

## Sport Dispute Resolution Centre of Canada

# Call for Applications for Arbitrators and Mediators \*

### **Background**

Established in 2003 and fully operational since 2004, the Sport Dispute Resolution Centre of Canada (SDRCC) offers a proactive approach to handling disputes at the national level of Canada's sport system. Through education and prevention, the SDRCC provides parties with information, expertise, and assistance regarding alternative dispute resolution to address and resolve conflicts quickly, minimizing jeopardy to a team, an athlete or any member of a sport organization.

Where the parties cannot reach a resolution on their own, the SDRCC offers an alternative dispute resolution (ADR) service for sports-related disputes. More particularly, the SDRCC offers resolution facilitation, mediation, med/arb and arbitration services for sports-related disputes such as national team selection, athlete assistance program (funding), disciplinary issues, and doping violation assertions.

Starting from May 2021, the SDRCC will manage rosters independently for each of its divisions, being the Ordinary Tribunal, the Doping Tribunal, the Safeguarding Tribunal and the Appeal Tribunal.

The SDRCC is governed by *An Act to Promote Physical Activity and Sport* (S.C. 2003, c. 2) which received Royal Assent on March 19, 2003. Administrative and procedural rules governing the SDRCC tribunal operations are contained in the Canadian Sport Dispute Resolution Code (available to be consulted on the SDRCC website: [www.crdsc-sdrcc.ca](http://www.crdsc-sdrcc.ca)). Most SDRCC arbitral awards are made public and can be consulted online via the SDRCC jurisprudence database.

### **Call for Applications**

The SDRCC is seeking Canadian-based ADR service providers to act as resolution facilitators, mediators, med/arb neutrals, and arbitrators, for resolving or assisting parties in resolving sports-related disputes, for a mandate of approximately three years beginning in the summer of 2021.

Candidates should be aware that SDRCC proceedings are often urgent in nature, with little or no advance notice, and are generally conducted in very short timeframes requiring decisions within 5 to 7 days or less. The majority of SDRCC proceedings are conducted by telephone and videoconferencing.

The ADR service providers will be remunerated for their services in accordance with the policies of the SDRCC. The fee will be \$250 per hour for a maximum of eight (8) hours per day, with restrictions and caps for certain tasks.

The selection process will be completed in February 2021 and successful candidates will be required to attend the SDRCC Arbitrator and Mediator Conference planned to take place on May 6 to 8, 2021 in Saskatoon (or virtually if public safety is at stake) in order to be admitted to the SDRCC roster.

### **Selection Criteria**

The selection criteria are defined in Appendix A of this Call for Applications. Additional selection criteria for specialized rosters are defined in Appendix B.

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\* Unless the context otherwise requires, words importing a particular gender shall include all genders.

The SDRCC will take into consideration the interest expressed by candidates for the specialised rosters, but shall have full discretion to decide how many and who from the pool of candidates will constitute each roster.

The SDRCC reserves the right to refuse to appoint candidates to the SDRCC roster for any reason (including limiting the number of candidates on the roster). There shall be no appeal from the SDRCC decision.

### **Required Information**

Candidates must submit the following documents:

1. The SDRCC Roster Application Form completed and signed;
2. A cover letter expressing their interest in joining the SDRCC roster and, if wishing to be part of one or more of the SDRCC specialty rosters (Doping, Safeguarding, Appeal), explaining their relevant training, experience and expertise for such.
3. A resume setting out:
  - o their mediation and/or arbitration experience, as applicable;
  - o their knowledge of and involvement or experience in the Canadian amateur sport system.
4. If wishing to be selected as **mediators**:
  - o two letters of reference from lawyers or parties for whom the candidate has conducted a mediation within the last two years.
5. If wishing to be selected as **arbitrators**:
  - o a copy, redacted to protect confidentiality if necessary, of an arbitral decision with reasons written by the candidate within the last two years

Applicants wishing to be considered as **med/arb neutrals** must provide the information required above for both arbitrator and mediator status.

### **Women in Arbitration Mentorship Program**

The SDRCC Women in Arbitration Mentorship Program is a new program designed to increase the number of women arbitrators on the SDRCC roster. Interested female arbitrator candidates should refer to the Program description in Appendix C and check the relevant box on the Application form. Candidates to this Program must present a complete application package as if applying for full membership on the SDRCC roster. The SDRCC reserves the right to limit the number of candidates selected under this program.

### **Application Process**

Applicants are strongly encouraged to review the following before applying:

The SDRCC website: [www.crdsc-sdrcc.ca](http://www.crdsc-sdrcc.ca)

[The SDRCC Strategic Plan for 2020-2024](#)

[The SDRCC Annual Report for 2019-20](#)

[The SDRCC Corporate Plan for 2020-21](#)

[The 2015 Canadian Sport Dispute Resolution Code](#) (a new Code, to come into effect January 1, 2020 will be adopted by the SDRCC Board of Directors in November 2020)

[The Code of Conduct for SDRCC Mediators and Arbitrators](#)

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Applications must be received by the SDRCC no later than 4 pm (EST) on November 6, 2020 and include all the documents required. Incomplete applications will not be considered. It is the candidate's responsibility to ensure that the application is received.

Interested candidates should send their complete application by email at [applications@crdsc-sdrcc.ca](mailto:applications@crdsc-sdrcc.ca). **NO PAPER APPLICATIONS ACCEPTED.** If letters of reference are to be supplied to the SDRCC directly by the referees, please indicate so in the body of your email message. It is the responsibility of the candidate to ensure that letters of reference are received by the SDRCC before the above deadline.

*Incomplete applications will not be subject to further follow up.*

Sport Dispute Resolution Centre of Canada

**Selection Criteria and Process for Arbitrators and Mediators**

**INTRODUCTION**

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**Background**

The Sport Dispute Resolution Centre of Canada (“Centre”) is governed by *An Act to Promote Physical Activity and Sport* (S.C. 2003, c. 2) which received Royal Assent on March 19, 2003. Subsection 17(1)(j) of the Act affords full responsibility to the Board of Directors to establish the qualifications required to become a mediator and/or and arbitrator of the SDRCC.

**Purpose**

In light of the maximum length of the directors’ mandates fixed by the Act, the Board of Directors adopted this *Selection Criteria and Process* in 2019 in order to document the way in which the SDRCC mediators and arbitrators are selected and to ensure consistency from one appointment process to the next.

**GENERAL PROCESS**

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**Call for Applications**

The SDRCC will issue a public call for applications to solicit candidates in the alternative dispute resolution (ADR) community, as widely as possible, through its website, entities sharing similar membership profiles such as the ADR Institute of Canada and its regional affiliates, as well as in the sport community through a communiqué or an announcement via SIRC. Where deemed relevant and contingent on financial resources, the SDRCC may also publicize the opportunity through job placement intermediaries.

The call for applications shall contain, minimally, the anticipated remuneration rate for mediator and arbitrator services, the application form and a list of all documents required as attachments, the dates and location of the SDRCC Mediator and Arbitrator Conference which will be mandatory for new roster members to attend, and the instructions for applications (deadline, coordinates, etc.)

The frequency of the calls for applications will vary based on needs of the Centre but will typically occur every 3 to 4 years to follow the cycle of the SDRCC Mediator and Arbitrator Conference. All such public announcements must be made in both official languages of Canada.

**Authority**

Only the Board of Directors can approve final nominations of mediators and arbitrators to the SDRCC roster. The ADR Services Committee is mandated by the Board of Directors to review all applications and recommend a slate based on its assessment of each candidate against the criteria set out in the present document.

### **Composition of the Roster**

In establishing the final composition of the recommended roster, the ADR Services Committee will take into consideration the needs of the Dispute Resolution Secretariat with regards to the size of the roster, the mediator/arbitrator ratio, the bilingual capacity of roster members, and Canada's regional, cultural and gender diversity more generally.

### **Duration of Mandates**

The ADR Services Committee can make a recommendation to the Board of Directors as to the length of appointment of the roster as a group, giving consideration to several relevant factors such as recent attrition rates, changes in services offer and demand, as well as next opportunity to conduct an orientation session and a Mediator and Arbitrator Conference.

### **Renewal of Mandates**

Roster members applying for renewal are not automatically selected. Considerations will be given to their applications in the context of the broader needs of the SDRCC and quality of new applicants, as well as the overall roster capacity to meet the demands of the tribunal and contribute to the betterment of the SDRCC. A healthy turnover will also be encouraged to allow a balanced generational representation as described herein.

Such considerations may include: general availability to accept appointments, number of cases accepted, attendance at annual conference, autonomy with SDRCC technological tools, quality of work, quality of decision-writing, feedback from parties, respect of invoicing guidelines, input from SDRCC staff on other criteria as deemed necessary, etc. The selection committee will also give consideration to inconsistencies between self-declared competencies in previous applications and the performance of the roster member in question.

## **SPECIFIC SELECTION CRITERIA**

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In reviewing individual applications for the roster, the ADR Services Committee will also take into consideration more specific needs as detailed below.

### Geographical location:

All other things being equal, the SDRCC will favor candidates having their main place of business in Canada. The SDRCC reserves the right to select mediators or arbitrators who practise outside of Canada as long as this person meets or exceeds the other selection criteria herein and is considered to be able to contribute to the SDRCC enhancement more than other Canadian-based candidates.

Roster members who move abroad during a mandate will be allowed to remain on the roster until the next renewal opportunity.

Whether selected as such or moved mid-mandated, roster members who do not live in Canada will be required to bill the SDRCC in Canadian funds. When travelling for SDRCC business, including for the annual conference, their travel costs will only be covered by the SDRCC as if travel took place from the closest Canadian city of this person's new location.

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## Selection Criteria and Process for Arbitrators and Mediators

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### Professional designations and credentials:

Candidates will be required to possess a designation issued by an ADR professional organization such as, but not limited to, the ADR Institute of Canada, Family Mediation Canada, or the Chartered Institute of Arbitrators.

Candidates without a designation but showing ADR training and diplomas or other relevant professional training and experience may also be considered, at the sole discretion of the selection committee.

Candidates not residing in Canada at the time of application shall be a member in good standing of a law society in Canada.

### Experience in conducting proceedings:

The SDRCC is seeking applicants who are currently active in the conduct of proceedings. Candidates will be required to indicate on their application form the number of proceedings conducted in the past two years. Candidates who have not conducted many recent proceedings are invited to provide an explanation for reporting lower numbers than would normally be for them.

**Arbitrator candidate:** Experience as sole arbitrator/adjudicator will be given precedence over experience as panel member. More weight will also be given to experience chairing a panel than being a panel member. Experience sitting as a judge will be considered relevant experience for arbitrator candidates. The candidate will have to supply a sample of a recent award for which he/she was the sole or primary writer (the award can be redacted if it contains confidential information).

**Mediator candidate:** Experience as mediator will be judged by the volume of mediations conducted alone or in co-mediation. The candidate will be required to provide letters of reference from two legal representatives of parties for whom they have recently conducted a mediation. Reference letters from colleagues, associates or former teachers/students will not be given any weight.

### Experience in conducting multi-party proceedings:

Close to 70% of ordinary (non-doping) tribunal cases at the SDRCC involve several parties. In team selection and funding disputes, for example, where the claimant seeks a spot on a team or financial support, one or more other athletes become affected parties since they are at risk of being dislodged from the team or lose their funding. Candidates will be asked the percentage of proceedings conducted in the past two years which involved more than two parties and illustrate through examples the type of multiparty disputes handled. Demonstrated significant experience in the conduct of multi-party proceedings will be considered an asset.

### Knowledge of the sport system and nature of disputes which may arise:

All other things being equal, candidates who show an understanding of the reality of federated sports or those having held positions in sport organizations at the highest possible levels of the sport system will be given preference. Relevant experience for this criterion includes having competed as a high-performance athlete, having coached or officiated at a high-performance level, having held decision-making positions (volunteer or remunerated) in sport organizations. Precedence will be given to experience in federated sport, however similar experience in professional sports will also be considered.

### Independence:

Parties to SDRCC proceedings sometimes seek roster members who are completely independent from the sport system and others prefer roster members who have intimate knowledge of the sport system from their involvement in various capacities. The roster selection process will ensure that there is a balance between the two profiles. Additional safeguards are in place on a case-by-case basis to guarantee independence from the parties and from the issues in dispute. Candidates are encouraged to explain in their applications to which group they think they belong and why.

In particular, candidates will be required to disclose on their application form any current or recent (past two years) membership and/or affiliation with the SDRCC or its potential clients. Candidates will also be required to list all national sport organizations or multisport organizations funded by Sport Canada for which they have conducted business in the past two years and in what capacity (e.g. policy review, conduct of appeals, investigations, legal representation, employment, etc.)

### Previous experience in sport law, ADR or SDRCC:

Candidates are encouraged through the application process to describe in sufficient detail any experience they may have in the following areas:

- Legal work in federated sports;
- SDRCC;
- Conducting proceedings for CAS;
- Sport Law Connect Program.

### Generational Representation:

The SDRCC is proud to count among its members some who have been in its ranks for almost two decades and wishes to ensure that they are offered an opportunity to help younger generations of arbitrators and mediators to follow in their footsteps. In order to allow this, the selection committee will favor a healthy turnover to maintain a balance between the very seasoned arbitrators and mediators and the new generation of ADR professionals looking to apply their skills to resolve sport-related disputes.

### Bilingualism:

All other things being equal, capacity to conduct proceedings in both official languages will be considered an asset. In order to ensure availability of sufficient bilingual mediators and arbitrators on the SDRCC roster at all given times, incapacity to conduct proceedings in both official languages may be sufficient alone to justify non-selection.

The SDRCC recognizes that someone can be bilingual without being capable of conducting proceedings in both languages. Candidates who indicate on their applications being able to conduct proceedings in both official languages may be convened to a telephone interview to test their linguistic capacities. In order to be considered “bilingual”, arbitrator candidates will be expected to be proficient enough in their secondary official language to write arbitral awards in that language.

Decision writing skills:

This criterion applies only to candidates seeking selection as arbitrators or med/arb neutrals. SDRCC arbitrations are often conducted with parties who are self-represented with no or little legal knowledge. It is expected that SDRCC arbitrators are able to write awards that are clear, concise and properly reasoned to be understood by lay readers.

The award to be supplied by the candidate will be judged, inter alia, for

- Analysis of evidence including inconsistencies and making any necessary findings of fact;
- Respectful and sensitive to circumstances of parties and events;
- Well-reasoned and jurisprudentially sound;
- Clarity of content and writing style;
- Use of accessible language;
- Effectively communicates to the reader what the dispute is about;
- Readers understand what has been decided and why.

Availability to respond to the nature of the requests (urgency):

A large number of SDRCC cases are conducted in very short timeframes, requiring resolution or final decisions within 5 to 7 days or less. Candidates have to acknowledge as part of their application that their practice is conducive to being available on short notice to conduct procedures of urgent nature, with little or no advance notice.

Use of technology:

Candidates have to accept that the majority of SDRCC proceedings are conducted by telephone and videoconferencing and that their capacity to fully participate in such context is incumbent on them to learn and become proficient and autonomous with the SDRCC technological tools.

**Telephone Interviews**

The SDRCC reserves the right to conduct telephone interviews to assess the candidates' self-declared competencies and experience, including, but not limited to, their capacity to work in both official languages, their availability to conduct time-sensitive proceedings, and their proficiency with the technology used by the SDRCC.

**Final and Binding Decisions**

The SDRCC reserves the right to refuse to appoint candidates to the SDRCC roster for any reason (including limiting the number of candidates on the roster). There shall be no appeal from the SDRCC decision.

## ADDITIONAL SELECTION CRITERIA FOR SPECIALIZED ROSTERS

### Specific Selection Criteria for Doping Tribunal Roster:

*The Doping Tribunal provides arbitration services for the application and enforcement of the Canadian Anti-Doping Program (CADP). The CADP is administered by the Canadian Centre for Ethics in Sport and is compliant with the World Anti-Doping Code. Doping cases arise out of assertions by the CCES of anti-doping rule violations against members of the Canadian sport community. The CADP provides a very strict framework within which decisions are rendered on, among others: provisional suspensions, whether an anti-doping rule violation took place, what consequences if any should be imposed, etc.*

In order to be considered to join the Doping Tribunal roster, in addition to meeting the general selection criteria for SDRCC arbitrators, a candidate shall:

- have been an arbitrator of the SDRCC for at least 8 years; or
- have rendered awards on merits in at least 4 SDRCC cases; or
- have adjudicated doping cases at the Court of Arbitration for Sport or other sport tribunals.

Candidates having acted as arbitrators on doping matters before, whether at the SDRCC or another sports tribunal, will be given precedence over those who have not. Once named to this specialized roster, arbitrators will be required to attend mandatory training on doping-specific matters in order to remain on the list until the next roster appointment process.

### Specific Selection Criteria for Safeguarding Tribunal Roster:

*The Safeguarding Tribunal provides arbitration services for the application and enforcement of conduct rules as they pertain to abuse, harassment and other forms of maltreatment in sport. The Safeguarding Tribunal rules allow for procedural accommodations to protect minors and vulnerable persons who may be called to testify. For the time being, the Safeguarding Tribunal is offered on a fee-for-service basis to sport organizations that opt to designate it as the ruling authority in the application of their respective conduct rules. In this context, each case will be heard according to different sets of rules.*

In order to be considered to join the Safeguarding Tribunal roster, in addition to meeting the general selection criteria for SDRCC arbitrators, a candidate shall have experience judging or conducting arbitrations pertaining to:

- human rights issues;
- family law;
- workplace harassment / employment law; or
- criminal law.

### Specific Selection Criteria for Appeal Tribunal Roster:

*The Appeal Tribunal provides arbitration services for appeals from doping-related decisions and Safeguarding Panel decisions. Most Appeal Panels will be constituted by three arbitrators. However, some appeals may also be heard by a single arbitrator.*

In order to be considered to join the Appeal Tribunal roster, in addition to meeting the general selection criteria for SDRCC arbitrators, a candidate shall:

- have been an arbitrator of the SDRCC for at least 4 years; and
- have rendered awards on merits in at least 3 SDRCC cases.

## SDRCC Women in Arbitration Mentorship Program Overview

### Background and Rationale

Women account for only 15% (4 out of 27) of the arbitrators on the SDRCC's current roster while women make up 41% (13 out of 31) of mediators. With the goal of providing equal opportunity for arbitrators and mediators regardless of gender, the SDRCC is implementing the Women in Arbitration Mentorship Program (WAMP), allowing female arbitrator candidates who demonstrate great potential, but lack the necessary experience, to be selected as program participants. These women will benefit from the same mandatory training as the SDRCC roster, shadow arbitrators acting on SDRCC cases and be mentored by a current roster member. Upon successfully completing certain tasks to evaluate their progress, they could then apply to be fast-tracked to full membership onto the roster, without having to wait for the next roster renewal process (which would normally be in 2024-2025).

### Objective

The goal of this SDRCC initiative is to increase the number of qualified women arbitrators on the roster. The program will accommodate up to 15 women to take part in the program and attend the next SDRCC Mediator and Arbitrator Conference, planned for the spring of 2021.

### Selection Criteria

Candidates will be evaluated against the same generic criteria as other applicants to the SDRCC roster. Those showing solid applications and demonstrating great potential, but who do not meet all qualifications for the SDRCC roster, mostly due to a lack of experience in conducting proceedings, will be offered the opportunity to participate in this mentorship program. If the pool of candidates exceeds the capacity of the program, the top candidates on the shortlist may be interviewed and those demonstrating the following criteria will be given precedence:

- **Experience in conducting multiparty proceedings and virtual proceedings**
- **Knowledge of the Canadian sport system**
- **Previous experience in sport law, ADR or SDRCC:**
  - Candidates are encouraged through the application process to describe in sufficient detail any experience they may have in the following areas:
    - Legal work in federated sports;
    - Participation in SDRCC conferences and proceedings;
    - Participation in the Court of Arbitration for Sport conferences and proceedings;
    - Participation in the Sport Law Connect Program.
- **Decision-writing skills and ability to render decision promptly:**
  - SDRCC arbitrations are often conducted with parties who are self-represented with no or little legal knowledge. It is expected that SDRCC arbitrators are able to write awards that are clear, concise and properly reasoned to be understood by lay readers, occasionally requiring short decisions to be rendered within 24 hours.

### Evaluation Process & Graduation Criteria

- **Attendance at the 2021 SDRCC Mediator and Arbitrator Conference on May 6-8, 2021**, and successful completion of the pre-conference orientation training conducted by the SDRCC.
- **Mentors**, volunteers drawn from the existing SDRCC arbitrators and assigned to each participant upon acceptance into the program, will be available throughout the duration of the program or until the participant's graduation.
- **Observation of at least three cases in at least two of the SDRCC's Tribunals** (Ordinary, Doping, Safeguarding), including at least one in the Ordinary Tribunal.
  - Observations would take place under the following parameters:
    - Participants will not have an active role in the proceedings;

- Participants must attend every aspect of the proceedings (e.g., Resolution Facilitation, Mediation in instances of Med/Arb, and all preliminary meetings in addition to the hearing). Only cases that are resolved by an award on merits will be considered an observation for the purpose of the program;
  - All roster members will be required to accept program observers on cases;
  - Observations can only take place when all parties expressly agree to observers;
  - A maximum number of observers (from WAMP and/or from the SDRCC's current Observer Program) can participate in a single case and priority will be granted to WAMP participants;
  - SDRCC staff will track/monitor participants' attendance as observers;
  - SDRCC staff will communicate to roster members and program participants that post-case contact between them is encouraged to debrief and ask questions.
  - For perspective, over the last three years, the average duration of ordinary and doping cases was 37 and 72 days, respectively. Over the same period, a yearly average of 17 ordinary and 5 doping cases have gone to an arbitration hearing.
- **Successful drafting of "mock decisions" on two cases observed in two different SDRCC Tribunals**
    - In at least two other cases, in two different SDRCC Tribunals, the participant will shadow the arbitrator for the entire procedure (excluding the RF session, but including the mediation portion of a Med/Arb case), review the case file, attend preliminary conference calls, review all submissions and attend the hearing;
    - The participant will prepare a mock fully reasoned decision for each of these cases (in parallel to and independently from the appointed arbitrator, but within the same deadlines).
- **Completion of evaluations**
    - Mock decisions will be evaluated by SDRCC staff, the ADR Services Committee, the participant's mentor and/or the arbitrator on the concerned cases against criteria for a sound decision as listed in the SDRCC Roster Selection Criteria:
      - Based on these evaluations, mock decisions will be marked as either satisfactory or unsatisfactory by the ADR Services Committee and feedback will be provided to participants;
      - Once two mock decisions are marked as satisfactory, in two different Tribunals, the evaluation process may proceed with the steps described below.
    - Participant's self-reflections / self-evaluations;
    - Mentor evaluation criteria will include participant engagement during interactions, number of interactions initiated by the participant and perceived readiness based on questions and comments related to the cases observed;
    - SDRCC staff may also share comments to inform the mentor's evaluation process;
    - If, at any time during the participant's evaluation in the program, some concerns arise about particular skills or knowledge falling short of expectations, the participant will be asked to take part in further professional development at her own expense before being considered for graduation.
- **Graduation to roster confirmed by ADR Services Committee**
    - When the mentor will deem appropriate, a recommendation will be presented to the ADR Services Committee to accept the participant as full roster member of one or more SDRCC Tribunal(s). A participant can graduate to one Tribunal roster while awaiting the completion of requirements in another Tribunal.
-