
| Wrestling | 5 | 16% |
| Water Polo | 2 | 6% |

A vast majority (almost 70%) of the cases were resolved within 30 days and the complete description of case resolution times is listed below:



A more comprehensive analysis of the cases appears in Appendix E.

The Legal Commission

The first Legal Commission, chaired by Gordon Peterson, selected the members of the Tribunal based on ADR and sport expertise, gender, bilingual capacity, and regional diversity. The second Legal Commission, chaired by Richard W. Pound, revised and improved the ADRsportRED Code. This new version of the Code was adopted by the Committee at the end of March 2004.

Training Arbitrators and Mediators

It was widely recognized that the arbitrators and mediators should be trained on the Canadian sport system. An initial training session in January 2002 prepared them for dispute handling related to selections for the 2002 Salt Lake City Games.

A second training session in March 2003 in Ottawa treated 23 ADRsportRED arbitrators to a series of lectures on amateur sport in Canada. Speakers from Sport Canada, NSFs, the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), Commonwealth Games Canada (CGC), Athletes CAN, the Canadian Professional Coaches Association (CPCA), and the CCES spoke of the many facets of amateur sport in Canada. Lastly, attorney and mediator Allan J. Stitt facilitated a sport mediation session. A modified version of this session took place in June 2003 in Montreal.

The new Sport Dispute Resolution Centre of Canada will continue to enhance arbitrator knowledge with a special session on doping matters in April 2004.

Results

GOVERNANCE AND OPERATIONS

Steering Committee

Each of the recommendations of the initial Work Group focused on one specific element of a comprehensive ADR system. The Implementation Committee incorporated these elements into its proposed six components of the Canadian sport ADR system. Using this proposed system as a roadmap, the Steering Committee implemented the interim program, ADRsportRED.

The Committee took on the responsibility of overseeing the Interim ADR Program. From the onset, the Committee recognized the transitional nature of its work, and focused its efforts on creating a program that would easily and fluidly transition to a permanent ADR system. The Committee sought to lay groundwork for the permanent system without inappropriately imposing long-term decisions or ramifications.

Managing the ADR program meant putting into place the processes and structures to administer effectively and efficiently a national program. To achieve that, Canadian Heritage, through Sport Canada, provided a generous contribution to better help the sport community establish such programs and services. (A financial overview of the program is available in Appendix F).

The Committee drafted the ADRsportRED *Code of Procedures* and developed ad hoc rules of procedures for major games; drafted the Terms of Reference for and appointed the panel of arbitrators and mediators, including the Co-chief Arbitrators; conducted training sessions for arbitrators and mediators; contracted a case administrator to administer the process; developed the Resource Centre and promoted ADRsportRED at many events in Canada.

While the Committee focused primarily on managing the interim program, it was also involved in the establishment of the SDRCC through the *Physical Activity and Sport Act*.

In addition, the Committee worked with Sport Canada and other partners within the Canadian sport system on policy areas ranging from national team selection to funding accountability frameworks, as well as substantive legal issues such as scope of appeal and the application of the *Charter of Rights and Freedoms* to the SDRCC.



The Canadian Centre for Ethics in Sport (CCES)

The values and ethics of the CCES as a partner and overseer contributed to the program's results. The assistance of the CCES in the development of policies and programs, the preparation of contracts and the provision of services enabled not only a high level of service but also the implementation of the interim program. In addition, the CCES testimony before parliamentary commissions and their involvement in the transfer of the interim program to the permanent centre were significant in the successful transition. Whereas the CCES has traditionally handled doping disputes through an independent arbitration service, these disputes will be handled through the SDRCC effective June 1, 2004. This enables the CCES to be a party free of any perceived or real conflict of interest.

The Office of the Director and the Service Providers

Over the past two years, the functions of the ADR program as envisioned by the Work Group and Implementation Committee have been managed by the Executive Director and shared between the contracted case manager, the providers of services and the Resource Centre Coordinator of ADRsportRED. Whereas the case manager has coordinated mediations and arbitrations, the Executive Director assisted the Committee, and oversaw the day to day business of the program.

Because of its expertise and its commitment to sport, the ADRsportRED management team achieved the Committee's goals by finding effective, economical ways to meet the needs of the sport community. Engaging the services of experts in amateur sport and the corporate and legal community in Canada, it broke new ground in sport-related dispute settlement. Through hard work and commitment, it has even served as a model for the provinces, the NSFs and the international community, and a number of international studies have been done on ADRsportRED. By making themselves available on an ongoing basis, the staff, service providers, members of the Steering Committee, arbitrators and mediators demonstrated their passion for the development of Canadian sport and have made a significant contribution to it.



Results

Improvements to the Canadian Sport System

Did ADRsportRED make a difference?

The goal of the ADRsportRED program was to improve the Canadian sport system by providing fair, accessible, and transparent resolution services for sport-related disputes. It is the Committee's hope that the program has raised awareness within the Canadian sport community of the importance of an ethical system based on natural justice and fairness.

Although it is difficult to measure the program's impact on athletes, coaches, officials and NSFs, it is clear that the program has had a positive, significant influence on the sport community. This is evidenced by the progress made on many issues over the last year, the number of disputes resolved, the number of calls and queries made to the program and the Resource Centre, and the establishment of the permanent centre under federal legislation.

The sport community is now aware of this independent, impartial service, and ADRsportRED is now considered one of the key service organizations in the sport community.

What follows are testimonies from leaders of the Canadian sport community:

"Athletes CAN has been involved with the design and implementation of the ADR system for sport in Canada since the beginning. While there have been challenges for athletes throughout the process, we are confident that the Canadian sport system is better because of this initiative. We are pleased that the new SDRCC Board of Directors has athlete representation and are optimistic that by working collectively with partners, Canadian athletes will one day be guaranteed the indisputable right to due process in sport."

Mike Smith
President, Athletes Can

"The ADRsportRED program has really helped to fill an important gap in the way the sport system deals with disputes and how we prevent them from happening in the first place. As we all learn more about the program, I think there's going to be a steady increase in the number of sport people and sport organizations proactively going to ADRsportRED for resource materials, mediation and arbitration. Ultimately, I believe that's going to build greater credibility and confidence in the sport system."

**Victor Lachance,
Senior Leader, The Sport Matters Group**

"ADRsportRED offers the sport community a lot of good information and guidance on how to develop better appeal policies. For the NSF, having better policies -- and communicating them more effectively -- means fewer appeals down the road. But we also have to recognize that we can't prevent disputes entirely. When they do come up, it's reassuring to know that ADRsportRED has the expertise to manage all aspects of the case and to provide qualified, unbiased professionals to help resolve it quickly through mediation or arbitration."

**Greg Mathieu
CEO, Wrestling Canada**

"The CCES has been a strong proponent of a national dispute resolution program for amateur sport for many years. We were pleased to have been able to administer the work of the Steering Committee of the ADRsportRED program and commend them for their commitment to building an effective, credible and transparent process. We will now watch with pride and satisfaction as the program finds its permanent home at the SDRCC."

**Paul Melia
CEO, CCES**

Specific outcomes of the ADRsportRED program include:

- > Resolution of sport-related disputes in a manner that is timely, fair and transparent
- > Better understanding within the sport community of legal concepts and decisions rendered as a result of ADRsportRED educational program
- > Prevention of disputes through the provision of tools such as model contracts and prevention assistance

There are a number of indicators of the Program's impact both within sport organizations and government policy.

Changes within sport organizations and their members:

- > Improved internal policies and practices of sport organizations. NSFs have never hesitated to use or join the program. Moreover, based on the number of calls ADRsportRED received, it seems that NSFs have decided to change, improve or even create internal appeal policies that include a reference to ADRsportRED. The program fostered fairness, respect for the independent process, and improved disclosure, communication and processes. NSFs, perhaps driven by a desire to avoid being overturned by arbitrators, were forced to improve their policies. On the other hand, the program sent a clear message by dismissing frivolous appeals.
- > Enhanced level of interest and a desire to adopt ethical practices within the sport community. ADRsportRED showed members that solutions to sport disputes can be effective, direct, practical and without legal complication when arbitrators' and mediators' meticulousness, experience, expertise and knowledge of sport are brought to the fore. The program was able to deal with communication and political issues in a transparent way by using independent mediators and arbitrators.
- > Access to expertise. ADRsportRED brought together the foremost experts in the fields of sport and law. Those members who would normally charge a much higher fee agreed to contribute to sport by accepting a substantial fee reduction. Members now have access to this expertise at low cost, in both languages and in all regions of Canada.

Program users enjoyed user-friendly forms and information. Arbitrators and mediators made accessible decisions using straightforward, concise language. Although some recommended criteria or thresholds for access to the system, the conclusion was that it was better to have a few unwarranted cases proceed than to have one warranted case refused.

Changes within the government structure:

- > Sport Canada included ADRsportRED as a condition of NSF funding, thus ensuring the participation of sport in a fair and equitable dispute resolution system.
- > In accordance with an undertaking by Secretary of State (Amateur Sport) Paul DeVillers, Sport Canada agreed to provide for appeals of carding under the Athlete Assistance Program (AAP).
- > ADRsportRED contributed to the adoption of the Act creating the permanent Sport Dispute Resolution Centre of Canada, which will set the path for the future of fairness in sport.

Lessons learned

What did ADRsportRED and the sport community learn?

ADRsportRED was an interim program from which lessons were learned and knowledge gained. These lessons, which led to a number of recommendations, can be divided into three categories: those related to operations, those resulting from decisions made by the program experts and those of a systemic nature.

LESSONS LEARNED FROM THE OPERATIONS

ADRsportRED operated within a structure comprised primarily of service providers with multiple control and governance levels. From the director's office, Resource Centre and secretariat to communications, translation, information technology, arbitrators and mediators, all departments and operational functions were handled by a team of service providers and partners, with the entire operation overseen by the CCES, the Executive Director and the Committee.

Without question, this structure permitted financial savings inherent in the occasional and ad hoc use of service providers. In the case of some operational mandates, such as communications and IT, using the services of a consultant was the wisest and most economical choice, providing access to expertise at low cost.

However, as the number of cases increased, the use of the outside commercial arbitration centre was discussed, and the SDRCC will have to determine whether an internal structure offers a better solution.

The limitations of using a commercial arbitration centre include difficulty controlling service delivery at distance, lack of program exclusivity, potential staff turnover, and commercial practices that are not always adapted for sport. On the other hand, there are clear financial advantages: it is less expensive to pay professional fees on a case-by-case basis than to pay a full-time salary. Another advantage is access to the knowledge and expertise of a professional case manager, in this instance, an international expert in the field. And, over the course of the interim program, the CCAC gained experience leading to greater efficiency in the last year of operation and in the development of expertise in case management for sport.

As the permanent structure of SDRCC is established and evolves, the decision to use an outside consulting firm to manage the day to day business should be re-examined to determine whether an internal structure including permanent office and staff would offer a better solution.

ADRsportRED benefited considerably from its collaborators, who contributed to the program's progress. It should also be noted that this service provider and consultant structure was the best solution for the interim program.



LESSONS LEARNED FROM THE DECISIONS

The sport community itself has gone through a learning process. Based on the decisions rendered, guidelines were drafted to steer the community toward a more ethical system and organization. The community has learned that decisions must be made objectively, transparently and fairly in light of the context of each sport. The athletes and coaches have learned that organizations' discretionary operational authority must be used to serve the interests of all their members in an impartial fashion.

To this date, the ADRsportRED Tribunal has rendered decisions in 32 cases. Through these decisions, ADRsportRED hopes it has improved the practices and policies of the sport community. The following are legal and practical observations gained from these decisions in various categories.

About determination of selection criteria

- > Selection criteria must be clearly established, but they do not need to be "mechanical" in the sense that they can be established on factors related to the future, the development of the athlete, or performances. (Medwidsky, Moore)
- > When selection criteria for an event are part of a duly signed selection agreement negotiated by all relevant parties, and when they are duly communicated to the athletes, they must be respected and the athletes must meet them in order to qualify for an event. (Blais, Clegg, Barclay, Janyk, Sergerie)
- > When the duly negotiated selection criteria are not operating in the best interests of the sport, they have to be reassessed in future negotiations for other events. (Clegg, Barclay)

About interpretation of selection criteria

- > Duly established selection criteria must be interpreted reasonably by an internal body acting in good faith and within its competence. (Sodhi 1 & 2, Zilberman, Rolland, Pierse, Pineau)
- > Where the selection process is ambiguous or based on subjective criteria, the internal selection committee must show that it analyzed different ways to interpret these selection criteria and that its decision was the conclusion of a reasonable interpretation. (Pineau)
- > In the absence of an approved policy dealing with a specific case, it is reasonable for an NSF to follow precedents set by international organizations. (Zilberman)
- > A decision cannot be based on sole criteria when that criteria was not publicized as part of the selection process for an event. (Rolland)
- > An internal committee of an NSF that enjoys discretionary powers has to weigh and take into account all circumstances surrounding a case before rendering a decision. (Rolland, Pierse)
- > Where two interpretations of a document are advanced, the decision-maker must take into account the purpose or intent of the document as a whole. (Pierse)
- > A winner does not always take priority over a loser. All factors must be considered. (Medwidsky)
- > The timeframe within which the qualification standards must be achieved is not a "standard" of the same mandatory nature as a performance standard negotiated by the NSF and the COC and included in the selection agreement. It responds to administrative considerations rather than performance-related ones. An athlete could be selected if he or she achieves the standards after the deadline when the deadline for registration with the COC has not expired and where no other athlete is affected by such selection. (Clegg)



About the authority of the NSF of an internal committee

- > An NSF has full discretion to determine how it will select its relay team. It is acceptable to base this decision on athletes' individual results even if it means that there will be no relay team formed, as long as there is no proof that this decision was made in an unreasonable or unfair manner. (Gagnon)
- > The power for a competent body to make policies implies the power to change these policies, unless there is legal constraint prohibiting such change. (Sodhi 2)
- > The board of an NSF can delegate part of its authority to an internal committee, but this delegation is never irrevocable. The board always keeps residual authority over this delegated power. (Cloutier)

About the obligations of an internal committee

- > Internal executive committees or panels must not exceed their powers and must respect the rules of natural justice. (Gordon)
- > A party must receive adequate notice of the possibility that it may be sanctioned following a hearing to be held. (Brandon)
- > Parties must have the possibility of being heard by an impartial committee or panel, and be given adequate disclosure of the case against them and the reasoning behind the decision rendered. (Gordon)
- > Decisions rendered by internal committees should be well-articulated to be well-understood. (Cloutier)

About a NSF's or a MSO's liability

- > An NSF's responsibility toward a team is one of support and assistance and is a mutual relationship. It is not a relationship falling within the principles of fiduciary duties. (Team McAuley)
- > An MSO can be vicariously liable for one of its employees if the actions reproached to this employee are sufficiently linked to his/her employment. This link needs to be analyzed on a case-by-case basis. (Brandon)

About the rights of the parties

- > When an athlete decides not to challenge a decision rendered by his/her NSF, that athlete cannot, as an affected party, join an appeal based on this decision and filed subsequently by another party. In other words, where a policy is modified and accepted as such by the members of an organization, these members cannot challenge this modification subsequently. (Sodhi 2)

About disciplinary sanctions

- > Penalties must be reasonable regarding the circumstances of each case. (Gordon)
- > When an MSO decides to become a member of another MSO, they both enter into a contractual agreement which includes provisions regarding fines for rule breaches. These sanctions are consequently matters of contract and cannot be considered as quasi-criminal. (Brandon)

Lessons learned

About carding

- > NSFs must clearly determine the nomination process when it comes to carding and inform the committee in charge of nominating the athletes as well as all the athletes of this procedure. (Mourad)
- > Where there is uncertainty about the nomination of an athlete for carding, this athlete should have the opportunity to express his or her point of view to the committee in charge of nominating the athletes. (Mourad)
- > Carding is granted on the basis of potential future achievements and not on past performances. (Cloutier)
- > A procedural glitch cannot amount to an order to grant carding unless the irregularity is substantial. (Cloutier)
- > When an athlete gets carding based on a declared training schedule, he or she is bound by this schedule unless the results don't allow that person to compete in a scheduled event. (Team McAulay)
- > If the information given by an athlete regarding his or her training and competition schedule for the year are considered inadequate by the body having authority to decide upon this matter, and if there is no proof of any

About the role of the arbitration panel

- > Where a competent internal body acting in good faith rendered a decision, the arbitration panel must respect this decision. In other words, the role of the arbitration panel is not to substitute its own opinion for that of the relevant body in determining whether or not the criteria and guidelines established by the relevant body are advisable and reasonable. The test lies in ascertaining whether the relevant body acted fairly and reasonably in the application of its rules. (Sodhi 1 & 2, Zilberman, Rolland, Pierse, Todd)
- > An arbitration panel must exercise its discretion with extreme care and deference to the decision-making body. (Pierse)
- > The arbitration panel cannot review a decision made by an internal discipline committee based on a new argument presented to him or her by the party appealing this decision when these arguments were not presented to the internal committee because the party voluntarily decided not to attend the internal hearing. (Brandon)



Lessons learned

LESSONS LEARNED ABOUT THE SYSTEM

Many systemic issues and items were considered, revised and approved by the Committee. Below is a discussion of the procedural and substantive issues faced by the Work Group, the Implementation Committee and the Steering Committee over the past four years. The permanent ADR system (i.e. the SDRCC) and the ADR program (i.e. ADRsportRED) are the culmination of these efforts.

About the Organizational Framework of the ADR System

The Work Group considered a number of possible organizational structures to support the ADR program, ranging from housing it within an existing organization to housing it within government. The Work Group was convinced of the necessity to house the program within an independent organization governed by a Council of members of the Canadian sport community and ADR experts.

All three groups were also convinced of the benefits of having the system entrenched in legislation. This system was to have a legislated Council, Disputes Secretariat, Policy Resource Centre, Arbitration and Mediation Procedural Code(s), and an Ombuds Office. This system was characterized as being national in scope, specific to sport, independent, not-for-profit, affordable, accessible, timely, confidential, where appropriate, and linked to the Court of Arbitration for Sport. Despite being created by legislation, the groups intended the system to be independent and arm's length from government. Furthermore, all three groups agreed that participation should be mandatory – that access to ADR should be a right of all participants in sport.

About the Board of Directors of the SDRCC

The ADR Council envisioned by the Work Group and Implementation Committee will become the Board of Directors of the SDRCC. The number of members and representative nature of membership on the Board has been preserved as proposed in both reports. However, the process for appointment has evolved into a slightly different process than that originally proposed, as has actual Board composition.

Pursuant to the *Act*, the Minister of Canadian Heritage appoints the Board based on guidelines established in consultation with the sport community. These guidelines have taken the form of the recommended representative nature of the Council, but do not provide for the somewhat complicated stepped appointment process proposed by the Work Group and Implementation Committee. The 3-year term of appointment with a maximum of one renewal term as proposed by the Implementation Committee is maintained in the legislation, as opposed to the four-year term originally proposed by the Work Group.

With respect to membership, the Work Group and Implementation Committee proposed that Sport Canada, governments and provincial multi-sport organizations be represented on the Council. Given the independence of the SDRCC, it was determined inappropriate to have governments represented in any form on the Board of Directors, and that the national focus of the program, as well as the jurisdiction of the *Act*, precluded provincial representation.

Lessons learned

About the ADRsportRED Code

The Work Group and Implementation Committee proposed the creation of a procedural *Code* outlining the ADR process. Whereas both the Work Group and the Implementation Committee proposed that such a *Code* be established in legislation, the Work Group saw the *Code* as the vehicle through which the legislation would make the program mandatory for national sport organizations. The Work Group also wanted the legislation to specify that the *Code* would limit the normal grounds of appeal of decisions from arbitration to judicial review, make third party participation in arbitrations mandatory, and grant the right of subpoena to arbitration panels.

The Implementation Committee, on the other hand, saw the *Code* as being adopted by the ADR Council and enabled by federal legislation. It provided a draft *Code* that has formed the basis of the ADRsportRED *Code*.

The *Code* currently in use by the ADRsportRED program is enabled by the *Act*, as proposed by the Implementation Committee. The *Act* does not grant arbitrators the right of subpoena. Feedback on the *Code* has been sought from arbitrators, legal representatives, the Department of Justice, as well as members of the sport community with legal expertise. The *Code* is a living document that has been revised as the program evolved.

The Committee encourages the Board of the SDRCC to consider the benefits of subpoena power for arbitration panels. This may be a possible amendment to the *Act* at a later date. The Co-chief Arbitrators of the ADRsportRED program contend that this is a very useful tool, particularly where ADR is not mandatory.

About Mediator and Arbitrator Panels

The Work Group recommended the establishment of two panels: (1) a minimum of 20 mediators, and (2) a minimum of 50 arbitrators. Given the interim nature of its program, and the initial focus of the program on arbitration as opposed to mediation, the Committee opted for one panel of 26 arbitrators/mediators. The Committee recommends that separate mediator and arbitrator panels be established for the permanent program. Furthermore, it recommends that the focus of the permanent program shift from one on arbitration to one that balances conflict management, mediation and arbitration.

In establishing the roster of arbitrators and mediators for the interim program, the Committee initially felt that expertise in ADR was of greater importance than expertise in sport. It is now believed that a solid foundation in sport is also of great importance. It is hoped that the SDRCC will continue to prioritize sport content arbitrator/mediator training.

The Committee opted for Co-Chief Arbitrators for the ADRsportRED program. This was done to ensure that parties had access to bilingual chief arbitration, as well as to ensure that there was a “back up” should a Chief Arbitrator be unavailable during a time-sensitive case, or should a Chief Arbitrator have to conflict him/herself out of a case.

While the idea of *pro bono* mediators and arbitrators was initially explored by the Work Group, it was decided that paying the mediators and arbitrators would ensure not only professionalism and credibility, but also prompt decision-rendering. As such, mediators and arbitrators are paid, albeit at a rate much less than the industry norm. The Co-Chief Arbitrators are also paid at an hourly rate for their participation in and oversight of mediations and arbitrations.



About the Ombuds Office

Both the Work Group and Implementation Committee recommended the creation of a National Ombudsperson for Sport. In short, the Work Group recommended that the federal government create a federally legislated and funded ombudsperson for the national sport system that followed a traditional model of ombuds work with traditional powers, was accessible to all participants in that national sport system, and would operate in conjunction with the national ADR program but be housed separately. The Implementation Committee supported the creation of an Ombuds Office, but did not explore in detail its implementation.

The Terms of Reference of the Committee did not include responsibility for the establishment of the Ombuds Office. Rather, Committee efforts were focused on managing the ADR program and establishing the policy Resource Centre. As the Committee worked to establish the ADRsportRED program, the Ombuds Office recommendation was incorporated into a broader system-wide Ethical Conduct Strategy for Sport. A representative on the Ethical Conduct Strategy Committee was also a member of the Committee.

Both the Work Group and the Implementation Committee saw the Ombuds Office as a critical component of the ADR system. The Committee shares this belief, and urges the SDRCC to work with the Ethical Conduct Strategy Committee to ensure that this recommendation is brought to fruition.

About Attributes of the Canadian ADR System for Sport

National, Specific to Sport and Independent

The SDRCC, as created by the *Act*, is an arms-length, not-for-profit corporation whose mission is to provide a national ADR service for sport disputes. Sport disputes are defined as including disputes among organizations and disputes between a sport organization and persons affiliated with it. The *Act* specifically indicates that the SDRCC is not an agent of her Majesty, is not a Crown Corporation, and is not a departmental corporation. The *Act* balances the public interest need for accountability to government with the desire and intent that the SDRCC be arms-length and independent from government.

In addition to the national dimension, the Work Group and Implementation Committee envisioned the ADR program as being available to any participant of a provincial sport organization where that organization has opted into the national program. While the ADRsportRED program remains at this time focused on disputes at the national level, interest has been shown from several provinces with respect to opting into the national program, or creating parallel provincial programs. The Committee recommends that the SDRCC continue discussions with the provinces in this regard.

Affordable

Of critical importance to members of all three groups was that there be no financial barrier to access the system, particularly for athletes. Although it was acknowledged that the risk of frivolous appeals increases with a decrease in cost, this risk was considered justifiable given the unacceptable alternative of financially barring athletes from their right to appeal. Furthermore, it was felt that equity of access necessitated the organizational funding sources available to NSFs that are not available to individuals.

Currently, a cost of \$250 is incurred in accessing the ADRsportRED program. The Committee recommends that the permanent program retain the policy of prioritization of access.

Lessons learned



Timely

One of the major shortfalls of litigation in resolving sport disputes is the timeline involved. Sport opportunities cannot be postponed or relived. Team selection and event registration processes are driven by external forces and timelines.

The ADRsportRED program offers participants expedited hearings and the ADRsportRED *Code* allows an appeal to be heard and a decision rendered within 24 hours.

Confidential

The Committee was of the view that the publication of arbitration decisions with reasons contributes to the reduction of frivolous appeals, to the establishment of best practices, and to consistency in decision-making. Furthermore, it also addresses an identified need for the collection of systemic data on appeals.

This being said, ADR provides unique opportunities for confidentiality. Both mediation and arbitration agreements can include confidentiality clauses. The Committee was very conscious of the sensitive nature of some of the subject matter forming the basis for appeals (i.e. harassment), as well as the allure of confidentiality as a motivator for resolution. It wishes to emphasize that successful resolutions and positive experiences supercede the objectives of the guarantee of confidentiality.

About the Scope of System

Considerable time was spent by the Work Group, Implementation Committee and Committee on the issues of who should have access to the system and for what kinds of disputes. In fact, these were arguably the deliberations bearing the greatest impact on the system as a whole.

Both the Work Group and Implementation Committee concluded that access to the ADR program should be a guaranteed right for any member of or participant in a national sport body for any dispute within the jurisdiction of those bodies.

Who can access the ADR system?

As indicated above, the *Act* does not guarantee the right to access ADR. Participation is not mandatory, although Sport Canada has attempted to make it mandatory through its funding (discussed below). Furthermore, the *Act* sets no parameters with respect to who can access the national ADR program.

The ADRsportRED program was available to all members belonging to a national sports organization – athletes, coaches, officials, administrators and volunteers at the national – as well as national sports organizations and multi-sport organizations. The program did not have any international, provincial or local jurisdiction.

The Implementation Committee recommended that while initially the focus should be on national sport organizations, discussion with provincial organizations could commence within two years of the onset of the program.

Lessons learned

Lessons learned

What kinds of disputes can be referred to the ADR program?

Both the Work Group and the Implementation Committee were broad in their recommendation on what kinds of disputes should be referred to the ADR program. The only qualification to this broad definition was that the scope of issues eligible for mediation or arbitration would be defined by the organization's appeals policy to the extent that the ADR program could only be accessed after the exhaustion of internal processes (except by consent).

The *Act* establishes a national alternate dispute system for sport disputes. "Sport disputes" is defined in the *Act* as including disputes among sport organizations and disputes between a sport organization and person affiliated with it, including its members. This definition is broad and permissive.

As a matter of policy, "sport disputes" includes disputes related to doping. Whereas the CCES has traditionally handled these disputes through an independent arbitration service, these disputes will be handled through the SDRCC effective June 1, 2004.

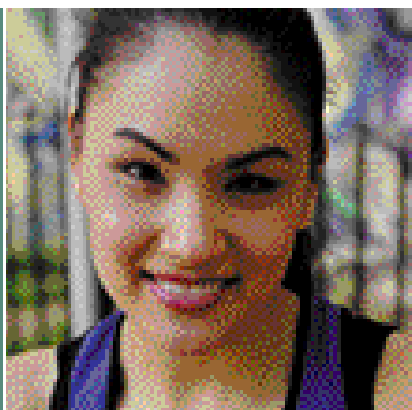
About Internal Appeal Mechanisms and Mandatory ADR

The Work Group recommended that either through existing or new legislation, the federal government require that all national sports bodies adopt an internal appeal process that incorporates the principles of natural justice, provides access to mediation and arbitration, and makes the results of arbitration final and binding.

Internal Appeal Mechanisms

The Work Group collected and reviewed the internal appeal policies of approximately 50 national sport organizations. It found that most organizations have appeal policies, but that the location of the right to appeal is varied, and that this right does not always apply to all decisions. It found that over half of the organizations responding did not provide access to mediation or arbitration, and that where arbitration was provided as an option; it was not always final and binding. Further, there was often internal policy inconsistency.

The Committee prioritized the development of the Policy Resource Centre, particularly the collection of appeal policies and the development of a sample appeal policy for use by national sport organizations. Appeal policies from many sport organizations can now be found on the ADRsportRED web-site. As discussed below, all of these organizations must now provide access to ADR.



Lessons learned



Mandatory ADR

The Work Group felt that ADR should be legislated as mandatory for all national sport bodies. It defined “national sport bodies” as any national sport organization that is federally incorporated, or that applies to become federally incorporated, and/or is a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration.

The Implementation Committee did not speak directly to the issue of legislated mandatory internal appeal mechanisms. However, it did recommend that legislation make it mandatory for national sport organizations to provide access to ADR upon exhaustion of internal appeal mechanisms, and that the ADR Code make it mandatory for NSFs to incorporate arbitration clauses within their agreements.

The Act is enabling legislation. It does not require organizations to have internal appeal mechanisms, nor does it require that access to ADR be mandatory. However, the Committee and ADRsportRED have worked with Sport Canada to require, as a condition of funding, that organizations have internal appeal policies that provide access to ADR for disputes involving national team athletes and coaches.

It is interesting to note that the proposed group of organizations originally envisioned by the Work Group to be required to have internal appeal mechanisms providing access to ADR is much broader than the group currently required to provide such access. Furthermore, the requirement is linked to federal funding, and is not legislated. Where an organization is not funded by Sport Canada, there is no requirement to provide access to ADR.

It should be further noted that the types of disputes that are required to go to ADR as a condition of Sport Canada funding is limited. In other words, Sport Canada funded organizations are currently not required to provide access to ADR where the dispute in question does not involve a national team athlete or coach.

It is hoped that the Board of Directors of the SDRCC will continue to work with Sport Canada and the greater Canadian sport community to ensure that all organizations provide access to ADR for all disputes, regardless of any funding relationship with Sport Canada, and regardless of the nature of the dispute. The Committee shares the view that access to ADR should be a guaranteed right.

About Other Substantive and Procedural Issues

Access to Legal Counsel

All three groups indicated that the system should be user-friendly such that parties should not require legal counsel, but that parties should be given the option of having legal counsel should they so desire. The issue of legal representation has been the topic of much discussion over the past four years. Athletes in particular have argued that they are disadvantaged when it comes to paying for legal services. They argue that sport organizations have access to organizational dollars for legal counsel – dollars that most often include membership fees that the athletes themselves have paid. Athletes were also concerned that federal government dollars, through Sport Canada funding, were being used to pay for legal fees.

The issue of inequities in legal representation has not yet been fully addressed. Sport Canada has clarified that its funding cannot be used for legal expenses. Athletes CAN, the organization of Canada’s national team athletes, is attempting to establish a network of legal representatives for athletes in conjunction with its legal information service provided to athletes through the Sport Solution program of the University of Western Ontario Law School.

The Work Group specifically mentions in its report the possibility of developing a needs-based program to provide financial assistance for legal advice, but this idea was not fully developed for the purpose of its report. It suggests that the idea be explored by the Council (the future Board of the SDRCC).

It is hoped that the Board will explore in greater detail the issues surrounding the systemic inequities in legal representation.

Lessons learned

Relationship with the Court of Arbitration for Sport (CAS)

Members of the three groups as well as ADRsportRED have met with CAS representatives over the years. The ADRsportRED *Code* has been purposefully modeled after the CAS *Code*, taking into consideration Canadian law and ADR practices. Several ADRsportRED arbitrators are also CAS arbitrators, including the Co-Chief Arbitrators, Richard H. McLaren and L. Yves Fortier.

The Implementation Committee suggested that the *Code* be submitted to CAS as a best practice for other national systems. It is hoped that the SDRCC will continue to share its materials and lessons learned with the greater international sport community as other countries look to Canada as a best practice in alternate dispute resolution for sport.

Trial de Novo

The Work Group, the Implementation Committee and the Committee all concur that the ADR program should be based on the concept of *trial de novo*. While considerable discussion was had surrounding the possibility of limiting the scope of review to the traditional grounds of appeal, there was recognition of the lack of sophistication of parties that warranted a full review and examination by an arbitrator. The Committee urges the SDRCC to continue with the practice of *trial de novo*.

About Funding the System

The Work Group considered both the systemic requirements for the ADR program as well as the possible sources of funding, concluding that the federal government should provide initial set-up funding for the program, as well as ongoing support. It recommended that the costs of the Disputes Secretariat be shared by users, national sport organizations, and the federal government, suggesting that user fees fund at least 20% of the costs of the Disputes Secretariat within five years.

The Implementation Committee provided an overall estimated annual budget of \$1 million for the ADR system. This was based on an anticipated 40 arbitrations per year. Furthermore, it was based on the costs of mediation being shared by the participants. Finally, funds targeted at promotion and awareness were virtually non-existent.

The Government of Canada has financed the Work Group, the Implementation Committee, and the ADRsportRED Program. With the entrenchment of the SDRCC in legislation, it is anticipated that the Government of Canada will continue to provide funding for this service. The Canadian sport community has benefited greatly from the work of these groups and the ADRsportRED program. The Committee believes that it will continue to do so to an even greater extent through the SDRCC.



Summary of the recommendations

of the ADRsportRED steering committee

It is hoped that the SDRCC will continue to share its materials and lessons learned with the greater international sport community as other countries look to Canada as a best practice in alternate dispute resolution for sport.

It is hoped that the Board of Directors of the SDRCC will continue to work with Sport Canada and the greater Canadian sport community to encourage these organizations to provide access to ADR for all disputes, regardless of any funding relationship with Sport Canada, and regardless of the nature of the dispute. The Committee shares the view that access to ADR should be a guaranteed right.

While the ADRsportRED program remains at this time focused on disputes at the national level, interest has been shown from several provinces with respect to opting into the national program, or creating parallel provincial programs. The Committee recommends that the SDRCC continue discussions with the provinces in this regard.

Both the Work Group and the Implementation Committee saw the Ombuds Office as a critical component of the ADR system. The Committee shares this belief, and urges the SDRCC to work with the Ethical Conduct Strategy Committee to ensure that this recommendation is brought to fruition.

Currently, a cost of \$250 is incurred in accessing the ADRsportRED program. The Committee recommends that the permanent program retain the policy of prioritization of access.

It is hoped that the Board will explore in greater detail the issues surrounding the systemic inequities in legal representation.

In establishing the roster of arbitrators and mediators for the interim program, the Committee initially felt that expertise in ADR was of greater importance than expertise in sport. It is now believed that a solid foundation in sport is also of great importance. It is hoped that the SDRCC will continue to prioritize sport content arbitrator/mediator training.

The Committee recommends that separate mediator and arbitrator panels be established for the permanent program. Furthermore, it recommends that the focus of the permanent program shift from one on arbitration to one that balances conflict management, mediation and arbitration.

It recommended that the costs of the Disputes Secretariat be shared by users, national sport organizations, and the federal government, and that user fees fund at least 20% of the costs of the Disputes Secretariat within five years.

As the SDRCC evolves and number of cases increases, the use of an outside case manager and an executive consulting firm will come under scrutiny, and the SDRCC will have to determine whether an internal structure would be a better solution.

The Committee urges the SDRCC to continue with the practice of trial de novo.

The Committee encourages the Board of the SDRCC to consider the benefits of subpoena power for arbitration panels. This may be a possible amendment to the Act at a later date.



Recommendation 1

That the Secretary of State (Amateur Sport) require, either through amendments to the Fitness and Amateur Sport Act (FAS ACT) or through introduction of new legislation, that all national sports bodies adopt a separate and overarching policy that:

- > institutes an appropriate internal appeal process incorporating the principles of natural justice;
- > provides for mediation and arbitration in the event of a dispute of any internal decision;
- > ensures that the results of arbitration are final and binding upon the parties involved in a dispute.

For the purposes of this and subsequent recommendations, 'National Sport Bodies' are defined as: Any national sport organization that is:

- > federally incorporated, or that applies to become federally incorporated, and/or a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration.

Note that this definition includes national Multi-Sport Organizations such as the Canadian Interuniversity Athletic Union, Major Games Organizations, such as the Canadian Olympic Association, as well as single sport organizations, commonly known as National Sport Organizations.

Recommendation 2

That the Secretary of State (Amateur Sport) ensure the establishment of a policy resource centre to assist National Sport Bodies and other sport bodies with the design and structure of policies related to internal appeal mechanisms and alternate dispute resolution and to ensure appropriate training for decision-makers in the national sport community on the development, interpretation and implementation of these policies.

Recommendation 3

That the Secretary of State (Amateur Sport) ensures the establishment of the structures required to support an Alternate Dispute Resolution (ADR) system incorporating the following principles:

- > Sport-specific
- > Independent of any sport organization or government
- > Not for profit
- > Affordable
- > Accessible
- > Timely
- > Confidential, where appropriate.

And that,

- > Provides a mandatory level of appeal for the resolution of disputes within National Sport Bodies when disputes have not been resolved through an internal process;
- > Offers an optional level of appeal for disputes within provincial sport organizations when disputes have not been resolved through an internal process;
- > Offers dispute resolution through mediation and arbitration services.

Recommendation 4

That the Secretary of State (Amateur Sport), either through amendments to the Fitness and Amateur Sport Act (FAS Act) or the introduction of new legislation, require that National Sport Bodies institute a provision for appeal of disputes to the national alternate dispute resolution system.

APPENDIX A

Recommendation 5

That the Secretary of State (Amateur Sport) ensure the establishment of a national alternate dispute resolution program that:

- > Provides access to mediation and arbitration services where there is a dispute of a decision made within a national sport organization or where the parties agree to move to mediation or arbitration;
- > Is available to any participant of a national sport body that is
 - federally incorporated, or that applies to become federally incorporated, and/or a registered Canadian amateur athletic association as designated by the Minister of National Revenue, or that applies to the Minister for such registration;
- > Is available to any participant of a provincial sport organization where that organization has opted into the national ADR program;
- > Deals with any matter falling within the jurisdiction of those organizations;
- > Operates on the principle of trial de novo;
- > Is linked to the Court of Arbitration for Sport.

Recommendation 6

That the Secretary of State (Amateur Sport) ensures the creation of an independent, freestanding 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, NSFs, governments (federal, provincial and territorial), National Sport Centres, 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.

Recommendation 7

That the Secretary of State (Amateur Sport) provides sufficient funding to cover:

- > The expenses of the Council of the national ADR system;
- > The salaries of an ADR secretariat and/or fees to a third party administrative service provider;
- > Promotion and outreach materials for the services;
- > The establishment of a policy resource centre for sport and sport organizations;

And

- > That such funding be provided by new funds.

Recommendation 8

That the Secretary of State (Amateur Sport) establish a federally legislated and funded appointment of an ombudsperson for the national amateur sport system.

That the ombudsperson follows a traditional model with traditional powers.

That the ombudsperson be accessible to all participants in National Sport Bodies.

That the ombudsperson operate in conjunction with the ADR system but that it be housed Separately

Recommendation 9

That the Secretary of State (Amateur Sport) establish an Implementation Committee, made up of members of the sport community, including at least one member of the Work Group, to assist in implementing the recommendations of the Work Group

Recommendation 10

That the Secretary of State (Amateur Sport) facilitate and fund a meeting of the full ADR Work Group one year after the submission of its report to follow up on the implementation of the recommended action and to make further recommendations as required.

APPENDIX B

The Implementation Committee adopted and built upon the recommendations of the Work Group. It identified six key components of the Canadian Sport ADR System:

- 1. Canadian Sport ADR Council**
- 2. Sport Policy Resource Centre**
- 3. Disputes Secretariat**
- 4. Arbitration and Mediation Codes of Procedure**
- 5. Ombuds Office**
- 6. enabling federal legislation**

The Implementation Committee recommended that the Canadian Sport ADR Council be an independent organization responsible for managing all the components of the system, including the Resource Centre, the Disputes Secretariat and the Ombuds Office. This organization could be either an incorporated not-for-profit organization or an arms-length organization created by enabling legislation. The Implementation Committee felt that the option of legislation would be better for the system in the long term.

With respect to the Sport Policy Resource Centre, the Implementation Committee felt that its primary purpose would be to strengthen the capacity of sport organizations to create clear, effective policies and make fair, sound decisions.

The Implementation Committee's Disputes Secretariat was the administrative arm responsible for the management of the mediation and arbitration services, including establishing arbitration and mediation panels, as well as liaison responsibilities with the international Court of Arbitration for Sport(CAS). The Mediation and Arbitration Codes of Procedures, as proposed by the Implementation Committee, would be modeled on the CAS Code, but consistent with Canadian law and ADR practices. No estimated cost was given by the Implementation Committee.

The implementation of the fifth component of the system, the Ombuds office, was not explored in detail by the Implementation Committee. It scheduled the implementation of the Ombuds office after that of the Council, the Disputes Secretariat and the Resource Centre. This order was noted to not be one of priority, rather to be one of implementation. In fact, the Implementation Committee deemed the establishment of the Ombuds office to be of critical importance. It recommended that the Ombudsperson report to the Council, but be established by legislation to ensure independence, credibility and permanence.

Finally, the Implementation Committee recommended that the Council, the Disputes Secretariat, the Ombuds Office, and the Arbitration and Mediation Code be established by federal legislation. It also recommended that the legislation make it mandatory for all NSF's and MSO's to provide access to ADR upon exhaustion of internal processes.

CCES

ADR-sport-RED STEERING COMMITTEE

Legal Commission for the selection of the members of the Tribunal

Selection criteria adopted by the Steering Committee

ADR and Related Experience

- > AAA requires 15 years of arbitration – alternative is to have no minimum number of years but have the amount of experience evaluated as part of the eligibility/selection process
- > Familiarity with sport; some connection to sport
- > Membership in ADR organizations
- > Other qualifications
- > International Experience – e.g. CAS member
- > ADR training

Neutral / Independence

- > Independence, commitment to neutrality transparency
- > Independence from the sport involved in the dispute and from all parties in the dispute. (There should be no connection to the NSF, which is a party to the dispute or to the specific parties in the dispute.)

Judicial capacity

- > Skills for adjudication, mediation, negotiation, do not necessarily need to be a lawyer or former judge; clarity of decisions/awards

Reputation

- > Integrity, Highest respectability (legal and sport)

Commitment and availability

- > For training courses, availability in general

Languages (bilinguals)

Location (geographical distribution in Canada)

Gender

List of the Arbitrators/Mediators

APPENDIX D

APPENDIX D

Co-Chief Arbitrators, ADRsportRED Ordinary Divison

L. YVES FORTIER, Q.C. (Montréal, Québec)

President and senior partner, Ogilvy Renault. Former ambassador and permanent representative of Canada to the United Nations in New York (1988-92). Member of the main international arbitration and mediation organizations. Member of the Court of Arbitration for Sport.

RICHARD H. MCLAREN (London, Ontario)

President of Innovative Dispute Resolution Ltd, Law professor at the University of Western Ontario. Member of the Court of Arbitration for Sport for the Olympic Games in Nagano and Sydney and the Commonwealth Games in Manchester.

Presidents and Vice-presidents of the Ad-hoc Divison

2002 Salt Lake City Games

THE HONOURABLE CHARLES DUBIN (Torys) (Toronto, Ontario)
and **VICTOR LACHANCE** (Sport Matters and CCES) (Ottawa, Ontario)

2003 Pan-American Games

DR. BRUCE KIDD (ADRsportRED and University of Toronto)
and **THE HONOURABLE PAULE GAUTHIER** (Desjardins Ducharme Stein Monast) (Quebec City, Québec)

2004 Athens Olympic and Paralympic Games

THE HONOURABLE PIERRE A. MICHAUD (Partner and Arbitrator, Ogilvy Renault law firm) (Montréal, Québec)
and **MS. MARG MCGREGOR** (Canadian Interuniversity Sport) (Ottawa, Ontario)

Arbitrators and Mediators

THE HONOURABLE JOHN WATSON BROOKE, Q.C. (Toronto, Ontario)

Former judge on the Supreme Court of Ontario, the Appeal Court of Ontario and the Court Martial Appeal Court of Canada.

PATRICE M. BRUNET (Montréal, Québec)

Senior partner, Brunet Avocats.
Member of the Court of Arbitration for Sport and the U.S. Anti-Doping Agency.

JEAN-GUY CLÉMENT (Montréal, Québec)

Arbitrator and mediator acting primarily in the field of labour relations.

JANE H. DEVLIN (Toronto, Ontario)

Arbitrator and mediator acting primarily in the field of labour relations.

STEPHEN L. DRYMER (Montréal, Québec)

Partner, Ogilvy Renault. Representative in international trade and sport arbitration processes.

ROSS C. DUMOULIN (Ottawa, Ontario)

Arbitrator and mediator appointed by the Ministry of Labour of Ontario.

DAVID C. ELLIOTT (Edmonton, Alberta)

Co-founder of the Alberta Arbitration and Mediation Society.
Member of the Arbitration and Mediation Institute of Canada.

THE HONOURABLE PAULE GAUTHIER, P.C., O.C., O.Q., Q.C. (Quebec City, Québec)

Senior partner, Desjardins Ducharme Stein Monast.
Member of main international arbitration and mediation organizations. Expert in international arbitration.

APPENDIX D

THE HONOURABLE BENJAMIN J. GREENBERG, Q.C. (Montréal, Québec)

Legal counsel, Stikeman Elliott. Former judge on the Quebec Superior Court.
Member of main international arbitration and mediation organizations.

JAMES W. HEDLEY (Winnipeg, Manitoba)

Partner, Swystun Karasevich Windsor.

THE HONOURABLE MARC LALONDE P.C., O.C., Q.C. (Montréal, Québec)

Partner Stikeman, Elliott.
Member of the Court of Arbitration for Sport
Member of main international arbitration and mediation organizations.

PETER J. MACKEIGAN, Q.C. (Halifax, Nova Scotia)

Senior partner, MacKeigan & Associates Ltd.

THE HONOURABLE STEWART MCINNES, P.C., Q.C. (Halifax, Nova Scotia)

Director, ADR Chambers, Atlantic Provinces Division.
Member of main international arbitration and mediation organizations.

GRAEME MEW (Toronto, Ontario)

Partner, Gowling Lafleur Henderson.

MICHEL G. PICHER (Toronto, Ontario)

Arbitrator and mediator, Adjudication Services Limited.

RICHARD W. POUND O.C., O.Q., Q.C., F.C.A. (Montréal, Québec)

Partner Stikeman, Elliott.
Member of the Court of Arbitration for Sport and the International Olympic Committee

ED RATUSHNY (Ottawa, Ontario)

Law professor, Ottawa Law School.
Member of the Court of Arbitration for Sport.

BERNARD A. ROY, Q.C. (Montréal, Québec)

Senior partner, Ogilvy Renault.
Member of main international arbitration and mediation organizations.

JOHN P. SANDERSON, Q.C. (Vancouver, British Columbia)

Founder of Sanlaing Communications Ltd., alternative dispute resolution consultants.
Member of main international arbitration and mediation organizations.

TRICIA C. M. SMITH (Victoria, British Columbia)

Associate, Barnes Craig & Associates.
Member of the International Council for Arbitration in Sport.

DALE H. STYNER (Calgary, Alberta)

Former national and international athlete and administrator of national sport organizations.
Member of internal appeal boards and sport mediation representative.

MICHAEL A. WADSWORTH, Q.C. (Toronto, Ontario)

Mediator, Stitt Feld Handy Group. Former Canadian ambassador to Ireland (1989-95).
Former president of the Canadian Football League Players' Association (1969-71).

WILLIAM J. WARREN, Q.C. (Calgary, Alberta)

Senior partner, Warren Tettensor. Former chair of the Canadian Olympic Committee (1994-2001).
Member of the Court of Arbitration for Sport.

JOHN H. WELBOURN (Calgary, Alberta)

Senior partner, Mackenzie Welbourn.

APPENDIX E

| EXPENSES | 2001-02 Only 5 months | 2002-03 12 months | 2003-04 12 months | TOTAL | REVENUES |
|---|--------------------------|-----------------------|-----------------------|--------------------------|--------------------------|
| Administration Steering Committee Partners Offices | (Note 1) \$102,950 | \$115,962 | \$133,000 | (Note 2) \$351,912 | |
| Services to Resolve Dispute Cases | (Note 3) \$69,492 | (Note 4) \$225,296 | (Note 5) \$195,000 | (Note 6) \$489,788 | |
| Resource Center Education Prevention | \$43,890 | (Note 7) \$189,550 | \$235,000 | (Note 8) \$468,440 | |
| Communication | \$28,900 | \$24,959 | \$55,000 | (Note 9) \$108,859 | |
| Miscellaneous | \$35,106 | \$29,324 | \$8,000 | \$72,430 | |
| TOTAL | \$280,338 | \$585,091 | \$626,000 | (Note 10) \$1,491,429 | (Note 11) \$1,491,429 |

Note 1: Administrative Start up cost

Note 2: 24% of the expenses devoted to administration and governance

Note 3: Salt Lake City Games cases

Note 4: Commonwealth Games Cases

Note 5: Pan American and Athens Olympic and Paralympic Games cases

Note 6: 33% of the expenses were devoted to the resolution of sport disputes

Note 7: Hiring a full time resource center coordinator

Note 8: 31% of the expenses were devoted to education and prevention of disputes

Note 9: 7% of the expenses were devoted to communication and official languages

Note 10: 64% of the expenses were devoted to programs and services to the sport community

Note 11: Financial contribution received from Canadian Heritage / Sport Canada

Synopsis of Cases

January 2002 to March 2004

APPENDIX F

APPENDIX F

| FILE NUMBER, DIVISION & TYPE OF REQUEST | SPORT | TYPE OF DISPUTE | MEMBER FILING THE REQUEST | ARBITRATOR OR MEDIATOR | LENGTH OF PROCEEDINGS* | SOLUTION |
|---|---------------|-----------------|---------------------------|------------------------|--|---|
| ADR 02-0001 Ad hoc division Arbitration | Biathlon | Selection | Athletes (3) & NSF | Ed Ratushny | 7 days (January 21 to January 27, 2002) | Award rendered – allowed for 1 and denied for 2 |
| ADR 02-0002 Ord. division Arbitration | Bobsleigh | Selection | Athletes (2) | N/A | N/A | Not eligible for ad hoc division (ruling of Mr. Victor Lachance) |
| ADR 02-0003 Ad hoc division Arbitration | Snowboard | Selection | Athletes (2) & NSF | Ed Ratushny | 9 days (January 23 to February 1, 2002) | Award rendered -appeal denied |
| ADR 02-0004 Ord. Division Arbitration | Water Polo | Carding | Athlete | N/A | 97 days (January 15 2002 to April 12 2002) | Settled prior to hearing |
| ADR 02-0005 Ad hoc division Arbitration | Alpine skiing | Selection | Athlete & NSF | Tricia Smith | 5 days (February 1 to february 5, 2002) | Award rendered – appeal denied |
| ADR 02-0006 Ord.division Arbitration | Taekwondo | Carding | Athlete | Michel G. Picher | 182 days (March 21 2002 to August 14, 2002) | Award rendered – appeal allowed |
| ADR 02-0007 Ord. Division Arbitration | Wrestling | Selection | Coach | Graeme Mew | 24 days (May 28 to June 21, 2002) | Award rendered – appeal denied |
| ADR 02-0008 ADR 02-0009 ADR 02-0010 Ord. Division Arbitration | Swimming | Selection | Athletes (3) | Michel G. Picher | 20 days (June 3 2002 to June 23, 2002) | Award rendered – appeal allowed |
| ADR 02-0011 Ord. Division Arbitration | Swimming | Selection | Athlete | Jean-Guy Clément | 19 days (June 5 2002 to June 21, 2002) | Award rendered – appeal allowed |
| ADR 02-0012 Ord. Division Arbitration | Curling | Carding | Athlete(s) | Richard H. McLaren | 303 days (July 2 2002 to May 1 st 2003) | Award rendered – appeal denied |

* The length of proceedings refers to the number of days between the time when the request for arbitration or mediation was filed with the Court Office and the time when a solution was found or a decision was rendered.

APPENDIX F

| FILE NUMBER, DIVISION & TYPE OF REQUEST | SPORT | TYPE OF DISPUTE | MEMBER FILING THE REQUEST | ARBITRATOR OR MEDIATOR | LENGTH OF PROCEEDINGS* | SOLUTION |
|---|---------------|--------------------|------------------------------|---------------------------|---|--|
| ADR 02-0013 Ord. Division Arbitration | Boxing | Discipline | Coach | Graeme Mew | 180 days (January 10 2003 to August 25, 2003) | Award rendered – sanction reduced |
| ADR 02-0014 Ord. Division Arbitration | Swimming | Discipline | Athlete | N/A | N/A | Withdrawal of the application prior to to appointment of arbitrator |
| ADR 03-0015 Ord. Division Arbitration | Speed skating | Eligibility | NSF (2) | N/A | 17 days (January 31 to February 16, 2004) | Agreement between parties |
| ADR 03-0016 Ord. Division Arbitration | Taekwondo | Selection | Athlete | Richard W. Pound | 3 days (May 7 2003 to May 9, 2003) | Award rendered – appeal denied |
| ADR 03-0017 Ord. Division Mediation | Water Polo | Selection | Athlete | Graeme Mew | 214 days (June 14 2003 to January 13 2004) | Mediation agreement signed by the parties |
| ADR 03-0018 Ord. Division Arbitration | Hockey | Discipline | MSO | Richard H. McLaren | 194 days (June 11 2003 to November 21, 2003) | Award rendered – appeal denied |
| ADR 03-0019 Ord. Division Arbitration | Badminton | Carding | Athlete | Richard H. McLaren | 166 days (June 26 2003 to November 6, 2003) | Award rendered – appeal denied |
| ADR 03-0020 Ord. Division Arbitration | Triathlon | Selection | Athlete | N/A | 7 days (July 10 to 17, 2003) | Withdrawal of the application prior to to appointment of arbitrator |
| ADR 03-0021 Ord. Division Arbitration | Wrestling | Selection | Athlete | Bernard A. Roy | 11 days (July 17 2003 to July 28, 2003) | Award rendered – wrestle-off ordered |
| ADR 03-0022 Ord. Division Arbitration | Wrestling | Selection | Athlete | Richard W. Pound | 3 days (August 20 2003 to August 22, 2003) | Award rendered – appeal denied |

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APPENDIX F

| FILE NUMBER, DIVISION & TYPE OF REQUEST | SPORT | TYPE OF DISPUTE | MEMBER FILING THE REQUEST | ARBITRATOR OR MEDIATOR | LENGTH OF PROCEEDINGS* | SOLUTION |
|--|-----------|--------------------|------------------------------|---------------------------|--|---|
| ADR 03-0023 Ord. Division Arbitration | Wrestling | Selection | Athlete | Richard W. Pound | 3 days (October 6 2003 to October 8, 2003) | Award rendered – appeal denied |
| ADR 03-0024 Ord. Division Arbitration | Hockey | Eligibility | Athlete & MSO | Jane H. Devlin | 26 days (October 28 2003 to November 24, 2003) | Award rendered – appeal denied |
| ADR 03-0025 Ord. Division Arbitration | Wrestling | Selection | Athlete | Richard W. Pound | 21 days (November 3 2003 to November 24, 2003) | Award rendered – appeal denied |
| ADR 03-0026 Ord. Division Arbitration | Taekwondo | Selection | Athlete | Dale Styner | 2 days (November 27 to November 28, 2003) | Award rendered – appeal denied |
| ADR 03-0027 Ord. Division Arbitration | Taekwondo | Selection | Athlete | Patrice Brunet | 5 days (November 27 to December 1, 2003) | Award rendered – appeal denied |
| ADR 04-0028 Ord. Division Arbitration (ordered) | Boxing | Selection | Athlete | Paule Gauthier | 8 days (February 26 to March 4, 2004) | Award rendered – appeal allowed (boxing bout) |
| ADR 04-0029 Ord. Division Arbitration | Shooting | Selection | NSF | John P. Sanderson | N/A (February 27 2004 to ...) | Pending |
| ADR 04-0030 Ord. Division Arbitration | Fencing | Selection | Administrator | Richard W. Pound | 17 days (March 5 to March 22, 2004) | Award rendered -appeal denied |
| ADR 04-0031 Ord. Division Arbitration | Fencing | Selection | Athlete | Tricia Smith | 13 days (March 10 to 23, 2004) | Award rendered- appeal denied |
| ADR 04-0032 Ord. Division Arbitration | Fencing | Selection | Athlete | Tricia Smith | 13 days (March 10 to 23, 2004) | Award rendered -appeal denied |

* The length of proceedings refers to the number of days between the time when the request for arbitration or mediation was filed with the Court Office and the time when a solution was found or a decision was rendered.

