

WHAT ARE SUBMISSIONS

AND WHAT DO I NEED TO FILE?

Suggestions for self-represented parties



THE "BRIEF"

A submission brief typically contains various sections, including:



1 COVER PAGE

PURPOSE: The cover page clearly identifies to which case your document pertains. If the document is eventually printed, it can also serve to enhance confidentiality of its content. In the absence of a cover page, the information could be inserted at the top of the first page for ease of reference.

CONTENT: A cover page would typically indicate the following information:

- The SDRCC file number (ex. SDRCC 17-XXXX);
- The name of the parties (ex. Athlete A v. National Sport Organization); and
- The title of the document (i.e. "Respondent's Submissions" / or in doping cases: "Athlete's Submissions").

**EXAMPLE:
SDRCC 17-XXXX**

**CLAIMANT'S NAME
(Claimant)**

AND

**SPORT ORGANIZATION
(Respondent)**

CLAIMANT'S SUBMISSIONS

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TABLE OF CONTENTS

PURPOSE: A table of contents can be useful to the reader when your brief exceeds 20 pages, or when you are submitting more than 5 documents as part of your brief. The table of contents enables other parties and the Arbitrator to easily find the documents to which you refer in your written submissions and to read them in a logical order.

CONTENT: The table of contents is a listing of all documents submitted in support of your case:

- If all parts of your brief are merged into a single document/file, the table of contents will list all parts of the brief and their page number (see example 1 beside).
- If your documents are filed separately, the table of contents would indicate the file name of each exhibit or document provided in support of your submissions (see example 2 beside). If some or all exhibits are already on file on the SDRCC Case Management Portal (CMP) at the time of filing your brief, you may even refer to them by their code (C-05; R-12; AP-02) as previously assigned by the SDRCC.

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WRITTEN SUBMISSIONS

PURPOSE: The written submissions are a text that you prepare to persuade the Arbitrator that he/she should rule in your favor.

CONTENT: It would usually be written much like an essay, with the intention to lead the reader to understand what really happened and to adopt your views of the situation. While each case is very different and may require different approaches and arguments, these are a few suggestions to help organize your ideas:

- Begin by briefly identifying the decision that is being appealed (e.g. if you are the Claimant: the disciplinary committee suspended you from the national team for a breach of the code of conduct; e.g. if you are the Respondent: the decision to select certain athletes to the national team).
- State clearly the conclusions you are seeking from the appeal (e.g. if you are the Claimant: to be named to the team, to be awarded carding, etc.; or if you are the Respondent: to have your original team selection or carding decision maintained, etc.).

EXAMPLE 1 – WHEN ALL DOCUMENTS ARE MERGED INTO ONE:

Table of Contents

Written submissions	p. 2
Affidavit from Claimant.....	p. 10
Exhibit A: Decision being challenged 2015-01-31	p. 12
Exhibit B: Email from (High Performance Director) 2014-12-03	p. 25
Exhibit C: Final rankings from World Championships 2014.....	p. 27

EXAMPLE 2 – WHEN DOCUMENTS ARE SEPARATE FROM THE BRIEF:

Table of Contents

Written submissions	p. 2
Affidavit from (High Performance Director)	p. 10
Selection Criteria	Exhibit A (document R-12)
Email from (Athlete) 2014-12-03	Exhibit B attached
Final rankings from World Championships 2014	Exhibit C attached

UNDERSTAND THESE CONCEPTS AND HOW THEY INTERPLAY:

Facts: “what happened” (e.g. you claim that you did pay your membership dues before the deadline); if the other party(ies) disagree with you on that point, you will need to prove to the Arbitrator that your claim is true by filing **evidence** (e.g. date stamped proof of payment).

Evidence: document or information that can “prove” your **facts** (e.g. if you want to prove that you sent or received a particular email on a certain date, a copy of that email could serve as “evidence”).

Applicable Rules: for example, in a national team selection dispute, is there a Team Selection Policy that is relevant to how athletes are selected to the National Team in your sport? What does that policy say?

Arguments: explanation of how you think the rules should be applied to the proven facts (e.g. as a Respondent in a disciplinary matter, if the rules say that a second offense is penalized by a fine, and you have proven that this was the person’s second offense, then your argument would be that you were correct in imposing a fine.)

Conclusions: the relief sought or the outcome that you are hoping for, if the Arbitrator believes your **facts** are true and agrees with your **arguments** (e.g. if you are the Claimant, to be recommended to Sport Canada for carding by your NSO; e.g. If you are the Affected Party, to maintain the NSO’s original nominations for carding, which includes your nomination pursuant to the relevant selection criteria).

- Continue by presenting specific arguments outlining why your request should be granted or, in the case of a Respondent, why the Claimant's request should be denied.
- It is best to clearly identify each separate argument or issue by a title or header, to assist the Arbitrator in understanding where you are going.
- Each argument needs to be developed and supported by facts and evidence.
- Facts cannot be assumed to be true by themselves. It is important to support them by evidence and show how they support your position. The Arbitrator cannot be

expected to verify these assumptions on his/her own.

In a nutshell, your written submissions could follow this sort of logic:

"As you can see from (*evidence*), these (*facts*) did occur. If you apply the (*rules*) to this set of proven facts, then clearly this means (*conclusions*)."

- The Arbitrator will not seek out documents from other sources, so if you wish to refer to a particular document as evidence in support of a fact, it is expected that it will be included with your brief, unless it has already been posted on the CMP.

- For example, evidence in support of your arguments can include: NSO team selection policy, competition results, affidavit (statement, sworn or not sworn) from someone who has knowledge of the matter, photographs, letters, emails, etc. (see section below for more details regarding evidence).
- If you are relying on evidence that has already been filed with the SDRCC (either by you or the other parties), you do not need to re-submit those documents. You can simply refer to the document's SDRCC code found on the CMP.
- You may choose to number your paragraphs, for easy reference during a hearing.

EXAMPLE – SUBMISSIONS AND DOCUMENT REFERENCES:

THE NSO DID NOT PROPERLY APPLY ITS SELECTION CRITERIA

1. The selection criteria in effect at the time that the decision was taken are the 2015–2016 selection criteria, published on May 2, 2014. (**R-07**)
2. At article 2 of said selection criteria, the NSO states that to be selected to the national team, an athlete must obtain a top-3 world ranking during the 2014–2015 season.
3. Athlete A was ranked no. 2 in the world, as per the World Ranking List. (**Exhibit B**)
4. On July 1, 2015, the Claimant received the NSO's decision to not select her to the national team. (**Exhibit C**)
5. In C v. NSO (SDRCC 16-XXXX), Arbitrator A found that for selection criteria to be properly applied, they must (...)

This indicates to the arbitrator that those selection criteria were already filed by the Respondent and are coded **R-07** on the Case Management Portal, under the "Party Filings" tab

Exhibit B would contain the World Ranking List, as evidence to support this statement.

Exhibit C would contain the challenged decision and evidence of the date it was communicated to the Claimant.

A copy of that decision needs to be submitted as part of the authorities / case law relied upon.

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SUPPORTING EVIDENCE

PURPOSE: Where relevant facts in support of your position are contested by the other party(ies), evidence will serve to prove that you are right in your claims that certain things happened. See text box beside for an idea on how to deal with facts that are not contested.

CONTENT: Documentary evidence can include:

- **The challenged decision:** when available in writing, it is expected to be included as part of the brief.
- **The applicable policy, rules or criteria.**
- An **affidavit** from someone who has first-hand knowledge of the events/dispute

THE VALUE OF A JOINT STATEMENT OF AGREED FACTS:

While you may not see eye-to-eye on everything with the other parties involved in the dispute, there may be a number of facts that are accepted by everyone. Sorting this out before having to make written submissions carries the following advantages:

- It reduces the amount of documentary evidence to be filed;
- It reduces the length of the parties' briefs;
- It reduces the number of witnesses to be called at the hearing;
- It shortens the duration of the hearing.

All of the above are a huge help for the Arbitrator. In addition, a *joint statement of agreed facts* also allows the Arbitrator's attention to focus on the element(s) of the dispute on which he/she needs to make a determination (e.g. in a disciplinary matter against a coach, if parties agree that the coach deserves a suspension but they disagree on its duration, the only question before the Arbitrator will be the duration of the suspension).

that occurred, which may include the parties themselves. The witness declares what he/she saw/heard and then signs and dates the statement.

- **Correspondence between the parties** such as letters, e-mails, etc.
- **Images:** Photographs or videos.
- **Expert evidence** such as a laboratory report/analysis, doctor's notes, etc.
- **Official ranking lists or competition results.**
- **Other information or documents** to which the last decision-making body (such as the selection committee, the disciplinary panel, or the internal appeal panel) had access to in order to render the decision being challenged.
- Anything else you feel is essential for the Arbitrator to see or read, as long as it is **relevant to the matter** in dispute.

It is highly recommended that each piece of evidence be clearly marked, either by a titled cover page, or a mark in the right hand corner (i.e. "Exhibit A").

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AUTHORITIES

PURPOSE: Authorities are previous arbitral decisions (called jurisprudence or case law) that support your arguments. An Arbitrator is not bound by jurisprudence, as each case is determined on the basis of its own set of facts and circumstances, but you may still want to show the Arbitrator how his/her peers have adopted a position similar to yours in the past.

CONTENT: This can include past SDRCC decisions with similar facts or desired outcome, decisions rendered by other sport tribunals such as the Court of Arbitration for Sport, or decisions from civil courts in which similar principles apply.

EXAMPLES OF SOURCES OF SPORTS-RELATED DECISIONS:

The SDRCC Jurisprudence database is available at: www.crdsc-sdrcc.ca/eng/dispute-resource-databases-jurisprudence

The Court of Arbitration for Sport Jurisprudence database is available at: <http://jurisprudence.tas-cas.org/Help/Home.aspx>

For an extensive body of international jurisprudence in doping cases: www.doping.nl/home

PARTIAL SAMPLE STATEMENT OF AGREED FACTS:

- The Claimant (Athlete) is the second ranked athlete in the 100m event in Canada in 2017 and has been for the past two (2) years.
- The Affected Party is the third ranked athlete in the 100m event in Canada in 2017 and has been for the past 18 months.
- The Claimant was notified by email on July 10, 2016 of the training and selection camp to be held from September 1 to 5, 2016.
- Due to work commitments, the Claimant was only able to attend the training and selection camp from September 1 to 3, 2016.
- On November 5, 2016, the Respondent (NSO) announced the athletes selected for the National Team, which included the Affected Party. The Claimant was not selected.

DID YOU KNOW?

SDRCC Resolution Facilitation is an excellent opportunity to explore those potentially agreed upon facts and to draft a joint statement!!

OTHER TIPS IN PREPARING AND SENDING YOUR DOCUMENTS TO THE SDRCC

- Beware of the filing deadlines and how you may need to adapt to time zone differences (all times in the CMP are in Eastern time).
- Pay attention to whether the Arbitrator provided instructions to the parties about what is expected in the submissions (e.g. list of witnesses, arguments in point form, maximum number of pages, etc.)
- Make sure your pages or paragraphs are numbered.
- Make sure you properly reference in your written submissions all your evidence and authorities.
- In the email subject line, it is always useful to refer to your SDRCC file number (ex. SDRCC 17-XXXX).
- It is important that each separate document submitted to the SDRCC bear a meaningful title, so that your eventual reader (the Arbitrator) can discern its content and promptly find it again if required.

Examples of meaningful titles are: "Claimant's Submissions"; "Respondent's Submissions"; "Email from Joe to Dave 2015-03-28"; "Affidavit of Suzy Q"; "2014-2015 International Federation Regulations", etc.

Avoid documents titled "05a4sd9f8ad" or simply "Email".

- If you wonder whether the document format you are about to send is acceptable, please refer to the document entitled "Communications Protocol" in the Forms/Resources tab of the CMP; if you cannot find your answer there, please contact the SDRCC staff prior to sending your documents.
- Note that the SDRCC staff will code and number each document submitted prior to them being uploaded on the CMP, so that they are easy to locate and reference after filing.