

**Centre de règlement des différends sportifs du Canada (CRDSC)**

**Sport Dispute Resolution Centre of Canada (SDRCC)**

**Canadian Sport Dispute Resolution Code**

**February 1, 2011**

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## Article 1 Definitions

- 1.1** For purposes of this Canadian Sport Dispute Resolution Code (hereinafter “this Code”), capitalized terms have the following meanings:
- (a) “**Act**” « *Loi* » means the *Physical Activity and Sport Act*, S.C. 2003, c. 2 and any statute amending the Act or enacted in substitution therefor, from time to time;
  - (b) “**Affected Party**” « *Partie affectée* » means a Person who may be affected or impacted by a decision of the Sport Dispute Resolution Centre of Canada (hereinafter “SDRCC”) and:
    - (i) who is accepted by the Parties as an Intervenor or Affected Party; or
    - (ii) who is accepted or named by the Panel as an Intervenor or Affected Party;
  - (c) “**Answer**” « *Réponse* » means a response to a Request, as more fully described in Section 3.7 hereof;
  - (d) “**Anti-Doping Program**” « *Programme antidopage* » means the Canadian Anti-Doping Program administered by the Canadian Centre for Ethics in Sport (hereinafter “CCES”), adopting and implementing the World Anti-Doping Program;
  - (e) “**Arbitrator**” « *Arbitre* » means an individual accepted and recognized as an Arbitrator by the SDRCC from time to time, who meets the qualifications determined by the SDRCC and who is willing to arbitrate cases for the SDRCC pursuant to the terms of this Code;
  - (f) “**Arbitration**” « *Arbitrage* » has the meaning ascribed thereto in Section 6.1 hereof;
  - (g) “**CCES**” « *CCES* » means the Canadian Centre for Ethics in Sport;
  - (h) “**Claimant**” « *Demandeur* » means a Person initiating a Mediation, Arbitration or Med/Arb;
  - (i) “**Code**” « *Code* » means this Canadian Sport Dispute Resolution Code, as amended by the SDRCC from time to time;
  - (j) “**Doping Appeal**” « *Appel antidopage* » means an appeal of a decision of a Doping Dispute Panel pursuant to the appeal rules of the Anti-Doping Program;
  - (k) “**Doping Appeal Panel**” « *Formation d’appel antidopage* » means the Panel that hears or has heard a Doping Appeal;
  - (l) “**Doping Control Rules**” « *Règlements sur le contrôle du dopage* » has the meaning ascribed thereto in the Anti-Doping Program;
  - (m) “**Doping Dispute**” « *Différend relié au dopage* » means any dispute other than a Doping Appeal, arising out of the application of the Anti-Doping Program;
  - (n) “**Doping Dispute Panel**” « *Formation d’audience antidopage* » means the Panel that hears or has heard a Doping Dispute;
  - (o) “**International-Level Athlete**” « *Athlète de niveau international* » has the meaning ascribed thereto in the Anti-Doping Program;
  - (p) “**Intervention**” « *Intervention* » means an application made by a potential Intervenor in accordance with Section 6.13 hereof;

- (q) **“Intervenor”** « *Intervenant* » means a Person having an interest in the Arbitration and whose presence is useful for the proper adjudication of the dispute, who makes an Intervention in accordance with Section 6.13 hereof and:
  - (i) who is accepted by the Parties as an Intervenor; or
  - (ii) who is accepted by the Panel as an Intervenor;
- (r) **“Jurisdictional Arbitrator”** « *Arbitre juridictionnel* » means one (or more) of the Arbitrators, designated from time to time by the SDRCC to perform the functions of a Panel prior to the formal appointment of a Panel to a Sports-Related Dispute as described in Section 6.8 hereof;
- (s) **“Laboratory Rules”** « *Règlements sur les laboratoires* » has the meaning ascribed thereto in the Anti-Doping Program;
- (t) **“Med/Arb”** « *Méd-Arb* » means a process conducted by a Med/Arb Neutral that starts as a Mediation and, if the dispute is not resolved, concludes by Arbitration;
- (u) **“Med/Arb Neutral”** « *Médiateur-Arbitre neutre* » means an individual accepted and recognized as a Med/Arb Neutral by the SDRCC from time to time who meets the qualifications determined by the SDRCC and who is willing to conduct a Med/Arb for the SDRCC in accordance with this Code;
- (v) **“Mediation”** « *Médiation* » has the meaning ascribed thereto in Section 5.1 hereof;
- (w) **“Mediator”** « *Médiateur* » means an individual accepted and recognized as a Mediator by the SDRCC from time to time who meets the qualifications determined by the SDRCC and who is willing to mediate cases for the SDRCC in accordance with this Code;
- (x) **“Member”** « *Membre* » includes an athlete, coach, official, volunteer, director, employee, any other person affiliated with a National Sport Organization (hereinafter “NSO”) and any participant in an event or activity sanctioned by a NSO;
- (y) **“Minister”** « *Ministre* » means the member or members of the Queen’s Privy Council for Canada designated by the Governor in Council for the purposes of the Act;
- (z) **“Minor”** « *Mineur* » designates an individual who has not reached the age of majority or is not considered of legal age under the laws and regulations applicable in his province of residence;
- (aa) **“NSO”** « *ONS* » includes any Canadian sport organization that is:
  - (i) a national sport organization recognized from time to time by the SDRCC;
  - (ii) a multisport organization, including, without limitation, the Canadian Olympic Committee, the Canadian Paralympic Committee, Commonwealth Games Canada, Canadian Interuniversity Sport, the Canadian Colleges Athletic Association, the Aboriginal Sport Circle, the Arctic Winter Games, Special Olympics Canada and the Canada Games Council;
  - (iii) a representational sports-related group including, without limitation, the Canadian Blind Sports Association, the Canadian Deaf Sports Association, the Canadian Wheelchair Sports Association, AthletesCAN, the Coaching Association of Canada, Coaches of Canada, Sports Officials of Canada and the Canadian Association for Advancement of Women and Sport and Physical Activity;
  - (iv) an umbrella sport organization, including, without limitation, the Aquatic Federation of Canada and the Canadian Ski and Snowboard Association;

- (v) a Canadian sport centre; and
- (vi) a multiservice organization including, without limitation, the CCES;
- (bb) **“Panel”** « *Formation* » means, where the context requires:
  - (i) a single individual appointed as an Arbitrator;
  - (ii) three individuals appointed as Arbitrators, one of whom shall be designated as the President;
  - (iii) a Jurisdictional Arbitrator; or
  - (iv) an individual appointed as a Med/Arb Neutral;
- (cc) **“Party or Parties”** « *Partie ou Parties* » means:
  - (i) any Person or NSO participating in a Mediation, Arbitration or Med/Arb;
  - (ii) any Member or NSO using the services of the Resolution Facilitator to help resolve a dispute;
  - (iii) any Affected Party;
  - (iv) in connection with Doping Disputes or Doping Appeals, any Person designated as a Party by the applicable rules of the Anti-Doping Program;
  - (v) the Government of Canada, in connection with disputes related to a decision of Sport Canada in the application of its Athlete Assistance Program (“AAP”);
- (dd) **“Person”** « *Personne* » means a natural person or an organization or other entity;
- (ee) **“President”** « *Président* » means the chairperson of a Panel;
- (ff) **“Provisional and Conservatory Measure”** « *Mesure provisoire et conservatoire* » means an application filed with a Panel in order to prevent the occurrence of irreversible consequences or to suspend the implementation of a decision being appealed while waiting for the final decision to be rendered after the completion of an Arbitration or Med/Arb;
- (gg) **“Provisional Suspension”** « *Suspension provisoire* » has the meaning ascribed thereto in the Anti-Doping Program;
- (hh) **“Request”** « *Demande* » means a request to the SDRCC for Mediation, Arbitration or Med/Arb, as more fully described in Section 3.4 hereof;
- (ii) **“Resolution Facilitation”** « *Facilitation de règlement* » means the process described in Article 4 hereof and overseen by the Resolution Facilitator;
- (jj) **“Resolution Facilitator”** or **“RF”** « *Facilitateur de règlement* » ou « *FR* » means an individual designated, from time to time, by the SDRCC to assist and guide Parties to resolve their dispute in a mutually agreeable manner in accordance with Article 4 hereof;
- (kk) **“Respondent”** « *Intimé* » means a Person responding to a Request;
- (ll) **“SDRCC”** « *CRDSC* » means the Sport Dispute Resolution Centre of Canada;
- (mm) **“Sports-Related Dispute”** « *Différend sportif* » means a sport dispute to which this Code applies as set out in Section 2.1 hereof. Such disputes may include (but are not limited to) those related to:
  - (i) team selection;

- (ii) a decision made by a NSO board of directors, a committee thereof or an individual delegated with authority to make a decision on behalf of a NSO or its board of directors, which affects any Member of a NSO;
  - (iii) any dispute for which an agreement to conduct a Mediation, Arbitration or Med/Arb or use the services of the Resolution Facilitator has been entered into by the Parties; and
  - (iv) any dispute arising out of the application of the Anti-Doping Program.
- (nn) “**TUE**” « *AUT* » stands for Therapeutic Use Exemption and has the meaning ascribed thereto in the Anti-Doping Program;
- (oo) “**TUEC**” « *CAUT* » stands for Therapeutic Use Exemption Committee and has the meaning ascribed thereto in the Anti-Doping Program;
- (pp) “**WADA**” « *AMA* » means the World Anti-Doping Agency; and
- (qq) “**World Anti-Doping Program**” « *Programme mondial antidopage* » includes the World Anti-Doping Code, the mandatory International Standards and the Models of Best Practice adopted by WADA.

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**Article 2      General Provisions**

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**2.1      Administration**

- (a) The SDRCC administers this Code to help resolve Sports-Related Disputes.
- (b) Subject to Subsection 2.1(c) hereof, this Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:
  - (i) in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC;
  - (ii) that the Parties are required to resolve through the SDRCC; or
  - (iii) that the Parties and the SDRCC agree to have resolved using this Code.
- (c) This Code shall not apply to any dispute that a Panel determines, in its discretion, is not appropriate to bring before the SDRCC or to a dispute where the Panel determines that the SDRCC does not have jurisdiction to deal with the dispute.

**2.2      Language**

The working languages of the SDRCC are French and English.

**2.3      Interpretation of the Code**

- (a) The French and English versions of this Code are equally authoritative and shall be interpreted as such.
- (b) Unless the context otherwise requires, the singular form shall include the plural form and vice versa, and in particular the definitions of words and expressions set forth in Article 1 hereof shall be applied to such words and expressions when used in either the singular or the plural form.
- (c) Unless the context otherwise requires, words importing a particular gender shall include all genders.
- (d) “In writing” or “written” includes printed, typewritten or any electronic means of communication capable of being permanently reproduced in alphanumeric characters at the point of reception.

**2.4      Miscellaneous Provisions**

- (a) This Code may be amended from time to time by the SDRCC.
- (b) The SDRCC fee for the conduct of a Mediation, Arbitration or Med/Arb may be set and modified from time to time by the SDRCC.
- (c) Any Party may apply to the SDRCC to waive the SDRCC fee if the Party believes that the fee will result in significant hardship.



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**Article 3      Resolution of Disputes**

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**3.1      Availability of Dispute Resolution Processes**

- (a) The dispute resolution processes of Resolution Facilitation, Mediation, Arbitration or Med/Arb under this Code are available to any Person in connection with the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b), 3.1(c) and 3.1(d) below.
- (b) Unless otherwise agreed or set out herein, and if the dispute involves a NSO, where a Person applies to the SDRCC for the resolution of a Sports-Related Dispute, the Person must first have exhausted any internal dispute resolution procedures provided by the rules of the applicable NSO.
- (c) Where a Person brings a Sports-Related Dispute to the SDRCC, the SDRCC will ask the Parties to declare whether they prefer to use Mediation, Arbitration or Med/Arb. If, prior to the completion or termination of the Resolution Facilitation process described in Section 4.2 hereof, the Parties do not reach an agreement with respect to which process they will utilize to help resolve their dispute, the Parties will be deemed to have agreed to refer their dispute to Arbitration in accordance with this Code.
- (d) Any Person involved in a Sports-Related Dispute can access the SDRCC Dispute Resolution Processes on a fee-for-service basis, subject to Subsection 2.1(b).

**3.2      Mediators, Arbitrators and Med/Arb Neutrals**

- (a) To assist in the resolution of Sports-Related Disputes, the SDRCC will establish and maintain lists of Mediators, Arbitrators and Med/Arb Neutrals. The lists and all modifications thereto shall be published by the SDRCC. An individual whose name appears on one list will not be precluded from appearing on another list.
- (b) In establishing the lists of Mediators, Arbitrators or Med/Arb Neutrals, the SDRCC shall:
  - (i) designate individuals with appropriate training who possess recognized competence with regard to sport and alternative dispute resolution procedure and have the requisite experience in conducting such matters; and
  - (ii) whenever possible, ensure fair representation of the different regions, cultures, genders and bilingual character of the Canadian society.
- (c) Upon their appointment to the relevant list, the Mediators, Arbitrators and Med/Arb Neutrals shall sign a declaration undertaking to exercise their functions personally with impartiality and in conformity with the provisions of this Code and, when applicable, shall also disclose any reasons that could affect their ability to appear on the rotating list of the SDRCC as described under Subsection 6.8(d) hereof.
- (d) Upon being appointed to deal with a particular Sports-Related Dispute, all Mediators, Arbitrators and Med/Arb Neutrals shall immediately disclose to the Parties and the SDRCC any conflict or potential conflict of interest and any circumstances that could create a reasonable apprehension of bias in respect of their appointment.

**3.3      Other Proceedings**

Mediators, Arbitrators, Med/Arb Neutrals, members of the Board of Directors of the SDRCC and staff of the SDRCC are not compellable witnesses in any court or administrative proceeding, including other SDRCC proceedings, and none of the Parties may attempt to subpoena or demand the production of any notes, records or documents prepared by the SDRCC in the course of the Mediation, Arbitration or Med/Arb.

### 3.4 Request

- (a) When a Sports-Related Dispute is brought to the SDRCC, the Claimant shall complete a Request and file such Request with the SDRCC. The Request shall contain:
  - (i) names, address and contact information of the Member or the NSO initiating the process and the name of the Respondent or other Party;
  - (ii) a brief statement of the dispute including, if applicable, facts, legal arguments, questions to be answered, remedy sought and proposed solutions to the dispute;
  - (iii) the reasons why the SDRCC has jurisdiction to deal with the dispute;
  - (iv) a copy of the agreement to go to Mediation, Arbitration or Med/Arb or, if no such agreement exists, a statement as to whether the Party would prefer Mediation, Arbitration or Med/Arb;
  - (v) the name of the preferred Mediator, if applicable, or the name of the preferred Arbitrator or Med/Arb Neutral, if applicable;
  - (vi) the identification of any Person whose selection, carding, ranking, or other status could be affected by the decision, the reasons justifying why that Person should be an Affected Party and, if available, the address, phone number and email address of the Person;
  - (vii) the language (English or French) that the Claimant would like to use to present its case;
  - (viii) where a Sports-Related Dispute is submitted to the SDRCC on appeal from a prior decision, the Claimant shall submit, if applicable, a copy of the decision being appealed; and
  - (ix) the signature of the Claimant or of an authorized representative.
- (b) The Request may contain:
  - (i) a copy of the applicable rules, policies or governing documents of any NSO participating in the Sports-Related Dispute;
  - (ii) any Request for Provisional and Conservatory Measures in accordance with Section 6.15 hereof; or
  - (iii) any exhibits or other evidence upon which the Claimant intends to rely.
- (c) Subject to Subsection 3.4(e) hereof, the SDRCC may waive any of the requirements set forth in this Section 3.4, with the exception of Paragraphs 3.4(a)(iii) and (iv) hereof.
- (d) Upon filing the Request, the Claimant shall pay a filing fee in an amount established by the SDRCC, or the Request shall contain a request to waive the filing fee on the grounds of substantial hardship.
- (e) Under exceptional circumstances or if all Parties agree, the SDRCC may accept a Request that is not filed within the time limit or that is not completed pursuant to Sections 3.4 or 3.5 hereof. The SDRCC may, in its discretion, refer this issue to a Panel.

### 3.5 Time Limits

- (a) All days are included in the calculation of time limits hereunder, including weekends and holidays.

- (b) In the absence of a time limit set by agreement or by statute, regulations or other applicable rules of a NSO, the time limit to file a Request shall be thirty (30) days following the later of:
  - (i) the date on which the Claimant becomes aware of the existence of the dispute;
  - (ii) the date on which the Claimant becomes aware of the decision being appealed; and
  - (iii) the date on which the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. The SDRCC may, in its discretion, refer this issue to a Panel.

### **3.6 Communication of the Request**

- (a) Upon receiving the Request, the SDRCC shall communicate the Request to the Respondent and set time limits for the Respondent to submit its Answer as required by Section 3.7 hereof.
- (b) The SDRCC will consider whether or not to communicate the Request to an authorized third party, which may include situations where the Respondent is a Minor.

### **3.7 Answer**

- (a) The Answer to the Request shall contain:
  - (i) a brief statement of the dispute including, when applicable, the facts, legal arguments, questions to be answered, remedy sought, a statement of defence, any counterclaim and proposed solutions to the dispute;
  - (ii) the identification of any Person whose selection, carding, ranking or other status could be affected by the decision, the reasons justifying why that Person should be an Affected Party and if available, the address, phone number and email address of the Person (if not already set out in the Request);
  - (iii) a position on the participation of any Person identified in the Request as an Affected Party;
  - (iv) a confirmation or rejection of the process proposed by the Claimant (Mediation, Arbitration or Med/Arb);
  - (v) a confirmation of the Mediator, Arbitrator or Med/Arb Neutral suggested by the Claimant or a suggestion of another Mediator, Arbitrator or Med/Arb Neutral;
  - (vi) subject to Subsection 3.9(b) hereof, the language (French or English) that the Respondent would like to use to present its case; and
  - (vii) the signature of the Respondent or of an authorized representative.
- (b) The Answer may contain the following information to be submitted to the SDRCC within a time frame determined by the SDRCC:
  - (i) any challenge to the jurisdiction of the SDRCC;
  - (ii) any request for Provisional and Conservatory Measures in accordance with Section 6.15 hereof; or
  - (iii) any exhibits or other evidence upon which the Respondent intends to rely.

- (c) If the Respondent fails to submit its Answer within the time limits set pursuant to Section 3.6 hereof, or if the Answer does not contain the mandatory information set out in Subsection 3.7(a) hereof, the SDRCC and any Panel may assume that the Respondent accepts the Request and may proceed directly with the appropriate process (Mediation, Arbitration or Med/Arb).
- (d) The SDRCC may waive the requirements set out in Subsection 3.7(a) hereof. The SDRCC may, in its discretion, refer this issue to a Panel.

### **3.8 Preliminary Administrative Meeting**

As soon as a Request is filed, the SDRCC may convene an administrative conference call to discuss preliminary matters, including the process to be used (Mediation, Arbitration or Med/Arb), appointment of the Panel, the participation of other Parties and the timing of the involvement of the RF.

### **3.9 Language of the Proceedings**

- (a) Parties are free to agree on the language of the proceedings to be either English or French. Failing such agreement, the Panel shall determine the language of the proceedings, taking into consideration all relevant circumstances of the case. Prior to the appointment of the Panel, if Parties cannot agree, the language of the proceedings shall be deemed to be the official language in which the Request was filed.
- (b) Unless otherwise agreed by the Parties, the language specified in accordance with Subsection 3.9(a) hereof shall apply to all administrative forms submitted by the Parties, notifications and communications, written statements and briefs, affidavits, administrative meetings, minutes, hearings, orders and awards, and other arbitral proceedings. Subject to Subsection 3.9(e) hereof, a Party may file a document in its original language if accompanied by a translation into the language of the proceedings.
- (c) On its own initiative or at the request of a Party, the Panel may order that all or part of the documentary evidence or exhibits shall be accompanied by a translation into the language of the proceedings. The Panel shall have the authority to rule on any issues regarding the language of the proceedings and translation.
- (d) When a Party is required by these rules or ordered by the Panel to supply a translation of a document, failure to submit the translation by the time limit prescribed by the Panel may result in the submissions in their original language to be disregarded by the Panel.
- (e) The costs of translation into the language of the proceedings of any document to be submitted by a Party shall be borne by that Party or by the SDRCC in accordance with the SDRCC's Official Languages Policy, as amended from time to time.
- (f) Notwithstanding Subsection 3.9(e) hereof, a Party shall be responsible, at all times, for the cost of any translation which may be required for the benefit of its legal representative.

### **3.10 Interpretation Services**

Regardless of the language of the proceedings specified pursuant to Subsection 3.9(a) hereof, if requested by a Party at least five (5) days prior to an oral proceeding or if otherwise agreed to by the SDRCC, the SDRCC shall provide the services of a French/English interpreter during the Resolution Facilitation session, the Mediation session, and/or the Arbitration hearing. Such interpreter shall be selected and paid by the SDRCC.

### **3.11 Representation and Assistance**

The Parties have a right to counsel at all SDRCC proceedings and may be represented or assisted by Persons of their choice at their own expense. The names, addresses, telephone and facsimile numbers, and email addresses of the representatives of the Parties shall be communicated to all other Parties and to the SDRCC.

### **3.12 Format of Proceedings**

SDRCC proceedings are conducted primarily by conference call. Upon agreement by all Parties, the SDRCC proceedings may also be conducted by documentary review, by videoconference, by webmeeting, in person, or through any combination of those formats. In case of disagreement by the Parties on the format of the proceedings, the Panel shall make a final determination at its own discretion, taking into account the urgency, the potential costs to the Parties, and the particulars of the dispute with regards to the production of evidence.

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**Article 4      Resolution Facilitation**

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**4.1      Resolution Facilitation**

- (a) Resolution Facilitation is a simple and informal process offered to Parties to a Sports-Related Dispute whereby a Resolution Facilitator (RF) appointed by the SDRCC works with Parties towards an agreement, focusing on effective communication and the interests of the Parties.
- (b) The RF can also help Parties better understand the other options available from the SDRCC to help resolve the dispute.
- (c) The Parties work with the RF to attempt to resolve the dispute until one of the Parties terminates the process or if the RF determines that further discussions are unlikely to lead to a resolution.

**4.2      Availability of Resolution Facilitation**

- (a) Resolution Facilitation is available to Parties to a Sports-Related Dispute:
  - (i) Prior to submitting a Request to the SDRCC, through a Resolution Facilitation request;
  - (ii) Upon submitting a Request to the SDRCC;
  - (iii) During Arbitration proceedings at any time prior to an award being rendered by the Arbitrator; and
  - (iv) Following publication of an Arbitration award to assist a Party in understanding the award.

**4.3      Mandatory Resolution Facilitation in Arbitration**

- (a) Resolution Facilitation is mandatory where Parties to a Sports-Related Dispute request Arbitration.
- (b) The Parties must each spend at least three (3) hours with the RF. The Parties must, in an attempt to resolve the dispute, spend the aforementioned time with the RF prior to the date scheduled for an Arbitration. The Parties will continue to work with the RF to attempt to resolve the dispute until one of the Parties terminates the process (if that Party has spent more than three (3) hours with the RF) or if the RF determines that further discussions are unlikely to lead to a resolution.
- (c) If a Party in an Arbitration refuses to spend the aforementioned time with the RF, such Party shall not take any further steps in the Arbitration process.
- (d) The RF process should not delay the Arbitration. The Parties may continue with the process of appointing a Panel while the RF is assisting them to resolve the dispute.
- (e) In the rare cases when the Parties do not have adequate time to schedule meetings with the RF prior to an Arbitration (due to severe time constraints), the Parties may jointly apply to the SDRCC to waive the requirement to participate with the RF in settlement discussions. Upon receipt of such application, the SDRCC may in its discretion waive the requirement to participate in the RF process.

- (f) The RF may provide the Parties with an oral opinion of the likely outcome of an Arbitration of the dispute. The opinion of the RF will not be communicated to the Panel until a decision is rendered by the Panel. Following the rendering of a decision, the RF's opinion may be communicated to the Panel regarding any submission made with respect to the costs of the Arbitration.

#### **4.4 Confidentiality of Resolution Facilitation**

- (a) The meetings between the RF and the Parties shall be confidential and without prejudice.
- (b) Should the dispute be subsequently brought to Arbitration, the RF shall not produce a report of the discussions between the Parties and no evidence of the discussions is admissible in Arbitration except:
  - (i) as set out in Subsection 4.2(f) hereof; or
  - (ii) when the Parties consent to communicate to the Panel an agreed statement of facts or a statement defining the scope of the Arbitration.
- (c) The RF may not be called as a witness at an Arbitration, or before any court of competent jurisdiction, including with respect to costs.

#### **4.5 Cost of Resolution Facilitation**

- (a) There will be no fee charged for the services of the RF.
- (b) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof, all other costs will be the responsibility of the Parties.

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**Article 5      Mediation**

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**5.1      General**

- (a) The term “Mediation” used in this Article 5 includes the Mediation portion of the Med/Arb, and the term “Mediator” includes a Med/Arb Neutral acting as a Mediator.
- (b) Mediation under the provisions of this Article 5 is a non-binding and informal procedure, in which each Party undertakes in good faith to negotiate with all other Parties, with the assistance of a Mediator, with a view to settling a Sports-Related Dispute.

**5.2      Application of Mediation Rules**

Where an agreement provides for Mediation under this Code, the rules set forth in this Article 5 shall be deemed to form an integral part of such Mediation agreement. Unless the Parties agree otherwise, the version of these Mediation rules in force on the date when the Request is filed shall apply. The Parties may, however, agree to apply other rules of procedure. The Parties shall sign a Mediation agreement, the form of which will be provided by the SDRCC unless they have agreed to a different form of agreement.

**5.3      Commencement of the Mediation**

The Mediation shall be commenced:

- (i) when a Request filed in accordance with Section 3.4 hereof states that the Claimant would like to attempt Mediation, and where the Answer states that the Respondent agrees to proceed by way of Mediation; or
- (ii) where the Parties agree, after the filing of a Request and Answer, to proceed by way of Mediation.

**5.4      Selection of Mediator**

Unless the Parties have agreed between themselves on a Mediator, the SDRCC will provide to them a list of three (3) Mediators selected on a rotational basis. The Parties shall choose a Mediator from the list provided. If the Parties do not agree on a Mediator within the time limit set by the SDRCC, the SDRCC shall appoint the Mediator on a rotational basis.

**5.5      Authority to Settle**

The Persons present at the Mediation must have full authority to settle the Sports-Related Dispute without consulting anyone who is not present.

**5.6      Conduct of Mediation**

- (a) The Mediation shall be conducted in the manner agreed by the Parties. Failing such agreement between the Parties, the Mediator shall determine the manner in which the Mediation will be conducted.
- (b) Each Party shall cooperate in good faith with the Mediator.
- (c) The Mediator shall devote sufficient time to the Mediation proceedings to allow it to be conducted expeditiously.



### **5.7 Confidentiality of Mediation**

- (a) The Mediator, the Parties, their representatives and advisers, experts and any other Persons present during the Mediation shall not disclose to any third party any information given to them during the Mediation, unless required by law to do so.
- (b) The Parties undertake not to compel the Mediator to divulge records, reports or other documents, or to testify in regard to the Mediation in any arbitral or judicial proceedings, including any proceedings before the SDRCC.
- (c) All written and oral statements and settlement discussions made in the course of Mediation will be treated as having been made without prejudice, and cannot be disclosed to a Panel except after a decision has been rendered, and then, only with respect to the issue of costs.

### **5.8 Time Limit of Mediation**

Upon commencing a Mediation, the Parties and the Mediator will agree upon a time when the Mediation proceeding will terminate. In the event that the Parties cannot agree on a time limit, the Mediator will set a time limit, considering the date by which the Sports-Related Dispute must be resolved and the amount of time that would reasonably be required to resolve the Sports-Related Dispute should it go to Arbitration.

### **5.9 Termination of Mediation**

The Mediation shall be terminated on the first of the following events to occur:

- (i) the signing of a settlement agreement by the Parties;
- (ii) a written declaration by the Mediator to the effect that further efforts at Mediation are no longer worthwhile;
- (iii) a resignation by the Mediator for other reasons;
- (iv) a written notice by either the Claimant or the Respondent terminating the Mediation; or
- (v) the expiry of the time limit established pursuant to Section 5.8 hereof.

### **5.10 Settlement**

If the Parties settle at the Mediation, a document evidencing the terms of the settlement should be prepared and signed by the Parties. A copy of the settlement agreement shall be submitted to the SDRCC.

### **5.11 No Settlement**

In the event of a failure to resolve a Sports-Related Dispute by Mediation, the Mediator shall not accept an appointment as an Arbitrator in any arbitral proceedings concerning the Parties involved in the same dispute unless a Med/Arb agreement has been signed by the Parties, or unless all Parties (including any Affected Parties) otherwise consent in writing. If the Parties do not settle at Mediation, they shall continue on to Arbitration pursuant to this Code unless otherwise agreed by the Parties in writing.

## **5.12 Costs of Mediation**

Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof, the Parties will pay their own costs for the Mediation, including costs of representatives.

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**Article 6 Med/Arb and Arbitration General Rules**

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**6.1 Application of Med/Arb and Arbitration Rules**

- (a) The rules set out in this Article 6 shall apply to all Med/Arb proceedings that do not settle at Mediation, and to all Arbitrations. Article 6 may apply to Doping Disputes and Doping Appeals, as permitted in Article 7.
- (b) The term “Arbitration” used in this Article 6 includes the Arbitration portion of the Med/Arb, and the term “Arbitrator” includes a Med/Arb Neutral acting as an Arbitrator.

**6.2 Notifications and Communications**

- (a) All notifications and communications between the Panel and the Parties shall be made through the SDRCC. Such notifications and communications shall be in writing and sent in a manner that enables their speedy receipt by the SDRCC at its address and any other address specified by the SDRCC in writing. Any communication will only be effective upon receipt.
- (b) All orders and other decisions made by the Panel shall be delivered to the Parties at the addresses given to the SDRCC at the commencement of the process or such other address as subsequently provided to the SDRCC by a Party in writing.
- (c) Unless otherwise determined by the SDRCC, all notifications and communications from the Parties intended for the Panel, including all written submissions, shall be sent to the SDRCC by email or courier, or fax if impossible to send by email or courier. If sent by courier, all communications shall include as many copies as there are Parties and Arbitrators, together with one additional copy for the SDRCC. If an expedited procedure is established by the SDRCC, the Panel may waive the requirement that all communications be sent to the SDRCC.
- (d) Any notices under these rules may be served on a Party by courier addressed to such Party, or its representative, at the last known address or by personal service, in or outside the province where the Arbitration is to be held.

**6.3 Confidentiality of Proceedings**

Arbitration proceedings under this Code are confidential and are not open to the public. None of the Parties, the Panel and the SDRCC shall disclose any confidential information relating to the proceeding of the dispute, from the inception of the proceedings until a decision is made or the proceedings are otherwise completed, to any Person not involved in the proceedings, except as provided for in this Code or under the rules and by-laws of the SDRCC. All communications with the media regarding the Arbitration shall be made by the SDRCC only.

**6.4 Waiver of Right to Object**

A Party shall be deemed to have waived any right to object if, within a provided time limit, that Party, being aware that any provision of this Code or any requirement under an Arbitration clause or agreement has not been complied with, commences or proceeds with an Arbitration and does not object to the non-compliance without undue delay.

**6.5 Time Limits**

- (a) All days are included in the calculation of time limits hereunder, including weekends and holidays.

- (b) All time limits will have expired if the communication by a Party is not received before four (4) p.m., Eastern Time, on the final day for filing.
- (c) Subject to the rules of the Anti-Doping Program applicable hereunder, upon application on justified grounds, the SDRCC may extend or reduce the time limits. The SDRCC may, in its discretion, refer this issue to a Panel.

## **6.6 Waiver of Alternative Relief**

The Parties to Arbitration hereunder automatically waive their rights to request further or alternative relief or remedies from:

- (i) the courts of any provincial or federal jurisdiction of Canada;
- (ii) the domestic courts of any other country; and
- (iii) any international court or any other judicial body to which an appeal may be otherwise made.

## **6.7 Onus of Proof in Team Selection Disputes**

Where an athlete is involved in a proceeding as a Claimant in a team selection dispute, the onus will be placed on the Respondent to demonstrate that the criteria were appropriately established and that the selection decision was made in accordance with such criteria. Once that has been established, the onus of proof shall shift to the Claimant to demonstrate that the Claimant should have been selected in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.

## **6.8 Composition and Appointment of Panel**

- (a) The Panel shall be composed of one (1) Arbitrator unless:
  - (i) an Arbitration agreement specifically calls for three (3) Arbitrators;
  - (ii) the SDRCC determines that the complexities or circumstances of a particular case are such as to warrant the appointment of three (3) Arbitrators; or
  - (iii) the matter is a Doping Appeal and, by virtue of the Anti-Doping Program, requires three (3) Arbitrators. For the avoidance of doubt, for all Doping Disputes, the Panel shall be composed of one (1) Arbitrator appointed in accordance with Subsection 6.8(b) hereof.
- (b) Where a sole Arbitrator is to be appointed,
  - (i) the Parties shall choose the Arbitrator. If the Parties do not agree on an Arbitrator within the time limit set by the SDRCC, the SDRCC will inform the Parties that if they cannot agree on an Arbitrator in a further period of five (5) days, the SDRCC will select an Arbitrator for them; and
  - (ii) if the Parties still cannot agree on an Arbitrator, the SDRCC will choose an Arbitrator on a rotational basis, exercising discretion in the appointment only to make sure that the Arbitrator is available, is able to speak the language requested by the Parties, is geographically located in a place that makes it convenient to conduct the Arbitration if either Party has indicated that there is to be an in-person hearing, and has no conflict of interest or potential or perceived bias. In cases where an Arbitrator needs to be appointed quickly, either the Parties on consent or the SDRCC in its sole discretion may waive the requirement to wait five (5) days.

- (c) Where three (3) Arbitrators are to be appointed,
  - (i) the Claimant and the Respondent shall each appoint one (1) Arbitrator within the time limit set by the SDRCC. The two (2) selected Arbitrators shall appoint the third Arbitrator, who shall be the president of the Panel. In the event that either of the Parties fails to appoint an Arbitrator in accordance with this Paragraph 6.8(c)(i), the SDRCC shall appoint such Arbitrator on a rotational basis; and
  - (ii) for Doping Appeals, under no circumstances may the Arbitrator who rendered the decision being appealed be appointed to the Panel.
- (d) The SDRCC will maintain, and revise from time to time, a rotating list of Arbitrators based on criteria determined by the SDRCC.

#### **6.9 Confirmation of the Arbitrator**

- (a) The Panel selected by the Parties will only be deemed appointed after confirmation by the SDRCC. Before proceeding with such confirmation, the SDRCC will ascertain that each Panel member fulfils the requirements of Section 3.2 hereof and has no conflict that prevents the Arbitrator from acting in the particular case.
- (b) The Panel may convene a preliminary meeting to discuss and decide procedural or other preliminary matters.

#### **6.10 Jurisdictional Arbitrator**

- (a) Where no Panel has yet been appointed to deal with a Sports-Related Dispute, and an issue arises between the Parties which they cannot resolve, the SDRCC may appoint a Jurisdictional Arbitrator from the rotating list of Arbitrators, having regard to the location of the Parties, the preferred language of the Parties and the existing time limitations.
- (b) The Jurisdictional Arbitrator shall have all the necessary powers to decide any issue in dispute between the Parties which would have otherwise been argued before the Panel had it been constituted. Notwithstanding the foregoing, the Jurisdictional Arbitrator shall not render a decision on the main substantive issue in dispute between the Parties.
- (c) A Jurisdictional Arbitrator appointed by the SDRCC for a Sports-Related Dispute may not be appointed as an Arbitrator on a Panel in connection with the main substantive issue in dispute between the Parties, unless that Arbitrator is selected by the Parties in accordance with this Code.

#### **6.11 Challenge, Removal and Replacement of an Arbitrator**

- (a) The appointment of an Arbitrator may be challenged if there is doubt regarding the Arbitrator's independence or a perception of conflict of interest. The challenge shall be brought immediately after the grounds for the challenge become known and in accordance with Subsection 6.11(c) hereof.
- (b) Decisions with respect to challenges are in the exclusive domain of the SDRCC and shall be determined in accordance with this Code and applicable laws.

- (c) A challenge shall be brought by a Party by way of a written petition to the SDRCC, which sets forth the facts giving rise to the challenge. The Arbitrator shall be informed of the challenge and given the opportunity to resign. If the Arbitrator chooses not to resign, three (3) additional Arbitrators will be appointed by the SDRCC, on a rotational basis, to conduct a hearing and receive written submissions from all Persons with an interest in the proceedings who desire to make written submissions. This Panel shall rule on the challenge.
- (d) The SDRCC may remove an Arbitrator if that Arbitrator refuses to, or is prevented from, carrying out its duties or if a decision to excuse the Arbitrator has been made pursuant to Subsection 6.11(c) hereof.
- (e) In the event of the resignation, death, or removal of an Arbitrator, such Arbitrator shall be replaced in accordance with the provisions applicable to the Arbitrator's appointment. Unless otherwise agreed by the Parties or otherwise decided by the Panel, in accordance with Subsection 6.11(c) hereof, the proceedings shall continue without repetition of the procedure that took place prior to the replacement.

#### **6.12 Participation of an Affected Party**

- (a) If a Claimant and a Respondent identify an Affected Party in the Request and Answer, as applicable, the SDRCC shall serve notice on the Affected Party at that Person's last known contact information.
- (b) Upon receipt of a confidentiality agreement signed by the Affected Party, the SDRCC will communicate to the Affected Party the relevant case information which shall state and include the following:
  - (i) the issue before the SDRCC;
  - (ii) a copy of the Request form and Answer form; and
  - (iii) a time limit for the Affected Party to submit an Intervention as set forth in Section 6.13 hereof. The SDRCC shall send a copy of the Intervention to the Parties.
- (c) The SDRCC may, at its discretion, serve notice in accordance with Subsection 6.12(b) hereof on any Person who may be affected or impacted by a decision on the dispute for which a Request was filed.
- (d) Failure of an Affected Party to participate in the Arbitration will be a factor considered and should be given significant weight by any future Panel should that Affected Party file a subsequent Request in its own right relating to that matter.

#### **6.13 Intervention**

If a Person wishes to participate in the Arbitration as an Intervenor, such Person shall complete and file an Intervention with the SDRCC within the time limit set by the SDRCC. The SDRCC shall provide a copy of the Intervention to the Parties and set a time limit for each to express their respective position on the participation of the Person wishing to intervene.

#### **6.14 Decision on the Participation of an Affected Party or Intervenor**

- (a) A Person may only participate in Arbitration as an Affected Party or an Intervenor if the Person files an Intervention and:
  - (i) if Parties agree in writing; or
  - (ii) if the Panel determines that the Person should participate.

- (b) Upon expiration of the time limits provided for in Sections 6.12 and 6.13 hereof, as applicable, the Panel shall make a decision whether the Person who has requested to be an Affected Party or Intervenor may participate. If such a decision is made by a Jurisdictional Arbitrator, such decision may be amended or rescinded by the subsequently appointed Panel.

#### **6.15 Provisional and Conservatory Measures**

- (a) No Party may apply for Provisional and Conservatory Measures under this Code before:
  - (i) a Request has been filed with the SDRCC; or
  - (ii) a Doping Dispute or Doping Appeal has been initiated in accordance with Sections 7.3 and 7.4 hereof.
- (b) If an application for Provisional and Conservatory Measures is filed, the Panel may invite Parties to make submissions within the time limit established by the SDRCC. After considering all submissions, the Panel shall issue an order. In cases of urgency, the Panel may issue a provisional or conservatory order upon mere presentation of the application, provided that any Parties so wishing shall be heard subsequently.
- (c) Provisional and Conservatory Measures may be made conditional upon the provision of security.

#### **6.16 Procedures of the Panel**

- (a) Subject to the specific provisions set out in this Article 6, the Panel shall have the power to establish its own procedures so long as the Parties are treated equally and fairly and given a reasonable opportunity to present their case or respond to the case of another Party as provided for by this Code and applicable law. The Panel may take such steps and conduct the proceedings as considered necessary or desirable by the Panel to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute.
- (b) The Arbitrator may require witnesses to testify under oath or affirm the evidence that they are about to give.

#### **6.17 Scope of Panel's Review**

The Panel shall have full power to review the facts and the law. In particular, the Panel may substitute its decision for:

- (i) the decision that gave rise to the dispute; or
- (ii) in case of Doping Disputes, the CCES' assertion that a doping violation has occurred and its recommended sanction flowing therefrom,

and may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

#### **6.18 Arbitration in the Absence of a Party or Representative**

An Arbitration may proceed in the absence of any Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a Party. The Panel shall require the Party who is present to submit such evidence as the Panel may require for the making of an award.

**6.19 Stenographic Record**

- (a) Any Party desiring a stenographic or other record of all or a portion of the hearing shall make arrangements directly with a stenographer or other service provider and shall notify the other Parties of such arrangements at least three (3) days in advance of the start of the hearing or as required by the Panel.
- (b) Audiorecording during conference call hearings may be arranged by the SDRCC upon request by a Party at least three (3) days in advance of the start of the hearing or as required by the Panel.
- (c) The requesting Party or Parties shall pay the cost of the services that they request. If a Party seeks a copy of a transcript or recording, full or partial, requested by another Party, then the Party seeking a copy shall pay half the total cost of the transcription or recording, not just the cost of the copy of the second transcript or recording.

**6.20 Resolution Facilitation and/or Mediation during Arbitration**

- (a) In addition to the requirement to utilize the RF as set forth in Article 4 hereof, at any time during the Arbitration process and prior to an award being rendered by the Panel, the Parties may jointly make a request in writing to the Panel asking for Mediation or the assistance of the RF.
- (b) Upon receipt of such request, the Panel shall adjourn the process to allow the Parties to appoint a Mediator or to meet with the RF. The Mediation process, including the appointment of the Mediator, will be conducted in accordance with Article 5 hereof and the Resolution Facilitation process will be determined by the RF in accordance with Article 4 hereof.
- (c) If the Mediation or the Resolution Facilitation process fails to resolve the dispute to the satisfaction of any of the Parties, the matter will be referred back to the Panel and the Arbitration process shall continue.
- (d) The Panel may not order the Parties to mediate their dispute without the consent of all Parties.

**6.21 Awards**

- (a) All awards shall be in writing, dated and signed by the Panel.
- (b) For a Panel of three (3) Arbitrators, the award shall be made by a majority decision or, if all three (3) Arbitrators have different decisions, by the president of the Panel alone.
- (c) Subject to Subsections 6.21(d) and 6.21(e) hereof, Arbitration decisions shall be communicated to the Parties within seven (7) days of the completion of the hearing process. In the absence of an agreement between the Parties to the contrary, the Panel shall also provide written reasons for the award. Such written reasons, if any, shall be provided to the Parties within fifteen (15) days of the completion of the hearing process. Upon request by the Parties, the time limits may be abridged by the Panel.
- (d) All awards made by the Panel on Doping Disputes shall be provided to the Parties no later than five (5) days from the completion of the hearing process. The Panel shall also provide written reasons to the Parties for its decision within twenty (20) days of the completion of the hearing process.



- (e) All awards made by the Doping Appeal Panel shall be provided to the Parties no later than fifteen (15) days from the completion of a Doping Appeal hearing process. The Doping Appeal Panel shall also provide written reasons to the Parties for its decision within forty-five (45) days of the completion of a Doping Appeal hearing process.
- (f) Subject to Subsection 6.21(g) hereof, the award shall be final and binding upon the Parties. There is no right of appeal on questions of law, fact or mixed questions of fact and law. Proceedings before a Panel may not be restrained by injunction, prohibition or other process or proceeding in a court and are not removable by certiorari or otherwise by a court.
- (g) Notwithstanding Subsection 6.21(f) hereof, a Party shall have the right to appeal an award in a Doping Dispute pursuant to Section 7.4 hereof. In addition, WADA and the applicable international federation shall have the right to appeal any award of the Doping Panel or of the Doping Appeal Panel to the Court of Arbitration for Sport.
- (h) All awards shall be made public unless otherwise determined by the Panel. Notwithstanding the foregoing, the Panel has no such discretion with respect to an award in a Doping Dispute or Doping Appeal and that award must be made public, subject to the applicable rules of the Anti-Doping Program.
- (i) All Arbitration awards, orders and other decisions made by the Panel shall be communicated in accordance with Section 6.2 hereof and delivered by any means permitting proof of receipt.
- (j) Each case must be determined on its facts and the Panel shall not be bound by previous decisions, including those of the SDRCC.

## **6.22 Costs**

- (a) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof and subject to Subsection 6.22(b) hereof, each Party shall be responsible for its own costs and that of its witnesses.
- (b) The Panel shall determine whether there is to be any award of costs and the extent of any such award. When making its determination, the Panel shall take into account the outcome of the proceedings, the conduct of the Parties and their respective financial resources, intent, settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs.
- (c) The filing fee retained by the SDRCC can be taken into account by a Panel if any costs are awarded.
- (d) The decisions on costs shall be communicated to the Parties within seven (7) days of the last submission pertaining to costs.

## **6.23 Interpretation of an Award**

- (a) If a Party believes the award is unclear, incomplete, or ambiguous or its components are contradictory or contrary to the reasons, or it contains clerical mistakes or a miscalculation of figures, such Party may request the assistance of the RF in understanding the award. While the explanation of the RF is not binding, access to the RF is intended to assist Parties to understand decisions of the Panel.
- (b) After consulting with the RF, the Party may apply to the Panel for the interpretation of an award.

- (c) When an application for interpretation is filed, the Panel shall review whether there are grounds for interpretation. The Panel shall rule on the application within seven (7) days following the submission of the application to the Panel.

#### **6.24 Applicable Law for Arbitrations**

The applicable law for Arbitrations shall be the law of the Province of Ontario and the arbitration legislation in place in Ontario shall be the law of SDRCC Arbitrations.

**Article 7      Specific Arbitration Procedural Rules for Doping Disputes and Doping Appeals****7.1      Application of Article 7**

In connection with all Doping Disputes and Doping Appeals, the specific procedures and rules set forth in this Article 7 shall apply in addition to the rules specified in the Anti-Doping Program. To the extent that a procedure or rule is not specifically addressed in this Article 7 or in the Anti-Doping Program, the other provisions of this Code shall apply, as applicable.

**7.2      Time Limits**

The time limits fixed under this Article 7 shall begin from the day after the day on which either:

- (i) the notification of an anti-doping rule violation pursuant to Rules 7.66-7.69 of the Anti-Doping Program was issued; or
- (ii) the notice of appeal is received by the SDRCC or the Panel, as applicable.

The time limits will have expired if the communications by the Parties are not received before four (4) p.m., Eastern Time, on the date when such time limit expires.

**7.3      Initiation of a Doping Dispute**

- (a) With respect to Arbitration hearings in respect of Doping Disputes, unless there is an agreement between CCES and the Person whom the CCES asserts to have committed an anti-doping violation, the SDRCC shall take all appropriate action to ensure that the hearing process shall commence no later than forty five (45) days from the notification pursuant to Rule 7.88 of the Anti-Doping Program.
- (b) With respect to a hearing involving a Person subject to a Provisional Suspension imposed under Rules 7.72 or 7.73 of the Anti-Doping Program, unless there is an agreement between such Person, the CCES and the NSO, the SDRCC shall take all appropriate action to ensure that the hearing process shall commence no later than twenty (20) days from the latest of the date on which the notice of Provisional Suspension was issued pursuant to Rule 7.76 of the Anti-Doping Program, and the date on which the Request is received by the SDRCC.

**7.4      Initiation of a Doping Appeal**

- (a) With respect to a Doping Appeal, a Person shall initiate the process by delivering a notice of appeal in writing to all Parties who were before the Doping Dispute Panel within thirty (30) days of the Doping Dispute Panel's decision pursuant to Rule 8.8 of the Anti-Doping Program.
- (b) With respect to a Doping Appeal from a decision of the TUEC or a medical review, which was not reversed by WADA, a Person shall initiate the process by delivering a notice of appeal in writing to all Parties set out in Section 7.6 hereof within ten (10) days of the TUEC's decision or medical review decision pursuant to Rule 8.8 of the Anti-Doping Program.
- (c) With respect to Doping Appeals, unless there is agreement among the Parties, the SDRCC shall take all appropriate action to ensure that the appeal hearing process commences no later than thirty (30) days from receipt by the CCES of a notice of appeal pursuant to Subsection 7.4(a) or 7.4(b) hereof.

- (d) Notwithstanding any of the foregoing, when fairness so requires, the SDRCC shall take action to expedite the commencement of hearings under this Section 7.4.

## **7.5 Proceeding without a Party**

Provided that reasonable efforts have been made to contact the Person whom the CCES asserts to have committed a violation of the Anti-Doping Program, if that Person is unreachable, or is avoiding contact, or has not confirmed receipt of the notification from the CCES and/or the SDRCC which addresses that Person's right to a fair hearing and the consequences of not participating at the hearing, the Panel may decide that the hearing will proceed without the participation of such Person.

## **7.6 Parties and Observers**

- (a) With respect to a Doping Dispute, pursuant to Rule 7.91 of the Anti-Doping Program, the Parties are (A) the Person whom the CCES asserts to have committed an anti-doping rule violation; (B) the CCES; and (C) the relevant NSO.
- (b) With respect to a Doping Appeal, pursuant to Rule 8.13 of the Anti-Doping Program, the Parties are:
  - (i) (A) the Parties who were involved in the Doping Dispute; (B) the relevant international federation; (C) any other anti-doping organization under whose rules a consequence could have been imposed; and (D) WADA; or
  - (ii) the applicant for the TUE or medical review and the CCES.
- (c) Pursuant to Rule 7.92 of the Anti-Doping Program, the observers before the Doping Dispute Panel with respect to Doping Disputes, are:
  - (i) WADA;
  - (ii) the Government of Canada; and
  - (iii) the international federation of the Person whom the CCES asserts to have committed a violation of the Anti-Doping Program.
- (d) For the avoidance of doubt, observers shall not be considered Parties.

## **7.7 Preliminary Meeting**

The Doping Dispute Panel or president of the the Doping Appeal Panel, as applicable, shall convene a preliminary meeting of all Parties by teleconference, to settle procedural matters as soon as is possible after:

- (i) the notification pursuant to Rules 7.66-7.69 of the Anti-Doping Program; or
- (ii) the receipt of a notice of appeal pursuant to Subsection 7.4(a) or (b) hereof.

## **7.8 Resolution Facilitation**

The Resolution Facilitation process as set out in this Code shall apply to Doping Disputes and Doping Appeals, as modified to accommodate Doping Disputes and Doping Appeals. However, the RF process shall not delay a hearing and if the RF process has not concluded when the hearing is to occur, the hearing will still take place as scheduled.

## **7.9 Conduct of Hearing**

Pursuant to Rules 7.95 and 8.16 of the Anti-Doping Program, hearings shall be conducted as follows:

- (a) The Doping Dispute Panel and the Doping Appeal Panel, as applicable, shall conduct an oral hearing unless the Person subject to the notification pursuant to Rules 7.66-7.69 of the Anti-Doping Program and the CCES agree to a documentary hearing.
- (b) The Doping Dispute Panel and the Doping Appeal Panel, as applicable, may conduct an oral hearing in person, by video or teleconference or combination of these means.
- (c) The Doping Dispute Panel and the Doping Appeal Panel, as applicable, shall conduct an in-person oral hearing in Canada in the municipality most convenient to the Person subject to the notification pursuant to Rules 7.66-7.69 of the Anti-Doping Program, unless impractical in the circumstances.

## **7.10 Evidence and Submissions**

The Doping Dispute Panel, and the Doping Appeal Panel, as applicable, shall receive and consider evidence and submissions from all Parties, including evidence from witnesses orally or in writing pursuant to Rule 7.96 and Rule 8.17 of the Anti-Doping Program.

## **7.11 Burdens and Standards of Proof**

Pursuant to Rule 7.81 of the Anti-Doping Program, in Doping Disputes, the CCES shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the CCES has established an anti-doping rule violation to the comfortable satisfaction of the Doping Dispute Panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. When the rules of the Anti-Doping Program place the burden of proof upon the Party alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 7.42-7.43 and Rule 7.49 of the Anti-Doping Program where the athlete must satisfy a higher burden of proof.

## **7.12 Methods of Establishing Facts and Presumptions**

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable for hearings before the Doping Dispute Panel pursuant to Rules 7.82-7.85 of the Anti-Doping Program:

- (a) WADA accredited laboratories are presumed to have conducted sample analysis and chain of custody procedures in accordance with the provisions of the Laboratory Rules for laboratory analysis;
- (b) The Person alleged to have committed an anti-doping rule violation may rebut this presumption by establishing that a departure from the Laboratory Rules occurred which could reasonably have caused the adverse analytical finding;
- (c) If the Person alleged to have committed an anti-doping rule violation rebuts the presumption referred to in Subsection 7.12(a) hereof by showing that a departure from the Laboratory Rules occurred and could have reasonably caused the adverse analytical finding, then the CCES shall have the burden to establish that such departure did not cause the adverse analytical finding;

- (d) Departures from the Doping Control Rules, the International Standard for Testing or other anti-doping rule or policy which did not cause an adverse analytical finding or other anti-doping rule violation shall not invalidate such findings. If the Party establishes that departures from the Doping Control Rules, the International Standard for Testing or other anti-doping rule or policy occurred during testing and could reasonably have caused the adverse analytical finding, then the CCES shall have the burden to establish that such departures did not cause the adverse analytical finding or constitute the factual basis for the anti-doping rule violation.
- (e) The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction, which is not the subject of a pending appeal, shall be irrebuttable evidence of those facts against the Party to whom the decision pertained, unless the Party establishes that the decision violated principles of natural justice.
- (f) In a hearing on an anti-doping rule violation, the Doping Dispute Panel may draw an inference adverse to the Party who is asserted to have committed an anti-doping rule violation based on the Party's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or by telephone as directed by the Doping Dispute Panel) and to answer questions from the Doping Dispute Panel or the CCES.

### **7.13 Scope of Doping Appeal**

Pursuant to Rule 8.6 of the Anti-Doping Program, a Doping Appeal shall be limited to questions of procedural error or unfairness made by the CCES during a medical review, by the TUEC, or by the Doping Dispute Panel, or failure to properly interpret and apply the Anti-Doping Program. A Doping Appeal is not a *trial de novo* with complete reconsideration of whether there was an anti-doping rule violation and if so, whether the Doping Dispute Panel imposed the appropriate consequence, or whether the TUE or medical review ought to have been granted. A decision of the CCES regarding a medical review, of the TUEC, or of the Doping Dispute Panel will only be reversed if it is unreasonable.

### **7.14 Scope of Doping Appeal in respect of an International-Level Athlete**

In cases arising from competition in an international event or in cases involving International-Level Athletes, the decisions of the Doping Dispute Panel may be appealed exclusively in accordance with the provisions of the Anti-Doping Program.

### **7.15 Appeal of TUE Decision**

- (a) When a decision to deny a TUE is not reversed by WADA, such decision may be appealed by International-Level Athletes to the Court of Arbitration for Sport in accordance with its rules and procedures.
- (b) Pursuant to Rule 8.26 of the Anti-Doping Program, if the Doping Appeal Panel reverses the decision by the TUEC to deny a TUE, that decision may be appealed by WADA to the Court of Arbitration for Sport according to its rules and procedures.