

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

SDRCC

Complaints Process Policy

Final Version

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SDRCC

Complaints Process Policy

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Governing Principles

The Sport Dispute Resolution Centre of Canada (“SDRCC”) must maintain high quality dispute resolution services so that parties, the sport community, and the general public can have confidence in its processes. One quality control tool is a formal complaints process that offers a fair, open, efficient, objective and predictable process to deal with complaints involving the arbitrators, mediators and the resolution facilitators (“DR service providers”). Both complainants and respondents are entitled to be informed of the outcome of the process and the reasons for it.

Objectives

The SDRCC Complaints Process is intended as an administrative procedure to improve, as required, the case management process or to investigate any alleged breach of professionalism by the DR service providers (e.g. gross incompetence, misconduct, bias). It is not intended to review, change or overturn the decisions rendered by arbitrators.

Role of the SDRCC

The SDRCC is responsible for managing the Complaints Process from an administrative standpoint and for outsourcing the services of the Independent Investigators on a case by case basis. To ensure that the program’s quality control needs are met, the SDRCC must also approve the outcome of every complaint, even negotiated or mediated outcomes.

Based on the report of the Independent Investigator, a final decision will be rendered by the SDRCC’s Complaints Committee, a subcommittee established by the Board of Directors in accordance with By-law 3.02, with delegated powers to resolve complaints. The role of the Complaints Committee is not to conduct a full review of the Complaint itself, but to receive the Independent Investigator’s report and consider its recommendations.

The members of the SDRCC Complaints Committee will not have advance knowledge of complaints or of the identity of the Complainant or of the DR service provider involved. This is to ensure that all complaints are decided fairly and objectively on their merits only.

However, the Complaints Process is recognized as a source of learning and opportunities for improvement for both the SDRCC and its DR service providers. The SDRCC reserves the right to publish non-identifying information, from any complaint filed, for educational and quality control purposes.

Admissible Complaints

The SDRCC will accept only complaints filed by one of the parties (claimant, respondent, or affected parties) to a dispute resolution process, concerning DR service providers conducting such process under the jurisdiction of the SDRCC:

- once that dispute resolution process has been completed. For example, this means that the arbitrator's jurisdiction must have come to an end before the complaint will be processed; and
- if that dispute resolution process is not subject to appeal or judicial review by any party.

The SDRCC will not accept:

- complaints limited to the outcome of the decision (trying to overturn or re-do an arbitration or mediation or substitute for an appeal);
- complaints that request remedies that only the court could provide such as requests for new hearings or removal of a DR service provider; or
- frivolous, patently trivial, vexatious, repetitive or abusive complaints.

Before submitting a Complaint to the SDRCC, the Complainant must sign the Complaint Form to agree and undertake in writing not to use any information obtained during the course of the Complaints Process for any purpose other than the SDRCC Complaints Process, including any civil action against the DR service provider or against the SDRCC, or any application for judicial review.

The Independent Investigator will be responsible for determining the admissibility of the complaint before beginning the investigation. If the Independent Investigator determines that a complaint is non-receivable, the Complainant will be advised, with reasons for such conclusion.

The Independent Investigator (II)

The Independent Investigator will be an arms-length service provider hired on a contractual basis with the SDRCC. The II will be appointed by the Executive Director in consultation with the SDRCC Complaints Committee. The II will review the application and, if admissible, will have full authority to investigate the Complaint, including the authority to contact and interview the DR service provider against whom the Complaint is filed, the Complainant, and other parties involved in the dispute resolution process at the origin of the Complaint. The investigation will be conducted by the II on behalf of the SDRCC and not as agent of the Complainant.

Overview of the Complaints Process

The notion is to have a paper-oriented process where adversarial oral hearings are a last resort and the exception rather than the rule. An oral session will only be convened at the discretion of the Complaints Committee if there is a serious factual allegation and the resolution of that allegation is required for the appropriate evaluation of the complaint.

The Complainant is provided with an information package that includes a Complaint Form to be completed and sent to the office of SDRCC. This Form will guide the formulation of the complaint and serve to declare consent to follow the SDRCC's protocols and conditions as outlined in the present policy.

Once the form is received by the Executive Director and is prima facie eligible, it will be forwarded to an Independent Investigator for a review of its admissibility.

After investigation, the II will issue a report, indicating whether or not the Complaint is substantiated. The II's report will be submitted to the SDRCC Complaints Committee with a copy to the Complainant and to the DR service provider who is the subject of the Complaint.

The DR service provider may submit a written response to the Complaints Committee about the II's report.

The Complaints Committee will review the report of the II and the DR service provider's submissions, if any, and make a final decision about the Complaint.

The Complainant and the DR service provider will be advised of the Complaints Committee's decision with reasons.

Complaints Process

Step 1 Submission of a Complaint

How: Only written Complaints will be accepted. The Complaint must provide the name of the DR service provider who is the object of the Complaint, together with the relevant dates and information about the dispute resolution process at the origin of the Complaints. The Complaint must also make specific allegations and provide any information available in support of the allegations so that they can be fully investigated. The Complaint form is sent to the Executive Director of the SDRCC. The Executive Director makes a first prima facia review, assigns a filing number for the application and forwards it to the II.

The Executive Director also has discretion to initiate a Complaint if something comes to his or her attention that raises a quality control concern or if a Complaint is discontinued by the Complainant for any reason. The Executive Director shall discuss the grounds for initiating a Complaint through the SDRCC Complaints Process with the Complaints Committee. Should the Executive Director and Complaints Committee find that:

- a serious or flagrant breach may have occurred; or
- the Complainant may suffer retaliatory consequences for filing a Complaint through the SDRCC's standard, written process; or
- the credibility of the SDRCC may be at risk;

then the Executive Director may initiate a Complaint under the Complaints Process.

Timing: The Complaint shall be submitted within 45 days following the completion of the dispute resolution process. The Complaints Committee may accept a Complaint that is not filed within the time limit if it is satisfied that there are exceptional circumstances to justify a reasonable extension of time, taking into account the likelihood of prejudice to the DR service provider.

Interim Provision: Once a Complaint is accepted and considered admissible, the Executive Director has discretion in the best interests of the program not to give out new assignments to the DR service provider in question until the final disposition by the Complaints Committee. In such case, the process of investigation and decision by the Complaints Committee will be completed as soon as practical and possible from the filing of the Complaint.

Step 2 Investigation of a Complaint

Admissibility: The II has the discretion not to proceed with any Complaint and to respond directly to the Complainant if the Complaint is inappropriate or without merit.

Authority of the II: After reviewing the Complaint and documents submitted by the Complainant, the II will conduct its investigation independently from the SDRCC. The II will have full authority to investigate, including the authority to interview or request written submissions or records from any relevant individual or organization in order to verify whether or not the Complaint is substantiated.

Step 3 Independent Investigator's Report

Content: After the investigation is complete, the II will issue a report, indicating whether or not the Complaint is substantiated. If the Complaint is substantiated, the II will also include recommendations for an appropriate outcome in the interests of quality control.

Communication: The II's report will be submitted to the SDRCC Complaints Committee with a copy to the Complainant and to the DR service provider who is the subject of the Complaint.

Response: The DR service provider, as the subject of the Complaint and the object of the recommendations by the II, may submit a written response to the Complaints Committee about the II's report.

Step 4 Complaints Committee Decision

Review of the II Report: The Complaints Committee will review the report of the II and the response of the DR service provider, if any, and make a decision about the complaint. If the Committee finds that the Complaint is substantiated, it may adopt the II's recommendations in whole or in part, reject them or substitute an alternative outcome. When the allegations are serious, the Complaints Committee may, at its sole discretion, request that a second investigation be conducted by another II before rendering a final decision. If the Complaints Committee's outcome is greater (more serious) than the recommendation of the II, the DR service provider will be notified in advance and given an opportunity to make additional submissions to the Complaints Committee.

Outcome: The decision of the Complaints Committee shall be the final decision on the Complaint. Outcomes will depend on the facts and circumstances of each case. If the Committee finds that a Complaint is substantiated, the outcome may include remediation, a simple warning or reprimand, training, review, observation, or a temporary or permanent removal of the DR service provider from the SDRCC list of arbitrators, mediators and resolution facilitators. In determining what to do on any substantiated Complaint, the Complaints Committee may take into account any previous substantiated complaints about the DR service provider.

Communication: The Complaints Committee will advise the Complainant and the DR service provider of its decision with reasons.

The Complaints Committee will also determine whether the publication of a document outlining the lessons learned from the Complaint is appropriate.