

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

**N^o : SDRCC DT 07-0058
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN
SPORT (CCES)**

TRIATHLON CANADA

GOVERNMENT OF CANADA

-AND-

**SHARI BOYLE
ATHLETE**

-AND-

**WORLD ANTI-DOPING AGENCY
(WADA)
OBSERVERS**

Before:

Graeme Mew (Arbitrator)

Appearances and Attendances:

For the Athlete:

Gary Boyd (Counsel)
Shari Boyle

For the Canadian Centre for Ethics in Sport:

David Lech (Counsel)
Anne Brown
Kevin Bean
Mary-Jane Richards

For Triathlon Canada:

Alan Trivett

Hearing Date and Place:

14 May 2007, Toronto

REASONS FOR DECISION

1. On 17 May 2007 I released my decision in this matter with reasons to follow. These are my reasons.

Overview

2. For the second time in less than a year, Shari Boyle (the “Athlete”) stands charged with an anti-doping rule violation. In May 2006, she tested positive for the presence of Ephedrine at a concentration of 30 ug/mL. The presence of Ephedrine at a concentration of greater than 10 ug/mL constitutes an anti-doping rule violation. As a result, she was held to have committed an anti-doping rule violation. A sanction of Ineligibility for a period of one year commencing 3 September 2006 was imposed on her.
3. As an athlete currently serving a suspension for a previous anti-doping rule violation, the Athlete remained subject to testing pursuant to Rules 6.6 and 7.14 of the *Canadian Anti-Doping Program* (“CADP”).
4. While still under suspension, the Athlete was requested to provide a Sample in an Out-of Competition test. She was training at the time and was permitted by the Doping Control Officer (“DCO”) to complete her training workout prior to providing a sample. Prior to being tested, however, the Athlete took herself out of view of the chaperone who was monitoring her activities, and ultimately left the training facility without being tested or making further contact with the DCO or the chaperone.
5. The Canadian Centre for Ethics in Sport (“CCES”) administers the *Canadian Anti-Doping Program* and would have tested the Athlete on 20 March 2007, but for the Athlete’s non-participation in testing that day.
6. As a result of the Athlete not submitting to Sample collection on 20 March, the CCES alleged that a further anti-doping rule violation had been committed by her, namely, failing, without compelling justification, to submit to Sample collection after notification as authorized pursuant to the CADP. This would be contrary to Rule 7.24 of the CADP which provides:

Refusing, or failing without compelling justification, to submit to Sample collection after notification as authorized in applicable anti-doping rules or otherwise evading Sample collection is an anti-doping rule violation.
[Code Article 2.3]
7. The CCES proposes that as a result of the Athlete’s further anti-doping rule violation, she should be suspended for three years – the maximum period of suspension for a second violation where the first violation arose from the presence of a “Specified” substance. The CCES says that there are no “exceptional

circumstances” warranting a reduction or elimination of the proposed period of suspension.

8. The Athlete asserts that she was taken suddenly, violently and horribly ill while training. She went to the washroom. She thought the DCO realised this and would follow her into the washroom. After a period of time in the washroom (in the absence of any CCES representative) she emerged, still very ill, and was immediately taken home by a friend.
9. The Athlete acknowledges that she failed to submit to Sample collection, but alleges there was compelling justification for her actions.
10. Alternatively, the Athlete asserts that there were “exceptional circumstances” warranting a reduction or elimination of the proposed period of suspension.
11. I was appointed, pursuant to CADP Rule 7.59 as the Doping Tribunal to hear this matter.
12. A hearing was held in Toronto on Monday 14 May 2007. The record before me included the Request of the Athlete and the Responses of the CCES and Sport Canada, affidavits from Anne Brown, Corina Mark and Leah Hogan of CCES and a statement of Colleen Hopkins. During the hearing additional evidence was admitted in the form of a recording of a voicemail message left by Ms. Hopkins for Ms. Brown as well as a copy of an email from Ms. Mark to Ms. Brown. All of the witnesses whose evidence was tendered in written form were made available for questioning at the hearing, either in person or, in the case of Ms. Brown, by telephone conference. Oral evidence was given under solemn affirmation.

The Athlete

13. The Athlete is thirty four years old. Her athletic background is in track and field, particularly running. She came back to running when she was thirty after a long hiatus. For the past two years she has concentrated on duathlon and, as such, is a member of Triathlon Canada.
14. As previously noted, on 3 September 2006 the Athlete was suspended for one year for an anti-doping rule violation. She remained under suspension at the time of the incident giving rise to this matter. She has been preparing to return to competition at the end of her term of suspension. Her preparation has included hard interval training twice a week.

The Evidence

15. The DCO was Corina Mark, a certified doping control officer. On 20 March 2007, she and the chaperone, Leah Hogan, attended at the Toronto Track and Field Centre. The Centre is part of the York University Campus. Their mission was to conduct an Out-of-Competition sample collection from the Athlete.

16. The DCO had the Athlete paged, following which she was identified by Ms. Mark and Ms. Hogan. The Athlete was on the track. Ms. Mark and Ms. Hogan introduced themselves. This occurred at approximately 6:50 p.m. The Athlete asked if she could continue with her workout as she had just started. Upon ascertaining from the Athlete that she had 45 minutes of her workout left, the DCO said that she could continue as she would still be able to make the 60 minute deadline for arrival at the Doping Control Station. The DCO told the Athlete that she must remain in the sight of Ms. Hogan at all times. The DCO encouraged the Athlete from that point onwards to only drink from sealed bottles of water that the CCES personnel were providing.

17. Ms. Boyle then signed an Athlete Selection Order. Ms. Mark and Ms. Hogan have different recollections as to who actually gave the Athlete the Athlete Selection Order to sign. What is not in dispute, though, is that the Athlete signed the document. It states, in part:

You are required to comply with Sample Collection by the Canadian Centre for Ethics in Sport. You must report to the Doping Control Station accompanied by the assigned Chaperone and arrive within sixty (60) minutes of notification...

18. The DCO then returned to a nearby office in which she was setting up a Doping Control Station. The Athlete continued with her workout. Ms. Hogan sat on some bleachers and watched the Athlete. She noted that the Athlete continued to use her own water rather than that supplied by the CCES.

19. The Athlete was running 1200 metre repeat intervals on the 200 metre track. She started to feel ill as she was training. Shortly after completing her intervals she states that she felt nauseated. She went straight to the female washroom adjacent to the track and threw up.

20. The Athlete's evidence is that on her way into the washroom, she saw the DCO nearby. The Athlete says that she told the DCO she was going to the washroom and that the DCO gave her "a sort of half smile" and looked at her but did not say anything. She says she waited at the entrance to the washroom for about 30 seconds to see if anyone, such as Ms. Mark, would come with her. No-one did.

21. A letter sent to by the Athlete to the CCES at the initial review stage, prior to the hearing, was to similar effect:

On one of my rest periods, I began to feel a bit ill. Hard workouts often upset my stomach, so I just assumed that was what was occurring at that time. When I crossed the line on my last running interval, I went to continue around the track to start my cooldown run. I motioned to Beth Primrose, my training partner for that evening, and she said she would catch me the next lap around. My stomach began to feel even worse as I got half way around the track, and I felt as if I was going to have to throw

up. I looked over to the stands where the CCES doping official was still sitting, wondering how I was going to make it over to her without getting sick on the track. As I continued around the track and came in to sight of the entrance, I could see the second CCES official, out near the turnstile and front desk area. I was relieved, thinking that I could tell her that I was sick and needed to get to the washroom. I exited the track area, and made eye contact with the second CCES official, telling her that I was really sick, and needed to go to the washroom. She gave me a sort of smile, so I went through the washroom door. I expected her to follow, so I stopped very briefly to look back, but she was not there. I had to then rush to get in to a washroom stall, where I got sick/threw up. I threw up one more time shortly after this, before I felt that my stomach was stable enough to exit the washroom area. I was expecting to see the CCES official right outside the door, near the turnstile where I had initially spoken to her, since she did not come in to the washroom with me. She was not there. I had estimated that I had spent less than 5 minutes in the washroom area but at the time thought it was enough time for the doping official to come in, and was confused as to why she had not.

22. The Athlete's evidence is that she believed, by reason of the nodding encounter with Ms. Mark outside the washroom which she recalls, that she had sought and obtained permission to get medical treatment.
23. The Athlete had come to the Track and Field Centre with her friend, Colleen Hopkins. Ms. Hopkins had been doing her own workout. She had finished before Ms. Boyle and had left the building, telling the Athlete that she would return to give her a ride home.
24. Ms. Hogan had seen Ms. Hopkins leave and had noted that upon leaving, Ms. Hopkins had grabbed her own bags and also Ms. Boyle's water bottle, and had left the track. At that point, Ms. Boyle had continued running laps with a training partner.
25. Ms. Hogan then described what happened next, from her perspective:
 6. At approximately 7:20 PM Ms. Boyle and her running partner stopped at their starting point, across from where I was sitting. I noticed that Ms. Boyle started to run another lap, more slowly, on her own. She got to the other side of the track near the pole vaulting area and then I lost sight of her. After a moment or so I started looking around to see if she would come back into sight, thinking she may have stopped there to stretch. When she did not reappear I got up from my seat and looked around hoping she would come back into view. I noticed that her running partner was also looking around for her.
 7. After approximately 5 minutes, when her running partner was headed in my direction, I asked her running partner if she knew where Ms. Boyle

had gone. This woman said she didn't know but would go check the washroom for me. It was reported to me that Ms. Boyle was not in the washroom.

8. I then headed toward the track entrance where I saw Corina [Mark]. I told Corina what had happened and Corina and I then went in opposite directions around the track to see if we could locate Ms. Boyle. We did this twice to make sure we didn't miss her. We never located Ms. Boyle or saw her again that evening.

26. The DCO, Ms. Mark, denies that any encounter outside the washroom occurred as described by the Athlete. After about 30 minutes setting up the Doping Control Station, the DCO decided to return to the fieldhouse to check up on the chaperone and remind the Athlete of the deadline she was facing. She used the washroom en route to the training area. She did hear one person enter the washroom/change room area while she was in the stall, but could not identify who that person was. She did not hear anyone being sick while in her stall. She then went to the fieldhouse, where she encountered Ms. Hogan looking for the Athlete.
27. The Athlete has a limited recollection of what happened immediately after she left the washroom. She had thrown up and was feeling weak and sick. She was seeing spots and had to grab the wall for support. She encountered Ms. Hopkins who was returning to find her. She recalls hearing Ms. Hopkins say her name. All the Athlete could say was "I threw up". The Athlete recalls Ms. Hopkins grabbing her, helping her through the turnstile that led out of the fieldhouse, and taking her home. She felt "terrible". She was worried about seeing spots. She threw up again in Ms. Hopkins' car on the way home.
28. The Athlete acknowledges that she knew she had to remain in sight of the CCES officials and that before leaving the Track and Field Centre, she made no effort to find the Chaperone. She said that due to her physical condition she did not have the capacity to find the Chaperone. She also knew that she was not authorised to leave the premises before completing the anti-doping procedures, but at the time she did not think about it.
29. The Athlete did not seek immediate medical attention. She said that she did not have a regular family doctor and would not think of going to a hospital in Toronto where she would have to wait 4-5 hours in an emergency department. Ms. Hopkins had thought that if necessary, she could take the Athlete to a walk-in clinic the next day. Although she continued to be sick on and off until 2:00pm the following day, she did not go to a walk-in clinic.
30. Having got home, the Athlete says that she thought about the doping control personnel and "felt bad" about leaving them. She asked Ms. Hopkins to try and contact them.

31. The evidence of Colleen Hopkins is that, after finishing her workout, she had packed her bag and left the Track and Field Centre to go to a coffee shop across the street. She had then moved her car to another spot and returned to the Centre to collect Ms. Boyle. She recalls seeing the DCO sitting in a car in the parking lot with a bunch of papers.

32. Her written statement continues:

I returned and waited in the waiting area outside the gate at the track. I saw Shari exit the washroom shortly after my arrival and I called her name to let her know where I was. She didn't look my way, instead stumbled and grabbed the wall. I jumped up to the gate to see what was going on. Again I called her name and she attempted to look my way. I could see she was very weak and her colour was terrible. I asked if she was okay as she was not very coherent and could not really walk without grabbing at something. All she said were three words - "I threw up". I grabbed her from over the gate and pulled her through. I told her I was taking her home immediately. I had not seen her look like this after a workout before. We proceeded out of the track center [*sic*]. As we were leaving, she threw up on the way to the car. I was trying to get her to the car as fast as I could, but she required quite a bit of my help. I finally got her to the car and was trying to get her home. I was very concerned. Shortly after getting in the car she threw up again. I would say it took approximately 20 minutes to get home. I helped her up the stairs and she continued to get sick a couple more times once we arrived home. When things settled down a bit, Shari asked me to phone the Track and Field center in attempt to contact the doping officials, as she was supposed to have had the drug test. I believe it was between 8:15-8:30. I left a message with the front desk, stating what had happened, in case the CCES officials could still perform their test. After I called there, I then called the CCES office in Ottawa and left a message in the general voicemail box. I summarized the evening's events, and asked for someone to call Shari or myself for further clarification. I had hoped someone would get my message, as I was not sure of their hours of operation. I continued to look after Shari into the early hours of the morning. The following day, Anne Brown phoned me and I reiterated the above information. She said "thank you" and the phone call was over. That same day I took my car to get the interior professionally cleaned of the throw up

33. Ms. Hopkins testified that she did not realise at the time she removed the Athlete from the Track and Field Centre that the Athlete had not completed her doping control procedures. However, even if she had, she says that she would probably not have done anything different. She was worried about her friend and felt she needed to get home. She "took control of the situation".

34. For Ms. Hopkins, the Track and Field Centre is a "place of stress" where her hardest workouts are done. While she has no medical training herself, Ms.

- Hopkins did not ascertain whether any medical assistance was available at the Centre and felt that her decision to take Ms. Boyle home, rather than to a doctor or a hospital, was appropriate.
35. Meanwhile, the DCO and Ms. Hogan were wondering what had happened. Ms. Hogan says that she had been paying attention to Ms. Boyle while she was training and could not explain how she had lost sight of her (other than for a split second as the Athlete passed behind a beam that was placed between the track and Ms. Hogan's vantage point).
 36. Ms. Mark and Ms. Hogan circled the track and asked other people if they had seen the Athlete, all to no avail. Beth Primrose, Ms. Boyle's training partner, approached and assisted with the search. According to Ms. Mark, Ms. Primrose was concerned for Ms. Boyle and also for the fact that Ms. Boyle had left with Ms. Primrose's watch. She commented to Ms. Mark that she was shocked that the Athlete would suddenly disappear.
 37. After calling Anne Brown, the General Manager, Ethics and Anti-Doping Services, for the CCES for guidance, Ms. Mark and Ms. Hogan remained at the track and Field Centre until 8:35 p.m. Ms. Mark said that she was not informed of any telephone call having been received for her or Ms. Hogan at the Centre that evening.
 38. Anne Brown's involvement started at 7:30 p.m. on 20 March when she spoke to the DCO and continued with exchanges of messages and, eventually, a telephone conversation with Ms. Hopkins. Her account of these events is as follows:

11. On the evening of March 20th, at approximately 7:30pm I was contacted by Ms. Mark. Ms. Mark advised me that she had notified Shari Boyle for doping control, given her consent for the athlete to continue training provided she remain in sight of the Chaperone. She informed me that the athlete had disappeared from the sight of the Chaperone while training. She also advised me they had been looking for the athlete but could not locate her whereabouts. I advised her to continue looking onsite until 8:30pm.

12. On March 21, 2007, I received a forwarded voice mail from the CCES general voice mailbox from Colleen Hopkins. Ms. Hopkins introduced herself as living with Shari Boyle. She advised me that Shari Boyle was selected for OOC testing on March 20, 2007 and that the purpose of her call was to advise me that Shari Boyle become very ill after being notified for testing and left the venue immediately. The message also asked the CCES to call her (Ms. Hopkins) as Ms. Boyle was still too sick to use the telephone.

13. At approximately 1pm I returned Ms. Hopkins' message. There was no answer and I left her a message to contact me at work. At approximately

1:10pm I left Ms. Hopkins another voice mail stating that rather than go back and forth through voice mails, to contact me directly on my cell. I left my cell phone number and asked that if for some reason I missed her, to please leave her cell phone number as well. This would eliminate messages back and forth.

14. At approximately 5:25pm, I was cycling home from work and Ms. Hopkins called me on my cell. I was in the middle of traffic and pulled over to the side of the road to take the call. Ms. Hopkins called to ensure I received the message that Ms. Boyle had been ill after being notified for doping control. I asked her if she had any questions and Ms. Hopkins said no, that she only wanted to advise me that Ms. Boyle had been sick and left the facility after being notified for doping control. Ms. Hopkins had no questions or further comments and we concluded the conversation.

Initial Review

39. The DCO and the Chaperone completed reports which, upon receipt by the CCES, prompted an “initial review” pursuant to Annex 6A and Rule 7.45 of the CADP to establish the circumstances surrounding the attempted sample collection of 20 March and the Athlete’s apparent refusal to provide a sample. This review was undertaken by Kevin Bean, the Results Manager of the Anti-Doping Program with the CCES, and by Ms. Brown. As part of this process, the Athlete was given an opportunity to submit a written explanation regarding her potential anti-doping rule violation. After providing her account of what happened, the Athlete’s written statement concluded:

As per rule 7.24, I did not refuse to submit a sample, nor did I fail to submit one without compelling justification. I was extremely sick the evening of March 20.

I do understand that I am subject to testing under the doping control rules of the CADP. This is why I willingly participate in the Athlete Whereabouts program and keep this information 100% up to date. This is how the doping control officials were able to meet me for the random test and is consistent with my commitment to fair play and cooperation with doping control procedures. I was not trying to evade testing, I was merely sick and in the washroom under the impression that the DCO was aware of this fact. By their own statements, neither the DCO nor the Chaperone ever checked the washroom. This is despite the fact that the DCO stated in her report that she thought she heard someone in the washroom around the time I went ‘missing’. To further show this desire and commitment to fair play, I am willing to submit to random testing, and would gladly submit to giving a sample at any time and anywhere.

I ask that CCES evaluate the inconsistencies within the reports and conclude that there has not been an anti-doping rule violation. I submit

that my sudden sickness and efforts to contact CCES officials promptly following the missed test help to provide a reasonable justification for not being able to provide a sample....

I would like to offer my sincere apologies for the communication problems that occurred that evening. I ask that the CCES provide me with the opportunity to correct this problem while continuing my dedication to drug-free sport.

40. Upon completion of the initial review, the CCES concluded that the Athlete's explanation was not "compelling justification" for not submitting to sample collection. This was communicated to Triathlon Canada and the Athlete. The Athlete elected to proceed to a hearing to determine whether the Athlete has, in fact, committed anti-doping rule violation.

Anti-Doping Rule Violation Established

41. The CCES has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof is whether the CCES has established an anti-doping rule violation to the comfortable satisfaction of the Doping Tribunal bearing in mind the seriousness of the allegation which is made (CADP Rule 7.55).
42. To establish a breach of Rule 7.24 (Refusals) based on a failure (as opposed to a refusal) to submit to Sample collection, the CCES must prove:
 - a. Failure without compelling justification to submit to sample collection;
 - b. Notification of Sample collection having been as authorised by the CADP.
43. I note that CCES points to the phrase "or otherwise evading sample collection" as an additional or alternative finding to "failing without compelling justification" which I could make in order for a breach of Rule 7.24 to be made out¹.
44. Although the Athlete's submissions referred to some discrepancies in the evidence of the DCO and Ms. Hogan, I am satisfied on the evidence that the Athlete was notified of Sample collection in accordance with the CADP. The Athlete was properly notified on 20 March 2007 that she had been selected for doping control by the DCO. The Athlete signed the Athlete Selection Order. By doing so, she confirmed that she had received and read the notice and that she would attend for doping control purposes at the Doping Control Station within sixty minutes of the time of notification.
45. On behalf of the Athlete it is submitted that the alleged anti-doping rule violation of "failing without compelling justification" to submit to Sample collection is

¹ See *Annus v IOC*, CAS 2004/A/718

- different from “failing” to submit, with a defence of “without compelling justification”. I agree. As a result, the burden is on the CCES to establish to my comfortable satisfaction that there was no compelling justification for the Athlete’s failure (as opposed to the CCES having to prove a failure and the Athlete then having to establish on a balance of probability that there was compelling justification).
46. It is common ground that the Athlete did not submit to Sample collection. I therefore have to consider whether the CCES has established that there was no compelling justification for her failure to do so.
47. I agree with the following submission made by the CCES:
- Ms. Boyle is deemed to know the substantive content of the CADP rules that apply to her. She is an experienced athlete and has been tested previously. As soon as Ms. Boyle was properly notified by the DCO that she had been selected for doping control she was also informed of her rights and responsibilities. Ms. Boyle had the right to request a delay in reporting to the Doping Control Station for the valid reasons set out in CADP Rule 6.46. The athlete’s responsibilities include the duty to remain within sight of the DCO or chaperone at all times after notification until sample collection is completed and to report to the Doping Control Station within 60 minutes of notification, unless delayed for the valid reasons listed in CADP Rule 6.46. Ms. Boyle knew that she could not leave the facility without notifying the DCO and receiving the DCO’s authorization and she was told and clearly knew that she must remain continually chaperoned.
48. Ms. Boyle made no request to the DCO to delay reporting to the Doping Control Station. This course of action is expressly set out in CADP Rules 6.45 to 6.48. The DCO could have considered any reasonable request from Ms. Boyle relative to her claimed illness and the DCO could have authorized a delay for Ms. Boyle to report to the Doping Control Station so long as (i) Ms. Boyle could be continuously chaperoned during the delay and (ii) the request was to obtain necessary medical treatment.
49. I do not accept the Athlete’s evidence that she encountered the DCO on the way to the washroom. Her account lacks a ring of credibility. Furthermore, even if that encounter had occurred and she had told the DCO that she was really sick and needed to go to the washroom, it is inconceivable that the DCO and/or the Chaperone would not have seen the Athlete and followed her in to the washroom.
50. Although little turns on it, I also prefer the evidence of the DCO to that of Ms. Hopkins on the question of whether or not the DCO was sitting in a car in the parking lot at the time Ms. Hopkins was re-parking her vehicle. There was no reason for Ms. Hopkins to be out there but, equally, no reason not to admit being out in the parking lot if, in fact, she was.

51. Mr. Boyd, counsel for the Athlete, urges me to undertake a common sense interpretation of Rule 7.24. He argues that the effect of the phrase “compelling justification” must be assessed on a case by case basis having regard to all of the circumstances. I agree. But, in my view, a common sense approach results in an opposite conclusion to that advocated by Mr. Boyd. In my view it defies common sense that an athlete, even a very sick one, as Ms. Boyle claims she was at the time, would not even think about the consequences of leaving the Training Centre without being tested, let alone do something responsible, such as contact the CCES personnel there and then, or have her friend do so for her. My view of the Athlete’s irresponsibility in this regard is reinforced when I consider that she was already under suspension for a previous anti-doping rule violation.
52. The fact that the Athlete’s friend “took control of the situation” and removed the Athlete from the Track and Field Centre does not materially change my view. The Athlete should not be able to avoid her personal responsibilities because of her friend’s actions. If, as she indicated, she was able to leave the Track and Field Centre under her own power, albeit with assistance, she could have gone to the DCO or the Chaperone.
53. Accordingly, even if I accept that the Athlete was taken suddenly, violently and horribly ill while training, I cannot accept that there was reasonable, let alone compelling, justification for her failure to submit for Sample collection. To be compelling, her departure would have to have been unavoidable. In fact, her departure from the Track and Field Centre was voluntary and intentional. Even if she was sick, she knew that no sample had been taken when she left the Centre.
54. I therefore conclude that, on 20 March 2007, the Athlete, Shari Boyle, committed an anti-doping rule violation, namely, failing without compelling justification, to submit to Sample collection after notification as authorized pursuant the CADP.

Sanction

55. By reason of the Athlete having previously committed an anti-doping rule violation on 21 May 2006 (the presence in her urine sample of Ephedrine at a concentration of greater than 10 ug/mL), the provisions of Rule 7.10² of the CADP (Rules for Certain Potential Multiple Violations) are engaged.
56. The Athlete’s previous anti-doping rule violation resulted in a one year period of ineligibility pursuant to the sanctions set for the in Rule 7.7.³ The effect of rule

² When an Athlete is found to have committed two separate anti-doping rule violations, one involving a specified substance governed by the sanctions set forth in Rule 7.7 and the other involving a Prohibited Substance or Prohibited Method governed by the sanctions set forth in Rules 7.16-7.20 (Presence), 7.21-7.23 (Use) or 7.30-7.32 (Possession), or a violation governed by the sanctions in Rules 7.24-7.25 (Refusals) or 7.28-7.29 (Tampering), the period of Ineligibility imposed for the second offence shall be at a minimum two years’ Ineligibility and at a maximum three years’ Ineligibility....

³ For a first offence, at a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year Ineligibility.

- 7.10 is that the further period of Ineligibility imposed for the Athlete's second offence shall be at a minimum two years' Ineligibility and at a maximum three years' Ineligibility. The sanction imposed can be eliminated or reduced if there are "Exceptional Circumstances" under Rules 7.38-7.40⁴.
57. The CCES seeks a three year suspension in addition the one year suspension currently being served. It submits that there are no Exceptional Circumstances which would warrant a reduction.
 58. On behalf of the Athlete it is submitted that she did nothing consciously wrong, that her actions were deliberate and, accordingly that there was no fault or negligence or no significant fault or negligence on the Athlete's behalf.
 59. Given my finding, on the evidence, that the Athlete's departure from the Track and Field Centre was voluntary and intentional, I cannot conclude that there was no fault or negligence or no significant fault or negligence on the her behalf.
 60. There is, however, an issue of when any further period of Ineligibility should start to run. CADP Rule 7.12 provides that the period of Ineligibility shall start on the date of the hearing decision, with credit to be given for any period of provisional suspension served (not applicable in this case). While the rule provides some discretion to start the period of Ineligibility on an earlier date, where fairness requires it, there is no discretion expressly given to delay the commencement of

⁴ Rule 7.40 has no application to this matter. Rules 7.38 and 7.39 provide as follows:

No Fault or Negligence

7.38 If the *Athlete* establishes in an individual case involving an anti-doping rule violation under Rules 7.16-7.20 (Presence) or 7.21-7.23 (Use) that he or she bears *No Fault or Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Rules 7.16-7.20 (Presence), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated. In the event this Rule is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under Rules 7.16-7.20 (Presence), 7.21-7.23 (Use) and 7.30-7.32 (Possession). [Code Article 10.5.1]

No Significant Fault or Negligence

7.39 This Rule applies only to anti-doping rule violations involving Rule 7.16-7.20 (Presence), 7.21-7.23 (Use), 7.24-7.25 (Refusals) and 7.35-7.36 (Administration). If an *Athlete* establishes in an individual case involving such violations that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Rule may be no less than eight (8) years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Rules 7.16-7.20 (Presence), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced. [Code Article 10.5.2]

the running of the sanction until a current period of Ineligibility has been completed.

61. It seems to me that the Athlete's situation is one that the drafters of the CADP did not turn their minds to. It would, however, undermine the sanctions regime provided for by the CADP if the second period of Ineligibility overlapped with the first, thereby reducing the overall period of Ineligibility arising from the first and second anti-doping rule violations.
62. It is my conclusion that, as a result of her second anti-doping rule violation, the Athlete should serve a further period of Ineligibility of two years in addition to the one year suspension that she is presently serving for a first violation. Her current period of ineligibility runs until 3 September 2007. Taking a purposive approach to interpretation of the CADP, I am of the view that the second period of Ineligibility would not start to run until the existing period of Ineligibility has been completed. However, if I am wrong about that, I would impose a period of Ineligibility of approximately two years and three months, which falls within the discretion provided by rule 7.10. Either way, the result is that the sanction imposed for this anti-doping rule violation is a further period of Ineligibility of two years in addition to the period of Ineligibility presently being served by the Athlete, with the result that the Athlete's period of Ineligibility shall continue up to, and including, 3 September 2009.
63. Pursuant to Rule 7.37 of the CADP, the Athlete shall be permanently ineligible to receive any direct financial support provided by the Government of Canada.

Costs

64. Pursuant to Rule 7.69, I have the discretion to award costs to any party. If any party wishes me to exercise that discretion in its favour, it should make a written request by no later than 8 June 2007. I will then provide such directions as may be appropriate concerning submissions on costs.

31st May 2007



Graeme Mew
Arbitrator