IN THE MATTER OF AN ARBITRATION

BEFORE

THE DOPING TRIBUNAL

(SPORT DISPUTE RESOLUTION CENTRE OF CANADA)

BETWEEN

CHRISTOPHER JARVIS

("the Claimant")

AND

CANADIAN CENTRE FOR ETHICS IN SPORT

("the Respondent")

AND

ROWING CANADA AVIRON

("the Intervener")

ARBITRATOR - MICHEL G. PICHER

Appearing for the Claimant: Michael A. Smith, counsel
Christopher Jarvis, Claimant

Appearing for the Canadian Centre for Ethics in Sport:
Peter Lawless, counsel
Ann Brown, G. M, Ethics and Anti-Doping Services
Kevin Bean, Results Manager, Anti-Doping Program

Appearing for the Intervener: Ian Moss, Executive Director
Jim Wiggins, Secretary

The Government of Canada and Wada did not appear

A hearing in this matter was held in Ottawa on December 18, 2007

AWARD OF THE DOPING TRIBUNAL

The Claimant is a rower who has been on the National Team of the Rowing Canada Aviron for a number of years, in more recent years as a carded athlete. By notice dated October 25, 2007 sent to the intervener, the Claimant was advised that , " …Mr. Jarvis has committed an anti-doping rule violation pursuant to Rules 7.26 and 7.27 of the Doping Violations and Consequences Rules (Athlete Availability and Whereabouts Information). The CCES proposes that the sanction for this violation be three (3) months ineligibility (in accordance with rule 7.27)." An anti-doping rule violation can only be confirmed by the acknowledgement of the athlete or by a determination of the Doping Tribunal. Mr. Jarvis has elected to proceed to a hearing before this Tribunal.

The record before the Tribunal is not in substantial dispute. Mr. Jarvis has been a competitive rower since 1997 and a member of the National Team since 2002. He has experienced notable success, medaling at the most recent Pan Am games and representing Canada at the Athens Olympics. He is a respected athlete, with no history of doping violations, and indeed an unblemished record of negative substance testing at all times, to and including the present. The infraction alleged is not in relation to the failure of any doping test, but rather in relation to the rules which require athletes to keep the CCES apprized of their whereabouts for the purposes of out-of-competition testing, on a quarterly basis.

The World Anti-Doping Code, to which Canada subscribes, provides in Article 14.3 that athletes identified by their national anti-doping organization for inclusion in an out-of-competition testing pool are to "provide accurate, current location information". As explained in the evidence of Ms Anne Brown, General Manager, Ethics and Anti-Doping Services for the CCES, the domestic rules of the Canadian Anti-Doping Program (CADP), which conform to the World Anti-Doping Code, include, at article 6.13, recognition of the procedures and guidelines of the CCES for collecting and monitoring athlete whereabouts information, "…to ensure that sample collection can be planned and conducted at no advance notice for all athletes included in the Registered Testing Pool.." and for the enforcement of the program through appropriate action. To that end, the Program has promulgated the Athlete Whereabouts Program Guidelines, which apply to athletes in the Registered Testing Pool, said to number close to 900 athletes who are generally included by reason of their carding status.

Article 8 of the Whereabouts Guidelines stipulates that athletes within the Registered Testing Pool are to provide information as to their location on a quarterly basis, based on a deadline of approximately two weeks in advance of the commencement of the three month reporting period. If an athlete fails to provide the information, whether on a written form provided for that purpose, or by way of the internet using a dedicated program called "Adams", the CCES notifies the athlete's National Sports Organization (NSO) in writing, giving the athlete a further grace period of 10 consecutive days to provide his or her whereabouts information., along with an explanation for the failure to comply before the deadline. Non-compliance by the athlete can result in the recording of

a "Failure to Provide Whereabouts Information" infraction. Under article 10 of the Guidelines, any combination of three Failures to Provide Whereabouts Information and/or Missed Tests, in a rolling period of 18 months, makes the athlete subject to an Anti-Doping Rule Violation, as defined in section 7 of the Doping Violations and Consequences Rules of the CAPD. Rule 7.27 provides for a minimum three month period to a maximum two year period of ineligibility for such a violation.

The record confirms that Mr. Jarvis did fail repeatedly to comply with the requirement to provide whereabouts information. He did so in respect of the first quarter of 2007, resulting in a "Failure to Provide" declaration on January 8, 2007, as was duly communicated to him, through Rowing Canada Aviron. He again failed to provide information for the third quarter, resulting in a second "Failure to Provide "declaration on June 29, 2007. Finally, the Claimant again failed to provide the requisite whereabouts information for the fourth quarter of this year, causing a third "Failure to Provide" declaration to be recorded on October 1, 2007. It is not disputed that on the occasion of the third infraction he was aware of having committed the first two infractions and that on all three occasions he did not respond to the notice giving him an additional ten days' grace. Nor is there any evidence to suggest that there was any failure on the part of his NSO to immediately advise him of all of the notices received from the CCES. In the result, he became subject to and received, through his NSO, a notice from the CCES dated October 25, 2007, of the asserted Anti-Doping Rule Violation and the proposed sanction of three months of ineligibility as determined by the CCES.

Under article 7.55 of the Doping Violations and Consequences Rules, the burden of proof in these proceedings is on the CCES , to a standard of proof, "…greater than a mere balance of probability but less than proof beyond a reasonable doubt." The Tribunal is well satisfied that that burden is met in the case at hand. There is no evidence to suggest that the failures of the Claimant, related above, did not take place. Nor is there any evidence to show that he was prejudiced by any failure or delay on the part of Rowing Canada Aviron in immediately passing on to him the critical notices received from the CCES on all three occasions of his "Failure to Provide".

As counsel fro the CCES acknowledges, under the World Anti-Doping Code, the rules and procedures of the Whereabouts Program must be reasonable. While the scope of the instant claim does not require this Tribunal to review all aspects of the Program as against that standard, it is clear that the rules applied to Mr. Jarvis, including their promulgation, application and the related notices provided to him were well within the standard of what is reasonable. Nor can I accept the submission of Claimant's counsel that intent is an element of the infraction which must be proved by the CCES. Negligence, or the inadvertence of an athlete to be vigilant and faithful to his or her obligations under the rules is sufficient to cause the Doping Tribunal to confirm an Anti-Doping Rule Violation where it is established that he or she has received due notice and has been non-compliant with the requirement to provide athlete whereabouts information within the deadlines in three separate quarters in an eighteen month period. I must conclude that that is proved on the evidence before me. Neither do I accept, as urged in the argument of the Claimant's counsel, that there was a special obligation on either the

NSO or the CCES to give any special warnings or reminders to Mr. Jarvis with respect to the obligations, which he readily admits he was aware of, although they were not his "daily focus".

The instant case is particularly unfortunate, given the personal background and admirable activities of Mr. Jarvis. As he explained in his evidence, following the Athens Olympic Games he gained something of a celebrity status, based in part on his own history as a diabetic athlete. He became increasingly called upon, and accepted, to speak in public and to associate himself with activities in support of organizations and events concerning diabetes. His heavy travel agenda in relation to those efforts, coupled with his training schedule and travel to competitions, caused him to be distracted from paying close attention to his email communications, particularly as his email in-box became more heavily loaded with messages connected to his extensive community work. In the result, he was not focused on his obligations to report his whereabouts in a timely way, as required by the rules. As he tells it, it was only after declarations adverse to him were recorded by the CCES that he would review his email records and discover that indeed he had missed the critical messages.

Sadly, these facts cannot relieve against the unqualified obligations Mr. Jarvis was under as an athlete in receipt of Sport Canada funding and subject to the requirements of the Athlete Whereabouts Program Guidelines. Nor does the CCES or this Tribunal have the discretion, absent unreasonableness, to vacate or reduce the minimum penalty assessed. As noted above, no unreasonableness is shown as regards the rules applied to the

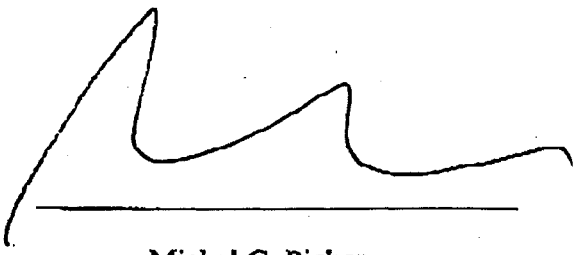
Claimant. As noted in the evidence of Ms Brown, in approximately ten thousand instances of whereabouts returns being required of athletes in the Registered Testing Pool since the inception of the Program, only two athletes have been identified for an asserted anti-doping rule violation. That includes the instant case, which appears to be the first to proceed to a Doping Tribunal decision. On the whole, the Tribunal is satisfied that the Program generally, as applied to Mr. Jarvis, was reasonable and that the minimum penalty proposed is reasonable, in accordance with the Rules.

On the facts of the case at hand, having regard to the provisions of article 7.12 of the CADP and article 10.8 of the World Anti-Doping Code, and the acknowledgement of their possible application by counsel for the CCES, I am satisfied that in the case at hand fairness would justify that the period of ineligibility for Mr. Jarvis be calculated to commence as of the date of the initial procedural hearing in this matter, being November 20, 2007.

For all of the foregoing reasons the claim must be dismissed. The Tribunal hereby finds and declares that the Claimant did commit an Anti-Doping Rule Violation by his failure to provide the requisite whereabouts information in three separate quarters within an 18 month period, contrary to article 10 of the Guidelines. The minimum sanction of three months' ineligibility, as required under article 7.27 of the Doping Violations and Consequences Rules, is therefore justified. As noted above, the Tribunal directs that the period of ineligibility of Mr. Jarvis be calculated to begin on November 20, 2007.

I retain jurisdiction in the event of any dispute respecting the interpretation or implementation of this award.

Dated at Ottawa this 19th day of December, 2007



Michel G. Picher

Arbitrator