

IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



Six Key Changes to the Canadian Anti-Doping Program: An Update on Athlete's Options and Rights Perspective

By Brittany Bates, Greg Cherniak and Tyler Matthews, Sport Solution Managers

Introduction

Constant evolution is required to maintain and protect the integrity of sport. The World Anti-Doping Agency (WADA) released the original World Anti-Doping Code (the Code) in 2004, and the most recent version of the Code comes into force on January 1, 2021. With this update, the new 2021 Canadian Anti-Doping Program (CADP) takes effect the same date to remain compliant.

As the 2021 CADP is nearly 100 pages, it can be difficult and time consuming for Athletes to understand exactly how the changes impact their rights and options. The following are 6 key changes to the CADP that Athletes should be aware of.

Results Management Agreements (Rule 10.8.1)

A Results Management Agreement is the voluntary admission of an asserted anti-doping rule violation (ADRV) that warrants an ineligibility period of four or more years. The result of this admission is an automatic reduction in sanction of one year. The Athlete has twenty (20) days from the issuance of the notification of the ADRV assertion to make this early admission. It is also important to note that, by signing a Results Management Agreement, Athletes are giving up the opportunity to reduce their sanction through any other rule in the 2021 CADP, including their right to a hearing before the SDRCC.

Case Resolution Agreements (Rule 10.8.2)

If an Athlete is asserted with an ADRV, they now have the right to discuss the circumstances of the potential violation with the Canadian Centre for Ethics in Sport (CCES) under a *Without Prejudice* agreement. This means that anything discussed between the Athlete and the CCES, during a specified time period, cannot be used against the Athlete in a hearing, or to assert an ADRV against another Athlete. It should be noted that WADA has recently published the Athlete's Anti-Doping Rights Act (the Act). The Act includes the Athlete's right to confidentially report any potential ADRV.

The discussions under the Without Prejudice Agreement results in the CCES, in conjunction with WADA, informing the Athlete of the new potential sanction if the Athlete signs a Case Resolution Agreement. Similar to the Results Management Agreement, athletes give up their right to a hearing by signing a Case Resolution Agreement.

The Addition of Substances of Abuse (Rule 10.2.4)

Substances of Abuse is a new category of Prohibited Substances that has been created by WADA with the Athlete's wellness in mind. The Substances of Abuse included in WADA's Prohibited List are: cocaine, heroin, ecstasy and THC (cannabis). If an Athlete tests positive for one of these substances, and can establish that its use was

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Out-of-Competition and unrelated to sport performance, they have the option of taking part in a Substance of Abuse treatment program to reduce the sanction from three (3) months to one (1) month. The treatment program must be approved by the CCES and may involve a form of counselling. Taking part in a treatment program to reduce the period of ineligibility does not remove the Athlete's right to a hearing. However, the Athlete will not be permitted to argue for a further reduction based on No Significant Fault or Negligence. The option to argue for a complete removal of the sanction based on No Fault or Negligence will still be available.

Return of Aggravating Circumstances (Rule 10.4)

The concept of Aggravating Circumstances has returned after being removed from the updated CADP in 2015. Aggravating Circumstances are justifications for a maximum sanction of two (2) additional years more than what would normally be applicable for certain ADRVs. For example, a violation that would normally carry a four (4) year sanction may be increased to six (6) years if there are multiple Prohibited Substances found in the sample. The return of this rule provides the CCES with discretion in applying a sanction when certain circumstances occur, but it is important to remember that the burden of proof in such cases is on the CCES. The CCES must first prove to the satisfaction of a hearing panel, on a standard greater than a balance of probabilities, that Aggravating Circumstances did occur.

Voluntary Provisional Suspensions Accepted by Athletes (Rule 7.4.4)

Provisional Suspensions can only be imposed by the CCES, but there are situations where this may not occur. If this is the case, the Athlete has the option to voluntarily accept a Provisional Suspension. However, there are time limits to be aware of when doing so: the Provisional Suspension must be accepted prior to the later of a) within ten (10) days of the ADRV notification or final conclusion on the B-Sample analysis, or b) the date on which the Athlete first competes after being made aware of the asserted ADRV.

A common question is: Why would an Athlete want to

enter into a Voluntary Provisional Suspension? The answer is that an Athlete will obtain credit for the suspension dating back to the day the sample was collected or the date of their last competition. For example, if a one (1) year ineligibility period is proposed by the CCES, with the sample collected on June 1st, 2020, and the next competition on July 2nd, 2021 the Athlete will benefit from exercising their right to accept a Voluntary Provisional Suspension so that the ineligibility clock starts on June 1st. This way, the Athlete will be able to compete on July 2nd even if the hearing process does not conclude until after July 2nd, 2020. Additionally, any Athlete who enters into a Voluntary Provisional Suspension can withdraw this decision, but would forfeit any time served toward their ineligibility period.

Gender Verification from a Doping Control Sample (WADA Code Article 23.2.2)

Athletes should be aware that Samples provided to any WADA signatory, aside from the CCES, can be used for the purpose of gender verification. An Athlete's right to privacy and discretion is important, but WADA has deemed that this provision is consistent with the principle that doping samples should be used to enforce non-doping rules. The CCES, however, has asserted that it will only use Samples for the purpose of anti-doping (CADP Rule 5.1).

Nonetheless, the Act includes the Athlete's right to data protection. This includes the fair and secure handling of personal information. The CCES adheres to the strict privacy standards set out in the Act when collecting and processing personal information. Data privacy standards of the CCES are set out in more detail under Rule 14.6.

Conclusion

Sorting through an asserted ADRV can be a daunting process for Athletes. The CADP must remain strict to protect the integrity of sport, but Athletes are still afforded many rights and options when it comes to the anti-doping process. Of course, there are more changes and relevant information contained in the 2021 CADP that Athletes should be aware of. Canadian National Athletes are welcome to contact Sport Solution at sportsolution@athletescan.com for more information and/or guidance through an asserted ADRV. ■

“Substances of Abuse is a new category of Prohibited Substances that has been created by WADA with the Athlete's wellness in mind.”



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

They come from every region of Canada and have extensive experience in alternate dispute resolution and sports-related issues, but how much do we really know about them? The SDRCC has an impressive list of 47 mediators and arbitrators and we will slowly be introducing you to some of them through our regular installments of “SDRCC Roster Member Profiles”. In this edition we would like to present, **Allan Stitt, Mediator and Arbitrator from Toronto, Ontario.**



What led you to a career in ADR?

While I enjoyed being a litigator, I continually felt that the results were unsatisfying. When I won a case, it felt like I should have won so the result was inevitable, and when I lost, I believed that the decision was just wrong. Winning didn't feel nearly as good as losing felt bad. And

then I began to wonder why it was that I felt that I was always on the right side of every case. And to my surprise, other litigators felt the same way. So in the back of my mind, I realized that when we get involved in disputes (whether are parties or as counsel), we are blinded and are regularly fooling ourselves.

In the early 1990's, I took a sabbatical from litigating and completed my Master of Laws at Harvard Law School and was fortunate enough to study negotiation and mediation with Professors Roger Fisher, Frank Sander and Bruce Patton. What they said made so much sense to me. So when I returned to Canada, I decided that I would focus on finding ways to resolve disputes other than through the courts. That is what started me on my ADR path.

When the Government created the SDRCC, I was extremely honoured to be asked to be its inaugural Chair of the Board and I proudly guided the SDRCC for its first six years. I had a tremendous, committed and intelligent group of fellow Board members and staff and we worked hard to mould the SCRCC. I take great pride in the fact that we convinced the many skeptics to test the Resolution Facilitation process and were able to make it an essential part of

the SDRCC process. I then happily transitioned to become a mediator and arbitrator with the SDRCC.

Specialization/Area of Expertise:

In addition to sports disputes, I mediate and arbitrate commercial/business disputes, employment issues, insurance cases, tax cases, transportation disputes, family business issues, and partnership disputes.

As an arbitrator with the SDRCC, I...

I try to help the parties resolve their disputes in a way that makes sense for them, and recognizes the unique sports environment.

Favorite Sport(s):

I used to play competitive tennis and was a tennis instructor prior to going to law school. I still try to play regularly. I enjoy watching most sports.

Dispute Prevention Tip for Athletes and Federations:

The key to preventing disputes is recognizing early that there is a challenge to overcome, having open lines of communication among athletes, coaches, administrators and Federations, and talking through concerns to try to come up with a solution that everyone can accept. It's not often that disputants can find the perfect solution, but if they focus on finding a good solution (that is better than allowing the issue to fester and lead to a major dispute), that will serve them well. ■

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

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Sport Dispute Resolution Centre of
Canada



Call for Applications for Mediators and Arbitrators / Mentorship Program for Women Arbitrators

The SDRCC invites applications from experienced arbitrators and mediators for four-year terms starting in spring 2021. In order to promote gender equity within its team, the SDRCC is launching a program allowing qualified women arbitrators to benefit from a mentorship program to access the SDRCC list faster. Detailed information and application form can be found at the following link: <http://www.crdsc-sdrcc.ca/eng/about-employment-ops>. The deadline to apply is November 6, 2020, 4:00 p.m. (EST). ■

CONGRATULATIONS TO THE NEW PARENTS !!!

Alexandra Lojen, our case manager, gave birth to an adorable baby boy. Health and happiness to the entire family!

Meet the New Team Members !!!



Ann-Sophie Laramée joined the SDRCC on May 19, as an intern, and took on the role of Assistant Case Manager on August 10. She assists with case management in the Dispute Resolution Secretariat. Ann-Sophie is currently completing her law degree at University Laval and has also studied at the University of Paris 1 Pantheon-Sorbonne during her degree. She is a former elite athlete in artistic swimming and an all-around sports fan.

Liddia Touch Kol has a bachelor's degree in kinesiology from McGill University and a certificate in marketing management from *l'École des hautes études commerciales de Montréal*. She has mainly worked in the retail and fitness world. Liddia is also a big sports fan, involved at many levels as an athlete, coach and volunteer in rugby and basketball, including women's university rugby. She is the new Education and Partnerships Coordinator.



Vincent Robichaud has completed a Diploma College Studies (*DEC*) in Sports Marketing and Management at Champlain College in Saint-Lambert. He also earned a bachelor's degree in Business Management completed in Ireland after a wonderful year abroad. Involved in the organization of many international sporting events, he is a fanatic of sports, but mainly of hockey, which he has now coached for three years. Vincent is the new Communication and Technology Officer. ■

Notable Dates:

- **October 21, 2020:** Virtual presentation to law students at *Université Laval*;
- **October 23-25, 2020:** Virtual kiosk at the AthletesCAN Forum;
- **October 28, 2020:** Virtual presentation to law students at *Université de Sherbrooke*;
- **November 4-6, 2020:** Virtual kiosk at the Sport Leadership Conference;
- **November 11, 2020:** Virtual presentation for sport management students at University of Ottawa;
- **November 19, 2020:** Presentation at the Saint Paul University Annual Symposium on Informal Conflict Resolution;
- **November 25-26, 2020:** Open for public webinar regarding the athletes right and responsibilities;
- **November 28, 2020:** Virtual workshop for the Ontario Powerlifting Association;
- **January 26-28, 2021:** Virtual kiosk at the Sport For Life Conference. ■



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