

IN THE NEUTRAL ZONE

News and Events of the Sport Dispute Resolution Centre of Canada



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Transitioning Towards a Universal Code of Conduct in Sport

by David Spears and Jay Kim, Lawyers on the SDRCC's List of Legal Representatives

Recent public attention to allegations of harassment and abuse in the sport system prompted ministerial announcements and the mobilization of the entire sport community in Canada to put safety at the forefront of priorities. As many actors are engaged in the implementation of better measures to eliminate harassment, abuse, and discrimination to protect all participants in Canadian sport, a number of sport organizations have pushed for the creation and adoption of a universal code of conduct which would apply to all Canadian sport organizations.

The ultimate goal is to work towards the adoption of a single overarching set of definitions, rules and standards for the entire Canadian sport system, so that there is alignment at all levels of sport in every region of Canada. A universal code of conduct would not only articulate a standard of conduct to which participants must adhere, but it would necessarily have to provide for sanctions and enforcement mechanisms regarding violations of the code to ensure that it is effective and plays a practical role in creating a safe environment for athletes and all others involved in Canadian sport.

A properly designed and worded universal code of conduct will provide protection to not only sport participants, but also those officers and Board members responsible for oversight and management of the organization. Sport organizations would be wise to give thought to the values and wording to be included in any code of conduct. The process involved in fostering a harassment-free environment can be a challenging task. This article aims to provide insights to organizations in the process of developing ideas with respect to a universal code of conduct.

1. Think about its Scope, to Whom it will Apply

The Canadian sport system, diverse not only by the number of sports and the multiple levels of participation, but also by the governmental jurisdictions, would greatly benefit from bringing all relevant stakeholders together to the table in an effort to find agreement on common standards and principles to be applied nationwide.

A universal code of conduct ought to clearly define what constitutes harassment, abuse, and/or discrimination, and clarify the distinction between those terms. To make sense to a broad spectrum of the sport community, it must also recognize the specificity and reality of each sport at various levels of practice and, if providing examples of conduct that could constitute harassment, abuse and/or discrimination, such list cannot be exhaustive.

2. It's about Respectful Relationships

A universal code of conduct is expected to cover a wide range of scenarios and relationships, including certainly but not limited to allegations of abuse and harassment arising from athlete-coach relationships. It is therefore necessary for sport organizations to come to a consensus on what it means to have respectful human interactions between all stakeholders and identify behaviours that ought to be prohibited. It is also insufficient to make the code only address behavior of those who harass, abuse or discriminate. To increase the deterrent effect of such code, it must also address consequences for those who are aware of incidents but fail to report them, those whose decisions or negligence have placed participants in vulnerable situations, and those whose conduct is a *(continued on page 2)*

In this issue:

SDRCC Roster Member Profile: John Curtis	3
SDRCC News, Announcements & Notable Dates	4



Transitioning Towards a Universal Code of Conduct in Sport *(continued)*

form of retaliation against victims or witnesses who come forward.

3. Understand Legal Implications

A universal code of conduct should meet any statutory requirements with respect to human rights legislation. Sport organizations may want to have a discussion with experts and professionals to ensure that what they are advocating for inclusion within a universal code of conduct meets or exceeds relevant statutory requirements. Once the universal code is implemented, sport organizations still have the responsibility to ensure that they meet all relevant provincial and federal statutory requirements - if at any point there are any gaps between the universal code and the law, it is up to the organizations to fill in the gap.

4. Designate Decision-makers and Think about Potential Procedural Issues

When a comprehensive universal code of conduct is adopted, each organization ought to designate independent persons who are experts or have received extensive training with respect to anti-harassment, anti-abuse and anti-discrimination, and who can make decisions with respect to the application of the code.

Furthermore, a universal code of conduct ought to establish the steps to be followed by a complainant or a witness wishing to report an alleged violation of the code. Organizations should ensure that they put themselves in a position to comply with the procedural provisions within the universal code of conduct, by designing a proper response mechanism that is equally respectful of the rights of the complainant, of the witnesses and of the accused.

5. Clearly Set out any Investigation Processes

Sport organizations are expected to promote a safe environment for all their members, which includes, as employers, to promote a discrimination-free and harassment-free workplace. They are required by law to investigate incidents of workplace discrimination and harassment in an objective, sensitive, and timely manner, even in respect of events that take place outside the workplace. It is important that complaints are entrusted to an independent third party to investigate and address any harassment and abuse allegations. However, few sport organizations already have proper investigation processes in place. That is why the Honourable Kirsty Duncan has made such a requirement a part of federal funding agreements.

6. Confidentiality is Paramount

It is difficult for athletes (and any other complainants) to come forward with a complaint of harassment, abuse or discrimination. Information about complaints and incidents must be kept confidential to the extent possible, unless some form of disclosure or reporting is required by law. On the other hand, while it is imperative to foster an atmosphere in which individuals feel safe to bring forward any complaints, a universal code of conduct should support complaints filed in good faith; a false accusation of harassment, knowingly or in a malicious manner, can be devastating for the wrongly accused respondent. Gossiping about an incident seriously undermines the privacy of all parties involved and should not be tolerated. Strict confidentiality is required to properly investigate an incident and to offer appropriate support to all parties involved.

7. Proactively Educate Members about the Universal Code of Conduct

When the universal code of conduct is implemented, sport organizations will have to communicate with all relevant members and stakeholders to discuss how the code applies to them. Organizations may want to seek out advice at an early stage to develop an appropriate strategy with respect to educating their athletes, coaches, and all other members, not only about the new rules in effect but also about how each of them can contribute to creating a safer environment.

“...it is imperative to foster an atmosphere in which individuals feel safe to bring forward any complaints...”

8. Keep Current with Eventual Developments

A monitoring plan should also be put in place to keep the code up-to-date with eventual legislative changes, including labour and employment laws, as well as further government announcements. As amendments are mandated, one must keep in mind that educational content delivered to the members of the sport community must remain consistent with any iteration of the code.

Conclusion

Sport organizations should strive to provide a safe, accessible, and welcoming environment, free of harassment, abuse, and discrimination, to all of their athletes, coaches, officials, volunteers and employees. Organizations need to ensure that all relevant stakeholders are aware of their rights and responsibilities under any new universal code of conduct. While the above-noted insights do not constitute a comprehensive checklist, hopefully they will serve as a guiding tool to sport organizations who are committed to developing and implementing a well thought-out universal code of conduct. ■



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 50 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 **John Curtis, Mediator from Kingston, Ontario.**

What Led You To a Career in ADR?

When I started practicing law, I thought litigation would be a terrific way to satisfy my own enjoyment of a competitive challenge while also helping people with the conflicts that were negatively impacting their lives. Unfortunately, I won my first few cases, so it took me longer than it should have to realize that litigation is a terrible way to solve problems. It seemed to me that most of the legal issues could be sorted out in just a few days or maybe weeks but cases dragged on for a variety of what I like to call “institutionalized practices” that rarely have the best interests of the litigants in mind. I stumbled on the concept of mediation as I shared my frustration with parents, friends and colleagues. I took a course in mediation and immediately knew this was the thing for me.



Specialization/Area of Expertise:

Early on in my mediation career, I focused my practice on workplace conflict. With the growing impact of changes to the *Occupational Health and Safety Act* in Ontario, my ADR practice has shifted substantially to the conducting of workplace harassment and sexual harassment investigations, usually involving allegations by or against executives or managers in an organization so that an outside investigator is required.

As a Mediator with the SDRCC, I...

...bring my knowledge of sport and the Canadian sport system to bear on the work I do. As both an Olympic athlete in sailing, former High Performance Director for

the sport of sailing as well as 20 years of experience as an ADR, professional my unique path guides me to help ask the right questions. My focus is always on figuring out what is most important to the participants in the process. This focus is critical to understanding the dispute whether I am acting as a mediator or an investigator.

Favorite Sport(s):

I continue to compete in sailing and enjoy it in all its various forms, on the water, ice or snow. In the summer when there is no wind I enjoy road cycling and during winter, when there is no ice on the lake, I like to cross-country and downhill ski.

Dispute Prevention Tip for Athletes and Federations:

To make the best use of the Resolution Facilitation and/or Mediation processes offered by SDRCC, get creative about the possible solutions to the problems that lead to dispute. The most creative solutions come when the parties independently come up with their own ideas about how to get what they need most before the mediation. Coming to the ADR process with some pieces of the “solution puzzle” makes the process far more effective.

The critical thing to remember when doing this pre-work is not to pre-judge options and eliminate them before they see the light of day at the mediation table. This pre-work will also help clarify for each party what core interests are at stake. ■

In our next edition, look for the profile of another SDRCC Roster Member.

Follow Us on Social Media: Stay current on the publications of new decisions while keeping up with the Sport Dispute Resolution Centre of Canada’s activities and newest educational publications!





The Investigation Unit is Now Up and Running

The SDRCC is pleased to announce that the Investigation Unit is now fully operational.

Supporting the will of the Canadian sport system to foster healthy and safe workplace and sport practice environments, the SDRCC decided, last fall, to extend its expertise to offer, as a pilot project until March 2020, a list of qualified and independent investigators to assist federally-funded sport organizations in handling complaints and allegations.

More information on this program can be found at the following link: <http://www.crdsc-sdrcc.ca/eng/investigation-unit> ■

New SDRCC Staff Members



Alexandra Lojen joined the SDRCC on January 7 as Case Manager. She is primarily responsible for case management in the Dispute Resolution Secretariat. Alexandra is a former national team and university volleyball athlete as well as a member of the Quebec Bar. Prior to joining the SDRCC, she held positions in various sports organizations and as a lawyer in private practice.



Eleni Siganos joined the SDRCC on January 3 as Education and Partnerships Coordinator. She is responsible for the SDRCC education programs and dispute prevention initiatives as well as for the development of meaningful partnerships with key stakeholders in the sport and legal communities. An avid follower of most sports, Eleni recently graduated with a Master's degree in Sport Management from the University of Ottawa and is a former member of the McGill University field hockey team. ■

SDRCC at the Canada Games



The SDRCC will be onsite at the Canada Games in Red Deer from February 15 to March 3, 2019 to provide free dispute resolution services.

Athletes, coaches and mission staff are also invited to stop by the kiosk, to be located in the Athletes Village, to pick up publications and souvenirs, and for any information or assistance. ■

Launch of the Sport Law Connect Program in British Columbia

The Sport Law Connect Program (SLCP) was launched in British Columbia as a pilot project in January 2019, in partnership with viaSport BC, the ADR Institute of British Columbia, as well law students from University of British Columbia and University of Victoria. Provincial sport organizations in British Columbia may now get help from trained law students or ADR professionals who may facilitate the resolution of sports-related disputes or sit on disciplinary or appeal panels. ■

Notable Dates

- **February 6:** Presentation to law students at Queen's University (Kingston, ON);
- **February 23:** Workshop for Row Ontario's umpires (Toronto, ON);
- **March 6:** Presentation to sport management students at University of Ottawa (Ottawa, ON);
- **March 27:** Presentation to sport management students at Algonquin College (Ottawa, ON);
- **April 7:** SDRCC Kiosk at the 2019 Ontario Coaches Conference (Toronto, ON). ■



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