

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

**July 15<sup>th</sup>, 2013**

**N°: SDRCC DT 13-0194  
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)  
CANADIAN AMATEUR WRESTLING ASSOCIATION (CAWA)**

AND

**YAK AL-REKABI  
(ATHLETE)**

AND

**GOVERNMENT OF CANADA  
WORLD ANTI-DOPING AGENCY (WADA)  
(OBSERVERS)**

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**Arbitration Award**

**Arbitrator:** Patrice Brunet

**Appearing:**

**For CCES:** Kevin Bean, David Lech

**For CAWA:** Tamara Medwidsky

**For the Athlete:** No one appeared

**INTRODUCTION**

1. On June 10<sup>th</sup>, 2013, the undersigned arbitrator accepted the function to arbitrate the present proceedings, under Section 6.8 (b) (ii) of the Canadian Sport Dispute Resolution Code, February 1, 2011 (the "Code"). There were no objections raised by any of the Parties.
2. On March 23<sup>rd</sup>, 2013, the Athlete won the bronze medal in the senior category of the 120kg division at the Junior / Senior National Wrestling Championships in Fredericton, New Brunswick.

3. He was subject to an in-competition doping test, and refused to provide a sample, as required under the Canadian Anti-Doping Program (CADP). He signed the Athlete Refusal Form, acknowledging that he was violating the rules of the CADP.
4. Since the refusal to provide a sample is equivalent to a doping infraction under the rules, the CCES initiated the process to suspend the Athlete for a period of 2 years, as this would be his first infraction.
5. Surprisingly, the Athlete has vanished since March 23<sup>rd</sup>. He is believed to have left the province of Quebec where he formerly resided, without any forwarding address. Many attempts have been made to contact the Athlete, but to this date, he remains untraceable.
6. A preliminary meeting by way of a conference call was held on June 17<sup>th</sup>, 2013, at 11 am (EDT), as per Section 6.9 (b) of the Code.
7. Further to this meeting, I made an Interim Order dated June 20<sup>th</sup>, 2013, requesting additional documents and information from the Parties. Those documents and information were communicated to the Tribunal and all the Parties within the deadline.
8. The CCES requested that this arbitration proceed by way of documentary evidence only. CAWA declared that they had no objection to this request.

## THE PARTIES

9. The CCES is an independent, not-for-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the CADP, including the provision of anti-doping services to national sport organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code and its mandatory International Standards. The CCES has implemented the World Anti-Doping Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the Code and of the CADP is to provide protection for the rights of athletes to fair competition.
10. The CAWA is the national sport governing body for Olympic style wrestling in Canada. The association's role is to encourage and develop the widest participation and highest proficiency in Olympic wrestling in Canada. Through the development of coaches, officials and administrators the association provides leadership to the sport and enables the provincial/territorial affiliates to coordinate programs and activities in their jurisdictions. CAWA operates the men's senior and developmental national team programs and a women's national team program. These teams represent Canada at major international tournaments, continental and world championships, world cups, and major games including the Olympics.

11. Since the Athlete has not participated in this process, there is limited information on him. The Tribunal is aware that he is a national-level athlete, having competed in the 120kg senior division of the event where the facts of this case were initiated.

## JURISDICTION

12. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19<sup>th</sup>, 2003<sup>1</sup>.
13. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sport community, among others, a national alternative dispute resolution service for sport disputes.
14. In 2004, the SDRCC assumed responsibility for all doping disputes in Canada.
15. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.
16. The Athlete is bound by the findings of this arbitration by virtue of his participation to an event sanctioned by CAWA, and his membership as a national-level athlete with CAWA, as detailed in Article 6 of CAWA's By-Law Section 14.5 (Discipline procedure).

## BACKGROUND

17. On March 23<sup>rd</sup>, 2013, the Athlete was a participant in the senior category of the 120kg division at the Junior / Senior National Wrestling Championships in Fredericton, New Brunswick.
18. He ultimately won the bronze medal, and was soon thereafter approached and notified by Doping Control Officer (DCO) Brian Gaudet and Chaperone Evan Ritchensfeld that he was required to undergo an anti-doping test.
19. Under this procedure, the Athlete must remain in plain view of the officials until he produces a urine sample, which is then sealed and sent to an accredited laboratory for analysis.
20. According to the DCO's Supplementary Report filed in these proceedings, at the time of notification, the Athlete had a representative with him and he indicated that he understood the information provided. The Athlete signed the Athlete Selection order without objection at 4:35pm.

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<sup>1</sup> The *Physical Activity and Sport Act*, S.C. 2003, c.2

21. Upon arrival at the doping control station, approximately 30 minutes later, the DCO was informed that the Athlete was considering refusing to provide a sample.
22. Other DCOs were on hand at the event, and attempts were made by all DCOs to convince the Athlete to provide a sample. All attempts proved to be unsuccessful, including one from CAWA's high performance manager.
23. Given the circumstances, DCO Gaudet completed the Athlete Refusal Form with the Athlete, who signed it at 5:35pm.
24. The Athlete was assisted by his sister, as his representative. As the Athlete appeared not to be fluent in English, his sister acted as a translator when necessary. The DCO stated in a letter dated May 16<sup>th</sup>, 2013 that "The subjects (sic) representative (sister) was with him for the notification and is also fluent in the English language".
25. The Athlete Refusal Form is a standard form generated by the CCES, which contains several declarations made by the Athlete. When he signed this form, the Athlete effectively made declarations, among others, to the effect that :
  - a. He had refused to provide a sample;
  - b. The consequences of a Failure to Comply with sample collection were fully explained to him;
  - c. He was aware that by refusing to provide a urine and/or blood sample, he was violating the rules of the Canadian Anti-Doping Program (CADP) and that he will be subject to a violation which carries a standard two-year period of ineligibility and other potential consequences.
26. The Athlete Refusal Form is further signed by:
  - a. The Athlete;
  - b. The Athlete's representative, Zeinab Al-Rekabi, who identified herself to the DCO and the Chaperone as his sister;
  - c. The DCO Brian Gaudet;
  - d. The Chaperone Evan Ritchensfeld.
27. By way of my Interim Order dated June 20<sup>th</sup>, 2013, I requested that affidavits be filed by both the DCO Gaudet and Chaperone Ritchensfeld attesting that they had personally witnessed the Athlete's signature on the Athlete Refusal Form. These affidavits were filed in the record to my satisfaction.
28. On April 10<sup>th</sup>, 2013, the CCES requested from CAWA that they be provided with the Athlete's contact information, in order to formally assert the violation. CAWA replied on the same day, with the Athlete's latest residential address in St-Laurent, Québec.

29. On April 10<sup>th</sup>, 2013, the CCES issued a "Notification of Anti-Doping Rule Violation - Refusal - Yak Al-Rekabi" and sent it by email to CAWA, for notification to the Athlete.
30. On April 10<sup>th</sup>, 2013, the SDRCC created a file under the Athlete's name to initiate the necessary process.
31. On April 11<sup>th</sup>, 2013, CAWA informed the Athlete's coach, Rob Moore, of the Athlete's notification by the CCES. CAWA requested from Moore that the Athlete acknowledge receipt of the notification. Moore acknowledged receipt of the message, but never confirmed having notified the Athlete; CAWA stated that "there is little communication between the coach and the athlete".
32. On April 19<sup>th</sup>, 2013, representative from CAWA, Tamara Medwidsky called the Athlete's telephone number at 2:43 pm. Ms. Medwidsky reported to the CCES that she had "*...made contact, but there is a huge language barrier. Through his wife, Yak indicated that one of their friends would be reading the documentation and helping to translate and explain. I'm not very confident that we are going to have any more response.*"
33. During this conversation, CAWA was provided with another email address to contact the Athlete, which was immediately used to send the "CCES Notification" details. No reply came.
34. On May 13<sup>th</sup>, 2013, the SDRCC Executive Director reported having tried various options to reach the Athlete, without success.
35. On May 16<sup>th</sup>, 2013, CAWA confirmed to the SDRCC that the Athlete "did not appear to be actively training at the moment and there was some indication from the coach that the athlete may be relocating to another province in the near future."
36. On May 24<sup>th</sup>, 2013, the SDRCC instructed a process server to serve a notice to the Athlete, at the residential address on record in St-Laurent, Québec. The process server reported that, on that day, at 6:30pm, he physically appeared at the requested address, but was unable to serve the Athlete. He spoke with the Athlete's uncle, Mr. Rakeb, who informed him that the Athlete had moved to Vancouver. No forwarding address was provided, and the same telephone number used previously to contact the Athlete was repeated by the uncle as the only means of communicating with the Athlete.
37. On June 17<sup>th</sup>, 2013, a preliminary teleconference hearing was held between myself, CAWA and the CCES, along with staff from the SDRCC. I was informed of the efforts made by CAWA, the CCES and the SDRCC, to locate the Athlete. I issued an Interim Order on June 20<sup>th</sup>, 2013, requiring additional documents establishing efforts to contact the Athlete. Those documents were filed within the deadline I had established. I also made it clear that efforts to locate the Athlete by the Parties should continue, and that any information leading to trace the Athlete should be immediately communicated to the Tribunal, until a final decision would be rendered. No such information came forth until this day.

38. Through CAWA, the Provincial Sport Organization Wrestling BC sent a letter dated July 4<sup>th</sup>, 2013, signed by its High Performance coach, which stated that:
- a. The Athlete has not been a member of Wrestling BC and the Burnaby Mountain Wrestling club for over 3 years;
  - b. He has not participated in any training, competition, or programs with the association or the club for the past 3 years;
  - c. He has had no contact with the Athlete for the past 3 years.

### **SUBMISSIONS**

39. As the Athlete has not participated in the process, no submissions have been received from him.
40. Both during the preliminary meeting of June 17<sup>th</sup> and in their letter dated July 4<sup>th</sup>, 2013 addressed to the Tribunal, the CCES has requested that they may prove the violation and justify the proposed sanction by way of documentary evidence only.
41. CAWA did not object to the request.
42. The CCES is requesting that the standard 2-year suspension be imposed on the Athlete.

### **THE APPLICABLE RULES**

43. The Canadian Anti-Doping Program (CADP) is based on and informed by the World Anti-Doping Code (the Code).
44. Under Rule 1.3 of the CADP, Athletes and other Persons accept the CADP as a condition of participating in sport and shall be bound by the rules contained in the Code and the CADP.
45. An athlete is defined in the CADP's Glossary as someone who participates in sport at the international or national level. The Athlete Al-Rekabi is an individual who fits this description.
46. Rule 6.31 of the CADP states that "When initial contact is made, the CCES or the DCO/Chaperone, as applicable, shall ensure that the Athlete and/or a third party, if

required, is informed: a) that the Athlete is required to undergo a Sample collection, b) of the authority under which the Sample collection is to be conducted [...].”

47. Rule 6.32 of the CADP states that “When in-person contact is made, the DCO/Chaperone shall: [...] c) confirm the Athlete’s identity.”
48. Rule 7.31 of the CADP states that “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.”
49. Rule 7.39 of the CADP states that “For violations of Rule 7.31 (Refusing or Evading) [...], the Ineligibility period shall be two (2) years [...].”
50. Rule 7.79 of the CADP states that “[...] an anti-doping rule violation and the appropriate consequence may not be determined and imposed without a hearing by the Doping Tribunal.”
51. Rule 7.87 of the CADP states that: “a) Hearings to determine whether an anti-doping rule violation has been committed and, if so, the consequence(s) shall be conducted by a single arbitrator sitting as the Doping Tribunal. b) The Doping Tribunal shall be constituted and administered by the Sports Dispute Resolution Centre of Canada and the arbitrators shall be members of its roster of arbitrators.
52. Rule 7.95 (a) of the CADP states that “The Doping Tribunal shall conduct an oral hearing unless the Athlete or other Person subject to the CCES’ notification asserting an anti-doping rule violation and the CCES agree to a documentary hearing.”
53. The present arbitration is conducted in accordance with the Code, and particularly within the context of its Section 7 “Specific Arbitration Procedural Rules for Doping Disputes and Doping Appeals”.
54. Section 7.5 of the Code states that “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.”

## **ANALYSIS**

55. This case is rather simple. The Athlete refused to provide a sample when he was compelled to provide one under the CADP, by virtue of his participation at a national-level event, and being a national-level athlete.
56. The DCO and Chaperone properly identified themselves during the process, and the Athlete appeared to be willing to comply with his obligation to be tested for banned substances in his body.
57. However, the Athlete changed his mind after 30 minutes and decided that he would not collaborate with the anti-doping officials.
58. He signed the Athlete Refusal Form in the presence of his sister, and acknowledged that this could amount to a violation of the CADP.
59. The Athlete may not be fluent in English, but nevertheless, the presence of his sister to interpret the events and convey the consequences of his actions satisfy me the Athlete understood the process, his decision and the resulting decisions and actions, in the absence of contradicting evidence.
60. The subsequent phone call held on April 19<sup>th</sup>, 2013, between Tamara Medwidsky and the Athlete's wife, further confirms that the Athlete was well aware of the facts and consequences of this matter.
61. We may never know what happened during the 30 minutes during which the Athlete took the decision not to collaborate with the anti-doping officials. He vanished from his sporting community and is alleged to have moved to British Columbia.
62. Detailed efforts to contact the Athlete have been reported by CAWA, the CCES, and even by the SDRCC, but to no avail.
63. It is obvious to this Tribunal that the Athlete not only evaded his athletic obligations pertaining to doping control, but he also cast a net of secrecy around his whereabouts in the weeks and months following the initiating events. Clearly, the Athlete organized his life in such a way as to avoid all contact with the sporting community.
64. The SDRCC and the sporting community are not required to have the same standard as a police department in tracking individuals. Based on the evidence submitted before me, I am fully satisfied, that "reasonable efforts" have been made to contact the Athlete, and therefore Section 7.5 of the Code finds application where this matter was able to proceed in absentia of the Athlete.



65. But over and above all, these proceedings could hardly surprise the Athlete, as he very determinedly signed the Athlete Refusal Form which confirms in writing and in no uncertain terms:
- a. His refusal to provide a sample for the purpose of doping control, and
  - b. His acceptance that the consequence of such a refusal is a 2-year suspension.
66. The delivery of the Canadian Anti-Doping program cannot suffer to be weakened by Athletes or Persons who deliberately avoid its reach. It is therefore natural that this arbitration process follow its course and a decision be rendered without any further delays.
67. The Athlete has been properly contacted, and the DCO/Chaperone have properly identified themselves as required by the CADP. The Athlete's identity has been established and he understood what was required of him.
68. Under Rule 7.79 of the CADP, and unless a waiver is signed by the Athlete, a hearing is required before an anti-doping violation is imposed.
69. However, Rule 7.95 of the CADP allows the Tribunal to assert a violation based on documentary evidence, if all Parties agree to it. This important rule is anchored with the well-known legal principle of *audi alteram partem*, and *viva voce* testimony when possible. Of course, in the present circumstances, the agreement to proceed by way of documentary evidence was impossible to obtain from the Athlete, as he is untraceable. I have considered holding a brief hearing, purely on technical grounds, however to what purpose would this have been accomplished, as the Athlete could not have been aware of it taking place, and all other Parties (CAWA and CCES) agreed to a decision based on documentary evidence.
70. Absolute logic must prevail over empty technicalities, in the reality of limited resources in Canadian federated sport, and I have rendered this decision based on documentary evidence only, since a hearing would not have added any parcel of substance to my reasons.

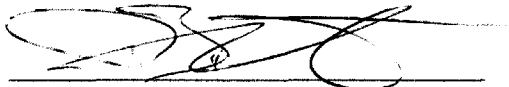
## DECISION

Mr. Yak Al-Rekabi has committed a doping infraction under Rule 7.31 of the Canadian Anti-Doping Program, by refusing to submit to an in-competition Sample collection.

There is no reason to reduce the period of ineligibility that is envisioned in Rule 7.39, therefore Mr. Yak Al-Rekabi is ineligible for a period of two (2) years, commencing on the date of this Award.

No submission was made on costs, and I make no order.

I retain jurisdiction and reserve the right to hear any dispute relating to the interpretation or application of the present decision.

A handwritten signature in black ink, appearing to read 'Patrice Brunet', written over a horizontal line.

Patrice Brunet, Arbitrator