



The Key to Success of the SDRCC Mediation Program

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Mediation, as a method of dispute resolution at the SDRCC, has demonstrated its effectiveness in recent years, but not without effort! Previously, requests for mediation were scarce and dispute resolution focused on the object of the conflict, not at all on the relationship between the parties. At first, barely 13% of the disputes managed by the SDRCC were resolved by amicable settlement. Then in 2006, in an attempt to overcome this challenge, the SDRCC instituted a mandatory three-hour mediation session (known as resolution facilitation) for all parties requesting arbitration. The SDRCC has seen the average rate of consent settlements climb exponentially to reach 33% between 2006 and 2015, with some years exceeding 50%. SDRCC mediation services were initially provided by a sole internal mediator, but today they are delivered by more than 28 professional mediators located across Canada. As the volume of requests increases, the mediators, many of whom are able to conduct sessions in English, French and sometimes even bilingually, are more than capable to help the sport community settle disputes amicably.

A Win-Win Solution

The resolution facilitation process imposed on parties who file an arbitration request with the SDRCC allows to address essential components of dispute resolution, which would otherwise not be considered under the rigid framework of arbitration. The less formal approach of resolution facilitation permits an open, frank discussion about the interests and needs of the parties while fully respecting the confidentiality of the procedures. This dispute resolution method focuses on the relationship between the parties, an aspect that arbitration tends to undermine, particularly as it distinguishes a winner from a loser rather than concentrating on practical solutions that might solve the problem. Opposing sides in a dispute often tend to fiercely defend their own positions and points of view; however, within the context of resolution facilitation, which is carried out in good faith and without prejudice, the discussions allow parties to hear and better understand the perspective of others. The solution they can find together may sometimes focus on improving conditions moving forward and avoiding other conflicts, rather than on simply remedy past events.

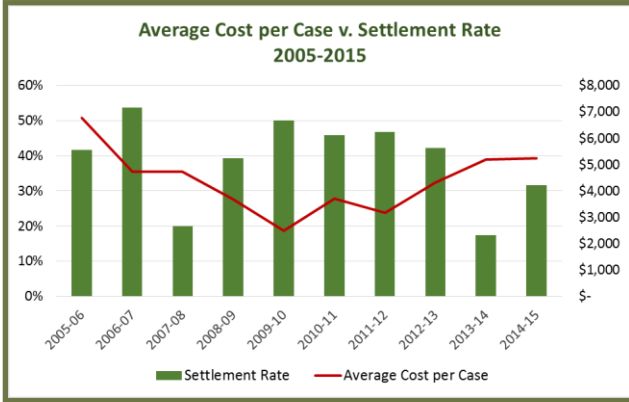
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A Wide Variety of Cases

The numbers also show that the cases most often resolved through mediation involve carding (36%) and team selection (27%). Considering that, in these types of cases, there are almost always more affected parties than places on a team or carding opportunities available, these disputes would readily appear to be impossible to settle amicably. The statistics become even more impressive when one considers that these disputes represent the most common cases brought before the ordinary tribunal of the SDRCC. Far behind in the percentage of settlement by consent, come the disputes concerning eligibility (12%) and disciplinary sanctions (7%) unrelated to doping.

The Financial Advantage

It is also interesting to examine the benefits of mediation from a strictly financial standpoint. The SDRCC has compiled data since 2006 (when resolution facilitation became mandatory for all arbitration requests), which reveal that the cost to the SDRCC of cases settled through arbitration is more than twice as much as for cases resolved by mediated settlement or in resolution facilitation. In fact, a case resolved by mediation



costs on average \$3,600, compared to \$7,500 for a case resolved by arbitration (after deducting the costs associated with the mandatory resolution facilitation process). These costs include, among others, professional fees paid to mediators and arbitrators (paid at the same hourly rate), teleconferencing expenses, mediation or hearing facility rentals, as well as transcription, translation or interpretation charges.

The chart besides clearly illustrates the trend whereby the average cost of cases in the SDRCC ordinary tribunal varies annually in a way that is inversely proportional to the consent settlement rate.

A Mitigated Time Factor

A statistical analysis of the SDRCC's ordinary tribunal confirms that cases are resolved quicker by arbitration than by consent settlement. It should be noted that one rule of mandatory resolution facilitation is that it may under no circumstances delay the arbitration process. Of importance is the fact that the applicable rules require that mandatory resolution facilitation never, in any way, delay the arbitration process. This means that for extremely urgent cases (i.e. where a resolution is needed within just a few hours), the SDRCC may waive the obligation for parties to participate in mediation in order to proceed immediately with the arbitration. This situation certainly sheds light, in part, on those results, because when time is of the essence, arbitration becomes the priority; in all other situations, parties are permitted to take the time necessary to find sustainable solutions to their dispute.

Aside from the time required to attend the resolution facilitation session, the parties involved have little or no preparation to do and no documents to submit beforehand. Even if the facilitation does not lead to a mutually agreed-upon solution, the parties may still take advantage of the session to agree on certain uncontested facts, and possibly even develop a joint statement of facts, thereby greatly reducing the amount of evidence and written submissions they must prepare for the hearing before the arbitrator. For most parties, the time thus saved represents a significant saving in costs as well.

In short, there are obvious benefits to integrating informal dispute resolution, such as mediation, into the more formal arbitration process. The experience of the SDRCC clearly demonstrates that this obligation allows for a higher amicable settlement rate, while considerably reducing administrative tribunal costs and, most likely, costs incurred by the parties. This process also enables not only to address issues that fall outside of the more formal framework, but also to work on solutions or on the relationship between the parties involved, so that future dispute may be avoided