

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

and

IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY AINSLEY ROBINSON
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No.: SDRCC DT 05-0024
(Doping Tribunal)

CANADIAN CENTRE FOR ETHICS IN SPORT
(CCES)

CANADIAN AMATEUR WRESTLING
FEDERATION

GOVERNMENT OF CANADA

And

AINSLEY ROBINSON
ATHLETE

And

WORLD ANTI-DOPING AGENCY (WADA)

INTERNATIONAL FEDERATION OF
ASSOCIATED WRESTLING STYLES (FILA)

OBSERVERS

BEFORE:

Jane H. Devlin

Arbitrator

APPEARANCES:

For the Athlete

Robert Nuttall
Ainsley Robinson

For the CCES

David W. Lech
Karine Henrie
Jeremy Luke

For the Government of Canada

Mary Warren

Background Facts:

1. Ainsley Robinson is 33 years of age. He lives with his spouse and two of his three children.
2. Mr. Robinson has been wrestling since he was 14 years of age and is a member of the Canadian Amateur Wrestling Association. He competed at the 1996 Olympic Games in Atlanta and his coach, Stan Tzogas, believes that he has a good chance of being selected to compete at the Olympic Games in Beijing in 2008. Given his age, Mr. Robinson is nearing the end of his wrestling career.
3. On the weekend of May 14 and 15, 2005, Mr. Robinson competed at the National Senior Wrestling Championships, which took place in Renfrew, Ontario. At approximately 2:00 p.m. on Sunday, May 15th, he was notified that he had been selected for doping control. No issue is taken regarding the procedures which were followed in sample collection or the chain of custody.
4. Mr. Robinson's "A" sample was analyzed at the WADA-accredited INRS laboratory in Montreal and on June 3, 2005, the Laboratory advised the CCES of an adverse analytical finding for the presence of cocaine and metabolites.
5. Cocaine is a prohibited substance on the 2005 WADA prohibited list, which applies to the Canadian Anti-Doping Program ("CADP").
6. On June 28, 2005, the CCES issued a notice to Mr. Robinson pursuant to Rule 7.46 of the CADP asserting that he had committed an anti-doping rule violation. The CCES proposed a sanction of two years' ineligibility from sport and permanent ineligibility for direct financial support from the Government of Canada.
7. On July 11, 2005, at the request of Mr. Robinson's counsel, Mr. Nuttall, Mr. Robinson's "B" sample was analyzed and the certificate of analysis confirmed the findings of his "A" sample.

The Proceedings:

8. Rule 7.53 of the CADP provides that except in circumstances where an athlete waives his or her right to a hearing pursuant to Rule 7.54, a hearing must be held to determine an anti-doping rule violation and the appropriate consequences. As there was no such waiver in this case, I was appointed as Arbitrator by Co-Chief Arbitrator, Yves Fortier C.C., Q.C.
9. A number of conference calls were subsequently held to deal with various procedural issues.

10. In advance of the hearing, the CCES filed an affidavit of Jeremy Luke, the General Manager of the Doping Control Team, outlining the circumstances giving rise to the anti-doping rule violation asserted in this case. Appended to Mr. Luke's affidavit were a series of documents pertaining to matters such as sample collection, the chain of custody, and the analysis of both Mr. Robinson's "A" and "B" samples. The documentation also included information regarding analysis procedures which was provided by Dr. Christiane Ayotte, the Director of the WADA-accredited INRS laboratory in Montreal, to Dr. Gerry Kupferschmidt, a forensic expert retained by Mr. Nuttall.
11. In addition, written submissions were filed on behalf of Mr. Robinson, the CCES and the Government of Canada. The written submissions of Mr. Robinson included two reports of Dr. Kupferschmidt and the submissions of the CCES included one report of Dr. Ayotte.
12. Mr. Nuttall and Mr. Lech, counsel for the CCES, also agreed to submit the following joint statement:

Joint Statement - Position of the Experts

1. The presence of cocaine and metabolite in a urine sample is a doping violation. Accordingly, the INRS laboratory performed a reliable test to determine the presence of cocaine and metabolite in urine. The test is not designed for precise quantification or to prove the recency of use. It is accepted that unchanged cocaine and cocaine metabolites were both present in Mr. Robinson's sample.
 2. There is no evidence that the Robinson sample was contaminated with cocaine at the INRS laboratory.
 3. It is not at all likely that unchanged cocaine would be detected in urine if the cocaine was administered 2-3 days prior to the sample collection session.
 4. The presence of unchanged cocaine in a urine sample is consistent with very recent (hours) exposure to the cocaine.
 5. Unchanged cocaine in the Robinson urine sample could be due to the recent willful administration of cocaine or due to recent passive exposure to cocaine. The presence of the metabolite benzoylecgonine in the urine sample could be due to willful use of cocaine or could be due to passive exposure to cocaine. The test results and the data available do not allow either theory to be dismissed in an outright fashion.
13. Given the presence of cocaine and metabolites in Mr. Robinson's sample, it was acknowledged that an anti-doping rule violation occurred. However, Mr. Nuttall

contended that there are exceptional circumstances which justify the elimination or, in the alternative, a reduction in the penalty for this violation. In this regard, Mr. Nuttall submitted that Mr. Robinson came into contact with a substance which he believed to be cocaine in the course of his employment and the drug was passively absorbed into his system through his skin. Mr. Nuttall further submitted that Mr. Robinson had no reason to believe that the drug could enter his system in that way and that he exercised due diligence or, in other words, all due care to avoid contamination.

14. The evidence in support of the claim of exceptional circumstances is set out below.
15. At the relevant time, in order to support his family, Mr. Robinson was working at Lloyd's Laminating during the day. He also worked on a part-time basis in the evening as a member of the security staff at the Chocolate Lounge, a club in downtown Toronto.
16. Mr. Robinson testified that on the evening of Wednesday, May 11, 2005, he began work at the Chocolate Lounge at 8:30 p.m. and his shift ended at approximately 3:00 a.m. the following morning.
17. Both Mr. Robinson and Larry Cummings, who also works at the Chocolate Lounge, testified that in carrying out their duties, security staff are required to pat down patrons entering the club to ensure that they do not have concealed weapons or contraband, such as cigarettes or illicit drugs. A patron who is found to have a suspicious item is given the option of leaving the club or turning the item over to security staff. Although Mr. Robinson testified that patrons may reclaim items when they leave the club, Mr. Cummings testified that this is a matter within the discretion of the promoter. According to both Mr. Robinson and Mr. Cummings, contraband items which are unclaimed at the end of the shift are to be destroyed, which generally involves flushing them down the toilet.
18. Although there is a locker in the club where contraband items can be stored during the course of a shift, Mr. Robinson testified that he kept such items in his pocket.
19. In an initial affidavit filed in advance of the hearing, Mr. Robinson stated that he took care not to come into contact with suspected contraband, even when destroying it or flushing it down the toilet. In a subsequent affidavit, he explained that it was his practice to wear gloves when handling suspected packages. At the hearing, Mr. Robinson testified that he wore leather gloves when patting down patrons at the door of the club and that at other times, he kept the gloves in his pocket.
20. At approximately 10:30 p.m. on the evening of May 11th, Mr. Robinson was assigned to the door of the club with Mr. Cummings. Mr. Robinson testified that when he patted down a man who entered the club, he discovered a brown paper bag tucked in his sock. Inside the paper bag was a plastic bag containing a white

powdery substance which Mr. Robinson believed to be cocaine. Mr. Robinson testified that he was able to recognize cocaine as in 1998, he was convicted of trafficking and possession for the purpose of trafficking and the substance involved was cocaine. Mr. Robinson was sentenced to three years and ten months' incarceration, of which he served approximately 19 months. Thereafter, he spent some time on parole.

21. Mr. Robinson testified that on the evening of May 11th, the patron on whom he found the brown paper bag wanted to remain in the club. Accordingly, Mr. Robinson took the bag and put it in the right front pocket of his pants, which were described as black jeans. Mr. Robinson's evidence was corroborated by Mr. Cummings, who recalled Mr. Robinson finding a brown paper bag containing a powdery substance when he patted down a patron on the evening of May 11th. Mr. Cummings believed that Mr. Robinson put the bag in his pocket.
22. Mr. Robinson estimated that the bag contained approximately 14 grams or ½ ounce of cocaine. He acknowledged that he was aware that cocaine is a prohibited substance under the CADP.
23. According to Mr. Robinson, during the course of the evening, he also put other items of contraband in the right front pocket of his jeans. These consisted of pills, which he believed to be ecstasy, marijuana and a package of cigarettes.
24. Mr. Robinson testified that at the end of his shift, the contraband items had not been reclaimed and he, therefore, proceeded to the washroom to dispose of them. According to Mr. Robinson, when he reached into his pocket, he found that the bag containing the substance he believed to be cocaine had broken open. He estimated that approximately 70% of the contents of the bag had spilled into his pocket and that 30% remained in the bag.
25. Mr. Robinson testified that he emptied the substance which remained in the bag into the toilet and then threw the bag in the garbage. He also testified that he turned out the lining of his pocket and shook the contents into the toilet.
26. In an affidavit filed in advance of the hearing, Mr. Robinson stated that in the process of emptying his pocket, he brushed the substance with his hands. He also stated that as he was doing so, he stood over the toilet and his head came in close proximity to the area of his pocket. At the hearing, he testified that he held his breath in an effort to avoid inhaling the substance. He also testified that he felt no effects and assumed he was "ok".
27. Mr. Robinson testified that when he was finished shaking out the lining, he did not believe that any of the powdery substance remained in his pocket.

28. Throughout this time, Mr. Robinson acknowledged that his gloves were in the back pocket of his jeans. Although he initially testified that there was no specific reason he didn't put them on, he later suggested that he didn't do so because he did not expect to be "poked".
29. Mr. Cummings testified that he saw Mr. Robinson come out of the washroom at the end of his shift and that Mr. Robinson did not express any concern. Mr. Cummings agreed that he did not know what happened during the time that Mr. Robinson was in the washroom.
30. At approximately 12:00 noon on May 12th, Mr. Robinson drove to Renfrew with some teammates to compete in the National Senior Wrestling Championships. Mr. Robinson testified that he was wearing the same black jeans he had worn when working at the Chocolate Lounge. He also testified that he generally puts his keys in the right front pocket of his pants and, for this and possibly other reasons, would have put his hand in his pocket during the day. Mr. Robinson testified that at the time, he did not believe there was any residue in his pocket which could have been a source of contamination.
31. In the first of two affidavits sworn by Mr. Robinson prior to the hearing, he stated that he also recalled wearing the same pants on Saturday evening and may well have put his hand in his pocket at that time.
32. Mr. Robinson testified that he was not aware that cocaine could be absorbed through the skin. He also agreed that he made no inquiries and conducted no investigation regarding his exposure to cocaine.
33. An outline of the sequence of events described by Mr. Robinson was provided to Dr. Kupferschmidt, the forensic expert retained by Mr. Nuttall.
34. In Dr. Kupferschmidt's initial report, he expressed the opinion that it was possible that the metabolite benzoyllecgonine, which was detected in Mr. Robinson's sample, was due to passive administration of the drug. He also suggested that Mr. Robinson's ongoing exposure to cocaine in the pocket of his pants up to the day before the sample was collected served to enhance that opinion.
35. In response to the report of Dr. Kupferschmidt, the CCES filed a report of Dr. Ayotte in which she indicated that the presence of cocaine itself in Mr. Robinson's sample was consistent with "very recent (hours) administration" of the drug. She also referred to Dr. Kupferschmidt's report in which he indicated that cocaine decreases rapidly in urine samples following its administration and is undetectable after 12 hours.
36. In a second affidavit sworn by Mr. Robinson in response to the submissions of the CCES, he stated that, on reflection, he had changed into his street clothes,

including his black jeans, after showering some 30 to 40 minutes before providing an acceptable sample on Sunday, May 15th. He believed that he might have put his hand in his pocket during that time.

37. At the hearing, Mr. Robinson testified that he wore his black jeans to the competition on Sunday morning and might well have put his hand in his pocket to retrieve his keys. He also testified that he was wearing his black jeans prior to providing an initial sample, which was unacceptable due to the pH level. He testified that he then had a shower and changed into his street clothes before providing a second sample, which was acceptable. Mr. Robinson also testified that he did not make any comment or note any concern on the doping control form because he had no reason to believe there was cocaine in his system. He testified that had he believed otherwise, he would have advised his coach.
38. In a second report prepared by Dr. Kupferschmidt, which accompanied Mr. Robinson's reply submissions, Dr. Kupferschmidt agreed with Dr. Ayotte that the present of cocaine in Mr. Robinson's sample was consistent with very recent (within hours) administration of the drug. However, he indicated that the presence of cocaine, as indicative of recent use, was inconsistent with the urinary benzoylecgonine level reported in Mr. Robinson's sample. On this basis, he suggested that perhaps the cocaine detected in the sample was the result of contamination. He also suggested that the theory that the benzoylecgonine level was the result of passive exposure to cocaine was just as plausible as the theory of recent use.
39. Apart from evidence relating to the anti-doping rule violation asserted by the CCES, Mr. Robinson gave evidence regarding his involvement in wrestling clinics and in coaching and mentoring young athletes. Mr. Robinson's coach, Mr. Tzogas, also testified that Mr. Robinson has a passion for his sport; that he is highly motivated; and is a positive influence on other athletes. Leroy Lyttle, a family friend, testified that Mr. Robinson is highly respected in the community and both Mr. Lyttle and Dermot Begly, who was previously involved in wrestling and now assists at the club where Mr. Robinson trained, gave evidence regarding Mr. Robinson's involvement in coaching and the assistance he had provided to young athletes.
40. Mr. Tzogas, Mr. Lyttle, and Mr. Begly, all of whom were aware of Mr. Robinson's prior conviction, testified as to Mr. Robinson's reputation for honesty. Mr. Tzogas testified that he did not believe Mr. Robinson would use illicit drugs and Mr. Lyttle and Mr. Begly testified that they believed Mr. Robinson's explanation regarding the manner in which cocaine entered his system. These witnesses acknowledged, however, that they had no personal knowledge of the events leading up the competition in Renfrew on the weekend of May 14 and 15, 2005.

The Violation

41. Given the presence of cocaine and metabolites in the sample provided by Mr. Robinson, it was acknowledged that an anti-doping rule violation occurred. As noted previously, cocaine is a prohibited substance on the 2005 WADA prohibited list, which applies to the CADP. Rule 7.17 of the CADP also provides that it is each athlete's personal duty to ensure that no prohibited substance enters his or her body. The Rule further provides that athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their bodily samples. It is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping rule violation.

Consequences

42. As cocaine is a prohibited substance, in accordance with the CADP, the penalty for a first anti-doping rule violation is a period of two years' ineligibility from sport unless the athlete establishes a basis for eliminating or reducing the penalty for "exceptional circumstances".
43. Rules 7.38 and 7.39 of the CADP, which deal with the elimination or reduction of a period of individual ineligibility based on exceptional circumstances, provide as follows:

No Fault or Negligence

- 7.38 If the *Athlete* establishes in an individual case involving an anti-doping rule violation under rule 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).

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.

44. The terms "no fault or negligence" and "no significant fault or negligence" are defined in the CADP glossary as follows:

"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 of caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method*.

"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.

45. As noted in a number of decisions, the provisions set out above correspond to certain articles of the WADA Code. Rule 1.26 of the CADP provides that the Code and its commentary are a source of interpretation of the Program. The commentary to the WADA Code provides that these provisions are meant to be applied "only in cases where the circumstances are truly exceptional and not in the vast majority of cases".
46. As provided under Rule 7.38 of the CADP, in order for a period of ineligibility to be eliminated, the athlete must establish no fault or negligence in relation to the violation. Under Rule 7.39, the period of ineligibility may be reduced where the athlete establishes no significant fault or negligence. In both cases, the Athlete must establish how the prohibited substance entered his or her system.

47. Rule 7.55 of the CADP provides that where the Rules place the burden of proof upon the athlete to rebut a presumption or to establish specified facts or circumstances, the standard of proof shall be on a balance of probabilities.
48. In this case, Mr. Nuttall contended that Mr. Robinson was accidentally exposed to cocaine during the course of his employment and that there was ongoing exposure to the drug by virtue of the residue in his pocket during the period prior to the test on May 15th. Mr. Nuttall further contended that I ought to conclude the drug to which Mr. Robinson was exposed was cocaine as he described finding a white powdery substance in plastic, inside a paper bag in the sock of a patron in a club in the entertainment district. Mr. Nuttall also submitted that based on his prior experience, Mr. Robinson was in a position to know whether the substance was cocaine.
49. It was the submission of Mr. Lech that Mr. Robinson did not establish how the prohibited substance entered his system. In particular, it was contended, he did not demonstrate that cocaine entered his system by means of passive exposure, rather than intentional use. Mr. Lech further contended that even on Mr. Robinson's version of events, he took possession of a substance which he believed to be cocaine, was negligent in his handling of the substance and failed to exercise appropriate care to avoid contact with it. He also failed to make any inquiries or conduct any investigation regarding the effects of his exposure.
50. The Government of Canada subscribed to the submissions of the CCES.
51. Considering firstly how the prohibited substance entered Mr. Robinson's system, as noted by both Dr. Ayotte and Dr. Kupferschmidt, the white powdery substance described by Mr. Robinson was not analyzed to determine if it was, in fact, cocaine. Moreover, even if the substance was cocaine, it is not possible to assess the potency of the drug or the extent of Mr. Robinson's exposure.
52. The joint statement submitted by the parties indicates that the presence of unchanged cocaine in Mr. Robinson's sample is consistent with very recent (hours) exposure to cocaine and it is not at all likely that unchanged cocaine would be detected if it had been administered two to three days previously. The joint statement also indicates that the presence of cocaine and the metabolite benzoylecgonine could be due to willful administration or passive exposure to cocaine. The test results, therefore, do not support or rule out either possibility.
53. As to other evidence, Mr. Robinson suggested that his principal exposure to cocaine occurred in the early morning of May 12th when he was disposing of a bag which he had taken from a patron at the Chocolate Lounge. According to Mr. Robinson, the bag broke open in his pocket and in the process of disposing of the substance in the toilet, he brushed his hands with it and his head came in close proximity with his pocket. Mr. Robinson also indicated initially that he wore the same pants when

he drove to Renfrew later that day and again on Saturday evening prior to providing a urine sample on Sunday afternoon.

54. It was the basis of this sequence of events that Dr. Kupferschmidt prepared his initial report which focused primarily on the metabolite benzoecgonine which was detected in Mr. Robinson's sample.
55. Dr. Ayotte, however, subsequently pointed out that cocaine itself was also present in Mr. Robinson's sample, which was indicative of very recent (within hours) administration of the drug. In fact, Dr. Kupferschmidt did not disagree with that opinion. Accordingly, it is apparent that the presence of cocaine in Mr. Robinson's sample could not be explained by the exposure he initially described.
56. In my view, it is significant that it was only after Dr. Ayotte's report that Mr. Robinson suggested for the first time the possibility of exposure to cocaine within a short time prior to his providing a urine sample on Sunday, May 15th. In an affidavit filed following Dr. Ayotte's report, Mr. Robinson stated that, on reflection, he recalled changing into his street clothes and, specifically, the pants he wore at the Chocolate Lounge, some 30 to 40 minutes prior to providing an acceptable sample and that he might well have put his hand in his pocket during that time.
57. By the time of the hearing, Mr. Robinson also recalled that he wore his black jeans to the competition on Sunday and again, prior to providing a initial sample which was unacceptable.
58. In my view, the fact that Mr. Robinson suggested possible exposure to cocaine on Sunday only when it became apparent that the presence of cocaine in his sample was indicative of recent administration bears on the veracity of his account. Moreover, having regard to all of the evidence, I find that Mr. Robinson failed to establish on a balance of probabilities that the presence of cocaine and metabolites in his sample was the result of accidental passive exposure to the drug. Although, in reaching this conclusion, I have considered the character evidence tendered on Mr. Robinson's behalf, I find that this evidence is not sufficient to outweigh the evidence relating to the anti-doping rule violation in respect of which Mr. Tzogas, Mr. Lyttle and Mr. Begly admittedly had no knowledge.
59. Furthermore, even if I were to accept Mr. Robinson's version of events, I cannot conclude that there was either no fault or negligence or no significant fault or negligence on his part.
60. According to Mr. Robinson, on the evening of May 11th, he took possession of a paper bag in which there was a plastic bag containing a white powdery substance that he believed to be cocaine. Rather than storing the bag in a locker in the club, he kept the bag in his pocket along with other items of contraband, consisting of pills, marijuana and a package of cigarettes.

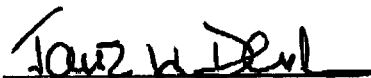
61. Mr. Robinson testified that when he went to the washroom at the end of his shift to dispose of these items, he found that the bag had broken open and that approximately 70% of its contents had spilled into his pocket.
62. At no time during the process of disposing of the substance in the toilet did Mr. Robinson put on the gloves which were in his back pocket. At the hearing, he appeared to suggest that he wore gloves only when patting down patrons entering the club and that the gloves were intended to avoid some type of physical injury. However, in an affidavit filed in advance of the hearing, Mr. Robinson stated that it was his practice to wear gloves when handling suspected packages and that when he discovered that the bag containing the substance he believed to be cocaine had broken open in his pocket, he had forgotten to put on his gloves.
63. Although Mr. Robinson also suggested that he had no reason to suspect that the bag would break open, even if that were the case, once he discovered that the bag had broken, prudence would have dictated the use of gloves. In fact, Mr. Robinson took no precautions to avoid contact with the substance which he believed to be cocaine. He also continued to wear his black jeans for a number of days in circumstances where he believed there had previously been a considerable quantity of cocaine in his pocket.
64. Although Mr. Nuttall submitted that at the time, Mr. Robinson did not know and would not reasonably have known that cocaine could be absorbed through the skin, Mr. Robinson stated that in emptying out his pocket on the morning of May 12th, he stood over the toilet and his head came in close proximity to his pocket. While that exposure does not explain the presence of unchanged cocaine in Mr. Robinson's sample, nevertheless, Mr. Robinson made no inquiries regarding the effects of such exposure.
65. Accordingly, for the reasons set out, I find that Mr. Robinson failed to exercise appropriate care by not taking precautions to avoid direct contact with a prohibited substance which he believed to be cocaine. Moreover, although Mr. Nuttall suggested that a finding against Mr. Robinson would have a chilling effect on athletes who are required to take possession of prohibited substances in the course of their employment, simple precautions could have been taken to avoid the type of exposure described by Mr. Robinson. I note, as well, that Mr. Robinson failed to make any inquiry regarding the effects of that exposure.
66. In the circumstances, therefore, I cannot conclude that there are exceptional circumstances which would justify the elimination or reduction in the period of ineligibility.
67. In my view, this finding is consistent with the decision involving Scott Lelièvre issued on February 7, 2005, in which Arbitrator Graeme Mew commented as follows:

Even then, as the Commentary from the Code set out above indicates, cases of contamination will only give rise to exceptional circumstances when the athlete can demonstrate "all due care" concerning the product said to be the source of the prohibited substance. In this case, the Athlete did not even consult medical or other expertise in the decision to use marijuana, and by his own admission did not have a safe or secure source of supply of that prohibited substance.

In the Kelly Guest case, in 2003 involving a Canadian athlete and arguments by him that his positive test result could have been due to contaminated supplements, it was found that the athlete's use of supplements was irresponsible because of his failure to take proper measures to ensure his products were clean. Although that case was decided under different rules, similar principles apply in this case. Athletes are strictly liable for substances that are found in their systems and exceptional circumstances mitigating against the consequences of that strict responsibility will not be found to exist where the athlete has failed to exercise appropriate diligence and care.

68. In the result, while Mr. Robinson is to be commended for his commitment to his sport and for his involvement in coaching young athletes, in view of the presence of cocaine and metabolites in his sample, it was acknowledged that an anti-doping rule violation occurred. For the reasons set out, I cannot conclude that there are exceptional circumstances which would justify the elimination or reduction of the penalty for such a violation. In accordance with the CADP, the penalty I am required to impose for a first anti-doping rule violation is a two year period of ineligibility from sport and permanent ineligibility for direct financial support from the Government of Canada. The period of ineligibility shall run from the date of the decision, provided that the period of provisional suspension shall be credited against the total period of ineligibility.
69. Unless a written request is made to the SDRCC by 5:00 p.m. on November 17, 2005, there will be no order as to costs.

DATED AT TORONTO, this 10th day of November, 2005.



Jane H. Devlin
Arbitrator