IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY LEE RYCKMAN ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

ATTENDANCES:

Kevin Bean	Canadian Centre for Sport & Law ("CCES")
David Lech	Canadian Centre for Sport & Law
Lorraine Lafreniére	Canadian Cycling Association ("CCA")
Sean O'Donnell	Canadian Cycling Association
Marie-Claude Asselin	Sport Dispute Resolution Centre of Canada ("SCRCC")
Lee Ryckman	the Athlete
Brent Smith	for the Athlete
James W. Hedley	Arbitrator

DECISION

BACKGROUND

1. This matter, having followed an unusual route, has now been referred to me for adjudication.

2. During a pre-hearing conference call on November 12th, 2007, all parties with the exception of the Athlete, Lee Ryckman, agreed that the doping adjudication involving Ms. Ryckman ought to proceed despite some difficulties which will be described further in this Decision.

3. As of December 3rd, 2007, I had before me two separate matters supported by separate Affidavits each sworn on November 28th, 2007 and received by me on December 3rd, 2007.

4. According to the Canadian Anti-Doping Program ("CADP"), and indeed according to the rules of natural justice, an athlete who has undergone

doping control is entitled to notice of the various stages of the doping control process, including the imposition of sanctions against the athlete. Suffice it to say that CCES experienced unusual difficulty in contacting Ms. Ryckman. For reasons later to be explained, it is not necessary to compile a record of the many attempts made to reach Ms. Ryckman. The fact is that by November 12th, 2007, the date upon which the parties other than the Athlete resolved to proceed, there was no actual evidence that Ms. Ryckman had received any direct notice of the results of the doping control process in which she had become involved. There was no actual evidence of her having been informed of the results of the analysis of any sample provided by Ms. Ryckman and finally we had no way of knowing that she had ever received actual notice of the results of the CCES "Initial Review" process nor of the results of pre-hearing conference calls of October 4th, 2007 and November 12th, 2007.

5. During the October 4th, 2007 pre-hearing conference I, as did all the parties attending the conference, expressed concern over the absence of the Athlete in the proceedings. I directed, with the consent and agreement of CCES and CCA (the national sport organization which is a party to this matter) that a process server be engaged to make further attempts to reach Ms. Ryckman personally. I further directed that the package for the Athlete's attention include a letter over my signature briefly explaining the process, her rights and the possible consequences of her non-participation. I should indicate again that many attempts have been made prior to October 4th, 2007 to reach Ms. Ryckman either to addresses associated with her or through CCA.

PROCEEDING WITHOUT THE ATHLETE'S PARTICIPATION

6. CCES requested during the subsequent conference on November 12th, 2007 that I exercise my discretion under Rule 7.5 of the Canadian Sport Dispute Resolution Code to proceed without the Athlete's participation:

> "7.5 Proceeding without a Party
> 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 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."

7. Since November 12th, 2007, I have had under consideration the Section 7.5 application by CCES.

8. On February 20th, 2008, I was contacted by SDRCC and participated briefly in a telephone call in which Ms. Ryckman and a representative to whom I will refer later also were present, thus indicating that Ms. Ryckman's hearing would not proceed without her participation. During this call, she was directed by SDRCC to contact CCES in order to establish the all important line of communication between CCES and the Athlete.

9. The Athlete has done so through her representative and the operation of Rule 7.5 is no longer an issue.

DOCUMENTARY REVIEW

10. During the November 12th, 2007 pre-hearing conference, CCES requested that the proceedings continue in the form of documentary review,

provided of course that I were also to decide to proceed without Ms. Ryckman's participation. I am prepared to proceed as requested by CCES and CCA.

11. I should indicate that the request to proceed by documentary review was repeated in a letter over the signature of Kevin Bean of CCES dated April 10th, 2008 to SDRCC. The reason for the renewal, in effect, of the CCES motion is that more recent correspondence has taken place since Ms. Ryckman's contact with CCES to the extent that the initial review, as contemplated by Rule 7.45 of the CADP, could be completed with the participation of Ms. Ryckman, if she chose to do so.

12. In my opinion, I now have sufficient material upon which to reach a decision on a documentary review.

13. CCA is the Canadian sport organization for cycling and has adopted the CADP. As a cycling athlete, Ms. Ryckman is subject to the Rules of the CADP.

14. On June 30th, 2007, Ms. Ryckman competed in the National BMX (Cycling) Championships in Bromont, Quebec. The CCES conducted an in-competition doping control session and collected a urine sample from Ms. Ryckman. Her sample was submitted in the usual way for analysis. The resulting Certificate of Analysis indicated an adverse analytical finding for the presence of Cannabis.

15. I have before me the Affidavit of Anne Brown, General Manager, Ethics and Anti-Doping Services, for CCES sworn on November 28th, 2007. That Affidavit includes a number of exhibits in support of the accuracy and efficacy of

the testing process and results. I am prepared to conclude that the adverse finding of the presence of Cannabis in Ms. Ryckman's system resulted from strict adherence to doping control rules and regulations and find that the adverse analytical finding involving Ms. Ryckman is valid.

16. There is also evidence that CCES has conducted an inquiry to determine whether or not Ms. Ryckman had a therapeutic use exemption (TUE) relative to the substance in her system. A TUE may be granted to an athlete who is permitted the use of a prohibitive substance. The CCES determined that no TUE had been granted and I accept that as a fact.

APPLICATION OF RULE 7.7

17. Under Rule 7.20 of CADP, Ms. Ryckman is liable to be barred from participating in competition for a period of two years.

18. However, Rule 7.7 can be substituted for Rule 7.20 where the violation involves a "specified substance". Cannabis is such a substance and Rule 7.7 allows the athlete to establish that the "substance was not intended to enhance sport performance" in which case the penalties described in Rule 7.20 could be replaced by much less onerous ones for a first violation:

> "at a minimum, a warning and reprimand and no period of ineligibility from future events, and at a maximum, one year ineligibility."

19. CCES takes the position that the onus remains on the athlete to establish that her use of the specified substance, in this case Cannabis, was not intended to enhance her sport performance. In other words, no one other than the athlete can satisfy the onus.

20. I now refer to a letter from CCES dated April 10th, 2008 to which is attached five items of correspondence involving Ms. Ryckman. They also involve in some way Mr. Brent Smith who identifies himself as a longtime friend, former sponsor and coach of Ms. Ryckman and a fellow competitor. In the correspondence, he purports to speak on Ms. Ryckman's behalf and the correspondence contains information suited to satisfy Rule 7.7.

21. However, CCES takes the position that Ms. Ryckman had not directly adopted Mr. Smith's submissions and, as a result, has not discharged the previously described onus. The result CCES considered itself unable to apply Rule 7.7 as the culmination of the "initial review" which had been commenced pursuant to Rule 7.45 of the CADP and reinstated when Mr. Smith contacted CCES.

22. Because the onus had not been discharged by Ms. Ryckman, and because Rule 7.20 was therefore not replaced, it was impractical and unrealistic for the Athlete to waive the hearing procedure, acknowledge the anti-doping rule violation and accept the consequences of the violation as provided in Rule 7.46(h). If Ms. Ryckman did so, she would be accepting the two year period of ineligibility prescribed by 7.20.

23. I have concluded that none of the parties considers that an appropriate penalty in these circumstances and, as I have stated, the matter has been referred to me for adjudication as the only acceptable alternative to the acceptance on the Rule 7.20 consequence.

24. As I indicated, I received a telephone call on February 20th, 2008 in which both Mr. Smith and Ms. Ryckman participated. I took the opportunity to ask Ms. Ryckman directly whether or not Mr. Smith could represent her in the discussions which ensued. She replied in the affirmative. I therefore have the advantage of having received direct confirmation that any evidence or submissions made by Mr. Smith would be adopted by Ms. Ryckman.

25. I am therefore prepared to render a decision based on Mr. Smith's submissions and treat them as if they were Ms. Ryckman's. I should also state that I accept Mr. Smith's evidence as truthful even though it has not been presented in affidavit form and even though I have not had the opportunity to make an in-person assessment of his creditability. I do not consider it necessary in these circumstances, although in other circumstances I might.

DISPOSITION

26. Lee Ryckman has been a luminary over the past 20 years in her chosen sport of BMX racing. She has been provincial champion over 15 times and has won multiple national championships. She has represented Canada in international events and has given much to her sport as an athlete and mentor.

27. More recently, she has experienced some personal difficulties, including some serious health problems.

28. Ms. Ryckman decided to take part in the June 2007 cycling competition earlier described. She was not in peak competitive condition at the time and perhaps did not take the competition as seriously as she would previously have done.

29. In fact, she took part in some "social sharing of cannabis" as late as the night before her event. However, she states that she did not use cannabis to use any advantage over her competitors. This is a believable statement and I accept it as a fact.

30. Those are the facts presented to me and upon which I rely. I have previously described the range of penalties set forth in Rule 7.7, if I conclude that the athlete has established that the use of the specified substance was not intended to enhance sport performance.

31. Ms. Ryckman has, in violation of the CADP and many other standards applicable to elite athletes, tested positive for a prohibited substance. She has admitted to doing so and has provided an explanation which is consistent with the words and obvious intent of Rule 7.7. Moreover she co-operated fully during the doping control process and states that the "social sharing" has never been done in the presence of other athletes.

32. I cannot see any reason to impose a harsher penalty than the minimum and therefore issue a warning and reprimand to Ms. Ryckman. There shall be no period of ineligibility and Ms. Ryckman's provisional suspension is, of course, terminated. Ms. Ryckman remains eligible for sport related financial support.

33. As to Rule 7.69 (Costs), I make no award for costs.

Dated: April 24th 2008

James W. Hedley, Arbitrator