



Representation in Mediation

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This article focuses on the advantages and disadvantages of being represented when participating in a **mediation** process. While some of it may also apply to **arbitration**, it is important to recognize the differences between the two processes. Arbitration is a formal legal proceeding with special rules of evidence to follow in which the arbitrator makes a final and binding decision; mediation is more informal and participants have input into the agreement. At an arbitration hearing parties must not only provide evidence, but also have the ability to cross examine witnesses. It is my opinion that it is simply not a wise decision to attend an arbitration hearing unrepresented.

The number and percentage of cases resolved through mediation as compared to arbitration has steadily increased since the establishment of the Sport Dispute Resolution Centre of Canada (SDRCC). Mediation may be used to resolve any type of dispute involving Canadian athletes, coaches, officials, or volunteers who come under the jurisdiction of a National Sport Federation. This could include matters of carding, team selection, eligibility, discipline, certification, or harassment. The goal of mediation is for parties to reach a voluntary settlement with the assistance of a mediator.

A major decision that participants must make is whether or not they need to be represented by counsel at mediation. The real question that should be asked is: How can the possibility of resolution be maximized? Can you do it yourself or do you need assistance in the mediation process?

To be effective in a mediation process, you need to:

- communicate clearly;
- express yourself clearly, speaking about concerns, needs, and desires;
- be willing to listen to the other parties' concerns, needs, and desires (to put yourself in their shoes);
- be respectful of all participants no matter how much "bad blood" there may be between you - another goal of mediation is to mend fences, not burn bridges;
- be prepared to examine as many different ways as possible of resolving the problem;
- be flexible and prepared to make concessions, if appropriate;



- be prepared to choose the best available option that meets every party's needs;
- be prepared to commit to the agreed upon resolution; and
- trust the mediator to manage the conflict and emotions in the room.

So far, it sounds easy enough to do alone, and you may think you can do it yourself - after all, you are the best equipped to express all of the above more effectively than any outside representative. However, there are some elements of mediation for which you may require assistance. It is essential that you:

- know your legal rights (the mediator is not supposed to advise you of them);
- have a good understanding of what happens if you don't reach a resolution and walk out the door;
- have realistic expectations; and
- are able to recognize a good resolution; a good resolution is one that meets your needs in a better fashion than by walking out the door or letting a third party arbitrator (or even a judge) impose a decision.

You can accomplish this in one of two ways: either by consulting a specialist in sports law to get advice on how to prepare yourself and on what happens if you don't reach an agreement, or by retaining someone to **assist** you at the mediation. Notice that I did not use the term "represent you", as your representative at the mediation cannot identify your needs, concerns, and desires as effectively as you can, nor is your representative going to be committing to the agreement reached during the mediation. However, this person can be of invaluable assistance to you in all of the above-mentioned elements of mediation.

When choosing someone to assist you, ensure that they have expertise in amateur sport. The SDRCC has a list of legal representatives at:

http://www.adrsportred.ca/resource_centre/list_representatives_e.cfm

Talk with the person first and make sure that he or she understands that it is important to be conciliatory and willing to explore all available options; these are very different skills than what makes someone effective counsel for arbitration or court cases.

Finally, relax - mediation is a very informal process. The mediator will assist you in expressing yourself regardless of whether you come alone, with counsel, or with a friend/family member for support. The mediator's job is to make everyone feel as comfortable as possible, and negotiate the best possible resolution for all participants.