

**CANADIAN CENTRE FOR ETHICS IN SPORT**

**IN THE MATTER OF THE CANADIAN POLICY ON PENALTIES FOR DOPING IN  
SPORT, 1993**

**AND IN THE MATTER OF AN APPLICATION BY CECIL RUSSELL FOR  
CATEGORY II REINSTATEMENT PURSUANT TO THE DOPING CONTROL  
STANDARD OPERATING PROCEDURES 1994**

**B E T W E E N:**

**CECIL RUSSELL**

Applicant

- and -

**CANADIAN CENTRE FOR ETHICS IN SPORT  
SWIMMING NATATION CANADA  
SPORT CANADA**

Respondents

- and -

**COACHES OF CANADA**

Intervenor

**BEFORE:**

Graeme Mew (Adjudicator)

**HEARING DATE & PLACE:**

20, 21, 22, 23 April and 15 June 2009 in Toronto,  
Ontario

**APPEARANCES:**

*Gary G. Boyd*  
*Robert C. Morrow*  
*David de Vlieger*  
*Peter Lawless*

Counsel for the Applicant  
Commission Counsel  
Counsel for Swimming Natation Canada  
Counsel for Coaches of Canada

**DECISION**

## ***Introduction***

1. Cecil Russell has applied for reinstatement of his eligibility to participate in organised sport. Mr. Russell's task is to establish, on a balance of probabilities, that exceptional circumstances exist that warrant his reinstatement from a sanction of lifetime ineligibility that was imposed on him in 1997 for what was then known as a "doping-related infraction".

2. The finding that Mr. Russell had committed a "doping-related infraction" was made pursuant to the *Canadian Policy on Penalties for Doping in Sport*, 1993 (the "1993 Policy") and the Standard Operating Procedures made in 1994 (the "SOP") pursuant to the 1993 Policy. The reason for the finding was Mr. Russell's criminal conviction for two offences involving prohibited drugs. The mandatory penalty for this infraction was lifetime ineligibility, meaning that Mr. Russell is precluded from participating in almost all organised sport in Canada, whether as a coach, athlete or in some other capacity.<sup>1</sup>

3. The 1993 Policy, which has since been replaced by the *Canadian Anti-Doping Program* ("CADP"), was administered by the Canadian Centre for Ethics in Sport ("CCES") (formerly known as the Canadian Centre Drug-Free Sport) which is the independent body responsible for coordinating the development and implementation of programmes and policies for anti-doping including, at the time, not only testing, research and education but also appeals and arbitration of cases involving allegations of doping or doping-related infractions.

4. Prior to receiving his lifetime ban, Mr. Russell had been a swimming coach, although he had not actively coached (or been a member of) a Swimming Natation Canada ("SNC") affiliated organisation or Coaches of Canada ("COC") in the years immediately preceding the imposition of the ban.

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<sup>1</sup> Section A, paragraph 8 of the 1993 Policy provides:

"All persons sanctioned by virtue of this policy will be ineligible to participate in any role and in any competition or activity sanctioned by a Canadian [National Sport Governing Body, Provincial Sport Governing Body], or affiliate for the duration of the period of ineligibility. Penalties in any sport, role or level shall be respected by the authorities of all other levels of the same sport and in all other sports subject to this policy."

5. The 1993 Policy and the SOP provide a mechanism whereby a person who has received a penalty can seek reinstatement. Mr. Russell elected to seek what is known as “Category II Reinstatement”. Section 11 of the SOP provides that persons sanctioned as a result of the 1993 Policy may apply for reinstatement of sport eligibility on grounds of “exceptional circumstances”.

6. “Exceptional circumstances” is defined as including circumstances warranting a reinstatement that constitutes a deviation from the uniform, standardized penalties contained in the 1993 Policy. Section 11.2.3 of the SOP lists certain criteria for Category II Reinstatement. The preamble to section 11 states that:

“It is the intent of the criteria set out in section 11.2.3 that the test of exceptional circumstances be restrictive in both interpretation and scope.”

Section 11.2.3 of the SOP is set out below in its entirety.

i) **Onus**

The applicant bears the onus of proving, on a balance of probabilities, exceptional circumstances justifying reinstatement within the meaning of section 11, and the **Canadian Policy on Penalties for Doping in Sport**.

ii) **Criteria for Category II Reinstatement**

A. Exceptional circumstances consist, inter alia, of the following:

- a) Age
- b) Remorse
- c) Circumstances surrounding the infraction, including any factors that may have caused or contributed to the Applicant’s diminished capacity.
- d) The Applicant’s experience in sport.
- e) The Applicant’s favourable prospects for rehabilitation.
- f) The Applicant’s prior, and post-infraction, conduct.
- g) The Applicant’s contribution to (the) sport.
- h) The Applicant’s cooperation with investigating bodies.
- i) The length of suspension served by the Applicant at the time of hearing.
- j) Additional factors advanced by or on behalf of the Applicant and determined by the adjudicator to be relevant.

B. The adjudicator may give such weight as he/she decides appropriate in the circumstances to each of the factors set out above.

- iii) The Applicant, as a component of the criteria referred above, must satisfy the arbitrator that the relevant penalty applicable to him or her under the **Canadian Policy on Penalties for Doping in Sport** is excessive in the circumstances.

7. The list of exceptional circumstances provided in section 11.2.3(ii) is not exhaustive, neither is it necessary for each of the factors to be satisfied in order for a participant to satisfy the onus of proof. Section 11.2.3(ii) must, however, be read in conjunction with section 11.2.3(iii) in assessing whether the penalty imposed upon the applicant is excessive.

8. An adjudicator may, if he or she decides to reinstate an applicant, prescribe terms and conditions of the reinstatement<sup>2</sup>.

9. Previous reinstatement cases have noted that while the test of exceptional circumstances is stated in the preamble to section 11 to be “restrictive in both interpretation and scope” the term can “encompass a variety of potential circumstances which can render the continuation of the relevant penalty excessive and inappropriate”<sup>3</sup> and that the phrase “exceptional circumstances” must be “construed broadly so that all relevant issues can be considered by the adjudicator to determine if the penalty imposed is excessive”<sup>4</sup>.

### ***Procedural History***

10. There is an extensive procedural history in this matter.

11. Mr. Russell first came to the attention of the CCES when two national sport organizations reported to CCES that Mr. Russell had been convicted of two drug-related offences, namely:

- (a) an offence contrary to section 39(2) of the *Food & Drug Act* apparently involving the personal possession of a small quantity of anabolic steroids, for which he was fined \$750; and

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<sup>2</sup> SOP, paragraph 11.2.2 (iii)

<sup>3</sup> [Gary Williams](#) Category II Reinstatement Application, Adjudicator Richard C. Secord, 9 January 1996 at 31

<sup>4</sup> [Glenn Ennis](#) Category II Reinstatement Application, Adjudicator David W. Lech, August 1998, at 6

- (b) an offence of conspiracy to traffic a controlled substance (anabolic steroids) contrary to section 465 of the *Criminal Code of Canada*, for which he was given a suspended sentence and placed on probation, having spent 201 days in custody prior to his trial.

As already noted, a case review, conducted by a three-person Case Review Board, determined, on 27 October 1997, that Mr. Russell had committed a doping-related infraction for which the applicable penalty, under the 1993 Policy, was life ineligibility<sup>5</sup>.

12. Mr. Russell appealed the decision of the Case Review Board. That appeal was heard by me, sitting as a sole adjudicator. On 19 October 1998 I denied Mr. Russell's appeal<sup>6</sup>.

13. On 13 September 1999, Mr. Russell filed an application for Category II Reinstatement. That application was heard in February 2000 by Adjudicator Russell Dumoulin who rendered a decision on 14 March 2000<sup>7</sup>. Adjudicator Dumoulin declined to reinstate Mr. Russell. He felt, on a balance of probabilities, that Mr. Russell had failed to demonstrate exceptional circumstances justifying early reinstatement. In the final paragraph of his decision the Adjudicator noted that Mr. Russell could apply again under the SOP for reinstatement at some time in the future.

14. On 29 July 2004 a further application for reinstatement was made on Mr. Russell's behalf. After some preliminary issues were dealt with relating to which regime Mr. Russell's application should be considered under, a hearing of the reinstatement application took place on 8 September 2005 in Ottawa before me, sitting as a sole adjudicator.

15. In a decision, released on 29 October 2005,<sup>8</sup> I granted Mr. Russell's application for reinstatement, effective immediately.

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<sup>5</sup> <http://cces.ca/pdfs/CCES-CASE-Russell1Brief-E.pdf>

<sup>6</sup> <http://www.cces.ca/pdfs/CCES-CASE-Russell2Decision-E.pdf>

<sup>7</sup> Summarised at <http://cces.ca/pdfs/CCES-CASE-Russell3Brief-E.pdf>

<sup>8</sup> <http://cces.ca/pdfs/CCES-CASE-Russell4Decision-E.pdf>

16. On 31 January 2006, and again on 26 September 2006, the CCES applied to me to reopen the reinstatement hearing, based on newly discovered information. That information included the fact that Mr. Russell had been convicted in 2004, in Arizona, of conspiracy to possess with intent to distribute ecstasy, evidence which had not been disclosed at the time of the hearing which I conducted in September 2005. I declined to reopen the hearing on the ground that I was *functus officio*.

17. CCES, SNC and COC then applied to the Ontario Superior Court of Justice to have my 29 October 2005 decision set aside on the basis of fraud pursuant to section 46(1) of the *Arbitration Act, 1991* (Ontario). The application was heard on 10 April 2007 by the Honourable Mr. Justice Robert Smith. His Honour granted the application and referred the matter back to me for reconsideration based on the additional evidence that had emerged since my original decision<sup>9</sup>. Costs were awarded against Mr. Russell.

18. Mr. Russell unsuccessfully sought leave to appeal the decision of R. Smith J. to the Court of Appeal for Ontario.

19. A further hearing was conducted by me in April and June 2009. There were 4 days of evidentiary hearings, during the course of which I heard from Mr. Russell himself and 15 other witnesses, as well as a further day of submissions by counsel.

### ***Evidentiary Record***

20. At the 2005 hearing it was agreed that Adjudicator Dumoulin's findings of fact following the 2000 reinstatement application by Mr. Russell should be accepted as binding for the purposes of Mr. Russell's 2005 application.

21. At the outset of the reconsideration hearing, it was submitted to me by counsel for Mr. Russell that the findings of fact of Adjudicator Dumoulin should continue to be binding. I accept that submission, with this qualification: to the extent that evidence that was not before

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<sup>9</sup> <http://www.canlii.org/en/on/onsc/doc/2007/2007canlii20978/2007canlii20978.pdf>

Adjudicator Dumoulin colours, qualifies or contradicts the findings of fact which Adjudicator Dumoulin made, I reserve the right to make different findings or draw different conclusions.

22. The documentary record before me on the reconsideration application included the documents that were before Adjudicator Dumoulin as well as the documents that were marked as exhibits at the 2005 hearing. A list of exhibits, which incorporates bundles of documents from the previous reinstatement hearings is appended to this decision.

### *Approach*

23. Ultimately, I have to decide Mr. Russell's application for reinstatement based on the criteria set out in section 11.2.3 of the SOP. There are, however, a number of themes running through the evidence and submissions which I heard during the course of the reconsideration hearing. Accordingly, I will recite my findings and analysis in respect of those themes and then attempt to evaluate the effect of those findings having regard to the criteria.

24. As I perceive the evidence and submissions, the predominant themes are as follows:
- a. The doping-related infraction which Mr. Russell was found to have committed and the background facts relating thereto;
  - b. Mr. Russell's evidence at the 2005 reinstatement hearing and the explanation therefor;
  - c. Mr. Russell's other experiences involving the criminal law in Canada, Spain and the United States of America;
  - d. Mr. Russell's swimming related activities during his periods of ineligibility;
  - e. The attitude of members of the swimming community towards Mr. Russell's possible reinstatement; and
  - f. Mr. Russell's character generally.
25. I will take each one of these themes in turn.

***The Doping-Related Infraction and the Circumstances Leading Up To It***

26. Adjudicator Dumoulin summarised the applicable history starting at page 2 of his decision (and replicated at paragraph 17 of my 2005 decision).

27. By way of recap, Mr. Russell, who is now 56 years old, went on from being a competitive swimmer who had represented his country of origin (Northern Ireland) to become a successful swimming coach. He moved to Canada and was actively coaching from 1974 until 1985. In 1985 he started running a kitchen cabinet and furniture refinishing business in Ontario.

28. In 1994 Mr. Russell was charged with 2 counts of trafficking in a controlled drug. He had entered Canada from Spain with what he claims were some drugs that he had purchased in a pharmacy. He says he produced a receipt at customs. The substances involved were apparently not legal in Canada and, as a result, Mr. Russell was charged, plead guilty and was fined \$750 on each charge.

29. In 1993 Mr. Russell helped set up an illegal business importing anabolic steroids. Mr. Russell understood that the steroids he was importing were going to NFL and CFL football teams, to police, firemen and body builders. Although he knew that steroids were banned in amateur sports and that they were used to build muscle, he did not give any thought to the harm which his activities could pose for athletes.

30. As a result of these activities, Mr. Russell was charged with conspiracy to traffic. He was remanded in custody. He spent a total of 201 days in jail. He was eventually given bail on the condition that he pleaded guilty to a suspended sentence.

31. On 26 March 1996, Mr. Russell appeared in court in Whitby, Ontario, for arraignment. The Crown had drafted a two count indictment and asked that Mr. Russell be arraigned. The charge was that between 1 February 1993 and 6 September 1995 in various places in Ontario, the United States, Spain and Northern Ireland, Mr. Russell had conspired and agreed together with other co-conspirators to commit the indictable offence of trafficking in a controlled drug, namely, anabolic steroids, contrary to s. 39(1) of the Food and Drug Act. Mr. Russell pleaded



guilty to this charge. He received a suspended sentence and 3 years probation with the 201 days he had spent in pre-trial custody taken into account. The second charge was stayed.

32. It was these convictions that gave rise to Mr. Russell being banned for life for a doping-related infraction. In 1996 or early 1997, Mr. Russell had applied to join the Ontario Swimming Coaches Association. Soon afterwards, he applied to Judo Ontario for black belt membership in that association. These applications ultimately led to Swim Canada and Judo Canada reporting to the CCES that Mr. Russell had been convicted of a drug related offence and seeking the guidance of the CCES as to the effect of such conviction on Mr. Russell's eligibility for membership of the Ontario Swimming Coaches Association and Judo Ontario respectively. As already noted, this ultimately led to a hearing before a Doping Control Review Panel of the CCES which concluded that Mr. Russell had committed a "doping-related infraction" contrary to the 1993 Policy and imposed the then mandatory lifetime sanction, albeit with the prospect of being able to apply for reinstatement.

***Mr. Russell's Other Experiences Involving the Criminal Justice System***

33. The convictions which gave rise to Mr. Russell's initial suspension are not his only experiences with the criminal justice system.

34. In September 1997 Mr. Russell gave evidence at the trial of Leo Henry Pilotte, who was charged with first degree murder and committing an indignity to human remains. The victim of the alleged crimes was Gerald Leveille.

35. On 16 February 1996, as a result of information provided by Mr. Russell (who had supplied steroids to Mr. Pilotte), Mr. Leveille's burnt remains had been found in an abandoned silo adjacent to Mr. Russell's residential property in Oshawa.

36. Apparently as a result of an agreement made with the prosecution to secure Mr. Russell's co-operation, Mr. Russell did not face charges as a result of his involvement with the death and disposal of Mr. Leveille. He did, however, testify that he had assisted Mr. Pilotte with burning material and had provided him with a can for gasoline (used in the destruction of Mr. Leveille's

body) and that later he had provided Mr. Pilotte with a garbage bag in which Mr. Pilotte placed some bones and jewellery that he had removed from the ashes.

37. The trial judge, in his summing up to the jury, repeatedly referred to Mr. Russell as an “unsavoury witness” and gave a very strong warning in relation to Mr. Russell’s evidence with emphasis on his participation in the commission of a crime. According to the trial judge, Mr. Russell was an accomplice “at least” in respect to the count of offering an indignity to the remains of Mr. Leveille.

38. During the course of being cross-examined at trial by Mr. Pilotte’s lawyer, it came to light that Mr. Russell was also facing charges in Montreal of threatening death, assault and sexual assault. After assisting Mr. Pilotte to dispose of Mr. Leveille’s body, Mr. Russell and Mr. Pilotte proceeded to Montreal. When asked whether there was any particular reason for Mr. Pilotte to be with Mr. Russell on that particular trip Mr. Russell responded that he had asked Mr. Pilotte “to be a witness for me”. When asked whether he made any special request of Mr. Pilotte in his capacity as a witness, Mr. Russell responded “I asked him to lie. If he was called up, to say that he was with me in the bar that night”.

39. Ultimately, the Montreal charges against Mr. Russell did not proceed.

40. At the hearing before Adjudicator Dumoulin and, again, at the 2005 hearing before me, there was evidence that in or about May 1997 Mr. Russell went to Fort Lauderdale, Florida, where he started working as a coach of the Fort Lauderdale swim team. He was able to do so because his ban in Canada did not have any effect internationally.

41. In February 1999 Mr. Russell was deported from the United States because of his Canadian convictions. He told Adjudicator Dumoulin that since then he had been earning a living in Europe working for a vacation package company. He expanded on this evidence during the reconsideration hearing.

42. In 1999, Mr. Russell was able to secure employment at a swimming club in Malaga, Spain. He subsequently developed a vacation package business with a United States based

company. He quickly developed a business selling timeshare style vacation packages. Mr. Russell claims that through this business he was making almost \$1 million per year.

43. According to Mr. Russell, in February or March of 2000, he met a gentleman called David Pattalio. Mr. Pattalio, an American, had purchased a vacation package from one of Mr. Russell's salesmen. Mr. Pattalio requested a place in Marbella that could accommodate a nanny and also requested a guide to take him around. Specifically, Mr. Pattalio made a request for a guide to accompany him on a trip to Amsterdam for three days. Mr. Russell said that this was an unusual request. Nonetheless, Mr. Russell quoted a rate of US\$100 per hour, which was accepted. Accordingly, Mr. Russell accompanied Mr. Pattalio to Amsterdam where he spent 72 hours, and earned US\$7,200 for doing so. Mr. Russell claims that when he got to Amsterdam, he saw Mr. Pattalio to his hotel. He was not, however, required to actually guide Mr. Pattalio around Amsterdam. Mr. Russell stayed at a hotel outside of the city centre and did not see Mr. Pattalio again until he met him at the airport to return to Malaga. Mr. Russell claims that he then told Mr. Pattalio that he was going to search him before he accompanied him back to Spain. Mr. Pattalio was apparently upset at being checked. It took him 45 minutes to agree. He then let Mr. Russell search him. Despite this, Mr. Pattalio got pulled over for an inspection, even though there was no need to pass through customs going from one EU country to another. Mr. Russell claims that he then told Mr. Pattalio that he was in trouble and he wanted nothing more to do with him. Three days later, Mr. Russell says that Mr. Pattalio called. He said that he and his family had overslept. They were due to leave. Mr. Russell took them to the airport. At the airport, Mr. Pattalio handed Mr. Russell a parcel and asked him to mail it. Mr. Russell claims that he dumped the parcel in bin and then went to see a lawyer. The lawyer told him not to worry about what had happened. Four hours later Mr. Russell received a telephone call from Mr. Pattalio. He said that he had missed his flight. He was at another hotel. Mr. Russell said that he would get back to him. He did not. He claims that he had no further contact with Mr. Pattalio. However, as will be seen, Mr. Pattalio's name surfaces again in connection with a U.S. based ecstasy importing operation.

44. All of this happened within weeks if not days of Mr. Russell's appearance before Adjudicator Dumoulin.

45. In June 2000 Mr. Russell was arrested in Spain on charges of importation and possession of ecstasy. He claims that because he was a foreigner he was not released on bail. He was also made the subject of extradition proceedings to the United States on similar charges. Although, according to a letter from Mr. Russell's Spanish lawyer, dated 4 April 2009, the Spanish charges were dismissed by a Spanish court in June 2002, Mr. Russell was held in a Spanish prison until 1 October 2002. At that time he was extradited to the United States to face a number of drug charges there.

46. When he arrived in the United States he was imprisoned in Arizona and charged with conspiracy to possess with intent to distribute MDMA (ecstasy). He was also charged with 15 other counts of possession of MDMA with intent to distribute and importation of MDMA into the United States.

47. Mr. Russell was detained in custody in Arizona pending resolution of the charges against him. During his time in custody he alleges that he suffered a severe beating at the hands of other detainees, which resulted in several broken ribs, cuts and bruises.

48. Mr. Russell claims that he was not involved in the importation or distribution of MDMA into the United States or any other country. However, Mr. Russell acknowledged that while he was in Spain he had become aware of various shipments or packages that were being sent by other individuals associated with his vacation business into the United States. He claims that he did not know that the shipments were of drugs but that he suspected something illegal was occurring. In particular, he suspected one of his employees, a Spanish national, was dealing in drugs. Mr. Russell had told that individual to keep his private business out of Mr. Russell's business.

49. Mr. Russell testified that shortly before he was arrested in Spain he had arranged for the sale of the retail part of his business for £1 million. He was to have signed the sale agreement the morning after he was arrested. He was in the office over a weekend, cleaning up the company's paperwork as well as the premises, when he discovered various postal receipts indicating the names and addresses of consignees of a number of packages in the desk of the

employee who he suspected to be involved in drug dealing. Mr. Russell says that he made and retained copies of those receipts and lodged them for safekeeping with a Spanish lawyer.

50. In the United States, Mr. Russell claims that he was able to convince the United States Attorney that he was not involved with the importation or distribution of MDMA. However, because he had information that indicated the consignees of various packages, the United States Attorney took the position that Mr. Russell had withheld information that he ought to have volunteered and that he was, therefore, involved in a conspiracy to possess with intent to distribute MDMA.

51. Mr. Russell advises that, during the 18 months that he spent in custody in the United States, he appeared in court 48 times. Negotiations were undertaken between Mr. Russell's lawyer and the United States Attorney, during the course of which an order was made sealing various aspects of Mr. Russell's file. Mr. Russell claims that the reason for this order was that he was prepared to provide the postal receipts and information he had obtained in Spain to the American authorities. The receipts identified a number of individuals that the United States Attorney believed to be involved in organised crime in the United States and, according to Mr. Russell, there was a fear that individuals might attempt to retaliate against his family.

52. Negotiations between the United States Attorney and Mr. Russell's lawyer culminated with an agreement that Mr. Russell would plead guilty to one count of conspiracy to possess with intent to distribute, with an agreed sentence that would be satisfied by the time he had already spent in custody in the United States and Spain. Mr. Russell says that he was told by his lawyer that if, rather than pleading guilty, he wished to continue on to trial on the charges against him, he could expect a delay of a further 18 months (during which time he would remain in custody) and that the cost of continuing to trial would be a further U.S. \$30,000 – U.S. \$40,000.

53. Mr. Russell claims that faced with the option of almost immediate release or a further 18 months in custody awaiting trial, together with the cost of proceeding to trial (especially since he had no source of income and it would have been necessary for his wife to try and raise the funds for his lawyer while also supporting their four children), he chose to enter a plea of guilty to the single charge of conspiracy.

54. Mr. Russell was sentenced on 10 March 2004. A delay of almost three months followed while the court determined the exact credit that he was to receive against the sentence as a result of the pre-plea custody in Spain and the United States.

55. On 4 June 2004 Mr. Russell was flown back to Toronto, escorted by two United States Marshals. He was presented to Canadian immigration where he was released and entered Canada.

56. Although the order releasing Mr. Russell (which was eventually unsealed) provides for “supervised release” for a term of 3 years, Mr. Russell has never seen a probation officer or been subject to any other condition of release.

57. There was apparently a formal plea bargain agreement drawn up. Mr. Russell claims that he did not read it. He has not produced a copy of it in this proceeding.

58. Evidence was tendered by SNC to suggest that Mr. Russell was associated with a number of individuals who were charged in the Chicago area with offences relating to the importation of MDMA. One of those individuals was David Pattalio. Although Mr. Russell denies that he was involved with the various individuals charged in Chicago, there are sufficient common denominators and coincidences to render it likely, in my view, that Mr. Russell was involved with these individuals and/or their activities in some way. In particular, there is a remarkable consistency between certain references to Mr. Russell in three separate plea deals<sup>10</sup> that were entered into by the Chicago accuseds (although only Mr. Patallio had apparently met Mr. Russell). The *modus operandus* of the Illinois scheme was very similar to the scheme Mr. Russell was convicted of participating in in the 1990s. Furthermore, in all of the circumstances, I did not find Mr. Russell's evidence that he did not know the people who were involved in the Illinois scheme to be credible.

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<sup>10</sup> Plea agreement between United States of America and Douglas Parker dated 7 January 2005 (Exhibit 12); Plea agreement between United States of America and Brian Ballard dated 20 January 2005 (Exhibit 13); Plea agreement between United States of America and Donald French dated 24 January 2005 (Exhibit 14)

59. On 18 December 2006 Mr. Russell signed an application for a pardon under the *Criminal Records Act*. A copy of his Canadian criminal record was attached to the application. In response to a question on the application form “Do You Have Any Other Convictions That Do Not Appear On Your Criminal Record?” Mr. Russell responded “no”.

60. In addition to the criminal record, which was appended to the pardon application, there was an occurrence summary from the Barrie Police relating to a complaint of harassment which was made against Mr. Russell by a female swimmer. This incident did not lead to any charges being laid.

***Mr. Russell’s Evidence at the 2005 Reinstatement Hearing***

61. In an affidavit sworn in connection with the application before the Superior Court, Mr. Russell claims that in the course of the plea bargain discussions that took place in the United States, and which led to his court file being sealed, he was told not to discuss the facts of his plea arrangement or any details with respect to the charge or its disposition, with anyone, and that to do so would put him in contempt of court and could lead to him being re-arrested and returned to prison. The plea agreement which he was required to sign (which, as already noted, he claims not to have read and which he has not produced) is said to have specifically prohibited Mr. Russell from disclosing his co-operation with the United States Attorney’s office or any information involved unless he had the written consent of the United States Attorney’s office.<sup>11</sup>

62. It is Mr. Russell’s evidence, which I accept, that he did not even tell his own lawyer, Mr. Boyd, about the criminal conviction in the United States prior to, at, or immediately subsequent to the September 2005 reinstatement hearing. However, although Mr. Russell steadfastly maintained that he felt he was not at liberty to disclose anything about the agreement or the plea bargain he had entered into to anyone, he also acknowledged that he took no steps to inquire whether the court file could be unsealed, at least for the limited purposes of being able to disclose information to his Canadian lawyer.

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<sup>11</sup> Affidavit of Cecil Russell sworn on 30 March 2007, paragraph 21

63. It was not until after he had been reinstated that a journalist discovered information concerning Mr. Russell's American conviction, and the evidence of that conviction came out.

64. Mr. Russell's explanation is simply that he had to lie about the conviction in the United States. As part of the deception that led to this matter being remitted to me by the court, at the September 2005 hearing, Mr. Russell placed in evidence a letter, addressed "to whom it may concern", dated 23 November 2004, purported to be from Nathaniel J. Carr III, a lawyer who had represented Mr. Russell in the United States. The letter stated:

"This letter is to inform you that the importation and possession charges on Cecil Russell, due to his extradition from Spain to the United States of America, were dismissed by the Crown Attorney's Office in March 2004. My law firm was representing Mr. Russell during this time."

With the benefit of hindsight, it seems strange that an American lawyer would be referring to charges being "dismissed by the Crown Attorney's Office" (emphasis mine). Mr. Carr was not called as a witness at either the original reinstatement hearing or at the reconsideration hearing. What the letter does not disclose is that Mr. Russell was convicted of conspiracy to possess with intent to distribute.

65. In his 30 March 2007 affidavit Mr. Russell states:

"Had I felt able to do so, I would have revealed the plea bargain and conviction on the conspiracy charge to Mr. Boyd and would have been guided by him as to how that evidence could be disclosed. In fact, the evidence with respect to the charges which were dismissed in Arizona was first brought forward by Mr. Boyd on my behalf in an attempt to be open and transparent in my application."



66. By giving evidence at the previous hearing, both in his own words, and by reference to the letter purporting to be from Mr. Carr, that the importation and possession charges had been dismissed, he wilfully, knowingly and deliberately misled the tribunal. He knew that particulars of the charges were not then publicly available and that the only source that the tribunal had to rely upon as to what had transpired in the United States was Mr. Russell and, perhaps, his criminal lawyer in the United States. As Mr. Justice Smith succinctly put it:

“A reasonably informed person would conclude that Russell’s actions in not disclosing his conviction in the circumstances were calculated to deceive”.<sup>12</sup>

67. Mr. Justice Smith goes on to say:

“...Russell’s failure to disclose his conviction in Arizona, which occurred approximately one year before the reinstatement hearing, was both deliberate and improper. I also find that the evidence of his conviction for a drug related infraction was a very material fact going to the issue in dispute. The drug-related conviction was directly related to several of the ten factors to be considered by the arbitrator, including the applicant’s remorse, prospect for rehabilitation and post-infraction conduct”.<sup>13</sup>

68. Mr. Justice Smith found Mr. Russell’s explanation for not even telling his own lawyer about the Arizona conviction to be unconvincing:

“Russell did not...ask Mr. Boyd whether he was prevented from disclosing his conviction in Arizona as a result of the criminal file being sealed. There was no restriction preventing Russell from revealing the fact that he had been convicted in Arizona, which could have been done without revealing details of his co-operation

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<sup>12</sup> *CCES v. Russell*, 7 June 2007, R. Smith J at 34

<sup>13</sup> *Ibid* at paragraph 39

with the State Attornies. I therefore find that Russell's alleged reason for failing to disclose his criminal conviction in Arizona to the arbitrator at the hearing is not believable nor does it provide him with a reasonable excuse for failing to disclose his criminal conviction in the circumstances of the this case."

69. I note that, in response to an argument by Mr. Russell that CCES should have conducted its own inquiry about Mr. Russell's record in Arizona, Mr. Justice Smith went on to find that it was not unreasonable for the CCES to rely on statements made by counsel for Mr. Russell in his letter applying for reinstatement stating that all charges had been dismissed, together with the letter provided from Mr. Russell's Arizona attorney stating that the possession and trafficking charges against Mr. Russell in Arizona had been dismissed.

70. One would have thought that, given the obvious concerns which would arise from the revelation that Mr. Russell had provided misleading evidence in the reinstatement hearing before me, he would have made efforts to make the plea bargain agreement which he entered into available to this hearing and to obtain evidence from Mr. Carr explaining the 23 November 2004 letter and/or why the fact of the conspiracy charge was not disclosed. He has done neither. I do note, however, that I was informed that Mr. Russell's Canadian lawyer had reviewed the plea agreement and had concluded that it could not be produced without violating its terms. It was also, conceded, however, that no permission had been sought from an appropriate judicial or prosecutorial authority to disclose the plea agreement even for the limited purpose of assisting this proceeding.

***Mr. Russell's Swimming Related Activities During His Periods of Ineligibility***

71. With the exception of the period from 29 October 2005 (when he was reinstated) to 7 June 2007 (when the decision reinstating Mr. Russell was set aside) Mr. Russell has been ineligible to coach, compete or otherwise participate in organised sport in Canada. In reality, this ban has done little to preclude Mr. Russell's activities in the sport of swimming.

72. At the previous reinstatement hearing, there was evidence that Mr. Russell had coached in the United States and Spain. These jurisdictions are beyond the reach of his Canadian ban.

73. Since returning to Ontario from Arizona in 2004 Mr. Russell has been actively involved in a number of swim clubs, most notably the Barrie Dolphins and the Oakville Dolphins.

74. After the reinstatement decision was set aside, Mr. Russell was warned by SNC that pending any further decision from me, SNC would uphold and enforce the decision of the court regarding Mr. Russell's lifetime suspension from participating in organised sport in any capacity. In a letter sent under cover of an e-mail dated 21 June 2007, Pierre Lafontaine, the CEO of SNC wrote:

“By reason of the foregoing, you are now, at a minimum, ineligible to participate in any role in any competition or activity that is organised, convened, held or sanctioned by Swimming Canada or by a member organization of Swimming Canada or by any affiliated club, league or association.”

75. On 20 June 2007 Mr. Russell's lawyer had written, in a letter to Swim Ontario:

“Mr. Russell is free to contract his services as a personal trainer to any person, provided that the training is not part of any “activity organized, convened, held or sanctioned” by Swim Ontario or any of its affiliates. This was the situation prior to Mr. Russell's reinstatement...and it remains the situation now that Justice Smith has set aside the reinstatement and referred the matter back to Mr. Mew for further evidence and a new determination of the reinstatement application.”

76. Mr. Lafontaine responded to this letter on behalf of SNC on 21 June 2007 saying:

“We agree with your comments regarding Mr. Russell engaging clients as a private trainer – so long as such training is not conducted as part of the activities of a member club or affiliate of Swim Ontario or Swimming Canada.”

77. There was placed into evidence before me a series of personal training contracts between Mr. Russell and various swimmers all of whom, coincidentally, are or were at the material time members of the Oakville Dolphins Swim Club. The contracts make express reference to Mr. Russell’s prohibition under the 1993 Policy and acknowledge that Mr. Russell will not be coach of record for the swimmer nor participate with the swimmer in any activity that would be in breach of the prohibition imposed by Mr. Russell’s suspension. Each contract is for a one year term and provides for a fee of \$1 per month based on 20 hours per week of personal instruction.

78. While there is at best equivocal evidence that, while banned, Mr. Russell has been on a pool deck in Canada during competition or during the scheduled activities of a swim club or an affiliate of Swim Ontario or Swimming Canada, there is ample evidence that he continues to actively coach. That evidence includes video footage showing Mr. Russell at the Age Group National Championships in Calgary in July 2008, sitting in the spectators’ gallery, being visited by a steady stream of swimmers who had just competed or were about to compete; it includes workout routines referring to “Coach Cecil”. While he denies it, it is clear to any reasonably informed person that Mr. Russell’s personal training services are inextricably connected with the activities, and the success, of the Oakville Dolphins Swim Club. In that regard, it is notable that Mr. Russell’s wife, Erin Russell, is Head Coach of the Oakville Dolphins (a position which she took over after Mr. Russell’s reinstatement was set aside).

79. I understand that there is disciplinary proceeding pending against Oakville Dolphins under the auspices of Swim Ontario in which Mr. Russell’s activities will be considered. I do not purport to determine any issue that may more properly be dealt with in that forum. I am, nevertheless, required to consider Mr. Russell’s post-infraction conduct and whether his “coaching” activities form part of that conduct.

80. Mr. Russell claims that he has not breached even the spirit, let alone the letter, of his ban. During the course of argument, however, it was conceded on Mr. Russell's behalf that he has "skirted around the edges of his ban". I would go further. In my view, his conduct clearly demonstrates that Mr. Russell has taken the words of Mr. Lafontaine's letter and attempted to disguise, through the medium of the personal training contracts which he has entered into, his activities as the *de facto* coach of the athletes he has trained. The result is that Mr. Russell's ban has operated as little more than an inconvenience for him. He has remained front and centre in the training and development of young swimmers, as evidenced by the large number of parents who have sent letters of support for Mr. Russell, some of whom also attended the hearing to testify in person.

***The Attitude of Members of the Swimming Community Towards Mr. Russell***

81. Mr. Russell engenders strong opinions both for and against his application for reinstatement.

82. Mr. Russell is clearly a very effective coach. His son Colin competed in 4 events at the 2008 Olympic Games and his daughter Sinead is on the junior national team and holds numerous national age group records. Both are "training clients" of Mr. Russell.

83. Witnesses who gave evidence in support of Mr. Russell's reinstatement included, amongst others, a corporal in the Royal Canadian Mounted Police (whose daughters have been trained by Mr. Russell), a Lieutenant Colonel in the Canadian Forces (whose sons are or were trained by Mr. Russell), the head coach of the University of Toronto swim team (Byron McDonald), a Toronto police officer (whose daughter is trained by Mr. Russell) and a professional engineer whose two children are competitive swimmers with personal training contracts with Mr. Russell. A common theme running through the evidence of these witnesses is that they believe that Mr. Russell has served his time for his past indiscretions and that reinstating him would benefit swimmers.

84. While these witnesses had varying levels of information about the nature of Mr. Russell's dealings with the criminal law and his involvement with prohibited drugs, none of them appeared

to comprehend the full extent of Mr. Russell's history. However, even when it was put to these individuals in cross-examination that, for example, Mr. Russell had asked Mr. Pilotte to lie on his behalf in connection with the charges that he was facing in Montreal, none of them were prepared to revise their opinions of Mr. Russell or reconsider their support for his application for reinstatement.

85. None of the individuals who gave evidence in support of Mr. Russell's application expressed concerns that Mr. Russell might be tempted again in the future to involve himself in illegal activities, even when informed through cross-examination of some of Mr. Russell's activities that they had hitherto been unaware of.

86. In addition to the oral testimony given in support of Mr. Russell's application, no less than 50 letters of support were filed in evidence. A letter from the parents of three children who train with the Dolphins is representative of the sentiments expressed by many of the individuals who support Mr. Russell:

"I can say with confidence that we have no qualms whatsoever in entrusting our children to Cecil's charge. What has become evident, and in fact the outstanding feature of Cecil's philosophy in training these kids, is the emphasis on earning one's rewards solely through sincere dedication, a lot of hard work and unwavering perseverance. In short, there are no short-cuts to success. It is obvious to us, that in serving his punishment for past mistakes, Cecil has not only ascertained that lesson, but has become extremely adept at passing it on to the kids he comes in contact with. It would seem to us that the disciplinary action meted out up to this point has successfully achieved the outcome for which it was instated and to prolong such punishment would serve no further purpose other than to deprive so many young children of the opportunity to learn from his mistakes.

Cecil Russell is one of those rare individuals who possess the ability and character to not only encourage and inspire the kids, but at the same time, demand and receive only positive behaviour while training with and representing the team. His own deep-rooted values of respect, sportsmanship and a disciplined hard work ethic are certainly obvious and extremely contagious and we welcome his value-reinforcing influence on children and parents alike. These values are expressed not only in himself but in his family as well. Cecil's children are remarkably polite, level-headed and mature. It is obvious that Cecil is as devoted in the care and rearing of his own children, as he is in his passion to help community kids succeed not only in sport, but in life as well."

87. Set against the views of his supporters, a number of witnesses were called who oppose Mr. Russell's reinstatement. Major Keith Reichert, a military lawyer who has served on the board of his local swim club and has been involved in a number of activities running a number of swim meets observed Mr. Russell in a number of different settings and felt, based on his observations, that he should report to SNC that Mr. Russell had violated his ban. Major Reichert also felt that Mr. Russell had continued to coach and had attempted to cloak himself with personal service contracts to avoid an overt breach of the ban. He expressed the view that Mr. Russell's conduct was preventing swimming organisations from properly enforcing the ban that had been imposed (I regard Major Reichert's views as indicative of an attitude that exists in sections of the swimming community, but I am not prepared to accept his testimony as admissible opinion evidence on whether or not Mr. Russell has violated his ban).

88. Eric Martin, the head coach of the Lakeshore Swim Club claims to have seen Mr. Russell coaching on deck at the Etobicoke Olympium pool. On 7 October 2007 Mr. Martin saw Mr. Russell and another coach, Peter Griffin, stop watches in hand, doing starts, walking up and down and entering data into a laptop. The swimmers were wearing Oakville Dolphins caps. Peter Griffin came over and introduced himself to Mr. Martin. There were blocks numbered 1 to 8 across the shallow end. Mr. Martin picked up a workout sheet and kept a copy. It referred to "Coach Cecil". Mr. Martin believed that the pool was rented out to Oakville Dolphins.

However, on cross-examination, he was not able to refute the suggestion put to him that the pool had been rented privately through a numbered company controlled by Mr. Russell, rather than by the Oakville Dolphins.

89. John Vadeika, the executive director of Swim Ontario gave evidence that he had observed Mr. Russell engaging in what he considered to be coaching activities including pre race briefings, timing of athletes (taking splits), posting race briefings and providing technical interventions (including physical demonstrations). Mr. Vadeika was not, however, aware that Mr. Russell had private training contracts with many athletes or that he purchased pool time at the Etobicoke Olympium through a company controlled by him.

90. David Johnson, the former national swim team coach, currently a coach at the Cascade Swim Club in Calgary, gave evidence of observing Mr. Russell at a training session at the Talisman Sports Centre in Calgary the day before the National Age Group Championships. Mr. Johnson testified that he believes strongly in a value system and integrity and that Mr. Russell's activities, which from Mr. Johnson's perspective seemed to be identical to what a coach would do, were in conflict with anti-doping policies.

### *Character Issues Generally*

91. Among the documents contained in Mr. Russell's application for a pardon was a statement dated 8 May 2008 from Sergeant June Anderson of the RCMP Toronto Integrated Proceeds of Crime Unit. In the unredacted sections of her statement, Sergeant Anderson wrote:

"I have spoken with Cecil RUSSELL on occasions during my involvement with the 2 separate investigations in 1993 and 1995. At no time would Cecil RUSSELL take responsibility for his involvement in these matters, but instead would deflect blame...

Cecil RUSSELL is an opportunist who will seek the best deal for his benefit. It is noteworthy that Cecil RUSSELL involvement in the homicide investigation came about only after his last chance at



being released from custody on his trafficking charges (1995) were exhausted and he sought an opportunity to facilitate his release and reduction in his charges. Cecil RUSSELL did not step forward to articulate his knowledge and involvement in the homicide until it was to his advantage to do so.

Cecil RUSSELL, despite his many brushes with the criminal justice system, continued to repeat his past behaviour.

Notwithstanding the views expressed by Sergeant Anderson, Mr. Russell did receive a pardon. As noted above, however, Mr. Russell did not, in applying for a pardon, disclose his conviction in the United States. Whether or not he should have is not for me to decide. However, it does seem that his propensity for selective disclosure has not diminished since the 2005 reinstatement hearing.

92. It follows that having now heard a great deal more evidence about Mr. Russell's activities than was before me in September 2005, I have formed a different view of Mr. Russell's character. While I am not unmindful of what has been said by many of his supporters about Mr. Russell's values, and his ability to instil what many perceive as a good value system in his students, the character that Mr. Russell displays to the wider world is far less savoury.

#### ***Application of the Criteria Under Section 11.2.3 of the SOP***

93. Before considering the enumerated criteria I turn first to section 11.2.3(iii) of the SOP which requires me to be satisfied that the penalty of lifetime ineligibility under the 1993 Policy is excessive in the circumstances. I have little hesitation in concluding that it is. However, I make that observation having regard to the two convictions that formed the basis of the original penalty. Under the 2009 version of the *Canadian Anti-Doping Program*, Trafficking or Attempted Trafficking in any Prohibited Substance is an anti-doping rule violation (section 7.36). Under section 7.40, the penalty for a violation of section 7.36 (Trafficking or Attempted Trafficking) is a minimum of four years ineligibility up to lifetime ineligibility unless there are "Exceptional Circumstances". In other words, the contemporary view in the sport community, as

expressed in the 2009 *Canadian Anti-Doping Program*, is that the appropriate period of suspension for trafficking or attempted trafficking (there is no reference to conspiracy to traffic) would be four years to lifetime ineligibility.

93. Assuming that if his case was being considered under the current CADP, there would be jurisdiction over Mr. Russell and assuming that conspiracy to traffic is treated in a similar manner to trafficking or attempted trafficking, Mr. Russell would not necessarily have received a lifetime ban. It should also be observed that there is now no equivalent to the reinstatement process that existed under the 1993 Policy. Accordingly, Mr. Russell would not be able to have whatever penalty was meted out to him subsequently reviewed and/or truncated.

94. A lifetime ban, imposed as it was when Mr. Russell was 44 years old would, in my view, now be regarded as excessive in all of the circumstances. Those circumstances include the fact that there was no evidence that the end-users of the drugs that Mr. Russell helped to provide were athletes involved in organised sport.

95. I turn then to the enumerated criteria under section 11.2.3(ii).

**A. Age**

96. Mr. Russell is presently 56 years of age.

97. As I indicated in my 2005 reinstatement decision, I am of the view that both Mr. Russell's age at the time that he started to import steroids (40) and his present age are relevant factors. I expressed the view, in 2005, that his age and his life experience, particularly in recent years, have likely given him an opportunity for mature reflection on his past mistakes. It is, in addition, submitted on behalf of Mr. Russell that the events surrounding the setting aside of the reinstatement have made it crystal clear to him that he cannot be involved in any criminal activity of any sort.

98. I am not sure now that Mr. Russell has, in fact, engaged in the mature reflection that I had assumed he would have when I wrote my 2005 decision. The COC submits that because Mr.

Russell has clearly not learned from his past mistakes, and, in fact, seems to continue to repeat them, that age cannot be seen as anything other than a negative factor. SNC points to a pattern of conduct that it describes as opportunistic.

In my view, Mr. Russell's behaviour has not improved with age. Taking in to account all of the circumstances, in my view, age is a neutral factor.

**B. Remorse**

99. Mr. Russell has now apparently expressed concerns that some of the steroids that he trafficked in may have caused harm to the athletes who took them. However, there has been no real palpable demonstration of remorse on Mr. Russell's behalf and his involvement with other drug related activities, including his conviction in Arizona, underscore the apparent lack of remorse. I therefore consider his lack of remorse to be a negative factor.

**C. Circumstances Surrounding the Infraction**

100. I considered the circumstances surrounding the infraction to be a negative factor in 2005 and I continue to do so now. Furthermore, it now emerges that his guilty plea appears to have been motivated, at least in part, by his continued incarceration and the opportunity to make a deal with the prosecution in return for his co-operation in relation to the Pilote trial.

**D. Experience in Sport**

101. In my 2005 reinstatement decision I concluded that Mr. Russell's experience in sport was a neutral factor. On the one hand he has achieved great success. On the other hand, given his experience, he should have known better than to engage in a steroids importing scheme.

102. In my view, Mr. Russell's experience in sport continues to be a neutral factor.

### **E. Favourable Prospects for Rehabilitation**

104. In 2005 I concluded that Mr. Russell's prospects for rehabilitation were extremely good and that it was a factor which should weigh heavily in his favour. I considered that Mr. Russell had had "more character forming experiences" since the hearing before Adjudicator Dumoulin, despite which he was no less committed to sport.

105. The revelations about Mr. Russell's involvement in the Pilotte case, the activities which led to his 2004 criminal conviction in Arizona, his willingness to commit perjury when faced with charges in Montreal and his demeanour generally, make me far less certain that Mr. Russell's prospects for rehabilitation are good.

106. More importantly, within weeks, if not days, of receiving Adjudicator Dumoulin's decision, Mr. Russell was engaging in highly questionable activities with Mr. Pattalio and people he was working with who he suspected were dealing in drugs.

107. Giving him the benefit of some doubt, it would seem that Mr. Russell's judgment continued to be poor, notwithstanding his previous convictions and his lifetime ban. I conclude at this time that Mr. Russell's favourable prospects for rehabilitation should be regarded as a neutral factor at best.

### **F. Prior and Post Infraction Conduct**

108. Evidence that has now been brought out, which was not previously before me, indicates that Mr. Russell has counselled perjury, helped with the disposal of a body and received a further criminal conviction, this time for conspiring to traffic in ecstasy.

109. In 2005 I noted that Mr. Russell had skirted around the edges of his ban and it seems that he has continued to do so, becoming ever more ingenious along the way.

110. Whereas in 2005 I regarded Mr. Russell's prior and post-infraction conduct as a neutral factor, I feel I must now regard it as a negative factor.

110. I also note that awards of costs which were made against Mr. Russell as a result of the application before Mr. Justice Smith and his unsuccessful application for leave to appeal to the Court of Appeal remain unpaid. He thereby continues to show a lack of respect for the judicial process.

### **G. Contribution to the Sport**

111. This is the criterion which weighs most heavily in Mr. Russell's favour at this time. The athletes who he trains (coaches) as well as a number of his fellow coaches regard him as one of the best in the business. He seems to have a knack of motivating and teaching young athletes. The success of his son Colin and his daughter Sinead are a testament to Cecil and Erin Russell's abilities as coaches as well, no doubt, as parents.

112. Before Adjudicator Dumoulin, at the 2005 reinstatement hearing and at the reconsideration hearing, there were compelling letters and testimony supporting Mr. Russell's reinstatement.

113. The swimming establishment, on the other hand, appears more divided over Mr. Russell's contribution to the sport. Some regard his association with drugs, his criminal convictions and his apparent flouting of the terms of his ban as inconsistent with his reinstatement as a coach.

114. Taking into account all of the evidence, in my view Mr. Russell's contribution to the sport favours his application for reinstatement.

### **H. The Length of Suspension Served by Mr. Russell at the Time of the Hearing**

115. With the exception of a period of approximately 19 months when Mr. Russell was reinstated, he has been banned from swimming since October 1997 – 11 years and 8 months ago. However, the effect of the ban has, to adopt a submission made by SNC, been a sham.

116. Within months of his initial ban, Mr. Russell was coaching in Florida. From there he went to coach in Spain. Even while he was in jail in Spain, he was writing workout and training routines for one of his swimmers.

117. Jeffrey Dixon, who is married to the president of the Oakville Dolphins Swim Club, testified that of the approximately 40 plus registered swimmers with the Dolphins club, 28 of them have personal training contracts with Cecil Russell. While he may not have stepped on to a pool deck during the organised activities of a swim club or during a swim meet, Mr. Russell's activities have, in virtually every other respect, been consistent with those of a coach.

118. Whereas in 2005 I felt that the passage of a further 5 ½ years since the hearing before Adjudicator Dumoulin was clearly relevant, it is clear to me now that Mr. Russell has effectively avoided most of the restrictions which the ban was intended to impose on him. I would not go as far as to say that the length of time that he has been suspended is a neutral factor, but it is no longer one that weighs as heavily with me as it did previously.

### **I. Additional Factors**

119. As he did in 2005, counsel for Mr. Russell says that I should take into account the fact that at the time of the infraction Mr. Russell was not a member of any sport body and was not active as a coach or participant in any sport. It was my view then, and it remains my view now, that issues relating to the jurisdiction of the CCES over Mr. Russell at the time of his offence should not be taken into account at this time.

120. I did, however, agree with Mr. Russell that the 2004 *Canadian Anti-Doping Program* and now the 2009 *Canadian Anti-Doping Program* should be considered. Anti-doping policies have changed over the years and reflect individual, cultural and societal factors. Rehabilitation and reintegration are now recognised objectives of anti-doping programmes. However, this factor does not really work in Mr. Russell's favour either. I have already indicated that I am no longer optimistic about his prospects for rehabilitation.

*Decision*

121. When all of the criteria are considered and the evidence is weighed, I have come to a different conclusion than I did in 2005. In addition to the evidence that was already before me about the convictions that led to the imposition of Mr. Russell's lifetime ban and his subsequent brushes with the law, there is now evidence that Mr. Russell has been criminally convicted in the United States for conspiracy to possess with intent to distribute ecstasy; there is evidence that he was involved in a murder and helped to dispose of a body; there is evidence that he asked someone to commit perjury to help him escape conviction; and there is a finding by a judge of the Superior Court that his failure to disclose the Arizona conviction at the 2005 hearing was calculated to deceive.

122. In the circumstances, I am not now prepared to reinstate Mr. Russell.

123. As a practical matter, I suspect that Mr. Russell will have difficulty persuading any adjudicator that he should be reinstated so long as he continues to skirt around the edges of his ban in the manner described in this decision. Even if he cannot be prevented from continuing with the pattern of coaching-like activities in which he has engaged to date (in respect of which I make no finding) he would be well advised to refrain from such activities because, in my view, they have had, and will continue to have, a significant impact on the overall presentation of his circumstances in a way which has a very negative impact on his objective of being reinstated.

124. This is not a decision about whether or not Mr. Russell is a good coach. Rather, I have to decide whether there are "exceptional circumstances" which warrant his reinstatement. In my opinion, the sands having shifted since more evidence has emerged, Mr. Russell has failed, on a balance of probabilities, to discharge his onus of establishing that the conditions for reinstatement are met at this time.

125. While I realise that there will be many parents and athletes who are disappointed with this decision, they will hopefully appreciate that anti-doping rules exist to protect athletes and maintain integrity and fairness in sport. Until Mr. Russell can bring himself more squarely

within the criteria which would support his claim for reinstatement, he must continue to be ineligible.

*Costs*

126. Section 11.2.4 (iv) of the SOP expressly provides that an adjudicator on a Category II reinstatement application does not have the authority to determine or make recommendations for the payment in part or all of the applicant's legal and other costs incurred for a review. If any party is of the view that I have authority to award costs to a party other than the applicant, and the amount of such costs, to whom and/or by whom they should be paid cannot be agreed, I will entertain written submissions on (a) the basis for asserting that I have such authority; (b) the scale and amount of costs claimed; and (c) by whom they should be paid. Any party seeking costs should deliver submissions by 5:00 p.m. EDT on 17 August 2009. Any party against whom costs are sought will until 5:00 p.m. EDT on 24 August 2009 to deliver responding submissions.

A handwritten signature in black ink, appearing to read "Graeme Mew". The signature is stylized with a large, looped initial "G" and a horizontal line under the name.

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Graeme Mew, Adjudicator  
10 August 2009



List of Exhibits

Exhibit No. 1	Application for Reinstatement Documents
Exhibit No. 2	Bundle of Documents forming the evidentiary record before Arbitrator Dumoulin
Exhibit No. 3	Transcript of arraignment proceedings before the Honourable Mr. Justice Lane on Tuesday 26 March 1996
Exhibit No. 4	Decision of Arbitrator Dumoulin dated 14 March 2000
Exhibit No. 5	Transcript of proceedings at trial in the matter of Her Majesty the Queen against Leo Henry Pilotte before the Honourable Mr. Justice I. M. Gordon and jury on 25 and 26 September 1997
Exhibit No. 6	Affidavit of Anne Brown sworn on 22 November 2006
Exhibit No. 7	Application for pardon together with information developed by the National Parole Board pertaining to Cecil Russell (170 pages under cover of a letter dated 3 March 2009 from the National Parole Board to Mr. Russell's counsel)
Exhibit No. 8	Judgment in a criminal case, United States of America v. Cecil Thomas Russell, 4 March 2004
Exhibit No. 9	Book of documents filed by Mr. Russell
Exhibit No. 10	Affidavit of Cecil Russell sworn on 30 March 2007
Exhibit No. 11	Affidavit of Joseph De Poncier sworn on 12 November 2008
Exhibit No. 12	Plea agreement between United States of America and Douglas Parker dated 7 January 2005
Exhibit No. 13	Plea agreement between United States of America and Brian Ballard dated 20 January 2005
Exhibit No. 14	Plea agreement between United States of America and Donald French dated 24 January 2005
Exhibit No. 15	Pardon application guide

Exhibit No. 16	Affidavit of Paul Charlton in support of extradition dated 15 November 2000 (sworn in United States of America v. Cecil Thomas Russell)
Exhibit No. 17	United States District Court criminal complaint in the matter of United States of America v. David Pattalio sworn 17 September 2004
Exhibit No. 18	Corporation profile report (Ontario Ministry of Government Services) for 830496 Ontario Inc.
Exhibit No. 19	Curriculum vitae of David M. Johnson
Exhibit No. 20	E-mail from David M. Johnson to Steven Sugar dated 21 July 2008
Exhibit No. 21	DVD of video footage taken at the Age Group National Championships in Calgary, July 2008
Exhibit No. 22	Documents produced by John Martin: <ul style="list-style-type: none"><li>a. "Workout C Sunday ETOB" (undated, one page)</li><li>b. E-mail from Eric Martin (Lakeshore Swim Club) to John Vadieka (Swim Ontario) dated 7 October 2007;</li><li>c. E-mail from Eric Martin (Lakeshore Swim Club) to John Vadieka (Swim Ontario) dated 2 November 2008</li></ul>
Exhibit No. 23	Curriculum vitae of John Vadieka
Exhibit No. 24	E-mail from Robin Mitchell (Chief Operating Officer, Talisman Centre, Calgary) to David deVlieger dated 15 April 2009
Exhibit No. 25	Letter from Fernando Carpena (The Royal Spanish Swimming Federation) to Pierre Lafontaine (Chief Executive Officer, Swimming Canada) dated 25 May 2009
Exhibit No. 26	E-mail from Fraser Tingle (Communications Specialist, Talisman Centre) to Cecil Russell dated 27 April 2009
Exhibit No. 27	Letter from Francisco Nunez (Valencia Swim Club, Spain) dated 11 May 2009