

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

**No.: SDRCC DT 05-0033
(Doping Tribunal)**

**CANADIAN CENTRE FOR ETHICS IN
SPORT (CCES)
BOBSLEIGH CANADA SKELETON
GOVERNMENT OF CANADA**

AND

**STEVE MOLNAR
(Athlete)**

AND

**WORLD ANTI-DOPING AGENCY
(WADA)
INTERNATIONAL BOBSLEIGH AND
SKELETON FEDERATION
(Observers)**

Before:

James W. Hedley

Appearances and Attendances:

For the Athlete:

Not represented

For the Canadian Centre for Ethics in
Sports:

David Lech (counsel)
Anne Brown
Jeremy Luke
Karine Henri
Joseph de Pencier

For Sport Canada:

Johanne Imbeau (counsel)
Mary Warren

For Bobsleigh Canada:

Chris Farstad
Shane Pearsall

SDRCC:

Benoît Girardin

DECISION

Doping Violations

1. In August of 1998, athlete Steve Molnar tested positive for Stanazolol while a member of the 1997/98 Alberta Bobsleigh team. He disputed neither the method of testing nor the test result but stated that he believed that the prohibition against the use of banned substances only applied during bobsleigh competition season. In taking Stanazolol, what he had really intended, he said, was to enhance his performance in the sport of power lifting, not bobsleigh. In January of 2000, Arbitrator John Welbourn upheld Mr. Molnar's four year suspension.

2. In October of 2005, Mr. Molnar participated in the Bobsleigh National Championships. Apparently he had no intention of trying out for the Canadian team or, for that matter, his Alberta provincial team so it is not entirely clear what he was doing there. It seems that the bobsleigh development coach asked him to fill in for an athlete who had recently left the team. I believe he was asked to do so in order to lend his veteran presence to the development of an inexperienced bobsleigh pilot. He apparently was not asked to take part in the usual selection process and he had not taken part in any of the testing camps since prior to the 2004/2005 season.

3. The Bobsleigh Canada Skeleton Team has confirmed that he was not a member of the team at the material time. Be that as it may, the team with which he participated placed third in the national championships and he was later invited to travel at the national team's cost to Lake Placid New York for a training camp. He was asked to leave when he revealed to a team administrator that he had been recently been tested for doping and what the results of the doping control test might likely be.

4. On October 21, 2005 during the National Championships and prior to Lake Placid, Mr. Molnar was selected for in-competition doping control testing. He tested positive for not one but three substances on the World Anti-Doping Agency ("WADA") Prohibited List: cannabis metabolite, methandienone and metabolites and oxymetholone metabolites. The second two substances are anabolic agents. The first, cannabis, is a threshold substance. "Threshold substance" is defined in the International Standard for Laboratories as "a substance listed in the prohibited list for which the detection of an amount in excess of a stated threshold is considered an Adverse Analytical Finding.". The permitted threshold level for cannabis is 15 mg/ml whereas Mr. Molnar's concentration measured at 86 mg/ml. The two anabolic agents are not threshold substances. The presence of methandienone and oxymetholone or their metabolites, at any level, is

prohibited. Similarly, cannabis is a "specified substance" as defined in Rule 7.7 of the Canadian Anti-doping Program (CADP), but the other two are not.

Again, Mr. Molnar did not dispute the method of collection of the requisite samples nor did he deny that he had ingested the prohibited substances.

5. It seems that Mr. Molnar is, at least on the basis of the facts which I have stated, an exemplary candidate for the lifetime ineligibility penalty imposed by the CADP for a second anti-doping rule violation.

Proceedings

6. Despite his admissions, Mr. Molnar does not submit himself willingly to the prescribed penalty. As is his right, he places the burden of establishing a doping violation on the Canadian Centre for Ethics in Sport (CCES).

7. Although it had appeared that the athlete was prepared to participate in the hearing process, his uphill climb steepened when he absented himself from further hearings after appearing once at a preliminary meeting of the parties. Pursuant to paragraph 7.59(d) of the CADP, a decision has been rendered to proceed without him. I have conducted a documentary hearing as contemplated by paragraph 7.9 of the Canadian Sport Dispute Resolution Code¹. I have received as evidence the Affidavit of Anne Brown, General Manager, Ethics and Anti-Doping Services of the CCES dated November 24th, 2006 and the written submission of the CCES by its counsel, David Lech, dated November 28th, 2006. I also have in evidence, by way of Ms. Brown's Affidavit, certain written submissions which I accept to have been made by Mr. Molnar to which I intend to refer:

a) Exhibit 11 to the aforementioned Affidavit being a letter addressed "To Whom It May Concern" at CCES dated November 27th, 2005 from Mr. Molnar;

b) Exhibit 19 being Mr. Molnar's "Athlete Answer to Rule 7.46 Notification from CCES" apparently written and signed by Mr. Molnar.

8. In my view, I require no further evidence or submissions in order to render the Decision that follows. In dealing with matters of both a contentious and non-contentious nature, I will be referring to Ms. Brown's

¹ This is not strictly in accordance with the Canadian Sport Dispute Resolution Code which provides, at paragraph 7.9, that the documentary hearing would be conducted upon the agreement of the "Person" and the CCES. However, the alternative of conducting an oral hearing would have been impractical to the extreme and I can see no compelling reason to proceed with other than a documentary hearing despite the literal reading of Rule 7.9.

Affidavit, to Mr. Molnar's submissions attached thereto, and to Mr. Lech's written submissions.

Doping Control

9. I have made passing reference to the letter of November 27th, 2005 in having stated that Mr. Molnar did not dispute the adverse finding resulting from the analysis of his urine. To quote the letter:

"Regarding doping infraction/positive test for three banned substances 1 cannabis, 2 oxymethelone, 3 methandione (sic), these three banned substitutes were found in my urine sample after being tested by CCES at Canadian Bobsledding Championships. I knowingly took all of the above substances."

10. CCES has filed a meticulously complete affidavit attached to which, among other things, are the following exhibits in support of the accuracy and efficacy of the testing process and results:

- Exhibit 3 Doping Control Officer Agreement
- Exhibit 4 Athlete selection order (signed by the Athlete)
- Exhibit 5 Doping Control Form (signed by the Athlete)
- Exhibit 6 Chain of Custody Form
- Exhibit 7 Sample Receipt Acknowledgement
- Exhibit 8 Doping Control Officer Report
- Exhibit 9 Certificate of Analysis
- Exhibit 10 Initial Result of Adverse Analytical Finding addressed to Bobsleigh Canada Skeleton

11. All of the above listed documents appear to be duly signed by the appropriate person and lead me to no other conclusion but that the adverse finding resulted from strict adherence to doping control rules and regulations. These rules and regulations are in place to assure that the evidentiary chain is unbroken and profess to apply only the highest standards of testing and detection available.

12. I find that the adverse analytical findings involving Mr. Molnar are valid.

Therapeutic Use Exception

13. There is also evidence that the CCES conducted an enquiry to determine whether or not Mr. Molnar had a therapeutic use exemption (TUE) relative to the substances in his system. A TUE may be granted to an

athlete permitting the use of a prohibitive substance. The CCES determined that no TUE had been granted; Mr. Molnar did not assert to the contrary.

Exceptional Circumstances

14. I will now deal with the question of whether Mr. Molnar has established that he is a candidate for relief under the "exceptional circumstances" rules of the CADP (Rules 7.38 and 7.39). In order to do so, he would have to convince me, on a balance of probabilities, of the existence of one of the following (with definitions included from the CADP glossary):

a) no fault or negligence: the athlete's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or had been administered the prohibited substance or prohibited method;

b) no significant fault or negligence: the athlete's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for no fault or negligence, was not significant in relationship to the anti-doping rule violation;

15. If Mr. Molnar could successfully establish "exceptional circumstances", the prescribed period of ineligibility could be eliminated or reduced.

16. In the present case, the Athlete not only makes no attempt at establishing exceptional circumstances but, in a manner consistent with his candor and forthrightness states:

"I knowingly took all of the above substances. It was a personal choice that I Steve Molnar made. One which was made without the members of Alberta Bobsleigh, Bobsleigh Canada, coaches, staff, volunteers' knowledge."

17. Mr. Molnar does comment, in passing, that team officials share some responsibility with him by not having him sign the required form of consent. He states:

"By rights by not signing consent form I didn't even have to provide sample. *Oversight of the coaches* plus my own fault for agreeing to participate while not knowing clearance times for substances taken."
(my emphasis)

18. I would not accept that as an argument for "no significant fault or negligence". Mr. Molnar knew he had taken the prohibited substances. The significant fault was his and if any criticism should be directed toward the team coaches, it still will not serve, on the facts of this particular case, to affect the prescribed penalty. To decide otherwise would clearly place the onus where it is not intended to be. In any event, Mr. Molnar has already stated that the decision to use prohibitive substances was his and his alone. In deference to Mr. Molnar, who has exhibited no intention to blame anyone but himself, I take his comment about coaches' oversight as a gratuitous slip.

19. I find that, as CCES asserts, there is no basis upon which to find that exceptional circumstances exist.

Contractual Nexus

20. I now turn to the only contentious issue raised in Mr. Molnar's written submission. This is the fundamental issue of whether or not Mr. Molnar was "liable" to be tested in the first place. Was Mr. Molnar outside the jurisdiction of the CADP at the material time; is he a "person" as defined therein and was he subject at the material time to anti-doping rules and regulations?

21. Mr. Molnar's position is that he was not a member of the Alberta or Canada Bobsleigh team and that he:

- a) did not anticipate being tested when he agreed to compete in the national championships;
- b) had not signed any document setting forth his obligations as a participant in the national championships, particularly with respect to anti-doping measures; and
- c) in the absence of signed documentation, should not have been chosen for testing.

22. In its submissions, CCES quotes the following excerpts (with emphasis added) from the CADP in asserting that Mr. Molnar was properly subject to the CADP and therefore under the authority of CCES for the purpose of doping control:

"The Canadian Policy Against Doping in Sport applies to ... all individuals who **participate** in any capacity in any activity organized,

held, convened or sanctioned by such bodies ["sport organizations"] regardless of where they reside or situate." (Rule 6.23)

"The Canadian Anti-Doping Program is governed by the Canadian Policy Against Doping in Sport. *Sport Organizations* and their members and **participants** who are subject to the Canadian Anti-Doping Program agree to be bound by the provisions and the spirit of the Canadian Policy Against Doping in Sport." (Part One - General Principles Rule 1.3)

"For purpose of *Doping Control*, any **Person who participates in sport** at the international level (as defined by each international federation) or national level (as defined by each *National Anti-Doping Organization*) and any additional *Person* who participates in sport at a lower level if designated by the *Person's National Anti-Doping Organization*. For purpose of anti-doping information and education, any **Person who participates in sport** under the authority of any *Signatory, Government, or other Sport Organizations* accepting the Code." (Definition of "Athlete" - Glossary)

23. It has been established to my satisfaction that Mr. Molnar competed at an event at the national level. It was convened and sanctioned by Bobsleigh Canada Skeleton and Mr. Molnar does indeed fit within the definition of an "athlete". As I have stated, CCES submits that as a result of his participation, he is "properly under the authority and jurisdiction of the CCES and is subject to doping control and is responsible for all violations that may ensue."

24. But is it enough simply to state that the CADP defines an "athlete" as a person who participates in sport at the national level without regard to whether there is a contractual nexus between the athlete and the Sport Organization?

25. My understanding of the legal relationship between the athlete and the CADP is that proceedings of this nature arise as a result of a contract. I quote Co-Chief Arbitrator Richard McLaren from the Christopher Sheppard decision as follows:

"The athlete agrees by contract that he will abide by CCA's anti-doping rules, which in turn are those of CADP. The parties then agreed to proceed by way of arbitration to have the matter adjudicated."

26. Further, in a footnote to the same case, he states:

"Doping disputes are sports related matters arising from contract where an athlete agrees not to ingest particular prohibited substances and, for which all parties concerned have contracted to have their dispute resolved by arbitration through the SDRCC."

27. In my opinion, it is not enough simply to state that the CADP defines a "person" as someone who has **participated** in a competition at a certain level. Codes imposed through contracts cannot be enforced unilaterally; there must exist a contractual nexus in order for the definitions set forth in the CADP to be applicable. There is no disputing that Bobsleigh Canada Skeleton has agreed to establish the anti-doping rules of the CADP but is there a contractual connection between the Athlete and this sport organization? I believe it has been established that there is no written contract in play. There is likewise no evidence that Mr. Molnar sat down with a representative of the sport organization and agreed verbally to what would have been the contents of an athlete's agreement. I therefore see no evidence that an express contract does exist.

28. In its written submission, CCES asserts that the mere act of voluntarily participating in an athletic competition at the national level, where the event is convened and sanctioned by a sport organization that has adopted the CADP creates a contract "that allows the CCES to assert authority and jurisdiction over the athlete". Does this mean that a contract has actually been created or does it mean that the Code establishes the athlete's responsibility whether or not a contract exists? As I have stated, a distinction must be drawn, in my view, between a "net" cast by the drafters of the Code and a contract by which an athlete agrees to abide by a set of rules.

29. In my opinion, merely competing in a national championship does not, by itself, imply the same contract, with all its terms, which may exist between fellow athletes under written contracts. I do however believe that it is open to me to find an implied agreement for certain limited purposes. It is at this level that I agree with counsel for CCES. An athlete's duty to comply with anti-doping regulations is essential in the area of high performance athletics whether honoured in the breach or observance. It resides at the very core of the elite athlete's culture. The suggestion that any athlete competing at a high level, under written contract or not, is unaware of the potential for testing, not liable to abide by anti-doping policies and rules and not liable to any penalties resulting therefrom is completely untenable.

30. Further, in this particular case, the athlete in question has a personal history and experience with doping control matters. He has been tested previously at least three times and has served a suspension as a result of an

adverse analytical finding. Steve Molnar is no stranger to this process and I have no difficulty in finding that there exists an implied contract as between Steve Molnar and his sport organization which binds him to all of the duties and consequences arising out of anti-doping policies in place at the relevant time.

Decision

31. In the final analysis, my duty regarding Mr. Molnar's anti-doping violations is clear. The relevant CADP rules are:

Rule 7.20

Except for the specified substances identified in Rule 7.7, the period of *Ineligibility* imposed for this anti-doping rule violation shall be:

First violation: Two (2) years *Ineligibility*.

Second violation: Lifetime *Ineligibility*.

Rule 7.9

When an *Athlete*, based on the same *Doping Control*, is found to have committed an anti-doping rule violation involving both a specified substance under Rule 7.7 and another *Prohibited Substance* or *Prohibited Method*, the *Athlete* shall be considered to have committed a single anti-doping rule violation, but the sanction imposed shall be based on the *Prohibited Substance* or *Prohibited Method* that carried the most severe sanction [Code Article 10.6.2]

Glossary

Ineligibility: See Consequences of Anti-doping Rules Violations above.

Consequences of Anti-doping Rules Violations: An Athlete's or other Person's violation of an anti-doping rule may result in one or more of the following:

- a) disqualification means the Athlete's results in a particular Competition or Event are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes;

b) **Ineligibility** means the Athlete or other person is barred for a specified period of time from participating in any Competition or other activity or funding as provided in the Doping Violations and Consequences Rules (my emphasis); and

c) Provisional Suspension means the Athlete or other Person is barred temporarily from participating in any Competition prior to the final decision at a hearing to determine anti-doping rule violations and consequences under the Doping Violations and Consequences Rules.

Rule 7.13

No *Person* who has been declared *Ineligible* may, during the period of *Ineligibility* participate in any capacity in a *Competition* or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by any *Signatory* or *Signatory's* member organization. In addition, for any anti-doping rule violation not involving specified substances described in Rule 7.7, some or all sport-related financial support or other sport-related benefits received by such *person* shall be withheld by *Signatories*, *Signatories'* member organizations and *Governments*. A *Person* subject to a period of *Ineligibility* longer than four years may, after completing four years of the period of *Ineligibility*, participate in local sport *Competitions* in a sport other than the sport in which the *Person* committed the anti-doping rule violation, but only so long as the local sport *Competition* is not at a level that could otherwise qualify such *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International Event* [Code Article 10.9]

32. To quote the written submissions of CCES in respect of rules 7.9 and 7.20:

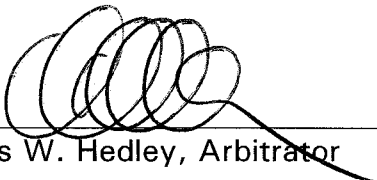
"Cannabis is a specified substance. Mr. Molnar's adverse analytical findings indicated the presence of a specified substance (cannabis) together with two other prohibited substances (methandienone and oxymetholone). Pursuant to CADP Rule 7.9, the CCES properly considered Mr. Molnar to have committed a single anti-doping rule violation for the presence of two prohibited substances: methandienone and oxymetholone which carry the harsher sanction. As set out in CADP Rule 7.20, these two prohibited substances carry a more

severe sanction for a second violation than would a second violation for a specified substance such as cannabis."

33. Pursuant to Rules 7.20 and 7.9, Steve Molnar's penalty is lifetime ineligibility, effective immediately.

34. As to Rule 7.69 (Costs), I make no award for costs.

Dated: December 13th, 2006



James W. Hedley, Arbitrator