



Introducing the New Tribunal Divisions and Procedural Rules of the SDRCC

By Kirsten Whelan and Ann-Sophie Laramée

February 2021

On January 1st, 2021, the new Canadian Sport Dispute Resolution Code (the Code) came into force after being adopted by the SDRCC's Board of Directors. The Code has been revised and updated to better serve the sport community. In developing the Code, the SDRCC implemented two working groups composed of roster mediators and arbitrators, staff and members of the sport community to propose changes meant to facilitate the resolution of sport disputes in a fair, timely and cost-effective manner. Two rounds of consultation were held to seek feedback from clients and from the legal sector, taking into account the perspectives of various stakeholders involved in sports-related disputes. This article outlines the key changes and revamped layout of the 2021 Code.

Layout Overview

The Code presents a new layout highlighting the structural changes made to the SDRCC Dispute Resolution Secretariat. It introduces a new division, the Safeguarding Tribunal, in addition to the existing Ordinary and Doping Tribunals. The appellate division, once dedicated exclusively to appeals of doping-related decisions, can now hear appeals from the Safeguarding Tribunal as well. Accordingly, in addition to general arbitration rules applicable to all four tribunals (art. 5), each tribunal's particular rules are laid out in separate articles in the Code (art. 6 to 9). Also, rules pertaining to mediation and resolution facilitation have been combined to form a single article (art. 4).

Ordinary Tribunal (art. 6): This section outlines the rules pertaining to appeals arising from decisions made by sport organizations or through their internal dispute resolution procedures, including team selection and carding disputes.

Doping Tribunal (art. 7): Provisions of this section regulate first-instance doping matters, providing a right to hearing to any member of the Canadian sport community presumed by the Canadian Centre for Ethics in Sport to have violated anti-doping rules. This section of the Code has been modified in order to align with the 2021 Canadian Anti-Doping Program (CADP).

Safeguarding Tribunal (art. 8): This article contains the procedural rules designed to provide hearing services for disciplinary procedures arising from code of conduct violations. These rules are adapted to take into account the distinctive and sensitive nature of the complaints, and include provisions to protect and accommodate vulnerable parties and witnesses.

Appeal Tribunal (art. 9): A completely new article defining the rules pertaining to appeals from decisions of the Safeguarding Tribunal or doping-related decisions. Relevant provisions for doping appeals have been updated to match the 2021 CADP.



Specialized Rosters: Two specialized rosters will be established from the broader pool of SDRCC arbitrators, allowing parties to benefit from professionals with particular knowledge and experience in matters related to doping and safe sport. Special provisions were adopted to further ensure independence of the Appeal Tribunal by limiting the circumstances in which a member of a specialized tribunal's roster can be appointed as sole arbitrator or panel chair in an appeal from that division.

Due to the reorganization of the Code, many provisions may have a different number without having substantially changed from the 2015 Code.

Key Changes:

Definition of a Sport Organization (ss. 1.1(vv)): The new Code now refers to the term Sport Organisation (SO), rather than National Sport Organisation (NSO). The term was broadened in order to facilitate the administration of the SDRCC's fee-for-service program.

Increased Scope of Authority of the Jurisdictional Arbitrator (s. 5.4): In addition to being able to rule on a challenge of the SDRCC's jurisdiction, the new Code extends to the jurisdictional arbitrator an increased range of powers. This includes merging two or more cases together when certain conditions are met, ruling on a time-sensitive request to apply a conservatory measure and deciding on the challenge of an arbitrator, which was previously ruled on by a 3-person panel.

Definition of an Affected Party (ss. 1.1(a) and s. 6.5): The new Code also clarifies when a person can be identified as an affected party, notably defining it as a person who "may be tangibly and adversely affected by an award of a Panel of the Ordinary Tribunal" and providing that "[a] Person who has not asserted the same claim as that of the Claimant is not de facto an Affected Party". This clarification is particularly relevant to team selection and carding disputes, where other athletes cannot be considered as affected parties solely because they had a right of appeal and did not file one.

Conservatory Measures (ss. 1.1(o) and s. 6.7): In light of the new structure with four divisions, what were previously known as provisional and conservatory measures are now referred to as conservatory measures, and apply only to the Ordinary Tribunal. This change was made in order to avoid confusion with provisional suspensions in doping cases and with provisional measures, which are exclusive to the Safeguarding Tribunal.

Possibility to Waive the Resolution Facilitation (RF) (s. 6.9): Due to increased use of early RF, the Code now enables parties, in certain circumstances, to jointly apply to the SDRCC to waive the otherwise mandatory RF session prior to an arbitration. This allows parties who have already engaged in substantive settlement discussions to accelerate the process and proceed directly to a hearing.

Scope of Review (s. 6.11): The scope of review in the Ordinary Tribunal is clarified with regards to the panel's power to conduct a hearing de novo. The Code also includes a new provision indicating that for deference to be afforded, the initial decision maker must demonstrate relevant expertise.



Conclusion

A new layout and tribunal structure, among other changes, highlight the transition to the 2021 Canadian Sport Dispute Resolution Code, providing an updated framework for dispute resolution in the Canadian sport community.

In order to support the Code's implementation, the SDRCC will develop and share an annotated version. The SDRCC also invites sports organizations, athletes and legal representatives (including the SDRCC's pro bono lawyers list) to attend its upcoming webinars in order to learn more about these new changes to the Code and what they entail for parties to potential sports-related disputes. Please consult the Notable Dates section on page 4 for more information.

To familiarize yourself with the way in which SDRCC proceedings are conducted, consult the Guide to SDRCC Proceedings at the following link: <http://www.crdsc-sdrcc.ca/eng/guide-to-proceedings> .■