

**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 CHRIS MCKAY ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No: SDRCC DT-05-0030  
(Doping Tribunal)

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

**FOOTBALL CANADA (FC)**

**GOVERNMENT OF CANADA (GC)**

and

**CHRIS MCKAY (Athlete)**

and

**WORLD ANTI-DOPING AGENCY (WADA)  
(Observer)**

**Before:**

John Welbourn (Arbitrator)

**Appearances and Attendances:**

For the Athlete:

No Appearance

For the Canadian Centre for Ethics in Sport:

Joseph de Pencier (General Counsel)  
Karine Henrie

For the Government of Canada:

Mary Warren

For Football Canada:

Bob Swan

For the World Anti-Doping Agency:

No Appearance

### **REASONS FOR DECISION**

These reasons follow my Decision of February 15, 2006 and are delivered as required by CDRCC Rule AD-8.11(a).

1. On September 28, 2005, Chris McKay (the "Athlete") was an athlete in the sport of junior football and a member of Football Canada ("FC"). As a member, he was required to abide by the rules of FC.
2. FC is the national sport organization governing the sport of junior football in Canada, and adopted the Canadian Anti-Doping Program ("CADP") on July 10, 2004. The purpose of the CADP is to safeguard the integrity and values of sport and to protect the health of individuals from the unethical practice of doping.
3. The Canadian Centre for Ethics in Sport ("CCES") is an independent not-for-profit organization which promotes ethical conduct in all aspects of sport in Canada and administers the CADP.
4. On September 28, 2005, the Athlete was a member of the Okanagan Suns Junior Football Team. He was randomly selected for out-of-competition doping control at a team practice in Kelowna, British Columbia. The Athlete refused or failed to provide a urine sample for testing.
5. Exhibit 4 to the Affidavit of Jeremy Luke is a photocopy of the CCES Athlete Selection Order for Mr. McKay. The document is dated September 28, 2005 at 8:12 p.m. and contains a somewhat legible signature in the "Athlete Signature" box immediately below the highlighted and capitalized provision:

**I HEREBY ACKNOWLEDGE THAT I HAVE RECEIVED AND READ THIS NOTICE.**

I accept that the signature is that of the Athlete.

6. Exhibit 5 to Mr. Luke's Affidavit is a photocopy of the Supplementary Report Form of Don Dorchak, the chaperone appointed to accompany the Athlete through the doping control procedure. The handwritten segment of the Report Form states:

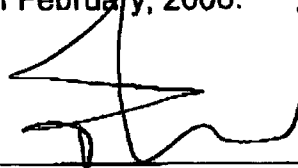
I was asked to take one of the players to the washroom for a urine sample. I asked Chris McKay if he was ready to do the test, he said yes. I then walked with him to the washroom and stood right beside him. Chris then asked me, what if I can't give you a sample right now. I said that I would stay with him until he can give me a sample. He then looked at me and said, I am not doing this, and he set his sample container, (which was still sealed) on

the garbage can, and left the building. I then picked up the container and reported the incident to my supervisor (Zane Klym) and the coach."

7. By letter dated October 5, 2005, the CCES notified FC of the matter and that an investigation had been initiated.
8. By letter dated October 24, 2005, the CCES notified FC pursuant to Rule 7.48 of the CADP, asserting that an anti-doping rule violation had occurred and proposing a sanction to be imposed on the Athlete of two years' ineligibility and permanent ineligibility for direct financial support from the Government of Canada.
9. Rule 7.53 of the CADP provides that a doping tribunal must hold a hearing unless the athlete waives the right to a hearing. The Athlete has not waived his right to a hearing.
10. Chief Arbitrator Richard McLaren appointed me as Arbitrator on November 1, 2005. All parties were advised of the appointment by letter from the Sport Dispute Resolution Centre of Canada ("SDRCC") on the same date. The letter advised that a pre-hearing conference call would take place on November 7, 2005. No objection to my appointment or the arbitrability of the matter has been taken.
11. The Athlete did not join in the November 7, 2005 conference call.
12. The telephone conference was therefore adjourned to November 17, 2005. FC was instructed to ensure the Athlete had been contacted, advised of his rights and was aware of this proceeding including the conference call on November 17, 2005.
13. The Athlete did not join in the conference call on November 17, 2005.
14. On November 30, 2005, a telephone conference was convened with Chief Arbitrator McLaren and Benoit Girardin, the Executive Director of the SDRCC. Subsequently, the SDRCC provided Chief Arbitrator McLaren with a detailed chronology of all contacts made and efforts to contact the Athlete to encourage him to participate in the proceeding, and to advise him of the assertion of the anti-doping rule violation, his rights and the proposed sanctions under the CADP.
15. Chief Arbitrator McLaren concluded that the Athlete was aware of the proceedings, the assertion of an anti-doping rule violation, the CCES proposal for sanctions, and that the Athlete understood the serious nature of the allegations made.
16. Pursuant to Rule AD-1 of the Arbitration Rules and Procedures for doping disputes, Chief Arbitrator McLaren then directed that the matter proceed in the absence of the Athlete.

17. Subsequently, the CCES filed the Affidavit of Jeremy Luke, affirmed January 5, 2006 which comprises the evidence relied upon. Mr. Luke is the General Manager of the Anti-Doping Program with the CCES.
18. The Athlete has not:
- a) participated in the hearing process;
  - b) contested the anti-doping rule violation asserted by the CCES or the evidence put forward by the CCES; or
  - c) offered any explanation for his prima facie refusal to submit to Sample collection.
19. The CCES has met the burden of proof that the Athlete refused or failed without compelling justification to submit to Sample collection after authorized notification. The Athlete's refusal constitutes an anti-doping rule violation as provided in Rule 7.24 of the CADP. This is a first violation.
19. The sanctions specified in my Decision of February 15, 2006 are incorporated by reference in these Reasons.

DATED at Calgary, Alberta, this 23 day of February, 2006.



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**JOHN WELBOURN, C.Arb., MCI Arb.**  
Arbitrator