



Top 10 Tips on Appealing Your Case to the SDRCC

by Alexandre Maltas, Meredith McGregor, lawyers, and Heena Han, articling student

June 2018

The Sport Dispute Resolution Centre of Canada is designed so that individuals can navigate the appeal system without lawyers. However, this process can be daunting. This article provides practical tips to athletes, coaches, officials, sport organizations, and their representatives embarking on the appeal process. You can click on the embedded hyperlinks throughout this document to access the respective resources that may help you during the appeal.

To get started, seek as much help and information as you can using the resources available to you. Some of these resources include:

Sport Solution - for athletes to get free information, assistance, and guidance on sports-related legal issues such as selection, carding, and discipline disputes. Click [here](#)¹ for their contact information.

SDRCC Pro Bono Program - obtain free legal advice and services. You can receive summary advice; representation at mediation or arbitration; procedural information; and necessary form completion assistance. Click [here](#)² for the list of Pro Bono volunteer lawyers.

Other Lawyers - similar services as pro bono lawyers but they may charge legal fees. Click [here](#)³ for a list of lawyers on the SDRCC website.

Tip # 1: Act Quickly

First and foremost, determine your deadline to file an appeal to ensure you do not miss your opportunity. Fill in the [Request Form](#)⁴, and notify all parties within the appropriate deadline to make a Request to the SDRCC. Unless your NSO appeal policy states otherwise, this is 30 days following the later of (1) when you become aware of the dispute, (2) when you become aware of the decision being appealed, and (3) when the last step in attempting to resolve the dispute occurred (i.e. an initial decision has been rendered on the issue). Is there an upcoming competition? If so, the appeal must be heard and the decision rendered prior to the deadline to submit a team list. An SDRCC appeal can be heard on an expedited basis if you indicate the urgency on your form.

¹ <https://athletescan.com/en/athlete-zone/programs/sport-solution>

² <http://www.crdsc-sdrcc.ca/eng/probonoprogram>

³ <http://www.crdsc-sdrcc.ca/eng/lawyers>

⁴ <http://www.crdsc-sdrcc.ca/eng/dispute-resolution-forms>



Tip #2: Evaluate the Merits of your Case

Evaluate your case at an early stage to develop a strategy and determine your likelihood of success. Steps to assessing your case include: (1) Speak to your athlete representatives; (2) Assemble the applicable policies, rules, competition results, email correspondence to ensure that you are properly informed and have access to the necessary information and evidence to argue your case; and (3) Seek legal information and advice at this early stage.

Tip #3: Consider Resolution Facilitation

Perhaps using the free Resolution Facilitation⁵ process before engaging in any formal means of dispute resolution may be more appropriate for your case. Parties can work collaboratively with the assistance of a neutral third party in order to resolve their dispute or partially settle some underlying issues to their dispute. Even if you do not reach a settlement, you can sort out the issues, narrow down questions to be arbitrated and better understand your options with the SDRCC. This process is confidential and the information shared cannot be used against the parties or released publicly without agreement. This Resolution Facilitation process is available FREE of charge to parties under the jurisdiction of the SDRCC, and can be used: (1) as a preventative measure to resolve a dispute in an early stage before arbitration; (2) as a mandatory step in arbitration; or (3) in the form of early Resolution Facilitation, before an internal appeal is even conducted by your sport organization.

Tip #4: Fulfill the Required Conditions for an SDRCC Appeal

Who rendered the decision you wish to appeal? Is this decision appealable to the SDRCC? A decision of a sport organization may be appealed to the SDRCC if any of the following conditions are met:

- a sport organization has rejected the right to an internal appeal;
- a final decision was rendered in the internal appeal process;
- the sport organization has failed to apply its internal appeal within a reasonable time; or
- the parties have agreed to come to the SDRCC together.

Tip #5: Use the Free Resources Available to you

To determine whether you have met the conditions to appeal, consult the Access to SDRCC Resolution Services (in a [pdf](#)⁶ or [interactive version](#)⁷). To determine what needs to be submitted to commence an appeal, consult the "[File an Appeal](#)"⁸ tab accessible from

⁵ <http://www.crdsc-sdrcc.ca/eng/dispute-resolution-facilitation#rf>

⁶ http://www.crdsc-sdrcc.ca/eng/documents/Access_to_SDRCC_services_EN.pdf

⁷ http://www.crdsc-sdrcc.ca/eng/documents/Access_Interactive_to_SDRCC_services_EN.pdf

⁸ <http://www.crdsc-sdrcc.ca/eng/file-an-appeal>



the SDRCC's home page. Consult the Guide to SDRCC Proceedings, which provides more detailed information for every step of the hearing process, before, during, and after the hearing. Familiarize yourself with the rules of the SDRCC by reading "the Code⁹" (The Canadian Sport Dispute Resolution Code), which outlines the procedural rules that must be followed when proceeding with an appeal to the SDRCC.

Tip #6: Prepare for your Preliminary Phone Call

A preliminary telephone call is a key opportunity to ask questions and seek direction from the arbitrator regarding the exchange of documents, witnesses and experts. It is during the preliminary hearing that the format of the hearing is discussed (in person, telephone conference or videoconference) as well as the timing of submissions and the scheduling of the hearing. The SDRCC procedure is flexible in order to accommodate the schedules and often distance between the parties. You may request additional preliminary phone calls to resolve any issues arising prior to arbitration.

Tip #7: Know the Rules that Support your Position

Research and know the policies, rules, and law in the area of the dispute. This may include team selection policies, carding criteria, code of conduct, discipline policy, athlete agreement, organizational bylaws or previous SDRCC decisions.

Refer to Previous Cases¹⁰ decided by the SDRCC that are similar to yours - past decisions are available on the SDRCC website and may contain critical information on the law that supports your arguments. Familiarize yourself with legal lingo - refer to the Definition section of the Code or review some previous cases to learn basic legal terms that you may need to argue your case such as: "de novo" vs "judicial review", "correctness" vs "reasonableness", "onus of proof", "balance of probabilities", "jurisdiction", "affidavits", "without prejudice", "deference", "standard of review", etc.

Tip #8: Determine what Evidence you Need to Support your Claim

Determine what information you will need to support your claim. Then determine how you will obtain that information and put it before an arbitrator.

Documents - Obtaining documentary evidence can be a significant issue in many appeals as the Code does not provide for mandatory disclosure of relevant documents. Consider what documents you have that support your position as well as what documents the other party may have. Some examples of relevant documents are meeting minutes, recordings and email correspondence. Also, ask the other party for any documentation that can serve as evidence to support your case. Alternatively, upon request, an arbitrator may order the other party to produce specific documents prior to the arbitration hearing.

⁹ http://www.crdsc-sdrcc.ca/eng/documents/Annotated_CODE_2015_Final_EN.pdf

¹⁰ <http://www.crdsc-sdrcc.ca/eng/case-summaries>



Witnesses - There are two main types of witnesses: fact witnesses and opinion witnesses. Fact witnesses give evidence of what they have personally observed. Opinion witnesses generally have a particular expertise and can give evidence of what they think and can infer from specific facts.

Tip #9: Apply the Evidence to the Rules

This is the point in which you must convince an arbitrator, or if in a mediation, the other party that the facts applied to the rules support your position. In setting out a legal argument, a useful framework to follow is:

State the main issue or issues;

- Describe the facts and relevant events (ensure these are supported by the documents and witnesses);
- Set out the relevant rules;
- Explain how the rules apply to the facts to support your position;

Think about some arguments that could be made against your submissions. What could the other side say and how would you respond to such an argument that may arise? Think about what you would say to respond to any arguments made against your position. The SDRCC guide [What are Submissions](#)¹¹ is a useful resource at this stage.

Tip #10: Prepare for the Hearing: Provide Reliable Expert or Witness Evidence

Prepare opening and closing statements and a short statement of your position. After identifying your witnesses, discuss the issues with your witnesses and prepare questions to guide them through their statements. Make sure that your witnesses feel comfortable to speak at the hearing and are ready to answer any potential questions that may be asked. Consider what information the other party's witnesses may have and prepare questions to ask them at the hearing.

Conclusion

Preparing for a hearing will not guarantee success, but it will definitely improve your chances of success. Whether you are seeking to be selected for a team, to receive carding, or to otherwise be given the opportunities you deserve, there are numerous resources and people ready to help. Do not hesitate to ask for assistance. ■

¹¹ http://www.crdsc-sdrcc.ca/eng/documents/SDRCC_Submissions_EN_final_web.pdf