

**INTERNATIONAL TENNIS FEDERATION**

**INDEPENDENT ANTI-DOPING TRIBUNAL**

**DECISION IN THE CASE OF MS MARTINA HINGIS**

**Tim Kerr QC, Chairman**

**Dr Anik Sax**

**Dr José Antonio Pascual Esteban**

**Introduction**

1. This is the decision of the independent Anti-Doping Tribunal (“the Tribunal”) appointed by the Anti-Doping Administrator of the International Tennis Federation (“the ITF”) under Article K.1.1 of the ITF Tennis Anti-Doping Programme 2007 (“the Programme”) to determine a charge brought against Ms Martina Hingis (“the player”). An oral hearing in respect of the charge took place in London on 11 and 12 December 2007.
2. The player was represented by Mr Anthony Morton-Hooper, assisted by Mr Alexander Rhodes, both of Mishcon de Reya, solicitors in London. The ITF was represented by Mr Jonathan Taylor, assisted by Mr Iain Higgins, both of Bird & Bird, solicitors in London. The Tribunal is grateful to the representatives of both parties and in particular to the advocates for the invaluable assistance they gave us with their oral and written presentations of high quality.
3. The player was charged with a doping offence following an adverse analytical finding in respect of a urine sample no. 3003444 which, the ITF contends, was provided by the player on 29 June 2007 at the Lawn Tennis Championships at

Wimbledon, London (“the Wimbledon Championships”). Both the A and B samples bearing the number 3003444 are said by the ITF to have returned adverse analytical findings for a metabolite of cocaine. Cocaine is a prohibited substance in competition.

4. The player denied that she had ever taken cocaine or any other prohibited substance. She did not admit that the sample tested was provided by her, nor that the laboratory results were reliable. She also contended that if the ITF could prove that she had committed a doping offence, she bore “No Fault or Negligence” for the offence, within the meaning of Article M.5.1 of the Programme. Alternatively she asserted that she bore “No Significant Fault or Negligence” for the offence, within Article M.5.2.
5. By Article S.3 of the Programme, the proceedings before the Tribunal are governed by English law, subject to Article S.1, which requires the Tribunal to interpret the Programme in a manner that is consistent with applicable provisions of the World Anti-Doping Code (“the Code”). The Code must be interpreted in a manner that is consistent with Swiss law (see the CAS decision in *Puerta v. ITF*, CAS 2006/A/1025, at para 10.8). Article S.1 of the Programme further provides that the comments annotating various provisions of the Code may, where applicable, assist in the understanding and interpretation of the Programme.
6. The detailed account of the facts, the submissions of the parties and the reasoning and conclusions of the Tribunal that follows below, reflects the level of detail relied upon by the player in the presentation of her defence against the charge. Despite the high degree of detail and the complexity of the case advanced by the player in her defence, the Tribunal has found this to be a simple and straightforward case.

## **The Facts**

7. We find the following facts. The player was born on 30 September 1980 in Slovakia and is now a Swiss citizen. She was formerly ranked as the number one women's tennis player in the world. She has had an illustrious and successful career at the very top of women's tennis. With the exception of Roland Garros, she has won all the Grand Slam tournaments and every major Tour event.
8. The player has been drug tested many times in the course of her career, always with negative result apart from (as the ITF contends) in this case. She is aware of anti-doping regulations and her responsibilities under them, including her personal duty to ensure that no prohibited substance enters her body. She has always been careful not to take any dietary supplements or medication which could lead to a violation of anti-doping rules.
9. The ITF is a signatory to the Code and is responsible for administering and enforcing anti-doping rules within the sport of tennis. Dr Stuart Miller is the ITF's Head of Science and Technical, and is the current Anti-Doping Administrator with supervisory responsibilities in relation to the Programme. The ITF manages its anti-doping responsibilities by means of a contract with International Doping Tests and Management AB ("IDTM"), of Lindigö, Sweden.
10. IDTM is responsible under that contract for carrying out doping tests on behalf of the ITF and for arranging analysis of urine samples at laboratories accredited by the World Anti-Doping Agency ("WADA"). Under the Programme, Mr Staffan Sahlström of IDTM is the person appointed by the ITF as its Anti-Doping Programme Administrator ("APA"). As the APA, Mr Sahlström is responsible for the overall operation and administration of the Programme.

11. In around 1988 or 1989, IDTM was certified in accordance with the then applicable international standard for drug testing, known as ISO/PAS 18873. IDTM has been re-certified each year since then. Certification of IDTM is effected by an accredited Swedish company each year. In March 2003 the Code was issued by WADA, to become effective from 1 January 2004 in sports whose international federations were signatories to it.
12. In June 2003 WADA issued the current version of its International Standard for Testing (“the IST”) whose provisions are mandatory. Its preamble explained that the IST was extracted from the then proposed ISO International Standard for Doping Control (“ISDC”), being prepared by a group of experts within the International Anti-Doping Arrangement (“IADA”) and WADA. The ISO ISDC, in turn, is based on ISO/PAS/18873 which is the standard in respect of which IDTM has been certified each year since around 1988 or 1989. A somewhat abbreviated form of the IST is included in the Programme at page 56ff.
13. In June 2004 WADA issued its Guidelines for Urine Sample Collection (“the GUSC”) as a model of best practice. By para 1 of the GUSC, its provisions are non-mandatory except for “those mandatory areas which are part of the [Code]”. It includes at para 5 a “Protocol for the Urine Sample Collection”, detailing the role of the lead doping control officer and chaperones, preparation of equipment and of the doping control station, athlete selection and notification, sample collection equipment, sample collection, separation into A and B samples, sealing of containers, paperwork and storage.
14. In August 2004 WADA issued the current version of its International Standard for Laboratories (“the ISL”). Its provisions are mandatory for all laboratories accredited by WADA. It includes detailed requirements for analysis and custody of urine samples on receipt of those samples from drug testing

organisations such as IDTM, and for reporting of findings. It includes details of the process for achieving WADA accreditation.

15. To assist federations which are signatories to the Code, WADA has also from time to time issued standard pro forma documents with accompanying instructions, such as the doping control form, chain of custody form, supplementary report form and doping control officer report form. Use of these forms is not mandatory and varies from organisation to organisation.
16. IDTM's current certificate of compliance with the relevant international standards, valid until 12 May 2009, was produced to us at the hearing. It is dated 19 May 2006 and provides for re-certification of IDTM in respect of:

“[o]rganising, conducting and managing doping control programs in compliance with World Anti-Doping Code and in accordance with it's [sic] international standards for testing and therapeutic use exemptions. The certification also includes ISO/PAS 18873: 1999.”
17. Thus we have clear evidence of certification that, in general, IDTM's doping control activities are carried out in compliance with the requirements of the Code and the IST. That does not, of course, guarantee that any particular urine sample, such as the player's in this case, was collected, stored and despatched for analysis in accordance with those requirements.
18. IDTM trains its doping control officers (“DCOs”) and requires them to maintain an “administration binder” and an “education manual” which is updated from time to time by the DCO on receipt of updating materials from IDTM. The certification of IDTM's activities to the required international standard includes certification of its training activities.
19. IDTM does not specifically require each DCO to maintain his or her education manual in a precisely prescribed format or with precisely prescribed content.

The DCO is responsible for keeping his or her knowledge up to date and, correspondingly, keeping the education manual up to date.

20. Mr John Snowball is a former insurance broker and former lecturer in sports science who became a DCO accredited by IDTM from 1999 onwards. He undergoes periodic re-training to retain his accreditation by IDTM. He has been involved in the collection of, he estimates, about 3,000 samples around the world, not just in the sport of tennis but in other sports in which IDTM has an anti-doping role. He has been the DCO in charge of testing at the Wimbledon Championships for the past six years.
21. He maintains an education manual from materials supplied by IDTM. It includes a password protected link to the members' section of IDTM's website, and links to other sites including those containing guidelines of various international federations. He is not familiar with the Code or the IST. He has not read those documents. He follows procedures derived from his training with IDTM and written down in his education manual as supplemented by him from his experience.
22. IDTM's written procedures as found in Mr Snowball's education manual include at para 8.4.1 the requirement that while the DCO is responsible for samples "they shall be stored in a secure area where the [...]DCO has control over who has access. All reasonable efforts must be made to keep the samples cool." By paras 8.4.1 and 9.5.1 of Mr Snowball's education manual, that provision applies both to in competition and out of competition tests.
23. Paragraph 14.2 of the same manual explains that the chapters describing doping control are "IDTM's Procedural Guidelines for Doping Control" which are "an effort to condense all International Federation's guidelines into a single standardised one". There follows a warning that the DCO must be aware that some sport federations' guidelines differ from IDTM's standardised ones.

24. On 28 March 2006 Professor Christiane Ayotte, director of the WADA accredited laboratory in Montreal, emailed Mr Sahlström to alert him and IDTM to a problem with sample collection bottles supplied by Berlinger & Co AG (“Berlinger”), which, she pointed out, had become more difficult to close since a metal ring closing system had been included. The metal ring had replaced a plastic ring. The metal ring is used to seal the bottle by turning it in a clockwise direction, compressing an inner ring of grey foam inside the bottle cap. Professor Ayotte stated that about one in six or one in ten kits had recently arrived at the laboratory not properly closed. By this she meant that they could be opened by hand rather than requiring a hammer blow, as is required when they are properly sealed.
25. The issue was raised by IDTM with its DCOs by a circular email the same day, 28 March 2006, which reached Mr Snowball and other DCOs. The issue was also raised by WADA with all its accredited laboratories, from which reports were sought and later obtained. These reports indicated that other WADA accredited laboratories had not experienced the problem, or not to the same extent as the Montreal laboratory.
26. On 18 April 2006 the Montreal laboratory received from IDTM a consignment of samples from Valencia, Spain, several of which were not properly sealed on arrival at the laboratory. The next day Professor Ayotte emailed IDTM warning that the problem was not solved. The nature of the problem was not that the bottles were impossible to close. It was more difficult than previously to close them, but it could be done perfectly well with proper care and attention. Once properly closed, the bottles remained sealed.
27. The problem was that some DCOs were not properly sealing the bottles and that where a bottle was not properly sealed, this was not necessarily visible to the naked eye so that an intruder could tamper with the bottle’s contents without

necessarily being detected. In such circumstances, the crucial “tamper evident” quality of the bottles would be lost.

28. In consequence, a further email dated 24 April 2006 was sent by IDTM to DCOs including Mr Snowball, enclosing a two page illustrated instruction from Berlinger on how to close the bottles properly to ensure they were sealed. Mr Snowball printed the instruction from Berlinger and incorporated it into his education manual. After various further investigations, tests and reports, Professor Ayotte was satisfied by 9 May 2006 that all bottles received in the preceding few weeks were properly closed and that the problem appeared to have gone away.
29. To improve the sample collection kits, Berlinger subsequently modified the design of its bottles so as to incorporate a new steel spring clip instead of the old grey foam ring. This clip has no apparent relation to the difficulties in sealing the bottles since they still contain the same metal toothed ring. Rather, the new clip is designed to enhance the ability of the bottle to avoid any leakage. It was not considered necessary to withdraw outstanding stocks of the old kit which did not include this feature. At Wimbledon in 2007, Mr Snowball was still using the old type of bottles which led to the correspondence in 2006 regarding the need for particular care to ensure they were properly sealed. It was bottles of this type that were used to store the player’s A and B samples in the present case.
30. On 7 June 2007 the organisers of the 2007 Wimbledon Championship were informed that IDTM’s certified DCO at the event would be Mr Snowball, assisted by his wife, Mrs Anne Snowball. Mrs Snowball is a part time charity worker who has been trained by her husband and by IDTM as an Assistant DCO and has been working as one since 2002. They were provided with temporary accommodation nearby. Mr Snowball arrived at the doping control station, beneath the Centre Court, on 22 June 2007. He was given a set of three



keys to, respectively, the reception room, the collection room and the office. The collection room had in it a standard domestic fridge, without a lock, for storage of samples.

31. Mr Snowball kept the three keys in his possession during the Wimbledon Championships. A fourth door connected the reception room to a corridor outside. Mr Snowball did not have a key to this door which he regarded as an emergency exit and means of escape in the event of fire. He was able to lock it from the inside by turning a latch and it was his practice to keep it locked from the inside. When away from the doping control station he would either lock all the doors or leave the station in the charge of a chaperone or Mr John O'Donnell of Group Four Securicor, who supervised the chaperones.
32. Cleaners, caterers and persons accompanying players whose presence was not recorded on a doping control form, were watched and monitored; details of the latter persons were recorded in a handwritten log. Apart from chaperones meeting with Mr O'Donnell when a quiet place was needed for them to have discussions, no one was allowed unaccompanied in the collection room.
33. Mr Snowball adopted the practice of removing the doping control forms each evening and taking them to his temporary accommodation, so as to prevent anyone who might obtain unauthorised access to the doping control station from being able to identify the sample provided by an individual player whose name appears on the doping control form but not on the A and B sample bottles bearing the number which is required to match the number on the doping control form.
34. He also adopted the practice of leaving a chair against the door of the collection room prior to locking it each evening. He never found the chair disturbed the next morning. However, on one occasion during the tournament, a policeman accompanied by a dog entered the reception room from the corridor outside.

Mr Snowball does not know how they gained entry; it is to be presumed that they had a key. The policeman explained that they were checking for explosives.

35. The tournament began on 25 June 2007 and was badly affected by rain. On 29 June the player was scheduled to play a match against Laura Granville. That match was chosen at random as a match where the loser would be subjected to a doping test. A chaperone, Ms Rebecca Bosanquet, was sent to attend the match, notify the loser afterwards that she had to undergo a doping test, and accompany the loser to the doping control station to provide a urine sample. The player lost the match. She attended a press conference afterwards and then reported to the doping control station at 20:00.
36. It is agreed that she then provided a urine sample in the presence of Mrs Snowball. Neither Mr Snowball, nor Mrs Snowball, nor the player herself, recall details of the sample collection and its aftermath, apart from the inconsequential detail recalled by Mr Snowball, on which he commented to his wife, that the player had been pleasant throughout and had given Ms Bosanquet a kiss, which he thought strange.
37. The lack of detailed recall on the part of all three witnesses is not surprising, since the Snowballs between them collected some 146 urine samples during the 2007 Wimbledon Championships, while the player has undergone many doping tests during her career, and all have proved uneventful apart from this one. In those circumstances Mr Morton-Hooper, for the player, submitted that we did not have reliable evidence of what happened during the sample collection process: Mr and Mrs Snowball could only say what they believe “would” have happened, based on their standard practice.
38. We do not accept that argument for the following reasons. First, it was accepted that the Snowballs were honest witnesses who were doing their best to

perform their functions at Wimbledon competently and professionally. Secondly, on the evidence we have, we do not have any reason to find that the Snowballs' standard practice was departed from. Thirdly, the following of standard practice is in no way contradicted by, and indeed is corroborated by, the doping control form which is intended to provide a contemporaneous record of the process precisely because accurate and detailed recollection is unlikely. Fourthly, the record of what happened to the sample after it left the doping control station is in no way inconsistent with the Snowballs' account.

39. Having read and heard the written and oral evidence of Mr and Mrs Snowball which was not contradicted by any evidence from the player, and having considered the doping control form, we are comfortably satisfied of the following. The player arrived with Ms Bosanquet at 20:00. Mrs Snowball took the player into the collection room and invited her to select a sample collection vessel from a number of them on a table.
40. The player was asked by Mrs Snowball to check that the kit was undamaged and its packaging sealed. The player did not express dissatisfaction with the available kits. She selected one. She was invited to open it by pulling the plastic packaging apart. She did so. She then provided a urine sample at 20:03, three minutes after arriving at the doping control station. Mrs Snowball observed the passing of the sample from a distance of about one metre. She then notified Mr Snowball that the player had provided the sample.
41. Mr Snowball then entered the collection room and sat down at the table. The remaining procedure was performed by the player and Mr Snowball in the presence of Mrs Snowball. Mr Snowball asked the player to select a Berlinger bottle kit from a selection of seven or eight such kits. It consisted of two bottles in a polystyrene box. Mr Snowball asked the player to satisfy herself that the kit had not been tampered with and that the A and B collection bottles were properly sealed. The player did so.

42. Mr Snowball then asked the player to check that the code number on the A bottle matched the code number on the B bottle and that the same number appeared on the polystyrene box. The player did so. It is not disputed that the code number on each Berlinger bottle is unique, i.e. no code number recurs more than once. Mr Snowball then asked the player to break the seal on each of the bottles and pour some of the urine sample into each of the A and B bottles.
43. Having heard all the evidence, we are comfortably satisfied that Mr Snowball then asked the player to put the top back on each bottle and close them fully, i.e. to press down while turning in a clockwise movement until a few clicks were heard. This is in accordance with the two page illustrated instruction received from Berlinger, via IDTM, in April 2006, which Mr Snowball had incorporated into his education manual. We have no evidence to support the thesis that the A and B bottles selected by the player were not properly sealed. We also accept that the player was asked to, and did, turn the bottles upside down to ensure that there was no leakage.
44. We accept that while the player was sealing the B bottle, Mr Snowball was checking the pH and specific gravity of the urine left in the collection vessel, using a pH stick and a refractometer. We appreciate the point that it is necessary to close one eye and look into the refractometer with the other eye in order to measure the specific gravity. But we do not accept the suggestion that this disabled Mr Snowball from verifying the sealing of the B sample bottle, which, we are comfortably satisfied, was also witnessed by Mrs Snowball.
45. Mr Snowball then invited the player to place the two bottles inside plastic bags secured by elastic bags and then to place them inside the polystyrene box, to shut the box with a tag and place the box on the table in the collection room. At that stage parts of the doping control form not already filled in were completed

by Mr Snowball, and Mrs Snowball signed the form to verify that she had witnessed the passing of the urine sample.

46. The player was then taken through the form by Mr Snowball and asked to confirm that the code number recorded in section 3 of the form – namely 3003444 – was the same as the code number on the polystyrene box. The player was not asked to confirm that the number recorded on the doping control form matched the number on each of the A and B sample bottles. These had already been stored in the polystyrene box. The player was then asked to insert details of any medication in section 3, and to make any comments she might have.
47. The player declared “Vitamin C” and “Living Fuel” on the form, and wrote “All good!” in the comment box. She then signed the doping control form in the bottom right hand corner and Mr Snowball then inserted the time of completion of the procedure, which was 20:11. Thus, the whole process lasted about 11 minutes. Mr Snowball then gave the player a pink copy of the doping control form and the player then left the doping control station. The polystyrene box containing the player’s A and B sample bottles was then placed in the fridge in the collection room, by either Mr or Mrs Snowball.
48. On the evidence we have, we are comfortably satisfied that the polystyrene box bearing the number 3003444 and containing the A and B sample sealed Berlinger bottles bearing the same number, remained undisturbed in the fridge over the weekend of 30 June and 1 July 2007 and on Monday 2 July 2007. We do not accept the suggestion that it may have been removed from the fridge or otherwise tampered with while it was still at the doping control station. There is simply no evidence to support this theory.
49. Nor is there any evidence that any person was or might have been concerned to tamper specifically with the player’s sample. This would require knowledge of

the correspondence between her name on the doping control form, kept off site, and the number written on the form and on the polystyrene box and the two bottles. Nor is there any evidence that any person might in an irrational and random manner be concerned to tamper with any sample, without knowledge of the identity of the athlete.

50. We accept that in the absence of Mr Snowball, an intruder with a key or other means of entry could have gained access to the reception room via the corridor, in the same way as the policeman and dog did. But that would only give the intruder access to the reception room, not to the locked collection room with a chair positioned against the locked door at night. The unchallenged evidence of Mr Snowball is that he did not find the chair disturbed at any time on arrival each morning. That is positive evidence that the fridge in the collection room was not opened in Mr Snowball's absence by an unauthorised person.
51. We also note that even if an unauthorised person had gained access to the player's sample stored in the collection room fridge, we are satisfied that the player's A and B sample bottles were properly sealed, and therefore tamper evident. It follows that any tampering would have been visible to a subsequent observer of the bottles. Furthermore, the substance subsequently detected – benzoylecgonine – cannot be produced inside the bottle under any storage conditions. It is produced inside the body when a person ingests cocaine. Nothing in this case turns on the conditions under which the player's sample was stored.
52. On Tuesday 3 July 2007 Mr Snowball arranged for a courier from DHL, the courier company, to collect a batch of 24 A and B samples that day, including the A and B samples in the box bearing the number 3003444. Mr Snowball personally handed the batch of 24 such boxes (as well as anonymised doping control forms corresponding to them) to the DHL courier at gate 20, at the Wimbledon site, at about 1.15pm that day. The courier and Mr Snowball then

both signed the airway bill at 1.25pm, and the courier took the box containing the batch of 24 A and B samples away for shipment to the Montreal laboratory. Mr Snowball then went back to the doping control station and faxed a copy of the collection report to IDTM.

53. Two days later on 5 July 2007 the WADA accredited Montreal laboratory, the Laboratoire de Contrôle du Dopage of which Professor Ayotte is the director, at the Institut Armand-Frappier, received the 24 samples. The sample receipt acknowledgment document prepared at the laboratory recorded the tracking number (415 0412 464) which is the same as the number on the airway bill. It is not suggested by the player that the batch of samples received at the laboratory was other than the same batch entrusted to the DHL courier by Mr Snowball two days earlier.
54. The same document shows that a Mme Mariane Mercier of the laboratory inspected the security seals on the 24 A and B sample bottles including that bearing the number 3003444 and indicated by drawing a line through the box headed “sealed” that all the bottles were sealed. She signed the document on 9 July 2007 by way of confirmation. We are comfortably satisfied that the A and B sample bottles bearing the number that matches the number on the player’s doping control form, were properly sealed on 9 July 2007. The laboratory staff did not know the identity of the tennis players competing at Wimbledon who had provided the 24 samples.
55. The A sample bearing the number 3003444 was then analysed at the laboratory and found to contain benzoylecgonine, a metabolite of cocaine. There is no reporting threshold for cocaine or its metabolites; however, from the laboratory’s full documentation package an estimated concentration of 42 ng/ml can be found. The certificate of analysis in respect of the A sample was dated 26 July 2007. The finding was reported to IDTM in the usual way. Mr

Sahlström then convened a Review Board pursuant to Article J of the Programme to consider whether there was a case to answer.

56. From 30 July to 12 August 2007 the player, who was not then aware of the laboratory's finding, took part in the Acura Classic competition at San Diego, California, followed by the East West Bank Classic at Los Angeles (singles and doubles), earning 61 WTA championship points and 61 WTA ranking points, and US \$15,395 in prize money. In the latter doubles competition she also earned 70 WTA championship points and 70 WTA ranking points, and a further US \$1,875 in prize money.
57. From 27 August to 9 September 2007 the player took part in the singles and doubles competitions at the US Open at Flushing Meadows, New York. In the singles competition she gained 90 WTA championship points and 90 WTA ranking points, and earned US \$42,271 in prize money. In the doubles competition she gained 140 WTA championship points and 140 WTA ranking points and earned US \$12,288 in prize money.
58. By 7 September 2007, towards the end of the US Open, Mr Sahlström had received from the Review Board its finding that there was a case to answer. Mr Sahlström therefore wrote to the player on 7 September by courier to her address in Switzerland, informing her of the positive test result in the case of the A sample and of her right to have the B sample analysed with a representative present, which analysis would take place in Montreal at 10am on 25 September 2007.
59. We do not know exactly when the player received that letter, but she decided to avail herself of the right to have the B sample analysed in the presence of her representative. On 17 to 23 September 2007 she took part in the China Open in Beijing, earning 35 WTA championship points and 35 WTA ranking points, as



well as US \$7,230 in prize money. The player has not taken part in any competitions since the China Open.

60. On 25 September 2007, two days after that competition ended, the B sample bottle was opened at the Montreal laboratory in the presence of the player's representative, Mr D. Schatia, and an independent observer, Professor Devine from the Institut Armand-Frappier who does not work at the laboratory. Mr Schatia signed as the "athlete's representative", and Professor Devine also signed a document agreeing that they had witnessed the opening of the B sample bottle, that the identification number corresponded to the number on the doping control form, that the "B" bottle seal was intact and there was no evidence whatsoever of tampering".
61. The B sample was then analysed at the laboratory and found to contain the metabolite of cocaine, benzoylecgonine. From the laboratory documentation package, the estimated concentration found was again approximately the same. The laboratory's finding was reported to IDTM on 28 September 2007.

### **The Proceedings**

62. By letter dated 1 October 2007 the player was charged with a doping offence under Article C.1 of the Programme, namely, the presence of benzoylecgonine in her urine specimen numbered 3003444 provided at the Wimbledon Championships on 29 June 2007.
63. In response the player wrote on 10 October 2007, through her lawyers, stating that she was shocked to be told there was a positive test result, that she wished to defend the charge at a hearing and further stating that she did not admit the sample tested was hers; nor that the laboratory results were reliable; nor that the presence of any prohibited substance was due to any failure of the player to perform her personal duty under Article C.1.1 of the Programme.

64. A meeting was held on 16 October 2007 with the chairman and the parties present, pursuant to Article K.1.7 of the Programme. A timetable was set for the submission of written briefs in accordance with Article K.1.7.
65. The ITF then provided its opening brief on 26 October 2007. In it the ITF asserted that the offence was one of strict liability; that the sample tested was the player's, as shown by a witness statement from Mr John Snowball and exhibits to it and by documents showing transport to Montreal and laboratory documents created before and during analysis of the A and B samples; and that accordingly the usual consequences (disqualification of results, forfeiture of prize money and ranking points, and a two year period of ineligibility) must flow, subject to the possibility of eliminating or mitigating the sanction if the player could establish a case under Article M.5.1 or M.5.2.
66. Before submitting her answering brief, in late October 2007 the player applied to have the charge summarily dismissed on the basis that there was no case to answer. The making of the application was notified to the chairman on 31 October 2007. The ITF did not object to a preliminary determination although there is no express provision in the Programme for such a procedure.
67. On 1 November 2007 the player issued a press statement denying that she had ever taken drugs, disputing that the sample which returned the adverse analytical finding for a cocaine metabolite was hers and announcing her retirement from top class tennis. She insisted that she was "100% innocent".
68. After an oral hearing on 12 November 2007, the chairman rejected the player's application for summary dismissal of the charge. The reasons for that decision were set out in writing in a preliminary decision dated 13 November 2007.
69. The player then submitted her answering brief on 20 November 2007. It included a clear denial that she had committed a doping offence and a clear

denial that she had taken any banned substance. She also disputed that the sample she had provided was the same sample as that which returned the adverse analytical finding for a metabolite of cocaine and (at paras 54-55) sought, pending expert evidence from Dr Bruce Goldberger of the University of Florida College of Medicine, to reserve her right to assert that there had been a departure from the International Standard for Laboratories.

70. The player's answering brief further made (inter alia) seven criticisms of the procedures used in respect of sample collection, storage and despatch for analysis. As later refined and explained in oral argument by Mr Morton-Hooper these can be summarised as follows:
- (1) failure, in breach of the IST, to use properly authorised sample collection equipment;
  - (2) failure, in breach of the IST, to offer the player a choice of sample collection equipment and to ensure the player verified the equipment was clean and sealed prior to use;
  - (3) failure, in breach of the IST, to ensure that the bottles containing the A and B samples were properly sealed;
  - (4) failure, in breach of the IST, to check that the code numbers on the A and B sample bottles matched the code numbers entered on the doping control form;
  - (5) failure, in breach of the IST, to define criteria ensuring the player's sample was stored in a manner that protected its integrity, identity and security prior to transport from the doping control station;

- (6) failure, in breach of the IST, to develop a system to ensure that the documentation for each sealed sample is completed and securely handled; and
- (7) failure to comply with the requirement of best practice that each movement of the sample after its collection should be documented.

71. At para 57 of her answering brief the player asserted, further, that she had a basis for eliminating or reducing any sanction pursuant to Articles M.5.1 and M.5.2 respectively and stated that “[i]n the event that this Tribunal should conclude that a Doping Offence has been committed by the Player and moves to a consideration of sanctions”, she wished to avail herself of the opportunity of establishing that basis and give evidence, as well as relying on evidence from an expert, Dr Yves Jacomet of the University of Nice-Sophia Antipolis, France.

72. Following a procedural disagreement between the parties, the ITF sought a ruling on 25 November 2007 that the player should provide in advance of the scheduled hearing full particulars of the basis of her plea for elimination or mitigation of sanctions under Article M.5. The chairman determined that application without an oral hearing, on the basis of the parties’ written submissions, and ruled that the player should provide such particulars by 29 November 2007, for reasons set out in the chairman’s second preliminary written decision dated 27 November 2007.

73. The player then provided the required particulars on 29 November 2007. She did not advance any positive case, on the balance of probabilities, as to how cocaine had entered her system – if, which she denied, it had entered her system at all. Rather, she reiterated her denial that she had ever knowingly taken cocaine, relied on the pattern of her drug free participation in her sport, established by means of numerous doping tests which, without exception, had proved negative; and asserted that cocaine is a ubiquitous substance which can

easily be present in the body through contamination, for example by handling banknotes.

74. She submitted at para 9 of her further particulars that “she need only establish that it probably entered her system by means of a drink, food, supplement or medication contaminated by this exceptionally prevalent substance”. At para 16 of the same document she invited the Tribunal to accept that the most likely explanation was “the consumption of drink, food, a supplement or medication that contained the substance or its principal metabolite”.
75. She went on to submit that she had always exercised the utmost caution to ensure that no prohibited substance entered her system and gave details of meticulous precautions taken throughout her career. Finally, she submitted that, in any event, fairness required that the player’s results in competitions subsequent to the 2007 Wimbledon Championships should remain undisturbed and that she should not forfeit her prize money and ranking points obtained from participation in those competitions.
76. By an email dated 30 November 2007 the player sought a ruling that the ITF should produce as a witness Mr Ricci Bitti, President of the ITF, for the purpose of answering questions from the player’s representative at the hearing of the charge, on the ground that Mr Ricci Bitti was in a position to give evidence from his own knowledge as to matters relating to the ITF’s approach to compliance with the Programme. In the same email the player sought an order that the ITF should disclose its written contract with IDTM, on the ground that the ITF had delegated to IDTM its anti-doping responsibilities as a signatory to the Code, and it was relevant to enquire into the basis on which the ITF had so delegated its responsibilities.
77. The player relied on an exchange of emails between Mr Phil de Picciotto, of Octagon, the well known organisation representing high achieving sports

persons including the player, and Dr Stuart Miller who is in charge of anti-doping matters within the ITF. In it Mr de Picciotto had sought details of the arrangements put in place by the ITF to perform its anti-doping responsibilities under the Code. Dr Miller's responses to those emails referred Mr de Picciotto to the parts of the Programme which reproduce, in slightly abridged form, the provisions of the IST. Dr Miller declined to elaborate further on the ground that the current proceedings were then pending.

78. By an email dated 30 November 2007 the ITF resisted both applications. The ITF argued that Dr Miller would be better placed than Mr Ricci Bitti to answer questions about measures taken by the ITF to perform its anti-doping responsibilities, and that Mr Ricci Bitti would be able to add nothing of substance to what Dr Miller could offer on the subject. The ITF also pointed out that Mr Sahlström would be attending the hearing and could answer questions about what IDTM was appointed by the ITF to do.
79. In opposition to the application for disclosure of the ITF's written contract with IDTM, the ITF argued in the same email that the request was no more than a fishing expedition and that there was no good reason to order disclosure of the terms of IDTM's appointment as there were no issues relating to the authority and engagement of IDTM which were material to the issues in the case.
80. On 3 December 2007 the chairman ruled by email that the player's applications were refused for reasons to be given subsequently. The chairman's reasons are briefly these. In relation to the attendance of Mr Ricci Bitti, the chairman considered that he had no power to compel the attendance of a witness and that it would be inappropriate to purport to exercise a power he does not possess. It would be unsatisfactory if an *ultra vires* direction for attendance were given and then not complied with. The most the chairman could do would be to issue a request for Mr Ricci Bitti's attendance.

81. The chairman could see no good reason to do so in circumstances where the rules envisaged that the parties should secure voluntary attendance of any witnesses they wished to call. The contractual regime governing determination of charges of doping offences does not include any obligation on either party to the contract to make witnesses available to give oral evidence against the will of the witness or the party asked to produce the witness. Moreover it was far from obvious that Mr Ricci Bitti's oral evidence, if given, would be relevant or would add anything of substance to what Dr Miller and Mr Sahlström could say in evidence on the subject of steps taken by the ITF to perform its anti-doping responsibilities under the Code.
82. As to disclosure of the written contract between the ITF and IDTM, the chairman asked the ITF to have that contract available in case evidence at the hearing made it appropriate for it to be disclosed during the hearing. It is possible in principle that the terms of IDTM's appointment could have some relevance and probative value: for example, in the unlikely event that those terms actually precluded IDTM from fulfilling the ITF's responsibilities under the Code.
83. However, the chairman had considerable doubt whether the terms of IDTM's appointment were more than peripheral to the main issue, which would be whether the steps taken with respect to the collection, storage, despatch and analysis of this particular player's sample was or was not in accordance with the IST; and, if it was not, whether any departures from the IST caused the Adverse Analytical Finding.
84. The overwhelming likelihood, in the chairman's view, was – as subsequently transpired at the hearing - that this issue would turn principally on the evidence of Mr and Mrs Snowball as to what actually happened during and after collection of the player's sample. The chairman also considered that any other relevant evidence on the subject of IDTM's terms of appointment could, very

probably (and as it subsequently transpired), be given by Mr Sahlström or Dr Miller. In the event, Mr Morton-Hooper did not, at the oral hearing on 11 and 12 December 2007, renew his application for disclosure of the ITF's contract with IDTM.

85. On 4 December 2007 Dr Goldberger produced his main report (further to a preliminary report contained in a letter dated 19 November 2007). One of Dr Goldberger's stated concerns was that without access to the Montreal laboratory's standard operating procedures, he was unable to verify whether the laboratory had complied with its written procedures and with the relevant international standard for laboratories (ISO/CEI/17025). He also made certain other points based on documents he had seen, and commented that the very low estimated concentration of benzoylecgonine (42 ng/ml) was such that it would go unreported in many drug testing programmes such as that of the US military, which uses a screening threshold of 150 ng/ml.
86. On 6 December 2007 the ITF served its reply brief. It disputed the player's contentions in detail, asserting that the Tribunal could be comfortably satisfied that the sample tested was the player's and that it contained a cocaine metabolite. The ITF contended that there were no departures from the IST and that in any case, even if there had been, they did not cause the adverse analytical finding. The ITF went on to assert that Dr Goldberger's evidence did not cast doubt on the reliability of the laboratory's analysis.
87. In the same document, the ITF submitted that the player had failed to advance any case as to how the prohibited substance had entered her system, and accordingly could not succeed in her case under Article M.5.1 or M.5.2; and that, therefore, the consequences set out in the ITF's opening brief should flow from the Tribunal's finding that a doping offence had been committed. Finally, the ITF rejected the player's assertion that fairness required her results in



competitions subsequent to the 2007 Wimbledon championships to remain undisturbed.

88. On 7 December 2007 the player sought disclosure of documents relating to problems encountered from about March or April 2006 (or possibly earlier) with the sealing of bottles forming part of the sample collection kit subsequently used to collect a urine sample from the player at Wimbledon on 29 June 2007. The request for disclosure arose out of two emails dated 28 March and 24 April 2006 which were attached to Mr Snowball's second witness statement, and from discussions the player's lawyers had already had with Berlinger.
89. The player's request led to voluntary disclosure by the ITF of various documents throwing further light on the issue. This disclosure was made by the ITF on 7 and 10 December 2007, i.e. up to the day before the hearing was due to start. Despite the lateness of the disclosure, the parties were fully able to absorb that new material and explore its significance with witnesses and in submissions at the hearing.
90. The hearing of the charge took place in London on 11 and 12 December. The hearing was transcribed. The Tribunal was very grateful to the parties, witnesses and supporting staff for the helpful way in which all concerned performed their respective roles. The Tribunal had before it numerous documents some of which are referred to above. We heard oral evidence from Mr Snowball, Mrs Snowball, Professor Ayotte, Mr Sahlström, Dr Miller, Dr Goldberger and the player herself. We then heard closing oral submissions from Mr Taylor, for the ITF, and finally from Mr Morton-Hooper, for the player.

### **The Tribunal's Conclusions, With Reasons**

91. The player accepts that the Wimbledon Championships are an event to which the Programme applies (by Article B.2) and that she is bound by its provisions (by Article B.1). She accepts that the Tribunal has jurisdiction to determine the charge against her (Article K.1.1). She further accepts that she is required to acquaint herself with the provisions of the Programme and to ensure that anything she ingests or uses and any medical treatment she receives, does not infringe its provisions (Articles B.4 and C.1.1).
  
92. Under the Programme, cocaine is a prohibited substance in competition (Article D.1.1 and Appendix Two, paragraph S6). This includes any metabolite of cocaine (Article C.1.1). The presence of a cocaine metabolite in a player's body in competition is a doping offence (Article C.1). The ITF bears the burden of proving that a doping offence has been committed. It must prove the offence to the comfortable satisfaction of the Tribunal, bearing in mind the seriousness of the allegation that is made (Article K.3.1).
  
93. The ITF relies on the laboratory's finding that benzoylecgonine, a cocaine metabolite, was present in the sample numbered 3003444. The ITF submits that the sample bearing that number is plainly that of the player. The player denies that the sample found to contain a cocaine metabolite was the sample provided by her, and submits that there were departures from the IST and from best practice in the collection and storage of the sample and in relation to the documentation process.
  
94. It is for the player to prove that departures from the IST occurred during testing (Article K.4.2) and she must prove this on the balance of probability (Article K.3.2). If she does so, the ITF has the burden to establish that such departures did not cause the adverse analytical finding made by the laboratory (Article K.4.2). Where the ITF bears that burden, it must prove this negative, i.e. lack

of causation of the adverse analytical finding, to the comfortable satisfaction of the Tribunal (Article K.3.1).

95. Accordingly, the Tribunal's first task is to evaluate the seven criticisms made by the player of the sample collection process, storage of the sample and the documentation. Mr Morton-Hooper, for the player, submitted that given the player's denial that she had taken a banned substance, her good character and record of negative doping tests must be taken into account. He produced a written testimonial in support of the player from Ms Billie Jean King, a legend in the world of tennis. He further relied on dicta from the well known decision in *USA Shooting and Quigley v. UIT*, CAS 94/25, at paras 34 and 50.
96. In *Quigley* the main issue was whether the applicable rules on their true construction created a strict liability offence. In the present case it is common ground that they do (subject to mitigation of sanctions where lack of fault is shown). Mr Morton-Hooper sought to liken the procedures adopted in the present case with the "thicket of mutually qualifying or even contradictory rules" mentioned in *Quigley* at para 34. In oral argument he went so far as to submit that "there has been a systems failure in this case as far as sample collection is concerned" (transcript day 2 ("T2"), p.103).
97. On the subject of the player's signature on the doping control form, Mr Morton-Hooper complained that the form purported to record that the player was, by signing, confirming that (subject to any comment made in the comments box), "samples collection was conducted in accordance with the relevant procedures" (in French "procédures applicables"), when it was not clear to the player what those procedures were.
98. We do not think there is any doubt that the procedures that apply are those set out in the IST as set out also (in abbreviated form) at Part II of Appendix Three to the Programme. Article F.5 of the Programme makes it abundantly plain that

testing for prohibited substances “shall be conducted in accordance with the [IST], the key elements of the current ...version of which are set out at Part Two Appendix Three to this Programme.”

99. That does not mean that by signing the doping control form, the player formally waived her right to allege later that the requirements of the IST had been breached; indeed, the ITF did not so contend. What it means is that the player’s signature and any comment she makes such as in this case the comment “All good!”, is of potential evidential value in determining whether Article F.5 of the Programme which the player is deemed to understand, and the IST, have been complied with.

*(1) Failure, in breach of the IST, to use properly authorised sample collection equipment*

100. The player’s first specific criticism was that the sample collection equipment was not shown to have been authorised by the ITF, as required by para 6.3.4 of the IST. Under para 6.3.4 the sample collection equipment used must be approved by the relevant anti-doping organisation, in this case the ITF, and must meet minimum criteria including having a tamper evident sealing system.
101. In oral argument Mr Morton-Hooper relied on the problems in spring 2006 as showing that the bottles used were not tamper evident in the sense that when not properly closed, they could be tampered with, and that whether they were properly closed or not was not itself visually evident to an observer. He noted that Professor Ayotte had accepted that where a bottle is not properly sealed, there should not be an adverse analytical finding even if a prohibited substance is detected in it, because the integrity of the sample could not be guaranteed.
102. Mr Taylor, for the ITF, submitted that the sample collection equipment used by Mr and Mrs Snowball, including the collection vessel, was supplied by Berlinger and its use was authorised by IDTM, to which the ITF had delegated

its responsibility to conduct doping tests. He submitted that authorisation by IDTM was demonstrated by para 4.1 of Mr Snowball's education manual, which specified the use of Berlinger kits, and collection vessels. He pointed out that authorisation by IDTM had not been challenged in oral evidence from Mr Snowball or Mr Sahlström.

103. Mr Taylor submitted that such kits meet the minimum criteria at para 6.3.4 of the IST and, in particular, that they are tamper evident. He accepted that the A and B sample bottles are not tamper evident unless properly sealed, but submitted that in the present case the evidence is that they were properly sealed.

104. The Tribunal considers that use of the Berlinger collection kits, including the collection vessel, was authorised by IDTM and, through IDTM, by the ITF. As to whether the kit met the criteria required by para 6.3.4 of the IST, the Tribunal finds that the A and B sample bottles used to collect the player's sample were capable of being properly sealed and were tamper evident provided they were properly sealed in the present case. The fact that some bottles of the same type were not properly sealed in 2006, and were therefore not tamper evident in the cases where they were not so sealed, does not entail the conclusion that all bottles of the same type are not tamper evident. It depends whether the bottle is properly sealed or not.

105. Accordingly, the Tribunal decides that the kit used was both authorised and included "a sealing system that is tamper evident", as required by para 6.3.4 and 6.3.4(b) of the IST. It follows that the first alleged breach of the IST is not made out.

*(2) Failure, in breach of the IST, to offer the player a choice of sample collection equipment and to ensure the player verified the equipment was clean and sealed prior to use*

106. The player made this allegation in her answering brief, before receiving the witness statement of Anne Snowball, who because the player is female, was the person responsible for carrying out these requirements set out in Annex C of the IST at paras C.4.2, C.4.3 and C.4.4. There are similar recommendations in the GUSC at paras 5.8.1 ff. The player was relying on the absence of any express reference in Mr Snowball's education manual to these requirements of the IST.
107. As we have made clear in our findings of fact above, we are comfortably satisfied that Mrs Snowball performed these requirements in the collection room with the player present. Mr Morton-Hooper was not in a position to challenge Mrs Snowball's evidence to that effect, for his client was unable to recall anything untoward in the sample collection process, as indicated by her contemporaneous comment "All good!" It follows that the second alleged departure from the IST is not made out.

*(3) Failure, in breach of the IST, to ensure that the bottles containing the A and B samples were properly sealed*

108. Para C.4.14 in Annex C to the IST requires that the athlete must seal the bottles as directed by the DCO, who must check, in full view of the athlete, that the bottles have been properly sealed. A similar provision is found at para 5.11.10 of the GUSC. The player asserts that there is insufficient evidence to show that the A and B sample bottles were properly sealed in this case. She relies, as already mentioned, on the problems in 2006 which demonstrate the risk of human failure to ensure proper sealing of this particular type of bottle. She relies on the lack of any clear express instruction from IDTM in Mr Snowball's education manual corresponding to this requirement.
109. She points out that later verification at the laboratory that they were properly sealed does not logically demonstrate that they had been properly sealed on 29 June 2007: they could, if not properly sealed, have been tampered with between

29 June 2007 and receipt at the laboratory. In this connection, she relies on what she contends was an absence of proper precautions to prevent tampering such as a lockable fridge and a lock on the door connecting the corridor to the reception room at the doping control station, through which a policeman and a dog were able to enter the reception room.

110. Mr Taylor relied on the Snowballs' evidence of their standard practice, the absence of any evidence to suggest that it was not followed in this case, the evidence of the player's comment on the doping control form tending to suggest that it was followed, and the lack of any material challenge in cross-examination of the Snowballs to their evidence that the A and B sample bottles would have been properly sealed.
111. Mr Taylor then pointed to the unchallenged evidence from the Montreal laboratory that the A and B sample bottles were properly sealed on arrival at the laboratory, and noted that there was no evidence that they had been tampered with. He referred ironically to what he described as the "Nazi frogman" defence (i.e. a caricature description of the fanciful notion that a "Nazi frogman" may have tampered with a player's sample in some unexplained way), and pointed to the inherent improbability of interference with the player's sample once it had been placed in the fridge in the collection room, and the absence of any evidence that it was interfered with.
112. As already noted in our findings of fact above, the Tribunal is comfortably satisfied that the A and B sample bottles were properly sealed by the player on 29 June 2007 in the presence of Mr and Mrs Snowball. The player has not disputed that Mr Snowball printed out and included in his education manual the two page instruction from Berlinger on how to ensure the bottles are properly sealed. We accept on the basis of Mr Snowball's written and oral evidence, corroborated by that of Mrs Snowball, that he instructed the player correctly on

how to follow that procedure. Accordingly, no departure from the IST is made out under this heading.

*(4) Failure, in breach of the IST, to check that the code numbers on the A and B sample bottles matched the code numbers entered on the doping control form*

113. The player asserts, next, that there was a breach of para C.4.12 of Annex C to the IST in that Mr Snowball failed to “check that all code numbers match and that this code number is recorded accurately by the DCO”. The player points out, through Mr Morton-Hooper, that Mr Snowball’s practice was to record the sample number on the doping control form by writing it down on the form using as his source the number printed on the moulded polystyrene box, after the A and B sample bottles had been placed within the polystyrene box.
114. Mr Morton-Hooper points also to the sequence of events set out in paras 5.11.5 to 5.11.8 of the GUSC and submits that the recording of the sample number on the doping control form should take place before and not after the placing of the A and B bottles in the polystyrene box, and that the source used to record the correct number on the doping control form should be the A and B sample bottles and not the number printed on the polystyrene box.
115. Mr Morton-Hooper submits that there is no guarantee in the present case that the numbers printed on the A and B sample bottles matched the number printed on the polystyrene box, and there is no evidence from the laboratory of a match between the number printed on the A and B sample bottles and the number printed on the polystyrene box.
116. Mr Morton-Hooper submits that if the number written by Mr Snowball on the doping control form was incorrectly copied from the polystyrene box, or if it was correctly copied but the A and B sample bottles were inadvertently placed in a box bearing a different number from that printed on the A and B sample



bottles, then the samples analysed at the laboratory were not the player's at all. He described the scenario as one of "low probability" but "high impact" (T2 p.143).

117. Mr Taylor, for the ITF, responded firstly that the IST does not prescribe the order in which the various steps must be carried out. Thus, submits Mr Taylor, it is not a breach of the IST to record the sample number on the doping control form after the sealing of the bottles rather than before they are sealed. Further, Mr Taylor submits that in any event Mr Snowball correctly performed his obligation under para C.4.12 of Annex C because he had already, prior to the player breaking the seals on the A and B sample bottles, required the player to confirm that the number printed on those bottles matched the number printed on the polystyrene box.
118. The Tribunal considers that it would have been better practice for Mr Snowball to have written the number on the doping control form using as his source the numbers on the A and B sample bottles, rather than using as his source the number printed on the polystyrene box. However, we do not accept that the method adopted by Mr Snowball constituted a breach of his obligation under para C.4.12 of Annex C to the IST, to "check that all code numbers match and that this code number is correctly recorded by the DCO".
119. A further difficulty with Mr Morton-Hooper's submissions on this point is that, while he is correct that in theory the risk of error to which he alludes exists, he himself described the risk of error as "low probability". Yet it is Mr Morton-Hooper's burden to prove a departure from the IST on a balance of probability. The risk of error is only slightly greater than it would have been had Mr Snowball used the sample bottles as his source. Had he done that, there would still have been a very small risk of error.

120. Furthermore, the player is jointly responsible with the DCO under para C.4.12 for checking that all code numbers match. We consider it unlikely to the point of fantasy that both the player and Mr Snowball, and indeed Mrs Snowball who was present, would all have made the mistake of overlooking a mismatch between the number on the bottles and the number on the polystyrene box in which the bottles were inserted, despite checking that the numbers matched prior to inserting the bottles into the polystyrene box.

121. Accordingly, while it would have been preferable for Mr Snowball to have written down the number on the doping control form using the bottles as his source prior to their insertion into the polystyrene box, we find that the player has not made out any departure from the IST under this head either.

*(5) Failure, in breach of the IST, to define criteria ensuring the player's sample was stored in a manner that protected its integrity, identity and security prior to transport from the doping control station*

122. The player strongly criticises the ITF for failing to comply with its obligation under para 8.3.1 of the IST to “define criteria ensuring that any sealed Sample will be stored in a manner that protects its integrity, identity and security prior to transport from the Doping Control Station”. The GUSC at paras 5.14.1-3 suggests in briefest outline what such criteria might be: that samples should not be left unattended unless locked away; that access should be restricted; and that where possible samples should be kept cool.

123. The education manual maintained by Mr Snowball contains only brief reference at para 8.4.1 (applied by para 9.5.1 to in competition tests) to safe storage criteria, stating that samples shall be stored in a secure area where the DCO has control over who has access, and that all reasonable efforts must be made to keep the samples cool. Para 9.4.1 of the education manual, alluded to by the ITF, contains a number of provisions about what the attributes of a doping

control station should be, but these do not specifically address criteria for safe storage of samples, other than brief mention of restrictions on access and the desirability of a lockable refrigerator.

124. The ITF further relies on the presence of checklists in the administration binder issued to DCOs by IDTM, but these do not deal specifically with criteria for safe storage of samples. The ITF, finally, relies on a letter dated 7 June 2007 from IDTM to the organiser of the 2007 Wimbledon Championships requesting that the doping control station area should be restricted from public access, and that the room should be lockable. This does not on its own suffice to comply strictly with the ITF's obligation under para 8.3.1 of the IST.
125. The Tribunal agrees with the player that the storage criteria set out in the education manual and elsewhere are very thin and insufficient to comply strictly with the ITF's obligation under para 8.3.1 of the IST. The criteria should have been more clearly and fully defined. It follows that the player has established at least a technical breach of the IST in this instance. The ITF therefore bears the burden under Article K.4.2 of the Programme of demonstrating to the comfortable satisfaction of the Tribunal that this departure from the IST did not cause the adverse analytical finding by the laboratory or the factual basis for the doping offence.
126. In the Tribunal's judgment, the ITF has easily discharged this burden to our comfortable satisfaction. We are confident that the omission to define with sufficient clarity and precision the criteria needed to ensure that any sealed sample will be stored in a manner that protects its integrity, identity and security prior to transport from the doping control station, had no causative impact on the adverse analytical finding in this case. The fact that the criteria were not defined as they should have been, does not mean that Mr Snowball's practices with regard to storage of samples were inadequate or resulted in any breach of security.

127. As we have made clear above in our findings of fact, we consider that Mr Snowball's actions in relation to storage of the sample numbered 3003444 were rigorous and adequate to protect the integrity, identity and security of that sample. We are confident that no breach of security occurred, that the sample was properly sealed and stored in the collection room fridge, and that it was not disturbed, sabotaged or otherwise tampered with during the period from 29 June to 3 July 2007 when it was taken out of the fridge and consigned to DHL for transport to Canada.
128. Accordingly the Tribunal decides that, while the player has established a departure from the IST in this instance, it was a departure that did not cause the adverse analytical finding and therefore that finding remains (subject to the player's other arguments below) valid despite the departure from the IST which the player has shown.

*(6) Failure, in breach of the IST, to develop a system to ensure that the documentation for each sealed sample is completed and securely handled*

129. The player alleges a departure from paragraph 8.3.3 of the IST, which requires that the ITF or the DCO, in this case Mr Snowball, "shall develop a system to ensure that the documentation for each sealed sample is completed and securely handled."
130. The ITF responds that Mr Snowball's system for dealing with documentation of the player's sample, and samples generally, was impeccable. He kept the doping control forms in a locked cupboard while at the doping control station. He took to his temporary accommodation each evening the doping control forms revealing each player's identity, so that in the unlikely event of an intrusion into the doping control station, the intruder would require inside

knowledge in order to discover the identity of a player corresponding to a numbered sample in the collection room fridge.

131. The Tribunal notes, further, that IDTM's documentation procedures required the airway bill to be signed by the courier and by Mr Snowball, and required the collection report to be sent to IDTM by Mr Snowball after despatch of samples to the laboratory by courier. The Tribunal does not understand the player to make any specific allegation of a break in the chain of custody between Wimbledon and Montreal.
132. In those circumstances the Tribunal rejects the player's contention that there was any departure from the obligations of the ITF or Mr Snowball under para 8.3.3 of the IST.

*(7) Failure to comply with the requirement of best practice that each movement of the sample after its collection should be documented*

133. The player asserted, supported by evidence from Dr Goldberger, that best practice would require that each and every movement of a sample should be recorded in a document. Mr Morton-Hooper criticised the ITF's procedures for documenting movements of samples on the ground that the ITF's documents did not match all the pro forma documents issued by WADA concerning the chain of custody of samples. However, he did not contend that these were mandatory requirements of the IST.
134. The ITF, through Mr Taylor, responded that a departure from best practice is immaterial if it is not also a departure from a relevant international standard, on the authority of *USADA v. Landis*, AAA Case no. 301900084706, award dated 20 September 2007, at para 274.

135. The Tribunal agrees that the player must establish a departure from the IST, not merely a departure from best practice, in order to trigger the obligation of the ITF under Article K.4.2 of the Programme to prove that the relevant departure did not cause the adverse analytical finding. In any case, the player makes no specific allegation that the sample numbered 3003444 was lost or interfered with en route from Wimbledon to Montreal. The point is without substance.
136. The Tribunal concludes from the above discussion of the player's seven specific criticisms that the player has shown only one minor departure from the IST – under the fifth of her seven criticisms analysed above - and that the ITF has easily succeeded in demonstrating to our comfortable satisfaction that this departure did not cause the adverse analytical finding or the factual basis for the doping offence.
137. We are completely confident (i.e. comfortably satisfied) that the sample numbered 3003444 was the player's, and that the A and B sample bottles were properly sealed and transported intact from Wimbledon to the laboratory in Montreal. We turn next to consider the evidence and arguments about what happened during the period from 5 July to 28 September 2007 when the A and B samples were analysed at the Montreal laboratory. This can be done briefly since there was no substantive challenge by the player to the reliability of the laboratory's finding that the sample numbered 3003444 contained a cocaine metabolite.
138. Under Article K.4.1 of the Programme, the laboratory in Montreal is presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories ("the ISL"). The player can rebut that presumption and if she does so, the ITF has the burden of proving to the comfortable satisfaction of the Tribunal (see Article K.3.1) that such departure from the ISL did not cause the adverse analytical finding. Dr Goldberger, the

expert witness instructed by the player, did not assert that there had been any departure from the ISL.

139. He prepared a report in a letter dated 4 December 2007, but his comments on that report related to the IST, not the ISL. He gave oral evidence to the effect that (in Mr Morton-Hooper's words in closing submissions) "he had been hampered in his ability to assist the player and give his expert professional view about the reliability of the work done in the Montreal" (T2, p.160-161). This evidence from Dr Goldberger had been foreshadowed in prior written exchanges between the parties, and led to a debate at the hearing about whether and to what extent it was open to the player to seek disclosure of documents in the possession of the laboratory.
140. The chairman is inhibited by Article K.1.7(c) of the Programme from making any order for disclosure of documents and relevant materials by the qualifying provision therein that "save for good cause shown no documents and/or other materials shall be ordered to be produced in relation to the laboratory analysis resulting in an Adverse Analytical Finding beyond the documents that are required, pursuant to the [ISL], to be included in the laboratory report pack".
141. The opening words of Article K.1.7(c) state that the chairman may "make such order as the Chairman shall deem appropriate in relation to the production of relevant documents and/or other materials *between the parties* [our emphasis] ...". There is therefore some doubt whether a chairman could or should order the ITF to disclose documents in the possession of an independent WADA accredited laboratory, which the ITF may have no contractual power to obtain from the laboratory. However, we need not decide that issue since no contested application for specific disclosure of documents from the Montreal laboratory was made.

142. The ITF did disclose, with the consent of Professor Ayotte, the laboratory's procedure document dated 20 April 2004, numbered C500-03, entitled (in English translation) "Confirmation of the Presence of Metabolites of Cocaine". Dr Goldberger commented that he would have liked to test the laboratory's work against other standard operating procedures used by the laboratory, which Professor Ayotte was not prepared to disclose voluntarily, and for disclosure of which no order was sought. In particular, he noted that he did not have access to a hyperlink mentioned in C500-03 to another document entitled (in English translation) "Criteria for Identification by Mass Spectrometry".
143. Although that document was not itself disclosed, Professor Ayotte did explain in written form the criteria and calculations used to identify the metabolite of cocaine detected by the laboratory by means of mass spectrometry; and this corresponded to the method required to be used as set out in a technical document issued by WADA under the ISL, a document which is freely accessible on WADA's website and with which Dr Goldberger is therefore likely to have been familiar.
144. Against that procedural background, the player was not able to assert that the laboratory's work had involved any departure from the ISL, and she did not seek to do so. Therefore, the presumption in Article K.4.1 is not rebutted, and the laboratory is presumed to have conducted sample analysis and custodial procedures in accordance with the ISL. In addition, we heard oral and written evidence from Professor Ayotte explaining the work done by the laboratory which convinced the Tribunal that its work on the player's sample was competent and the result reliable in the case of both the A and B sample analysis. That evidence was not challenged in cross-examination of Professor Ayotte.
145. We conclude from the above discussion that the ITF has easily succeeded in proving to the comfortable satisfaction of the Tribunal that a doping offence



under Article C.1 of the Programme has been committed by the player. We turn next to consider the consequences of the doping offence.

146. First, by Article L.1 of the Programme, the individual result obtained by the player in the 2007 Wimbledon Championships must be disqualified, and the ranking points and prize money she received in that competition must be forfeited. The player received 90 WTA championship points and 90 WTA ranking points from her participation in the Wimbledon Championships, and US \$50,422 in prize money. Those points and that prize money must be forfeited.
147. Second, pursuant to Article M.2 of the Programme, the Tribunal is obliged to impose on the player a period of ineligibility of two years, subject to her opportunity, before it is imposed, to establish the basis for eliminating or reducing the sanction as provided in Article M.5. The player did indeed seek to rely on Article M.5.1 (No Fault or Negligence) and Article M.5.2 (No Significant Fault or Negligence).
148. The terms “No Fault or Negligence”, and “No Significant Fault or Negligence” are defined in Appendix One to the Programme, and have been considered by the CAS in its case law. However, in the case of both Article M.5.1 and M.5.2 the player must, in a case involving a doping offence under Article C.1, “establish how the Prohibited Substance entered his or her system”. This requirement has also been considered by the CAS in case law relied upon by the ITF. The player accepted at para 3 of her written particulars of facts relied on under Article M.5 that she must establish how the prohibited substance entered her system.
149. At para 16 of the same document the player invited the Tribunal to accept as the most likely explanation the consumption of drink, food, a supplement or medication that contained cocaine or its principal metabolite. However, she

issued that invitation to the Tribunal not because she could give specific evidence from her personal knowledge of such consumption, but on the basis that it should be inferred from the player's assertion – which we are invited to accept – that the player did not take cocaine deliberately.

150. In oral closing submissions (see T2, p.167) Mr Morton-Hooper stated: “it is absolutely right to say that she is unable to give you a specific explanation of how, if it be the case, this substance entered her body. All she can do is explain to you the care that she has always taken with her career to make sure she doesn't take anything which may give rise to a positive drugs test.”
151. Mr Taylor for the ITF submitted that the player must show by positive evidence, not merely speculation or deduction from a protestation of innocence, how the substance entered the player's system; and must show that the innocent explanation advanced was more likely than not to be the correct one; and that to discharge that burden the player must show the factual circumstances in which the prohibited substance entered her system and not merely the route of administration.
152. Mr Taylor relied in this regard on *WADA v. Stanic and Swiss Olympic Association*, CAS 2006/A/1130, para 39; *Karatantcheva v. ITF*, CAS 2006/A/1032, paras 98 and 117; *ITF v. Karol Beck*, decision of the Anti-Doping Tribunal dated 13.2.6, paras 14 and 24; *ITF v. Jamie Burdekin*, decision of the Anti-Doping Tribunal dated 4.4.5, para 76; *International Rugby Board v. Keyter*, CAS/2006/A/1130, paras 6.10-6.12; and *CCES v. Lelièvre*, Sport Dispute Resolution Centre of Canada, decision dated 7.2.5, para 51.
153. Mr Morton-Hooper was not able to submit that those authorities failed to provide support for the ITF's argument that the player's particulars of her case under Article M.5 were wholly inadequate to discharge the burden on her of establishing how the prohibited substance in this case entered her system.

Whether or not the player's denial of having deliberately taken cocaine is true, we agree with the ITF that the player cannot discharge the burden on her of establishing how it entered her system.

154. Accordingly, the player's arguments founded on Article M.5.1 and M.5.2 cannot succeed. The Tribunal is therefore bound by Article M.2 to impose a two year period of ineligibility. Under Article M.8.3(a) it is provided that any period during which the player demonstrates that she has voluntarily foregone any form of involvement in competitions shall be credited against the period of ineligibility, which otherwise would start on the date the Tribunal's decision is issued (other than in cases where fairness requires otherwise, such as in cases of unusual procedural delay which is not suggested here).
155. In the present case it is accepted by the ITF that the player has voluntarily foregone participation in tennis competitions after taking part in the China Open in Beijing which ran from 17-23 September 2007. After that competition the B sample bottle was opened and it was analysed, following which the player was charged with a doping offence by letter dated 1 October 2007. In those circumstances, the Tribunal decides in accordance with Article M.8.3(a) that the period of ineligibility will commence on 1 October 2007 and will expire at midnight (London time) on 30 September 2009.
156. Under Article M.7 of the Programme, all other competitive results obtained from the date (29 June 2007) the positive sample was collected must, unless the Tribunal determines that fairness requires otherwise, be disqualified with all the resulting consequences including forfeiture of any medals, titles, computer ranking points and prize money. The player submitted at para 27 of her further particulars dated 29 November 2007, that it would be unfair to disqualify the player's results in competitions subsequent to Wimbledon in which she took part.

157. The player submitted that even if her case under Article M.5 failed (as it now has failed), no competitive advantage was gained or could have been gained due to the nature of the prohibited substance and the low concentration reported by the laboratory. The player relied on subsequent negative doping tests, on her decision voluntarily to forego competition from late September 2007 onwards, and on her decision to announce her retirement from the sport, which she did on 1 November 2007.
158. The ITF submitted in its written reply brief (paras 4.10 ff) that the player's subsequent results should be disqualified; that non-disqualification of subsequent results must be the exception and not the rule, as the Anti-Doping Tribunal had accepted in e.g. *ITF v. Dupuis*, decision dated 29.9.6; that the player's denial that she had taken a banned substance was not exceptional; that by Article M.7.1 the lack of evidence of illegitimate enhancement of performance during subsequent competitions is not of itself sufficient to trigger the Tribunal's discretion under Article M.7; and that the subsequent negative drug tests on the player should be disregarded by the same reasoning.
159. We have reached the conclusion that this is not a case in which fairness requires us to leave undisturbed the player's results subsequent to the Wimbledon competition. We cannot find anything exceptional about the circumstances of this case, and we note that the player did not voluntarily abstain from competitive tennis until notified of the B sample result which made it virtually inevitable that she would be charged with a doping offence.
160. While we do not know the exact date on which the player received IDTM's letter of 7 September 2007 notifying her that her A sample had returned an adverse analytical finding for a cocaine metabolite, it is overwhelmingly likely that she was aware of that test result when she took part in the China Open, which ended only two days before her representative, Mr Schatia, attended the opening of the B sample bottle at the Montreal laboratory.

161. In all the circumstances, we decide that the player's results in competitions subsequent to Wimbledon shall be disqualified, and the ranking points and prize money received by the player from those competitions (half the prize money awarded to the doubles pair in the case of the two doubles competitions) must be forfeited.
162. In conclusion, we pay tribute to the zeal and diligence of both legal teams and in particular to the tenacity and determination with which the player's legal representatives tested the ITF's case to the maximum on every conceivable arguable point, ensuring that every possible weakness in the ITF's case should be exposed to the player's maximum advantage. Despite those Herculean efforts, the force of the case against the player was overwhelming and the Tribunal's task was ultimately quite simple.
163. By Article O.2 of the Programme this decision may be appealed by the player to the CAS.

### **The Tribunal's Ruling**

164. Accordingly, for the reasons given above, the Tribunal:
- (1) confirms the commission of the doping offence specified in the notice of charge set out in the ITF's letter to the player dated 1 October 2007, namely that a prohibited substance, benzoylecgonine, a metabolite of cocaine, has been found to be present in the urine sample that the player provided at the Wimbledon Championships on 29 June 2007;
  - (2) orders that the player's individual results in the ladies' singles competition must be disqualified in respect of the 2007 Wimbledon Championships, and in consequence rules that the prize money and

ranking points obtained by the player through her participation in that competition must be forfeited;

- (3) orders, further, that the player's individual results in all singles and doubles competitions subsequent to the 2007 Wimbledon Championships shall be disqualified and all prize money (half the prize money awarded to the pair in the case of doubles competitions) and ranking points in respect of those competitions forfeited;
- (4) declares that the player shall be ineligible for a period of two years commencing on 1 October 2007 from participating in any capacity in any event or activity (other than authorised anti-doping education or rehabilitation programmes) authorised by the ITF or any national or regional entity which is a member of or is recognised by the ITF as the entity governing the sport of tennis in that nation or region.

**Tim Kerr QC, Chairman**

**Dr Anik Sax**

**Dr José Antonio Pascual Esteban**

**Dated: 3 January 2008**