GETTING READY FOR THE HEARING

Information for self-represented parties before the Ordinary Tribunal and Doping Tribunal

CRDSC SDRCC
Centre de Règlement des Différends Sportifs du Canada
Sport Dispute Resolution Centre of Canada

BEFORE THE HEARING

1 RIGHT TO REPRESENTATION

You have the right to be represented during the entire hearing process and can also add one or more representatives at any stage of the process. One does not need to be a lawyer to act as representative or spokesperson. You can ask a friend, a parent, a coach or any other person of your choice. Any person you designate to represent you will be bound by the same confidentiality rules as you are.

In any event, a party considered a minor under the laws of their province of residence must be represented by an adult, either a parent or legal guardian, or another designated adult.

Although the SDRCC cannot recommend any particular legal representatives, you can refer to some of the options below:

- A list of lawyers offering services for professional fees is available at http://www.crdsc-sdrcc.ca/eng/lawyers.
- A list of lawyers participating in the SDRCC Pro Bono Program can also be consulted at the following link http://www.crdsc-sdrcc.ca/eng/probonoprogram.
- The AthletesCAN Sport Solution program offers access to free information, as well as assistance and guidance to athletes on sport issues that may require legal counsel. The program's webpage can be consulted at https://athletescan.ca/athlete-zone/legal-support/ and its staff can be reached at sportsolution@athletescan.com or 1-888-434-8883.

2 FORMAT OF THE HEARING

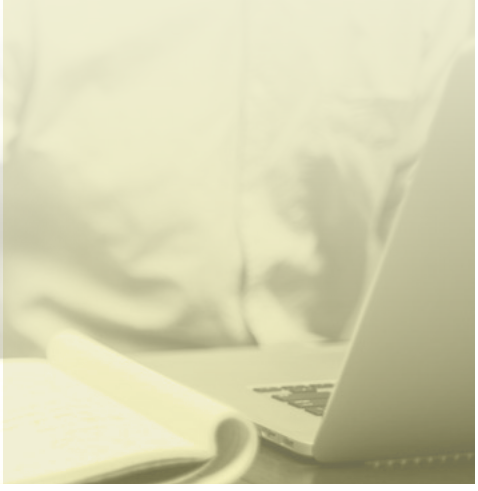
SDRCC proceedings, including the hearing, are normally conducted by teleconference. In certain circumstances, the hearing may be conducted by other means. The format of the hearing can be agreed upon by all parties or determined by the arbitrator.

The different hearing formats available are:

- Teleconference (the SDRCC can provide worldwide conference calling numbers, including toll-free numbers in over 60 countries; the system can also be accessed via Skype);
- Videoconference (each participant requires a computer with a suitable camera and microphone and a stable Internet connection);
- In person (parties will need to agree on the location and bear their own costs to attend);
- Documentary review (the arbitrator will render their decision based on documentary evidence and written submissions only); or
- Any combination of these formats can be appropriate in certain circumstances (for example, the hearing could be held in person while some witnesses can testify by teleconference or videoconference).

IN PREPARATION FOR THE HEARING you may consider...

- Sending in advance to the SDRCC all documents on which you intend to rely at the hearing. Late filings may be denied by the arbitrator. You may refer to the SDRCC publication entitled **What are Submissions?** for more information.
- Reviewing all documents filed by other parties, which will be available on the SDRCC Case Management Portal (CMP). They may be helpful in preparing what you will say at the hearing, or what questions you will ask other parties or witnesses, if applicable.
- Bringing a pen and paper or other means to take notes or record your thoughts when others speak.
- Investing time for preparation. It will increase your confidence and make the hearing as comfortable as a hearing can ever be!



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DURING THE HEARING

TYPICAL ORDER OF PROCEEDINGS

1 OPENING STATEMENTS → 2 EVIDENCE → 3 ARGUMENTS → 4 CLOSING STATEMENTS

1 OPENING STATEMENTS

The hearing begins with a roll call to confirm all attendees. After some introductory remarks, the arbitrator may invite the parties to make brief opening statements.

Opening statements are **NOT** a presentation of evidence or your arguments. Opening statements are meant to provide a brief overview of your position, the type of evidence you intend to present and the outcome you wish to obtain (or how you wish the arbitrator to rule).

2 EVIDENCE

What is evidence at the hearing?

Evidence consists of facts that you need to bring forward at the hearing in order to support your position. Remember that all documentary evidence (policies, documents, videos, photographs, expert reports, affidavits, email correspondence, text messages, etc.) is supposed to already have been shared in advance through the CMP. Therefore, the evidence is primarily oral at the hearing. It consists mostly of parties explaining the context around the documentary evidence and of the witnesses' testimonies. In other words, it is everything that could not be proven through documents before the hearing.

How is evidence presented?

At the hearing, parties take turns presenting the evidence. The person who has the burden of proof usually presents first; in most cases this is the person that initiated the proceedings (typically referred to as the "claimant"). When it is your turn, you will have the opportunity to speak about the documentary evidence you already submitted. This is an opportunity to put your evidence into context or point to relevant portions of those documents that support your position. It is also during the presentation of evidence that witnesses are invited to speak.

EXCEPTION IN CARDING OR TEAM SELECTION DISPUTES

See section 6.10 of the Canadian Sport Dispute Resolution Code

In an SDRCC procedure concerning team selection or carding, the first onus of proof is on the sport organization to prove that "the criteria were appropriately established and that the disputed decision was made in accordance with such criteria." After that, the onus shifts to the person not selected or carded to prove to the arbitrator that they met the criteria and therefore should have been selected or nominated. This rule may cause the sport organization may present its case before that person. If in doubt about the order, it is recommended to validate this question with the arbitrator as early as possible in the process.

2.1 Witnesses

The person to be called to testify as a witness can be, among others, someone who was present when certain events took place or who has a certain expertise about an element of the facts in dispute. The witness testimonies will serve to prove facts to support the parties' respective positions. Witness testimonies can also support claims of certain things happening and/or confirm the way in which they happened.

Usually, witnesses will answer the questions asked by each party and their representatives. The expectation is that they will tell the arbitrator what they heard, saw or know for a fact. Unless witnesses have relevant expertise in the subject matter, their opinions are generally not accepted as evidence.

2.2 Examination or Questioning

The examination or questioning of each witness in a hearing generally follow these steps:

- DIRECT EXAMINATION OF WITNESSES (ALSO REFERRED TO AS EXAMINATION-IN-CHIEF)

The examination of witnesses is conducted by the party who "invited" that specific witness to testify. It often begins with questions to the witness to establish who this person is, whether they have any expertise or to justify the relevance of what they bring. The goal of the direct examination is for the witness to provide facts that support the position advanced by a party.

Direct examination does not always have to be in a question and answer format. Sometimes, when the witness is experienced in these types of proceedings, the witness can simply make a series of statements without the need to be questioned.

To expedite the process, an arbitrator may request witness statements or "will-say" statements in advance of the hearing. It is possible that, if such statement for a witness is precise and thorough, direct examination may not be necessary. In such case, the other party(ies) would still have the right to cross-examine that witness.

DURING THE HEARING

CROSS-EXAMINATION OF WITNESSES

The cross-examination of witnesses is done by the opposing party(ies) or, in other words, the party(ies) who "did not invite them". If you invite witnesses, the other party(ies) will then be allowed to ask them questions and to clarify certain elements of their testimonies. You will also have the right to cross-examine the other parties' witnesses.

It is not mandatory for any party to cross-examine another party's witness.

REDIRECT EXAMINATION

The redirect examination is an opportunity for the party to ask additional questions to its own witness, but solely to help clarify any new matters that may have been brought up during cross-examination.

It is not mandatory for any party to conduct redirect examination after another party has cross-examined one of its witnesses.

SAMPLE QUESTION FORMATS FOR WITNESS TESTIMONIES

Essay-type of questions (commands or instructions using action verbs to ask the witness to tell a factual story):

- *Describe how… was made.*
- *Tell us what happened when…*

Open-ended questions (starting with who, when, what/which, where, or how – and other forms such as how many, how long, etc.):

- *Who attended the meeting?*
- *When did you participated in…?*
- *After you received the email from Mr. X… what happened?*

Questions calling for a "yes or no" answer (usually starting with verbs such as did, could, would or have):

- *Did you know it was prohibited to…?*
- *Could you see… from where you were?*
- *Is it true that…?*

IN PREPARATION FOR WITNESS TESTIMONIES, you may consider...

- Preparing a list of questions in advance for your witnesses and those of the other party(ies). You can still add/remove/change your questions as the hearing unfolds, but it is likely to be easier for you to have prepared more questions and not ask all of them, than to come up with new questions "on the spot."
- Placing your evidence in chronological order, if it makes sense to do so. This could make it easier for the arbitrator and other parties to follow along.
- Concentrating your questions on facts on which the parties disagree; if the arbitrator has multiple versions or interpretations of what happened, he/she will have to decide which one to believe.
- Taking the necessary measures to ensure that your witness will be present at the hearing. It is your responsibility!
- Determining in what order you will present your witnesses, if more than one. It is up to you.
- Refraining from making comments or expressing your opinion when examining a witness.
- Keeping in mind that the goal of the witnesses' examination is to seek facts, not conclusions.

3 ARGUMENTS

What are arguments at the hearing?

Arguments are statements prepared in order to persuade the arbitrator to rule in your favour. They affirm that your point of view is valid by bringing together the proven facts into a coherent conclusion (you may refer to the SDRCC publication entitled **What are Submissions?** for more information). It is a good practice to rely on facts and evidence for every argument brought forward. In other words, strong arguments rely on the witnesses' testimonies or on documents filed with the SDRCC.

How are arguments presented?

Just like for the presentation of evidence, parties will take turns presenting their arguments during the hearing, normally starting with the party bearing the burden of proof. Once parties have presented their arguments, each party may have a right of rebuttal, at the discretion of the arbitrator.

In some cases, parties can also be invited by the arbitrator to formulate their arguments in writing, after the hearing.

IN PREPARATION FOR THE ARGUMENT PHASE, you may consider...

- Knowing the facts that you are contesting.
- Writing down your main points of arguments in advance of the hearing. It will prevent you from forgetting any.
- Not repeating everything that has been said, whether by you or others, or that was already submitted in writing.
- Making sure the evidence on which you rely logically supports your arguments.
- Listening carefully to the arguments presented by the other parties. If you have a right of rebuttal, you might be able to highlight contradictions playing in your favour.

DURING THE HEARING

4 CLOSING STATEMENTS

At the end of the hearing, each party may be given the opportunity to briefly restate their position while making a link between the facts, evidence, policies or arguments presented during the hearing. This is the final statement that the arbitrator will hear from the parties. At this stage, parties only need to summarize to the arbitrator what they would like them to remember before they render a decision. **No new information can be brought in at this stage.** Usually, the party with the burden of proof will be the first to present its closing statements.

RIGHTS OF THE AFFECTED PARTIES

Affected parties who have signed the confidentiality agreement and submitted an intervention form have the same rights as any other parties to the proceedings. They can present evidence and witnesses, cross-examine other parties' witnesses and formulate arguments during the hearing.

You may refer to the SDRCC publication entitled **So, I am an Affected Party?** for more information on the role and participation of the affected parties.

TYPICAL SCENARIO of arguments in a carding or team selection dispute

In SDRCC proceedings, the onus is first on the sport organization to present its arguments as to why someone else has been nominated or selected. The sport organization must show that such decision follows its properly established criteria. Then, the person seeking selection or carding would present arguments as to why he/she believes that he/she should have been selected to the team or nominated for carding. Finally, the affected party(ies) who filed an intervention form can also formulate arguments. In this type of case, the affected party(ies) might argue that they met the sport organization's criteria and should therefore remain selected on the team or maintain their status as carded athletes.

CONFIDENTIALITY

BEFORE, DURING OR AFTER THE HEARING

As per section 5.9 of the Canadian Sport Dispute Resolution Code, all parties participating in an SDRCC arbitration shall be mindful of the confidentiality of the proceedings.

The arbitrator, the parties, their representatives and advisors, the witnesses, the experts, the SDRCC and any other persons present during the arbitration **shall not disclose to any third party any confidential information or confidential document related to the proceedings or any information or document acquired during the arbitration**, except for what the arbitrator will deem necessary to include in the final award to be made public.

A breach of confidentiality during an SDRCC proceeding speaks to the conduct of the party(ies), and may impact an eventual arbitrator's decision on whether to award costs against the party who is at fault.

AFTER THE HEARING

1 ARBITRAL AWARD

Unless otherwise agreed upon by the parties and by the arbitrator, all SDRCC arbitral awards are to be issued in writing according to the following timelines*:

	Ordinary Cases	Doping Disputes
Short Decisions	7 days (after the completion of the hearing)	5 days
Decisions with Reasons	15 days	20 days

** These timelines may be shortened in time-sensitive matters, or even prolonged with the consent of parties.*

2 COSTS

Parties at the SDRCC have the right to seek the reimbursement of their costs from other parties. It is usually the successful party who will do so, but not necessarily. Also, success in an arbitration does not mean that the party is "entitled" to be awarded costs.

Parties wishing to seek costs for an arbitration need to inform the SDRCC no more than 7 days after the award with reasons is rendered. The arbitrator will then determine whether an award on costs is justified in the circumstances. When making such determination in an Ordinary Tribunal case, the arbitrator will consider the following factors, among others (see section 6.13 of the Canadian Sport Dispute Resolution Code for more detail)::

- The outcome of the proceeding;
- The conduct of the parties and abuse of process ;
- The respective financial resources of the parties;
- Settlement offers; and
- Each party's good faith efforts in attempting to resolve the dispute prior to or during the arbitration.

For Doping Tribunal cases, specific rules regarding costs are contained in Rule 8.2.4.8 of the Canadian Anti-Doping Program.

The reasoned decision on costs will be communicated to the parties within 10 days of the last submissions pertaining to costs.

ON SDRCC ARBITRAL AWARDS

- In SDRCC Ordinary Tribunal cases, arbitral awards are final and binding upon parties. Parties coming to the SDRCC for the resolution of their dispute are deemed to have agreed to the Canadian Sport Dispute Resolution Code, which stipulates at section 6.12(b) that… "There is no right of appeal on questions of law, fact or mixed questions of fact and law."
- In doping disputes, parties have a right to appeal an award to the SDRCC Appeal Tribunal or, for international-level athletes, to the Court of Arbitration for Sport. The World Anti-Doping Agency and the International Sport Federation can also appeal the SDRCC award to the Court of Arbitration for Sport.
- Unless otherwise determined by the arbitrator, all awards will be made public. The only two exceptions to this rule are: 1) if the person who has been found to have committed an anti-doping rule violation is a *minor, protected person or recreational athlete* (pursuant to Rule 14.3.7 of the Canadian Anti-Doping Program) and 2) if the person has been found not to have committed an anti-doping rule violation.

NO AWARDS FOR DAMAGES

SDRCC arbitrators do not award damages (compensatory, punitive or otherwise) such as loss, injury, property damage, pain and suffering or stress. This means that only actual out-of-pocket expenses incurred by a party in order to take part in the proceedings may be the basis for a request for costs. At the SDRCC, these are primarily legal fees, but can also include others such as expert reports or fees, travel expenses if hearing is held in person, etc. Generally, the SDRCC arbitrators are not inclined to award costs, but they will not hesitate to do so where deemed appropriate.

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