



An NSO's Perspective on Appeals and Dispute Resolution

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The Evolution of NSO Internal Appeals

National Sport Organisations (NSOs) are decision-makers; this responsibility is both a privilege and a burden for the organisation, as the decisions that are made can affect lives and influence the outcome of sport. As decision-makers, our role is to ensure that there is a mechanism in place for individuals affected by our decisions to question them. In recent years, NSOs have been asked by Sport Canada to create more robust appeal policies which would in turn increase the organisations' accountability as decision-makers. This proved to be a challenging task for many NSOs because there was a lack of knowledge concerning appeals and the policies that govern them. A rapid evolution of the appeal process is what resulted, as members of the sport community learned from and adapted to situations as they arose.

One of the areas that has evolved most significantly for NSOs is that of the management and hearing of internal appeals. In the NSO environment, when an appeal is brought forward, it is important for the organisation to involve its own members in the process, so that they can learn to properly deal with appeals; the education and experience that comes with being involved can only strengthen the sport. It is to allow for such continued learning for the organisation and those involved that CKC will, whenever possible, fully engage in its internal appeal process. However there are circumstances under which CKC will prefer to bypass its internal appeal process and request that the appeal be sent directly to the SDRCC: when doing so would be of greater benefit to all of those involved.

Bypassing to the SDRCC or Not?

One of the more obvious and most common reasons for CKC to refer an appeal directly to the SDRCC would be in the interest of time. The SDRCC has the ability to take a case and hear it within days or even hours from when it is filed, something that most NSOs are simply unable to manage. An example of such a situation would be when there is a dispute on team selection and the competition is only weeks or days away.

The decision to bypass the internal appeal is also one that is based on cost; not just financial cost, but the indirect cost created by the impact of the appeal on the organisation's human resources. If the personnel and volunteers of the organisation who are engaged in managing or defending the case are at a breaking point, there is no doubt that deferring to the SDRCC is more beneficial.

Aside from the time and cost efficiencies, the nature of the appeal may also be a determining factor. Some decisions need to be decided on by the rigor of the process and they need an arbitrator that has the past experience, such as those on the SDRCC roster, to hear the case. Most NSOs do not have on their internal appeal panels individuals with significant legal experience; when the decision made could create important jurisprudence for the organisation or for members of the sport community at large, it is imperative that the decision is in the right hands.

While there are great benefits for NSOs to be able to go directly to the SDRCC with a dispute when needed, it remains a decision that should not be taken lightly. If an NSO systematically



refers disputes to the SDRCC, it can sometimes create an expectation that this is the way it should be. It can also create a lack of trust in the NSO's internal process or, even worse, create a situation where appellants or affected parties only see the SDRCC pro-cess as the one that is final and binding, thereby undermining the credibility of the internal process itself. These are perceptions that NSOs need to work on changing. By offering to their members an internal appeal process conducted with fairness, respect, and integrity, NSOs ensure that appeal processes in Canadian sport can continue to evolve and improve.

The Benefits of Mediation

Whether an appeal is filed after the internal appeal pro-cess has been exhausted or referred directly to the SDRCC, CKC always looks to resolve the dispute as quickly and as amicably as possible. The outcome of a mediation process is a win/win situation as opposed to that of an arbitration process which is always win/lose, due to the fact that the decision is imposed onto the parties. Depending on the issues at stake, the mandatory resolution facilitation offered by the SDRCC before arbitration is generally welcome by CKC as an opportunity to settle. The mediation process creates a level of partnership with the appellant and the affected parties; in turn, this partnership fosters an atmosphere of cooperation and teamwork that helps preserve relationships, which are often strained by the dispute.

CKC is proud to have a good record of settling disputes before the SDRCC by reaching agreements during resolution facilitation or mediation. Of course not all disputes are conducive to mediated settlements to the same degree; for example, team selection disputes are usually less collaborative in nature. However in situations where mediation can be used to its fullest, the conclusion is much more positive because everyone feels as though they have ownership of the outcome. Solutions reached through collaborative efforts bring with them a sense of satisfaction to those involved which is ultimately what makes them a more desirable form of resolution.

Critical Factors in Successful Mediations

Agreeing to enter into mediation does not automatically result in a successful settlement, as there are many critical factors to make the mediation a success. What makes the difference in successful mediation sessions are the sharing of values, the sharing of expectations, as well as neutrality of the process and respect for all individuals involved. It does not matter how much willingness there is to having an open and honest conversation; if people go into mediation thinking that the end game is to settle upon their terms, they are entering the process with blinders on and have already decided on what outcomes they believe are acceptable. The mediation process needs to be about understanding and respect of other parties' needs, which creates a new potential awareness of what the different options are. This often leads to a solution that belongs to everyone.

Entering mediation with an open mind can often be difficult given the stress of the situation. One of the advantages that mediation brings to the resolution process is that it tends to be significantly more relaxed than other forms of resolution. This relaxed environment helps the parties to feel more comfortable and more confident in the process and its outcome. Further to the common advantages associated with mediation in general, the mediation services provided by the SDRCC are unique in nature as they do well at taking away the intimidation factor for all parties (particularly the novice). The SDRCC mediators ensure that parties understand the process; they provide a structure and they mitigate some of the fear and pressure that the process naturally creates.



Conclusion

NSOs are entrusted with decisions that have a significant impact, not only on their own internal management and short term outcomes, but also on how the Canadian sport system is perceived as a functional unit working towards a better sport. They have a responsibility to ensure that their members' rights are respected and that NSOs are accountable for what they decide. This can only be accomplished through the creation of clear and sound policies, by the fair and equitable application of those policies, and by the provision of a legitimate platform for questions and appeals.

CKC knows that this can be achieved by knowing, understanding, and taking advantage of the dispute prevention and resolution services offered by the SDRCC. ■