

**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 JOSEPH FRANS  
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT**

**N° : SDRCC DT-05-0022  
(Doping Tribunal  
Ordinary Division)**

**CANADIAN CENTRE FOR ETHICS IN  
SPORT {CCES}**

**CANADIAN CURLING ASSOCIATION {CCA}**

**GOVERNMENT OF CANADA {GC}**

**and**

**JOSEPH FRANS {Athlete}**

**and**

**WORLD ANTI-DOPING AGENCY {WADA}  
Observer**

**Before:**

**Richard McLaren (Arbitrator)**

**Appearances and Attendances:**

**For the Athlete: No Appearance**

**For the Canadian Centre for Ethics in Sport: David W. Lech, Esq.**

**For the Government of Canada: Mary Warren**

**The Canadian Curling Association: Neil Houston**

**World Anti-Doping Agency: No Appearance**

## DECISION

1. Joe Frans is an athlete in the sport of curling and a member of the Canadian Curling Association {CCA}. As a member he agreed by signing a contract that he would abide by the rules of the CCA.
2. The CCA is the national sport organization governing the sport of Curling in Canada. They adopted the Canadian Anti-Doping Program {CADP} on 16 June 2004. The purpose of CADP is to protect athletes' rights to fair competition.
3. The Canadian Centre for Ethics in Sport {CCES} is an independent not-for-profit organization incorporated under Part II of the *Canada Corporations Act* who, amongst other things, promotes ethical conduct in all aspects of sport in Canada and to further that objective administers CADP.
4. Mr. Frans was one of four curling athletes randomly selected for in-competition doping control at the CCA sponsored Canadian Brier in Edmonton, Alberta. Pursuant to the rules of CADP the Athlete provided a urine sample for testing on 8 March 2005.
5. The World Anti-Doping Agency {WADA} accredited laboratory in Montreal {Lab} reported, on 24 March 2005 to the CCES, an adverse analytical finding for cocaine and its metabolites. The CADP incorporates the Prohibited List International Standard issued by WADA. Section 6 of the Prohibited List, applicable at the time of obtaining the sample, sets out stimulants that are prohibited. That list includes cocaine and its metabolites as being a prohibited substance.
6. Following the receipt of the Lab Certificate of Analysis an "initial review" was conducted pursuant to Rule 7.45 of the Doping Violations and Consequences Rules {the Rules}. As part of that review, a representative of the CCES requested through the CCA that the Athlete provide an explanation of the adverse analytical finding. On 11 April 2005 the Athlete responded by email with a written explanation.
7. The Athlete's explanation by email was to the following effect:  
*This is a complete shock. I don't believe it. I drink a lot (I'm a curler) but I don't do drugs. I partied hard at the Tim Horton's Brier going to the patch every night. I did go to the smoke hole often because I like to smoke when drinking and met many people there which prolonged my stay. I also went to many after parties all week long. I don't remember seeing cocaine or anyone smoking it but those are the only times I can possibly think of that I*

*may have come into contact with drugs. I am at a loss. Curling is my life and because or [sic] curling I have met thousands of people (most of my friends). I work at a golf course where everyone knows I curl and ask me every day about it. I would never do anything to jeopardize something that means so much to me and everyone around me. I have hardly slept since I received this letter, I don't know what I would do without curling.*

8. On 14 April 2005 a Notice about Mr. Frans was issued to the CCA by the CCES pursuant to Rule 7.46 of the Rules. The Notice asserts that a doping infraction occurred and proposes a sanction of two years ineligibility and permanent ineligibility for direct financial support from the Government of Canada pursuant to Rules 7.20 and 7.37.
9. Rule 7.23 of CADP provides that a Doping Tribunal must hold a hearing to impose consequences provided for under the Rules unless the athlete waives the right to a hearing. In this case there was no waiver of the right to a hearing.
10. The Co-Chief Arbitrator Yves Fortier, C.C., Q.C. appointed me to be the Arbitrator on 27 April 2005. The parties were advised of the appointment by letter from the Sport Dispute Resolution Centre of Canada {SDRCC} on the same date. The letter advised the parties that a pre-hearing conference call would take place on 3 May 2005. At the time of the call there was no objection to my appointment or as to the arbitrability of the matter.

#### **Record of Proceedings and Attempted Notice to Athlete**

11. The Athlete did not participate in the pre-hearing call of 3 May 2005. Therefore I instructed the SDRCC to go to extended lengths to contact the Athlete and advise him of his rights and to satisfy me that he was aware of this proceeding.
12. The CCES filed, on 5 May 2005, a document entitled the 'Affidavit of Jeremy Luke the Senior Manager, Doping Control Program with the CCES'. This document provides the information and business records of the CCES in respect of the alleged Frans anti-doping rule violation and forms the evidence of the CCES in this matter. That document has been provided to the Athlete.
13. On 24 May 2005, I sent an email note to Mr. Girardin, the Executive Director of the SDRCC. This email summarized the variety of methods undertaken by the SDRCC to contact and serve the papers of these proceedings on the Athlete. I was satisfied that Mr. Frans was aware of the proceedings and had personally received the various communications in this proceeding, all of which are summarized in my email. I also concluded that Mr. Frans was unwilling to participate in the process, but he had not waived the hearing of

his case. Therefore, I closed the hearing due to his lack of co-operation and willingness to participate as well as being mindful of the strict timelines imposed by the Rules. I had Mr. Girardin advise the parties that I was closing the hearing as of 25 May 2005 and I requested that he make my email to him available to the parties. I have proceeded to make this decision based upon the written record before me.

### Submissions of the CCES

14. The CCES has met its burden of proof to establish an anti-doping rule violation. The athlete is responsible under Rule 7.16 and 7.17 for any prohibited substance or its metabolites found to be present in his sample.
15. The Athlete has failed to provide any written submission on his behalf other than his initial response (quoted in full above) to the CCES prior to the Notice of Infraction having been issued.

### DECISION

16. I am satisfied that the Athlete was given every opportunity to participate in a hearing before me. He failed to respond to the various attempts made to acquire his participation in a hearing or waiver of the same. The parties were advised that I was closing the hearing in this matter and that it would proceed merely upon the written record I had received.
17. The proper selection of the Athlete for testing, the integrity of the sample collection and the chain of custody of the urine sample are all established on the record. The Lab has reported an adverse analytical finding and there is no indication that the chemical analytical process used by the Lab was in any way flawed.
18. Rule 7.17 and 7.18 make an athlete responsible for any prohibited substance found in the urine sample analysis. As was held in the decision of Arbitrator Mew in *CCES & GC v. Scott Lelievre* (SDRCC DT -4-0014 dated 7 February 2005) *it is not necessary that intent, fault or knowing 'use' by an athlete be demonstrated to establish this anti-doping rule violation*. I am comfortably satisfied that, on a review of all of the evidence before me, an anti-doping rule violation has occurred.
19. Cocaine is not a "specified substance" identified in Rule 7.7. It is a prohibited substance when it is detected at any level; a point made in the recent cocaine case, *supra*, by Arbitrator Mew. The failure of the Athlete to participate in these proceedings means that there is no necessity for me to refer to the Exceptional Circumstances Rules 7.38 and 7.39. There must be evidence from the Athlete, or presented on his behalf, that there was either no fault or

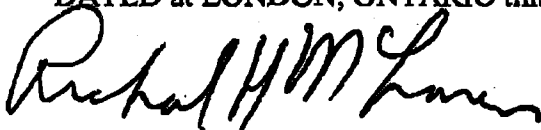
negligence or no significant fault or negligence. The only evidence before me from the Athlete is the 11 April 2005 explanation sent to the CCES. That statement is one of denial and an inability to explain what has occurred. I take notice of the fact that cocaine cannot enter the human body by the consumption of alcoholic drink or the smoking of tobacco as referred to in the Athlete's explanation. In short, the Athlete has provided no explanation of the adverse analytical finding. In the absence of any satisfactory evidence, by way of explanation from the Athlete, I need not address further the Exceptional Circumstances provisions of the Rules. They have no application in this case.

20. I find that an anti-doping rule violation has occurred under the CADP and the Rules prohibiting the use of a prohibited substance. In the circumstances I have no other choice than to impose the sanction for a first anti-doping rule violation of a two-year period of ineligibility and permanent ineligibility for direct financial support from the Government of Canada.
21. The foregoing period of ineligibility starts on the date of this decision in accordance with the Rules.

**Costs**

22. No submission was made on costs. Unless applied for, I make no order in respect of the same.

DATED at LONDON, ONTARIO this 2<sup>nd</sup> Day of JUNE 2005



Prof. Richard H. McLaren, C.Arb  
Co-Chief Arbitrator SDRCC