

AN ANALYSIS OF DISPUTES AND DISPUTE RESOLUTION SYSTEMS AT THE CLUB LEVEL IN SPORT

Hilary Findlay, Brock University, Canada, hfindlay@brocku.ca

INTRODUCTION

How an organization deals with disputes can have a dramatic impact on the operational capacity of the organization but at the same time, the capacity of the organization can affect its ability to effectively deal with disputes. At the international and national levels of sport, formal independent dispute resolution processes are increasingly a core mechanism of the sport system. An important finding from studies of dispute resolution systems in general is that their structure very much influences how they function. In the sport sector, very little has been written addressing this element of system design. The core methods of dispute resolution at the national and international levels are similar: arbitration and mediation, although the evidence suggests the mediation element is rarely used (Newmark, 2002). Nonetheless, the pattern of reliance upon arbitration is not surprising given that for the predominant disputes at these levels (i.e., selection, eligibility and doping) there is typically little if any middle ground and, as such, they lend themselves to the arbitral process.

There is little research into the nature of disputes beyond the national and international levels, i.e., at the developmental or grass roots level. In Canada, sport organizations operating at this level have essentially emulated the same dispute resolution processes at the national level; however, this structure may not be the best for dealing with their sport disputes. A singular and very limited study in 1998 of provincial sport governing bodies across Canada identified three broad categories of factors underlying disputes at the provincial level: the policies and procedures available to the organization to handle conflict, personality conflicts between and among those involved in the conflict and the knowledge base of those individuals within the organization who handled complaints and conflict (Sport Canada, 1998). This initial study suggests that as sport organizations move closer to the grass roots level, the nature of the disputes they deal with changes from rule based to interest based disputes. Certain dispute resolution mechanisms are more effective than others depending on the nature of the dispute and the degree of power imbalance between parties (Constantino & Merchant, 1996). If this is so, emulating the national structure of dispute resolution will likely not be the most effective means of resolving disputes.

As a secondary issue, it is well established that the perception of fairness is an important factor in assessing the effectiveness of dispute resolution systems (Howeison, 2005). Most theories of procedural fairness, as well as the expectations of those actually engaged in the dispute process of a sport body to a fairness process, emphasize the objective elements of fair procedures. They are, however, typically silent on aspects of procedural justice and the extent to which parties view the process to have been fair and 'legitimate'. In the Canadian national sport arbitration process, more than 80% of all arbitrations have found in favour of the sport organization, suggesting sport organizations have largely been fair at law in how they have dealt with issues but complainants nonetheless did not feel they had been treated fairly. If this is accurate, it may point to the importance of incorporating aspects of procedural justice as legitimate elements of any dispute resolution process.

The focus of this study was to: analyze the structural elements of governance within all levels of the organization, investigate the dynamics of the organization's disputes in terms the core issues and measure the perceived satisfaction of disputants of both the process and the outcome of the dispute.

METHODS

The research was carried out by means of a qualitative, case study of one nonprofit sport governing body with approximately 400,000 participants. Its corporate structure consists of a single governing entity, 21 district

associations and over 1,000 clubs at the community level. The study involved an analysis of selected governing documents (by-laws, dispute management policies & procedures) of the organization, district associations and selected clubs, as well as a review of the outcomes of all the formal disputes (hearings) of these bodies. Semi-structured interviews with a selected sample of those responsible for the conflict management functions of the bodies as well as parties to specific disputes within all levels of the organization were completed. Documents and interview transcripts were coded and analyzed for patterns and trends.

RESULTS & DISCUSSION

Initial document and case analysis reflects a dichotomy in the nature of disputes – inter-club (or corporate) disputes and intra-club (or local level) disputes. Corporate disputes relate primarily to issues of policy interpretation and compliance (i.e., rule driven) and local level disputes are individual and personality driven (i.e., interest driven). At the club level, complainants' views of the 'legitimacy' of the dispute resolution process directly related to their subjective perceptions of fairness particularly as it related to the conduct of club officials.

These results demonstrate and confirm a difference in the fundamental nature of disputes at each level within the sport hierarchy. This suggests a different approach to structuring the dispute resolution process may be necessary to achieve optimal effectiveness and satisfaction among disputants. Indeed, the use of a rights-based dispute mechanism (e.g., arbitration) on club level disputes (i.e., interest-based disputes) may inflame the perceived dissatisfaction even though there is a resolution, albeit imposed, to the dispute thus undermining the entire process. Further, regardless of the type of dispute resolution process used, or the organizational level, complainants typically viewed there to be an inherent organizational bias against them which is consistent with research on one-party designed systems (Bingham, 2002). Such results speak strongly to the need for an independent system of dispute resolution but, as well, consideration of a more integrated conflict management system (Lynch, 2001).

REFERENCES

- ADR SportRED Jurisprudencial Database (2007). Retrieved Feb. 19, 2007, from http://www.adrsportred.ca/resource_centre/jurisprudence/index_e.cfm.
- Bingham, L.B. (2002, October). Self-Determination in Dispute System Design and Mandatory Commercial Arbitration. In *The Coming Crisis in Mandatory Arbitration*. Symposium conducted at Duke Law School Private Adjudication Centre, Durham, North Carolina.
- Constantino, C.A. & Merchant, C.S. (1996). *Designing conflict management systems: A guide to creating productive and healthy organizations*. San Francisco: Jossey-Bass.
- Howeison, J. (2002). Perceptions of Procedural Justice and Legitimacy in Local Court Mediation. Murdoch University Electronic Law Journal, 9(2). Retrieved April 16, 2007, from <http://www.murdoch.edu.au/elaw/issues/v9n2/howeison92.txt>.
- Lynch, J.F. (2001). Beyond ADR: A Systems Approach to Conflict Management. *Negotiation Journal*, (July) 207-216.
- Newmark, C. (2002). Is Mediation Effective for Resolving Sports Disputes? In Blackshaw, Ian (Ed.) *Mediating Sports Disputes* (pp. 78 – 91). T.M.C. The Hague: Asser Press.
- Sport Canada (1998). Survey Regarding a National Sport ADR Network: Final Report. Report to Federal-Provincial/Territorial Sport Committee (1998). Ottawa, ON: Centre for Sport & Law.