

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

**AND IN THE MATTER OF AN ALLEGED ANTI-DOPING RULE VIOLATION BY RACHELLE FLEURANT
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT**

No: SDRCC DT 12-0187
(Doping Tribunal)

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

BOBSLEIGH CANADA SKELETON (BCS)

- and -

RACHELLE FLEURANT
Athlete

- and -

GOVERNMENT OF CANADA

WORLD ANTI-DOPING AGENCY (WADA)

**INTERNATIONAL BOBSLEIGH
FEDERATION**
Observers

REPRESENTATIVE FOR THE CCES:

PETER LAWLESS

ARBITRATOR:

RICHARD H. McLAREN, C.ARB.

AWARD

Introduction:

1. This is a doping tribunal hearing pursuant to section 7.79 of the Canadian Anti-Doping Program 2009 (the “CADP 2009”).

The Parties:

2. The Athlete is a member of Bobsleigh Canada Skeleton.
3. Bobsleigh Canada Skeleton is the national sporting organization responsible for the sport of Bobsleigh and Skeleton in Canada.
4. The CCES is the body responsible for administering the CADP 2009.

Background:

5. On 20 October 2012 the Athlete provided an in-competition sample at the National Bobsleigh Championships in Calgary Alberta. That sample gave rise to an adverse analytical finding (“AAF”) for the presence of clenbuterol, oxandrolone and hydrochlorothiazide, prohibited substances according to the 2012 WADA Prohibited List.
6. On 30 November 2012, Bobsleigh Canada Skeleton and the Athlete were notified of the AAF by way of letter addressed to Don Wilson, Chief Executive Officer of Bobsleigh Canada Skeleton. In that letter, the Athlete was reminded that she had waived her right to request the analysis of her B-Sample and was advised of her right to request a complete copy of the laboratory documentation package pertaining to her A-sample. The Athlete was advised that she had four options to consider in proceeding with this matter:
 - (i) Proceed to a hearing;
 - (ii) Waiver her right to a hearing;
 - (iii) Decide to voluntarily admit the anti-doping rule violation;
 - (iv) Provide further information to CCES.

All four options were elaborated on in the letter and she was further advised to seek legal counsel.

7. The 30 November 2012 letter, also provided that the Athlete was provisionally suspended.

Procedure:

8. On 30 November 2012, the Athlete was sent an Information Letter from the SDRCC outlining the process of the doping tribunal.
9. On 3 December 2012, an administrative call took place to further detail and outline the Doping Tribunal process. Present on the call, in addition to SDRCC staff, were the Athlete and Kevin Bean of the CCES.
10. On 11 December 2012, the Athlete admitted to having committed an anti-doping rule violation (“ARV”) and filed with the SDRCC, a form entitled “Admission of an Anti-Doping Rule Violation”, which provides, *inter alia* as follows:

Pursuant to CADP Rule 7.13, I hereby voluntarily admit to the violation that has been asserted against me by the CCES [...]. I further confirm that I will not at any time in the future contest the fact of the violation. Notwithstanding the foregoing, I may still attempt to have the sanction(s) associated with the admitted violation determined by a Doping Tribunal at a hearing or I may accept a sanction proposed by the CCES and waive my right to a hearing.

I confirm I have received independent legal advice regarding this voluntarily admission. Alternatively, I confirm that I have declined to receive independent legal advice despite having ample opportunity to acquire independent legal advice.

11. By letter dated 19 December 2012, the SDRCC reminded the Athlete that she was to file her answer regarding her intent to waive her right to a hearing, or file a request for hearing. The Athlete was advised that unless the SDRCC received her signed Waiver form or Request for a Hearing form, it will proceed to constitute the doping hearing tribunal.
12. By way of letter dated 21 December 2012, the SDRCC again wrote to the Athlete advising that absent a formal communication from her on or before Thursday, December 27, 2012,

in the form of either a completed Request for a Hearing form or a signed Waiver of Right to a Hearing form, the SDRCC would appoint an arbitrator from its rotation list and would convene a preliminary meeting to commence the arbitration process.

13. On 3 January 2013, the parties were advised of the appointment of Prof. Richard H. McLaren as Arbitrator, and requested to provide input on the scheduling of a preliminary meeting.
14. On 4 January 2013, the parties were notified that the preliminary meeting had been scheduled for 9 January 2013 at 2:00 p.m. Eastern Standard Time (“EST”).
15. On 9 January 2013, at the request of the Athlete, the preliminary meeting was rescheduled to 3:30 p.m. EST.
16. On 9 January 2013 at 3:30 p.m. EST, the preliminary meeting took place as scheduled. In addition to members of the SDRCC staff, present on the call were: the Arbitrator, Erin McDermid, associate lawyer with the Arbitrator, Carolyn Chmiel from the CCES and Peter Lawless, counsel for the CCES. The Athlete contacted the SDRCC prior to the call to notify that she would not be participating.
17. On 10 January 2013, the parties were advised of the times and dates for submissions and the scheduling of the hearing. In particular, the Athlete was advised that her submissions on sanction were due by 16 January 2013.

Jurisdiction:

18. Bobsleigh Canada Skeleton is a Sport Organization that is subject to the Canadian Policy Against Doping in Sport, and as such is bound by the provisions of the CADP.
19. The Athlete is a Participant who is subject to and bound by the provisions of the CADP.
20. The CADP provides that hearings to determine whether an anti-doping rule violation has been committed shall be conducted by a single arbitrator sitting as the Doping Tribunal. The Doping Tribunal is constituted and administered by the SDRCC, pursuant to section 7.87 of the CADP.

Issue:

21. Given the Athlete's Admission, the only issue before the Arbitrator is the length and start date of the sanction.

The Submissions:

a. Submissions of the Athlete:

22. Despite being invited to do so on numerous occasions, the Athlete has made no submissions on her own behalf.

b. Submissions of the CCES:

23. The CCES states that the appropriate sanction in this case is two (2) years and further states that the Athlete has given the Arbitrator no reason to reduce the sanction in accordance with the CADP 2009.
24. The CCES states that it is agreeable to the commencement of the sanction being the date of Sample collection that is October 20, 2012.

Relevant Provisions:

25. The relevant provisions of the CADP 2009 are as follows:

7.0 Doping Violations and Consequences Rules

Commencement of Ineligibility Period

7.11 Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. [Code Article 10.9]

7.12 Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. [Code Article 10.9.1]

7.13 *Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) unequivocally admits the anti-doping rule violation in writing after being confronted with the anti-doping rule violation that is being asserted by the CCES, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. [Code Article 10.9.2]*

Presence in Sample

7.23 *The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Sample is an anti-doping rule violation. [Code Article 2.1]*

SANCTIONS ON INDIVIDUALS

Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

7.38 *The period of Ineligibility imposed for a first violation of Rules 7.23-7.27 (Presence), Rules 7.28-7.30 (Use or Attempted Use) and Rules 7.34-7.35 (Possession) shall be two (2) years Ineligibility, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Rules 7.42-7.43 (Specified Substances) and Rules 7.44-7.48 (Exceptional Circumstances), or the conditions for increasing the period of Ineligibility, as provided in Rules 7.49 (Aggravating Circumstances) are met. [Code Article 10.2]*

26. The relevant provisions of the SDRCC Code are as follows:

6.17 *Scope of Panel's Review*

The Panel shall have full power to review the facts and the law. In particular, the Panel may substitute its decision for:

- (i) the decision that gave rise to the dispute; or*
- (ii) in case of Doping Disputes, the CCES' assertion that a doping violation has occurred and its recommended sanction flowing therefrom,*

and may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

7.1 *Application of Article 7*

In connection with all Doping Disputes and Doping Appeals, the specific procedures and rules set forth in this Article 7 shall apply in addition to the rules specified in the Anti-Doping Program. To the extent that a procedure or rule is not specifically addressed in this Article 7 or in the Anti-Doping Program, the other provisions of this Code shall apply, as applicable.

7.5 *Proceeding without a Party*


Provided that reasonable efforts have been made to contact the Person whom the CCES asserts to have committed a violation of the Anti-Doping Program, if that Person is unreachable, or is avoiding contact, or has not confirmed receipt of the notification from the CCES and/or the SDRCC which addresses that Person's right to a fair hearing and the consequences of not participating at the hearing, the Panel may decide that the hearing will proceed without the participation of such Person.

DECISION

27. Having read the submissions of counsel for the CCES and examined the record before me, I find that the Athlete has committed an anti-doping rule violation. In particular, the presence of a Prohibited Substance in the Athlete's bodily sample.
28. The only conditions under which I may eliminate or reduce the sanction is if the athlete establishes that he or she bears no fault or negligence, or no significant fault or negligence, he or she has provided substantial assistance in discovering or establishing anti-doping rule violations, or the Athlete has voluntarily admitted the commission of an anti-doping rule violation before having received notice of a Sample collection that could establish an anti-doping rule violation.
29. The Athlete has provided me with no submissions, therefore I unable to find that any of these preconditions are met here. Accordingly, I have no basis under which to eliminate or reduce the sanction. As such, I hereby accept the CCES' position that the appropriate sanction is two (2) years ineligibility.

30. The start date shall be as requested by the CCES, that being 20 October 2012, the date of Sample collection.

Dated at London, Ontario this 17th day of January, 2013.


Richard H. McLaren, C.Arb.
ARBITRATOR