SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

Nº: SDRCC DT 17-0256
(Doping Tribunal)

Between:

CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)
CANADIAN COLLEGIATE ATHLETIC ASSOCIATION (CCAA)

– and –

MATTHEW PIERRE

Athlete

– and –

GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)

Observers

Tribunal : Patrice Brunet (sole arbitrator)

Date of Hearing: April 7th, 2017

Appearing:

For CCES: Alexandre T. Maltas & Meredith S. MacGregor (legal counsel), Matthew Koop

For CCAA: Sandra Murray-MacDonell (observer)

For the Athlete: Emir Crowne & Timothy Cullen (legal counsel)

REASONS FOR DECISION

I. INTRODUCTION

1. On November 10, 2016, Matthew Pierre (the "Athlete"), a collegiate soccer player, participated in the Canadian Collegiate Athletic Association ("CCAA") National Men's Soccer Championships in Fort McMurray, Alberta.

2. On February 1, 2017, the Athlete was notified of an Adverse Analytical Finding ("AAF") under Rule 7.3.1 of the 2015 Canadian Anti-Doping Program (the "CADP"). The notice stated that he had committed an anti-doping violation based on the sample provided during the competition on November 10, 2016.

3. The Canadian Centre for Ethics in Sport (the "CCES") certifies that the analysis of the sample provided by the Athlete revealed the presence of D- and L-amphetamine.

4. D- and L-amphetamine is a stimulant classified as a prohibited substance according to the 2016 WADA Prohibited List, which was the list in effect at the time of the sample collection.

5. The Athlete does not dispute that his sample revealed D- and L-amphetamine and he recognized the violation on February 24, 2017. Prior to this admission, the Athlete had accepted a Provisional Suspension on December 15, 2016.

6. However, he is challenging the 2-year sanction proposed by the CCES and pleads that this sanction is unjust and disproportionate to his degree of fault.

7. Consequently, he is requesting a reduction of the ineligibility period requested by the CCES.

II. THE PARTIES

8. The CCES is an independent, not-for-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the CADP, including the provision of anti-doping services to national sports organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code ("the WADA Code") and its mandatory International Standards. The CCES has implemented the WADA Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the WADA Code and of the CADP is to provide protection for the rights of athletes to fair competition.

9. CCAA is the national governing body of intercollegiate sport in Canada. They took part in the hearing as observers.

10. Mr. Matthew Pierre is a collegiate soccer player at Douglas College in New Westminster, British Columbia.

11. The World Anti-Doping Agency ("WADA") is the international organization responsible for managing the World Anti-Doping Program which includes the WADA Code. WADA did not take part in the hearing.

12. The Government of Canada did not attend the hearing either.

III. FACTUAL BACKGROUND

13. The Athlete has been playing soccer since the age of six. At the time of the doping control, he was studying at, and playing soccer for Douglas College

14. In April 2016, the Athlete was involved in a car accident. Following the accident, he suffered from physical injuries but they did not prevent him from playing soccer. He also had difficulties with his schoolwork and at work. According to a report provided

by Dr. Susan Laubenstein, his family doctor, he may have suffered from depression following the accident.

15. On November 1, 2016, a friend of the Athlete offered him a “study pill” after the Athlete confided having difficulties focusing at school and feeling stressed with final exams and schoolwork deadlines.

16. The Athlete stated that he did not question his friend about the composition of the “study pill” and he did not conduct a research on internet regarding the pill.

17. On November 8, 2016, the Athlete consumed the “study pill” to finish an assignment. He stated not telling anyone about taking the pill because he was embarrassed.

18. On November 10, 2016, he played a soccer game with Douglas College at the National Championships. After the game, the Athlete was asked to undergo an anti-doping test. He did not disclose in the doping control form that he had taken a “study pill” or C4 pre-workout powder.

19. The Athlete stated that he received anti-doping training at varsity college. He also attended a mandatory two-session program with other athletes at Douglas College. However, he stated that the sessions focused mainly on marijuana and steroid use.

20. On February 1, 2017, the Athlete received a notice for an adverse analytical finding. This notice informed him that he committed an anti-doping rule violation at the competition on November 10, 2016.

21. The certificate of analysis of the Athlete’s A sample indicated:

D and L-amphetamine, D/L ratio = 2.1

22. When he received the notification from the CCES, the Athlete questioned his friend about the “study pill” and learned that it was a partial capsule of Adderall, which contains the Prohibited Substance.

23. On December 15, 2016, the Athlete accepted a provisional suspension.

24. On February 24, 2017, the Athlete admitted the anti-doping rule violation in accordance with CADP Rule 10.11.2.

IV. PROCEDURAL BACKGROUND

A. Preliminary Stages

25. On February 1, 2017, the CCES issued a notification of anti-doping violation in compliance with CADP rule 7.3.1. At paragraphs 1 and 2 of the notice, the CCES stated the following:

> *[…] The Canadian Centre for Ethics in Sport (CCES) asserts that Mr. Matthew Pierre, an athlete affiliated with CCAA, has committed an anti-doping rule violation.*
>
> *The sample giving rise to the adverse analytical finding was collected in-competition on November 10, 2016 in Fort McMurray, AB, in accordance with the Doping Control Rules of the CADP. The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory on December 2, 2016. A copy of the Certificate of Analysis is enclosed, indicating the presence of D- and L-amphetamine, classified as a prohibited substance on the 2016 World Anti-Doping Agency (WADA) Prohibited List. Further; this substance is classified as a "specified substance" pursuant to CADP Part C Rule 4.2.2.*

26. On March 2, 2017, I was appointed as Arbitrator in the present case.

27. On March 16, 2017, a preliminary conference call was held between the Parties, the

SDRCC and the undersigned Arbitrator, to cover preliminary matters and plan the next steps in the proceedings.

28. On March 24, 2017, the Athlete and his legal counsel filed their written submissions.

29. On March 30, 2017, the CCES filed its written submissions.

B. The Hearing

30. As agreed between the Parties and confirmed by the undersigned Arbitrator, the hearing was held via conference call on April 7, 2017.

C. Short Decision

31. On April 12, 2017, I issued a short decision in writing, with the following conclusions:

> *8. After considering the evidence, including testimonies during the hearing, I cannot conclude that the Athlete bears No Significant Fault or Negligence under Rule 10.5.1.1 of the CADP.*
>
> *9. The test under Rule 10.5.1.1 is a threshold test which, when met, allows me to analyze the degree of fault of the Athlete to reduce the Period of Ineligibility. Since the threshold has not been met, I am bound by Rule 10.2.2 of the CADP which provides for a period of ineligibility of two years.*
>
> *10. The Athlete has committed an anti-doping rule violation, under Rule 2.1 of the CADP and there is no reason to reduce the period of ineligibility under Rule 10.5.1.1 of the CADP.*
>
> *11. THEREFORE, Matthew Pierre is ineligible for a period of*

twenty-four (24) months, commencing retroactively on November 10th, 2016, the date of sample collection, by reason of the Athlete's prompt admission of the rule violation, and ending on November 9th, 2018.

V. JURISDICTION

32. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19, 2003[1].

33. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sports community, among others, a national alternative dispute resolution service for sport disputes.

34. In 2004, the SDRCC assumed responsibility for the adjudication of all doping disputes in Canada.

35. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.

VI. SUBMISSIONS

36. This section summarizes the oral and written submissions of the Parties. Although this is not a detailed record, I carefully examined all submissions presented by the Parties.

A. The Athlete

37. The Athlete submits that the two-year sanction proposed by the CCES should be replaced by a sixteen (16) month period of ineligibility or any other reduced period

[1] The *Physical Activity and Sport Act*, S.C. 2003, c.2

of ineligibility.

38. He also submits that he did not intentionally intend to commit an anti-doping violation and that his degree of fault was "significant", according to the categories of fault described in the *Cilic*[2] decision.

39. The Athlete states that the onus of proof is on the CCES and that they need to prove his intent to commit the anti-doping violation.

40. According to him, the three following elements are needed to prove the violation: (1) the conduct which the Athlete knew constituted a violation, (2) the significant risk that the conduct might constitute a violation and (3) that the Athlete manifestly disregarded that risk.

41. He states that those elements represent a threshold and that each element is a "significant procedural safeguard" to ensure that only the athletes who cheat get caught.

42. The Athlete also explains that he does bear some measure of responsibility but that he is not a cheater and should not be considered as one.

43. In his opinion, he bears a significant degree of fault based on the *Cilic* categories.

44. Furthermore, the Athlete submits that after his car accident, he suffered from back and neck injuries. Dr. Susan Laubenstein, his family doctor, also noticed that he may have suffered from a minor depression.

45. Following the accident, he was having difficulties focusing at school. His grades declined as well and he claims that he was not the same anymore.

46. The Athlete then explains that he decided to use the "study pill" that his friend had given him since he had a school project to complete. According to him, after taking

[2] *Cilic v. International Tennis Federation,* CAS 2013/A/3327

the pill, he was more focused and it allowed him to finish his work.

47. The Athlete submits that he did not inquire with his friend about the pill because his friend was, in his opinion, a credible person.

48. He also states that he has never had a doping or disciplinary infraction in his athletic career.

49. The Athlete apologizes for what happened. He claims that he should have been more responsible and he takes full responsibility.

50. He wishes to obtain a reduction of his sanction in order to play soccer again. Soccer is an important part of his life.

51. During the final oral arguments, the Athlete's counsel explained that the Athlete was not experienced regarding anti-doping programs and that he was under a lot of stress due to his academic, sporting and personal life.

B. The CCES

52. The CCES submits that the Athlete has failed to demonstrate that he bears *No Significant Fault or Negligence* and thus the two (2) year suspension pursuant to Rule 10.2.2 of the 2015 CADP must be imposed.

53. Alternatively, if the Tribunal comes to the conclusion that the Athlete is at *No Significant Fault or Negligence*, the CCES claims that the appropriate sanction should fall in the range between 20 and 24 months of ineligibility given that the Athlete's fault should be deemed "considerable".

54. Furthermore, the CCES submits that the Athlete's sanction should start on November 10, 2016, the date on which the Athlete's sample was collected.

55. Regarding the Athlete's degree of fault, the CCES claims that the Athlete first needs

to establish how the substance entered his body, and then that he has *No Significant Fault or Negligence*.

56. The CCES states that the Athlete has failed to prove, on the balance of probabilities, how the D- and L-amphetamine entered his system. The CCES explains that the Athlete initially reported that it was through consuming C4 pre-workout powder that the substance entered his body but he then changed his story explaining that he took half of a friend's Adderall pill. According to the CCES, the Athlete has not provided sufficient evidence to prove any of these two explanations.

57. As for the second part of the test of Rule 10.5.1.1 of the CADP, the CCES submits that the Athlete cannot meet the threshold test of *No Significant Fault or Negligence*.

58. The CCES states that a very high standard is expected of athletes to make diligent and detailed inquiries before ingesting supplements, vitamins or drugs.

59. They also claim that the Athlete had sufficient anti-doping education and awareness. As a result, the Athlete knew that he was responsible for what he ingested and that he should have known that taking an unidentified pill from a friend is a considerable risk.

60. Furthermore, the CCES states that the Athlete made no inquiries to coaches, staff members or medical professionals before taking the pill, even though he had the pill in his possession for a week. He also did not make any internet searches to determine what exactly is a "study pill".

61. The CCES submits that the Athlete failed to disclose on the Doping Control Form that he had taken a "study pill" or C4 pre-workout powder. He only notified the CCES about taking an Adderall pill on March 24, 2017.

62. Finally, the CCES claims that the Athlete bears significant fault and that there is no reason to reduce the two (2) year period of ineligibility. The fact that he took a partial unidentified pill from a friend, that he did not ask his friend what the pill was and

that he did not seek medical advice or advice from coaches is severe. The CCES claims that the Athlete has a high degree of fault.

VII. APPLICABLE RULES

Canadian Anti-Doping Program (CADP)

63. The CADP is largely based on the WADA Code.

64. Under Article 1.3 of the CADP, Athletes and other Persons accept the CADP as a condition of participating in sport and shall be bound by the rules contained in the WADA Code and the CADP.

65. An athlete is defined in the CADP definitions (Appendix 1) as someone who competes in sport at the international level or at the national level. Mr. Pierre is an individual who fits this description, therefore he is bound by the CADP and there were no objections to this effect.

66. The following provisions of the CADP rules are particularly relevant to the present proceedings. It should be noted that these provisions are repeated, almost word for word, in the WADA Code:

> ***2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample***
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 2.1.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is*

established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

[…]

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2. The anti-doping rule violation involves a Specified Substance and CCES can establish that the anti-doping rule violation was intentional.

10.2.2 If Rule 10.2.1 does not apply, <u>the period of Ineligibility shall be two years</u>.

[Underline added]

[…]

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Rule 2.1, 2.2 or 2.6.

10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[Underline added]

[…]

APPENDIX 1 DEFINITIONS

Fault: *Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Rule 10.5.1 or 10.5.2.*

[…]

No Fault or Negligence: *The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise*

violated an anti-doping rule. Except in the case of a Minor, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

No Significant Fault or Negligence: *The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.*

[Underline added]

[…]
10.11.2 Timely Admission

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by CCES, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Rule shall not apply where the period of Ineligibility already has been reduced under Rule 10.6.3.

[Underline added]

WADA Code

67. Articles 2.1, 10.2, 10.5, 10.11.2 as well as Appendix 1 of the CADP are largely based on articles 2.1, 10.2, 10.5, 10.11.2 and Appendix 1 of the WADA Code.

68. The WADA Code is also complemented by the International Standards, which include WADA's Prohibited List.

69. WADA's 2016 Prohibited List includes the following provision regarding amphetamine:

> *S6. STIMULANTS*
> *All stimulants, including all optical isomers, e.g.* ***d- and l-*** *where relevant, are prohibited.*
> *[…]*
>
> *[Emphasis added]*

VIII. RELEVANT JURISPRUDENCE

70. Both parties submitted several authorities to support their arguments. For the sake of brevity, I will focus on the existing jurisprudence that is most relevant to this case.

Cilic v. International Tennis Federation, CAS 2013/A/3327

71. Even though it was rendered before the adoption of the 2015 WADA Code, this case is probably the most relevant because it sets the principles applicable to the length of the period of ineligibility for Specified Substances under certain circumstances.

72. In this decision, Mr. Cilic, a professional tennis player, tested positive to N-ethylnicotinamide, a metabolite of nikethamide, which is prohibited in competition. The Anti-Doping Tribunal of the ITF imposed a period of ineligibility of nine (9) months. Mr. Cilic appealed this decision to the Court of Arbitration for Sport.

73. In its analysis, the Panel establishes three degrees of fault:

    a. *Significant degree of or considerable fault;*

b. Normal degree of fault;

c. Light degree of fault.

74. Applying these three degrees of fault to the possible sanction range of 0 to 24 months, the Panel arrives at the following sanction ranges:

a. Significant degree of or considerable fault: 16-24 months, with a "standard" significant fault leading to a suspension of 20 months;

b. Normal degree of fault: 8-16 months, with a "standard" normal degree of fault leading to a suspension of 12 months;

c. Light degree of fault: 0-8 months, with a "standard" light degree of fault leading to a suspension of 4 months.

75. In this decision, the Tribunal stated the following:

71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.

72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.

73. The subjective element can then be used to move a particular athlete up or down within that category.

74. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.

aa) The objective element of the level of fault

At the outset, it is important to recognize that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.

75. *However, an athlete cannot be reasonably expected to follow all of the above steps in every and all circumstances. Instead, these steps can only be regarded as reasonable in certain circumstances: […]*

76. In the end, the Panel found that it was a "standard" case of light degree of fault and determined that the appropriate amount of time was in the middle of the applicable range of 0-8 months, i.e. four (4) months. Therefore, Mr. Cilic was suspended for a period of four (4) months.

<u>*WADA* v. *Despres, CCES & Bobsleigh Canada*, CAS 2008/A/1489</u>

77. This case unfolded in 2008, but still remains an important precedent in doping cases.

78. In this case, Mr. Despres tested positive to a nandrolone concentration exceeding the 2.0 ng/mL threshold. The SDRCC initially found that Mr. Despres had met the standard of "No Significant Fault or Negligence" and shortened his term of ineligibility to twenty (20) months (instead of twenty-four (24) months). Still unsatisfied with this sanction, Mr. Despres appealed this decision to the CAS.

79. While discussing the notion of "No Significant Fault or Negligence", the Panel stated the following:

7.8 The Panel is not suggesting that an athlete must exhaust every conceivable step to determine the safety of nutritional supplements before qualifying for a "no significant fault or negligence" reduction. To that end, the Panel recognizes Mr. Despres' argument that taking reasonable steps should be sufficient since "one can always do more". The Panel in Knauss followed this logic when it determined that even though Mr. Knauss could have had the nutritional supplement tested for content, or simply decided not to take it altogether, "these failures give rise to ordinary fault or negligence at most, but do not fit the category of "significant" fault or negligence". Similarly, the Panel distinguished between reasonable steps Mr. Despres should have taken and all the conceivable steps that he could have taken. In light of the risks involved, the Panel finds that Mr. Despres did not show a good faith effort to leave no reasonable stone unturned before he ingested Kaizen HMB.

7.9 In addition to his failure to contact the manufacturer directly, the Panel finds that he failed to take the following reasonable steps before taking Kaizen HMB, and that these failures bar a finding that the Appellant exercised a standard of care meriting a "no significant fault or negligence" reduction to the mandated two-year period of ineligibility.

(a) Mr. Despres did not check with his doctor, the team doctor, or Mr. Berardi about whether Kaizen was a trustworthy brand of HMB supplements. […]

(b) Mr. Despres should have done more thorough research. […]

(c) Even that limited research should have provoked caution. However, Mr. Despres failed to ask for more information and took Kaizen HMB despite coming across information the internet that should have triggered greater vigilance. […]

[Underline added]

80. The Panel ultimately set aside the SDRCC decision and imposed a twenty-four (24)-

month period of ineligibility to Mr. Despres.

CCES v. Chan, SDRCC DT 15-0217

81. In this decision, Mr. Chan's sample analysis revealed the presence of Fentanyl and Oxycodone, which are both Specified Substances. The sole issue before the Tribunal was Mr. Chan's degree of fault and the appropriate sanction in light of his fault.

82. The Tribunal applied the factors listed in the *Cilic* decision and ultimately concluded that Mr. Chan's degree of fault was at the highest level. Consequently, the Tribunal imposed a sanction of 16 months.

83. In particular, the Tribunal stated the following:

> *62. The Panel further distinguished between substances prohibited in-competition from those prohibited out-of-competition, and medication designed for therapeutic purpose. In the latter case, the Panel noted that a higher duty of care was called for because medicines are known to have prohibited substances in them.*
>
> *63. The Panel noted that, while each case will turn on its own facts, the following examples of matters can be taken into account in determining the level of subjective fault: the athlete's age and experience, language or environmental problems, the extent of the athlete's anti-doping education and any other "personal impairments", including an athlete who may be experiencing a high degree of stress, or whose level of awareness has been reduced by a careless or understandable mistake.*
>
> *64. Applying those factors, and considering the Kendrick and Fauconnet decisions, I conclude that Mr. Chan has demonstrated a high degree of fault. In my view, a higher standard of care could and should be expected from a reasonable person in Mr. Chan's situation […]*

[Underline added]

CCES v. Maheu, SDRCC DT 15-0239

84. In this decision, Mr. Maheu's sample analysis revealed the presence of Ephedrine, classified as a prohibited substance. The Tribunal concluded that the Athlete's degree of fault, while significant, fell short of the maximum of twenty-four (24) months.

85. The following paragraphs of the decision are particularly relevant in this instance:

> *197. The Tribunal is now required to determine whether the Athlete bears No Significant Fault or Negligence. If so, only then can an analysis of the degree of Fault be entertained, leading to a reduction of the suspension period.*
>
> *198. The concept of "No Significant Fault or Negligence" implies fault or negligence, but to a lesser degree than a "significant fault or negligence". As each case turns on its facts, I have analyzed this one through the glasses of the 2015 Code, combined with the intention of the drafters. In my opinion, the drafters intended to be severe towards dopers, while providing a limited flexibility to the Tribunal when considering reductions of suspension periods for Specified Substances. In other words, only special, but not exceptional, circumstances would permit a reduction of the suspension period.*
>
> *199. Now therefore, the 2-step test under article 10.5 of the 2015 Code requires that I consider:*
>
> *a. Whether the Athlete established how the Prohibited Substance entered his or her system, and*
>
> *b. Whether the Athlete has established that he bears No Significant Fault or Negligence.*

86. Consequently, the Athlete was suspended for a period of eighteen (18) months.

IX. DISCUSSION

87. After considering the evidence, including testimonies during the hearing, I cannot conclude that the Athlete bears *No Significant Fault or Negligence* under Rule 10.5.1.1 of the CADP.

88. The threshold test defined under Rule 10.5.1.1, when met, allows me to analyze the degree of fault of the Athlete to reduce the Period of Ineligibility.

89. This threshold test consists of a 2-step test. The Tribunal first needs to determine whether the Athlete has met the two criteria of the test before analyzing the degree of fault which could then lead to a reduction of the suspension period. It is only when the Tribunal determines that the Athlete bears *No Significant Fault or Negligence* that it can then analyze the degree of fault.

90. The 2-step test under Rule 10.5 of the 2015 CADP (and the definition of *No Significant Fault or Negligence)* requires that the Tribunal consider:

    a. Whether the Athlete has established how the prohibited substance entered his system, and
    b. Whether the Athlete has established that he bears *No Significant Fault or Negligence*.

91. The burden of proof related to these two criteria is the balance of probabilities, and rests on the Athlete.

92. The expected standard of behavior of the Athlete is also an element that I considered in this analysis.

93. In order to successfully demonstrate the absence of "*Significant Fault or Negligence*", Appendix 1 of the CADP requires that "[…] the Athlete must also establish how the Prohibited Substance entered his or her system".

94. The *credible* establishment of the origin of the Prohibited Substance is key to a further analysis of the criteria.

95. The evidence that I have considered related to the origin of the Prohibited Substance, as testified to by the Athlete, and as adduced from the documents filed, do not provide me with a clear acknowledgment from the Athlete as to the origin of the Prohibited Substance.

96. On January 19th 2017, the athletics manager at Douglas College asked the Athlete to provide exact details related to the product, as to its brand, origin, time of consumption and research about the product before consumption, among other things.

97. On the following day (January 20th 2017), the Athlete wrote back with the following details: "*(1) the exact product that i (sic) consumed what (sic) C4 pre-workout. I was not too sure the flavor, and was in a plastic bag no container. (2) i (sic) obtained the product from a friend before i (sic) left for the trip, which he gave to me in a small ziplock (sic) bag. (3) the product was taken in the morning before i (sic) played Holland in the national tournament. (4) unfortunately I had done no prior research of this product before consuming it, and my negligence has put me in a I (sic) fathomable position.*"

98. These stated facts were in fact, later contradicted by the Athlete himself.

99. Until March 24 2017, the CCES was still under the impression that the Athlete's ingestion theory was supported by his consumption of C4, as declared by the Athlete himself.

100. However, this turned out to be a lie.

101. Through his lawyer's submissions, filed on March 24, 2017, and during his testimony at the hearing, the Athlete changed his story to admit he had consumed Adderall (the study pill) instead of C4. Both products are entirely different one from the other, and

they cannot be confused.

102. The Athlete had never purchased nor consumed C4 at all, ever, as testified during the hearing.

103. I can only conclude that his January 20, 2017 email was pure fabrication, and one can only wonder to what purpose he chose to provide those details which cannot be attributed to an error. It was a fabricated lie, which misdirected the doping authorities' resources in their legal and clinical analysis and research.

104. It is important that I recognize that the Athlete's initial declaration on January 20th 2017 preceded the retention of counsel, or at least of the counsel who appeared before me. Once counsel was retained, only one story prevailed. However, regardless of counsel representation, the conduct and credibility of the Athlete is what is at the heart of this case.

105. While I acknowledge that the Athlete may have done the right thing by coming forth with a "new truth", which in his words is "the only truth", in this case, unfortunately, the adage *a fault confessed is half redressed* does not apply.

106. The Athlete is an adult, and can clearly distinguish between truths, half-truths and lies. The details he provided on C4 were made in writing, with sufficient details to provide undisputable credibility, and were stated more than two (2) months after his sample collection. Furthermore, fully knowing that the details he had provided were fabricated, the Athlete did not correct his statement in a timely fashion: he informed the CCES and the Tribunal of his "new truth" only on March 24th, 2017. I find that the expected standard of behavior of the Athlete of his level has not been met.

107. Our legal system is firmly founded on trust. A car driver is expected to respect the speed limit even if he knows that he may be driving in an area, or at a time, when the police is not present. As a society, we trust that most people will respect the law, reasonable policing being deployed to exercise sporadic control. Doping in sport answers to similar imperatives. It is a system based on trusting that athletes will not

take prohibited substances, the anti-doping authorities exercising the policing component, sporadically.

108. For these reasons, trust is key in my assessment of the facts in this case. When the trust is breached, as I have found it to be, it is as if the Athlete had removed the needle from a compass. There is no common denominator anymore to assess credibility and point in the direction of truth.

109. The sequence of declarations by the Athlete, first by not indicating anything on his doping control form at collection time, then by stating that he consumed C4 on January 20, and then by submitting on March 24 that he had instead consumed a "study pill", leaves me with no reason to trust the Athlete's last version.

110. The trust in his testimony is absent, and I am not able, on a balance of probabilities, to conclude positively as to the method of ingestion.

111. Since the method of ingestion has not been established to my satisfaction, I cannot conclude that the Athlete bears *No Significant Fault or Negligence* nor, subsequently, establish his degree of fault.

112. For all these reasons and since the threshold has not been met under Rule 10.5, I am bound by Rule 10.2.2 of the CADP which provides for a period of ineligibility of two years.

X. DECISION

113. CONSIDERING the submitted documentary evidence and the testimonies heard during the hearing:

114. Matthew Pierre has committed an anti-doping rule violation under Rule 2.1 of the Canadian Anti-Doping Program.

115. CONSEQUENTLY, Matthew Pierre is declared ineligible for a period of twenty-

four (24) months, effective retroactively from November 10, 2016 and ending on November 9, 2018.

116. I retain jurisdiction with respect to any issue which may arise concerning the interpretation or implementation of this decision.

Signed in Montreal, on April 27th, 2017.

Patrice Brunet, arbitrator