

Dispute Resolution Training



**PRESENTATION BY
STEVEN INDIG**

Sport Law & Strategy Group



Providing strategic insight to the Canadian sport community through professional services in these areas:

- Legal Solutions
- Communications, Marketing & Event Management
- Leadership Development, Human Resource Management & Integral Coaching®
- Governance, Compliance, Risk Management, & Financial Management
- Strategic Planning, Research, Engaging Athletes, & Member Surveys



Conflict



WHAT IS CONFLICT?

- Differing of Interests or Opinion
- A State of Opposition
- A Disagreement or Incompatibility
 - Personalities
- The term “conflict” describes a general state of affairs that may be:
 - ✓ Situation-based
 - ✓ Attitude-based
 - ✓ Behaviour-based
 - ✓ Change-driven

HOW CONFLICT BECOMES DISPUTE ...

Policies



none
contradictory
unclear
bad fit

Personalities



past history
miscommunication
lack of “people” skills
inherent bias

Lack of Knowledge



individual rights
dispute management
implementing policy
leadership

RE-EXAMINE CONFLICT

- Conflict should be viewed as a positive state
- Important change within organizations does not occur without conflict

“if we’re all thinking the same way, then we’re not thinking”

Policies



Organizations Run Into Trouble When:

- They do not set out rules **[policies]** or procedures to deal with something
- They set out rules **[policies]** but they are incomplete, vague or contradictory
- They set out rules **[policies]** but then choose not to follow them
- They have rules **[policies]** that do not “fit” with their culture or their resources

Policies are Your Best Friend

- They provide you with a guide for your actions
- They help you to **avoid** a problem or crisis
- In the event you cannot avoid a problem or a crisis, they will help you to act uniformly, consistently and fairly in how you **manage** your problem or crisis
- Retain organizational knowledge

Policy Template

1. **Statement of purpose of the policy**
2. **Scope** and **application** of the policy (what and whom does the policy apply to?)
3. **Exclusions** from the policy (what does the policy not apply to? - just to be safe!)
4. Policy “**scheme**” (who does what, when, how)

Code of Conduct

- **Code of Conduct** -- a statement of the standard of behavior expected of members including harassment
- A statement of the organization's values, beliefs and expectations of members and participants. This is usually a "positive" statement.
- The standard of behavior which is expected is further defined by giving examples of conduct which breaches that standard. This is usually a series of "negative" statements.
- Application of the policy: athletes, parents, coaches, directors, etc.

Suggested Policies

1. Bylaws
2. Safe Sport Policies
 - a) Code of Conduct
 - b) Discipline and Complaints Policy
 - c) Appeal Policy
 - d) Dispute Resolution
 - e) Abuse
 - f) Screening
 - g) Workplace Harassment
3. Protest Policy
4. Confidentiality
5. Conflict of Interest
6. Privacy
7. Accessibility
8. Sanctioning Policy
9. Employment and Contractor Agreements
10. Financial Policy
11. Equity Policy
12. Inclusion
13. Social Media
14. Committee Terms of Reference
15. Waiver and Assumption of Risk
16. Director's Agreement and Guide

Implementation

- Communication!
- Communication!
- Communication!



Informally Resolving Conflict



Informally Resolving Conflict

- Complaint comes in via email or telephone
 - Prior Planning / Policy / Training
 - One small mistake or comment can turn a complaint into a disaster
- Reply via E-mail or Telephone?
- Listen First – ask what you can do?
- Do not provide a quick response
 - Buy time to discuss, research, review, etc.
- Demonstrate Respect
- Declare your intent – what is your role
- Do not mislead
- Listen First – ask what you can do?

Informally Resolving Conflict

- Keep Commitments / Right Wrongs
- Practice Accountability
- Separate the Person from the Behaviour
- Confront Reality – Speak Straight
- Clarify Expectations

STAYING IN CONTROL

- If there is no fuel there is no fire
 - Refusing to strike back bores the attacker
 - Focus on process and not outcome
- Acknowledge the truth
- Assess your situation
 - Do not rush to make rash decisions
- Take concrete action
 - Do not leave a situation unaddressed
 - Take action swiftly

DELIVERING BAD NEWS

- Deliver with dignity and respect
- Be clear and concise
- Let feelings run their course
- Do not flinch or amend your decision
- Wait, this moment shall pass

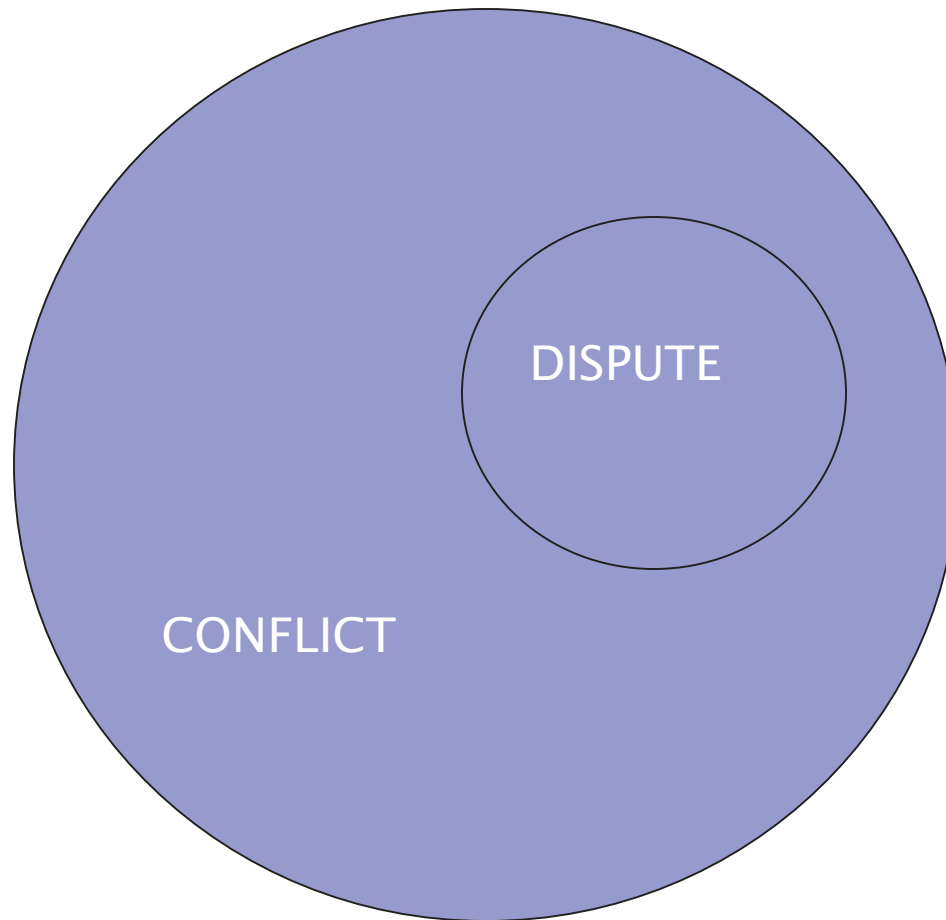
CONFLICT IS NOT STATIC

A Conflict changes over time:

- Issues “mutate” and “multiply”
- Parties take positions
- Positions harden
- Trust dissolves

Thus timely intervention is key!!

CONFLICT V. DISPUTE

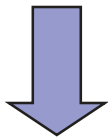


WHEN YOU BECOME AWARE OF A CONFLICT ...

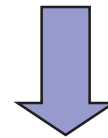
- Take the matter seriously
- Take action quickly ... and be seen to be taking action
- Be neutral
- Be confidential and discrete
- Define and focus the complaint
- Be forthright and transparent
- Be ***bold***....

DEALING WITH A COMPLAINT

- **STEP 1** - Receive complaint
- **STEP 2** – Clarify dispute
- **STEP 3** - Select options for resolution



Internal Hearing



Other D.R. Technique

A. D. R.

- A variety of techniques used to prevent, manage and resolve disputes
- What used to be “alternative” is now “appropriate”
- Main purpose is to reduce costs and other negative consequences of disputes

POSSIBLE CHOICES

- **Self-help** (negotiation)
- **Get passive help** (fact-finding, conflict analysis)
- **Get active help** (facilitation, mediation)
- **Get a decision** (private dimension – internal hearing, external arbitration)
- **Get a decision** (public dimension – court)

Mediation

- The mediator should be able to assist the parties to negotiate more effectively than they could on their own
- This is why mediation is sometimes called “assisted negotiation”
- The mediator cannot make the parties do anything they do not want to do (no binding decisions)

Complaint Management



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MANAGING YOUR DISPUTES

1. **Prior planning** → ensure your governing policies are sound
2. **Proper execution** → interpret and implement your governing policies properly
3. **Appeals** → implement an appeals policy
4. **Intervention** → consider the services of an outside administrator, case manager, mediator, arbitrator, consultant

PROCEDURAL FAIRNESS

1. **Authority** - authority to make a decision has been delegated to the decision-maker
2. **Right to a hearing** - the person affected has a reasonable opportunity to present his case
3. **Rule against bias** - the decision-maker listens fairly to both sides to reach a decision untainted by bias

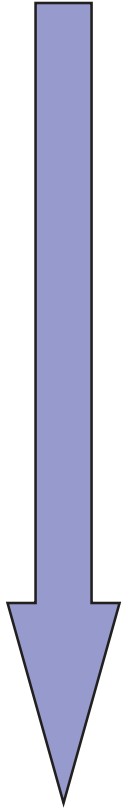
PROCEDURAL FAIRNESS

The content of “fairness” is not the same in every situation. It is a spectrum that depends on the seriousness of the sanction and the impact on the individual.

PROCEDURAL SAFEGUARDS

- Decisions to take away *rights already conferred* require greater safeguards than decisions to withhold *rights not yet granted*
- Safeguards should be in direct proportion to the *potential consequences* of the decision
- Safeguards will depend on the extent to which the decision is *final and binding*

FORMAT OF HEARING



- simple oral interview and response
- review of written documents
- review of documents, written arguments and conference call
- oral hearing in-person
- an oral hearing with formal, court-like procedures

Recent innovations in disputes

- Independent administrator (let someone else manage, leaving you free to be a part of the process!)
- “Screen” (if not brought on proper grounds, they do not proceed)
- Put confidentiality provisions in policy (breach can result in the process being suspended or stopped)
- Simplify the Panel composition and its procedures
- Reciprocation?

Pan-Canadian Discipline Suite

Other Matters to Consider:

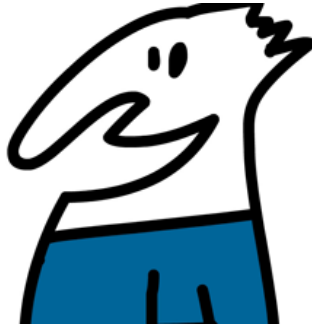
1. Anonymous Complaints, rumors, innuendo, etc.
2. Investigations
3. Communications
4. Media Preparation

ONE PIECE OF ADVICE ...

When you receive a complaint ...

DO SOMETHING!

Any Questions or Comments?



For more information, visit:

Steven Indig

647-348-3080

sji@sportlaw.ca

www.sportlaw.ca

