

# Complaints Process Policy

**Final Version**

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SDRCC

# Complaints Process Policy

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## 1. Governing Principles

The Sport Dispute Resolution Centre of Canada (“SDRCC” or “Centre”) must maintain high quality dispute resolution and investigation services so that parties, the sport community, and the general public can have confidence in its processes. While the overall quality control plan of the Centre provides for several evaluation tools and methods to monitor and improve its services, the complaints process offers a fair, open, efficient, objective and predictable process to deal with complaints involving the Centre’s arbitrators, mediators, resolution facilitators and members of the Investigation Unit (“Service Providers”).

## 2. Objectives

The Centre complaints process is intended as an administrative procedure to improve, as required, the dispute resolution services and to investigate any alleged breach by the Service Providers of their respective codes of conduct: the *Code of Conduct for SDRCC Mediators and Arbitrators* and the *Code of Conduct for Members of the Investigation Unit* (the “applicable Code of Conduct”). It is not intended to review, change or overturn the decisions rendered by arbitrators nor to alter the conclusions or recommendations of an investigator.

## 3. Role of the Centre

The Centre is responsible for managing the complaints process from an administrative standpoint and for outsourcing the services of a Third-Party Review on a case-by-case basis, as may be required by the present Policy. To ensure that the goals of its quality control plan are met, the Centre must also approve the outcome of every complaint, even negotiated or mediated outcomes.

All final decisions will be made by the Centre’s Complaints Committee, a subcommittee established by the Board of Directors in accordance with By-law 3.02, with delegated powers to resolve complaints. Where the services of a Third-Party Review are required, the role of the Complaints Committee is not to conduct a full review of the complaint itself, but to receive the Third-Party Review report and consider its recommendations.

The complaints process is recognized as a source of learning and opportunity for improvement for both the Centre and its Service Providers. The Centre reserves the right to publish non-identifying information, from any complaint filed, for educational and quality control purposes.

## 4. Admissible Complaints

The Centre will only accept complaints against its Service Providers that explicitly refer to a breach of one or more section(s) of the Code of Conduct for SDRCC

Mediators and Arbitrators or the Code of Conduct for members of the Investigation Unit.

The Centre may receive complaints filed by any of the parties, representatives, witnesses or observers in a dispute resolution or investigation process, concerning Service Providers conducting such process under the jurisdiction of the Centre, provided that the dispute resolution or investigation process:

- has concluded. For example, this means that the arbitrator's jurisdiction has come to an end or that the investigator has filed its final investigation report before the complaint will be processed; and
- is not subject to appeal or judicial review by any party.

Complaints may also be filed by others who have first-hand knowledge of a possible breach of the applicable Code of Conduct by a Service Provider conducting a procedure under the jurisdiction of the Centre.

The Centre 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) or the outcome of an investigation (trying to alter its conclusions or recommendations);
- complaints that request remedies that only the court could provide such as setting aside a decision or requests for new hearings; or
- frivolous, patently trivial, vexatious, repetitive or abusive complaints.

Before submitting a complaint to the Centre, 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 Centre's complaints process, including any civil action against the Service Provider or against the Centre, or any application for judicial review.

The Chief Executive Officer will be responsible for determining the admissibility of the complaint before commencing the complaints process. The Chief Executive Officer may refer this question to the Complaints Committee. If a complaint is deemed inadmissible, either by the Chief Executive Officer or by the Complaints Committee, the complainant will be advised, with reasons for such conclusion.

## 5. Complaint Initiated by the Chief Executive Officer

The Chief Executive Officer also has discretion to initiate a complaint if a situation 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 Chief Executive Officer shall discuss with the Complaints Committee the grounds for initiating such complaint. Should the Chief Executive Officer 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 Centre's standard, written process; or
- the credibility of the Centre may be at risk;

then the Chief Executive Officer may initiate a complaint under the complaints process.

## 6. Initiation of a Complaint

**How:** The complainant must complete the Complaint Form and send it to the Chief Executive Officer. This form will guide the formulation of the complaint and serve to declare consent to follow the Centre's protocols and conditions as outlined in the present policy. Incomplete forms will be returned to the complainant with a mention of missing information and a deadline for completion and resubmission. No further action shall be taken if the duly completed form is not resubmitted prior to that deadline.

**Timing:** The Complaint Form shall be submitted within 45 days following the completion of the dispute resolution or investigation process giving rise to the complaint. 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 Service Provider.

## 7. Overview of the Complaints Process

**General:** 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.

**Types of Complaints:** The applicable Code of Conduct sets out the standards of conduct governing the professional and ethical responsibilities of the Service Provider of the Centre respectively. It is intended to complement existing legal and professional requirements. Breaches of certain provisions of the applicable Code of Conduct do not bear the same seriousness and consequences.

**Interim Provision:** Once a complaint is accepted and considered admissible, the Chief Executive Officer has discretion in the best interests of the program not to give out new assignments to the 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 time of the initial filing of the complaint.

**Communication of the Decision:** Both the complainant and the Service Provider who is the subject of the complaint will be advised by the Complaints Committee of its final decision with reasons.

## 8. Process

**Initial Review:** Upon receipt of a complaint concerning an alleged breach of the applicable Code of Conduct by a Service Provider, the Chief Executive Officer shall promptly advise the Complaints Committee of the complaint. The Complaints Committee will conduct an initial review of the complaint to determine the course of action to be taken, if any, which may include the gathering of further information by the Chief Executive Officer. The Service Provider will then be notified by the Chief Executive Officer of the complaint and of the course of action determined by the Complaints Committee.

**Investigation:** The Complaints Committee may, after reviewing the facts, decide to submit the complaint to a Third-Party Review for a more complete investigation and recommendations. The Service Provider will be given an opportunity to respond to the allegations during the investigation phase.

**Final Determination:** The Complaints Committee will reconvene to review the conclusions of the Third-Party Review report. If the Complaints Committee is considering the imposition of sanctions, the Service Provider will be invited to file a position statement before the Complaints Committee makes a final determination on the complaint.

## 9. The Third-Party Review

The Third-Party Review will be conducted by an arms-length consultant hired on a contractual basis with the Centre and shall not be a member of the Centre's Investigation Unit. The Third-Party Review consultant will be appointed by the Chief Executive Officer in consultation with the Complaints Committee.

The review of the complaint will be conducted by the Third-Party Review consultant on behalf of the Centre and not as agent of the complainant.

**Declaration of Independence:** The Third-Party Review consultant shall execute a Declaration of Independence stating his/her independence from the Service Provider, the complainant, and any other person involved in the procedure giving rise to the complaint.

**Admissibility:** The Third-Party Review consultant 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 Third-Party Review Consultant:** After reviewing the complaint and documents submitted by the complainant, the Third-Party Review consultant will conduct its investigation independently from the Centre. The Third-Party Review consultant will have full authority to investigate the complaint, including the authority to contact and interview or request written or oral submissions or records from any relevant individual or organization in order to verify whether or not the complaint is substantiated.

***Third-Party Review Report.*** After the investigation is completed, the Third-Party Review consultant will issue a report, indicating whether or not the complaint is substantiated. If the complaint is substantiated, the Third-Party Review consultant will also include recommendations for an appropriate outcome in the interests of quality control. The Third-Party Review report will be submitted to the Complaints Committee with a copy to the complainant and to the Service Provider who is the subject of the complaint.

## 10. Authority of the Centre's Complaints Committee

If the Complaints Committee finds that a complaint is substantiated, it may adopt the Third-Party Review report's recommendations in whole or in part, reject them or substitute an alternative outcome. Outcomes will depend on the facts and circumstances of each case.

The Complaints Committee may, at its sole discretion, request that a second investigation be conducted by another Third-Party Review consultant before rendering a final decision.

The decision of the Complaints Committee shall be the final decision on the complaint.

## 11. Outcomes and Possible Sanctions

If the Complaints 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 Service Provider from the Centre's list of arbitrators, mediators and resolution facilitators or members of its Investigation Unit. In determining what to do on any substantiated complaint, the Complaints Committee may take into account any previous substantiated complaints about the Service Provider.