

***IMPORTANT NOTE: This version is a translation of the original French version***

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)**

**No: SDRCC DT 09-0114  
(Anti-doping Tribunal)**

**BETWEEN**

**CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)  
CANADIAN WEIGHTLIFTING FEDERATION HALTÉROPHILE CANADIENNE (CWFHC)**

**AND**

**CHELSE ZARBONI-BERTHIAUME  
(ATHLETE)**

**AND**

**GOVERNMENT OF CANADA  
WORLD ANTI-DOPING AGENCY (WADA)  
(OBSERVERS)**

**ARBITRATOR: PATRICE M. BRUNET**

**Appearances:**

On behalf of **Chelse Zarboni-Berthiaume**: Yvon Chouinard

On behalf of **CCES**: Yann Bernard

**FACTS**

1. Chelse Zarboni-Berthiaume, a national-level athlete in weightlifting, trains on a regular basis at the Club d'haltérophilie Les Géants in the Centre Sportif Gadbois in Montreal. She participates in meets at the national and international levels and is aiming to be selected for the 2012 Olympic Games in London.
2. With regard to the management of the Canadian Anti-Doping Program (CADP), and as a member of the national team, Chelse is subject to the rules and procedures that apply to the program, especially those governing the testing and analysis of out-of-competition doping control samples without advance notice.
3. At the request of the CCES, I ordered that witnesses be excluded from attending the hearing.
4. On November 6, 2009, two doping control officers (DCO) went to Chelse's training venue at the Centre Sportif Gadbois. Joan Decarie was the first officer to arrive followed by Tony Fiorentino, the second officer, at 6:35 p.m. Mr. Fiorentino met with Ms. Decarie to briefly discuss the details of the protocol, i.e. the location where sample collection would take place. Both doping control officers were to collect samples from two other athletes in addition to Chelse during this same visit.
5. Mr. Fiorentino testified before the Tribunal on his extensive experience as a doping control officer, stating that he had been doing this work for the past 14 years while at the same time acting as a client service agent for the CCES. He also said that he had acted as a DCO hundreds of times, i.e. during the 1996 Olympic Games and the 1999 Pan American Games, and that he had tested athletes in Africa, Asia, in the Middle East, in the Caribbean. He had worked not only as a DCO, but also as an instructor for doping control agents in training.
6. The Tribunal was satisfied with Mr. Fiorentino's extensive experience and in-depth expertise as a DCO, and the frank and concise manner with which he answered questions assured me of his credibility in this matter.

7. Mr. Fiorentino prepared two reports, the contents of which were mostly restated during his testimony. These reports are part of this case and they restate the facts as observed by Mr. Fiorentino during his two attempts to collect urine samples.
8. On November 6, 2009, at 6:35 p.m., Mr. Fiorentino introduced himself to Chelse Zarboni-Berthiaume, formally notified her that she had been selected for doping control and was required to provide a urine sample. Since the testing would be conducted in plain sight, Ms. Decarie was to act as the observer as required by the protocol.
9. As reported during Mr. Fiorentino's testimony, the athlete's reaction was, as Mr. Fiorentino would best describe it, apathetic. Chelse did not give the impression that she was willing to cooperate and assist the DCOs in carrying out their duties by providing a urine sample.
10. The DCOs remained on site for three and a half hours. During this time, they:
  - a. Recommended other ways of producing a sample (walking, skipping, drinking water, etc.);
  - b. Made plans for using different facilities after the training centre's 10:00 p.m. closing time;
  - c. Provided all the water Chelse would have needed to stimulate urine production. She only ingested 750ml of water, about a bottle and a half;
  - d. Recommended that she call her employer to explain that she would be late for work, since Chelse said that she had to be at work for 8:45 p.m., downtown;
  - e. Suggested that Chelse could receive financial compensation for any missed work due to lateness caused by the doping control.
11. During his 14 years of experience and after conducting hundreds of doping controls, Mr. Fiorentino claimed that he had never seen such unwillingness to cooperate in the production of a urine sample.
12. During this waiting period, two (2) attempts were made to go to the washroom to produce a sample. Both attempts were unsuccessful.

13. The DCOs confirmed that it is normal for athletes to be unable to produce a urine sample in a short period of time – either because the athlete is shy, dehydrated after competing or training or due to synchronism. However, a urine sample always ends up being produced after consuming water or doing some exercise. What is abnormal, according to their testimony, is the great reluctance shown by Chelse to help produce a sample. For most of that evening, Chelse was on her mobile phone sending text messages. Documentary evidence showed that she sent 158 text messages during that period.
14. Chelse's mother, Ms. Zarboni, arrived shortly after 10:00 p.m., at the time the training venue was closing for the night.
15. Mr. Fiorentino and Ms. Decarie identified themselves and explained their role to Ms. Zarboni. They also identified Ms. Lyne Lavallée as Chelse's chaperone, required due to Chelse's age. Ms. Lavallée had succeeded Nick Roberts, Chelse's previous chaperone, earlier that same evening. Mr. Fiorentino had the feeling that Ms. Zarboni was not surprised to find the presence of DCOs, allowing him to conclude that she probably knew why Chelse was still at the training centre. He thought that she had been notified via some of the text messages Chelse had sent during her three-and-a-half-hour wait.
16. Chelse's mother was agitated and upset. She ordered Chelse to take her bag and personal belongings and to follow her. Chelse did not say a single word from the moment her mother arrived until she left just a few minutes later.
17. Mr. Fiorentino explained to Chelse's mother that if Chelse were to leave before producing a urine sample, it could have dramatic consequences on her career (*'it could jeopardize her career'*). Ms. Zarboni replied that this did not bother her because she never really agreed that her daughter become a weightlifter anyway.
18. In a final attempt, Mr. Fiorentino suggested to Ms. Zarboni that he accompany Chelse back to her home in order to collect the urine sample, a suggestion Ms. Zarboni also rejected.
19. When Ms. Zarboni left the training venue, Chelse simply followed her. She appeared to be obeying her mother, and showed no reluctance considering the consequences that her departure could have on her status as an active athlete.

20. In a letter dated November 18, 2009, and addressed to the CCES, Ms. Zarboni stated that Mr. Fiorentino suggested that Chelse have a beer to help her urinate. Mr. Fiorentino has categorically denied this claim, adding that he did not bring any beer with him and that the training centre does not have an outlet where alcohol is sold. He said that he had had a discussion with Nick Roberts that Chelse could have overheard, where he mentioned that drinking beer could be a technique used in other circumstances, but that he had not offered Chelse any beer. When questioned on this point, Chelse reported she had told her mother that she had been offered beer, but that she did not recall who had made the offer, since she was sending text messages on her cell phone and was not looking at the person speaking to her.
21. The designated washroom, which was quite busy with other athletes flowing in and out, is located next to the training centre's showers. It was entered into evidence that a second, more private washroom located on the second floor of the centre Gadbois could have been used as an alternative location for collecting the sample. Yet at no point during the evening was the more "public", and thus possibly uncomfortable, nature of the initial washroom raised by either the athlete or one of the athlete's support personnel, or her mother.
22. The second DCO, Joan Decarie, also has extensive experience, with more than 10 years of experience in this role and more than 2000 samples to her credit.
23. Since Ms. Decarie was physically present during the two attempts to collect a sample in the washroom, she witnessed the circumstances first hand. During the first attempt, Chelse tried to provide a sample, but was unsuccessful, stating 'I can't go' before going back to the gym.
24. Yvon Chouinard, president of Chelse's weightlifting club and her representative at the hearing, was also sworn in and questioned by the CCES. He related his experiences as a proponent of unannounced doping controls in Canada in the 1980s. The club has high hopes for Chelse; she is the club's best athlete and best hope of qualifying for the 2012 Olympic Games.
25. While Mr. Chouinard's credibility is not challenged, the fact that he was not present when the events of November 6, 2009 took place does not allow me to consider a different perspective other than that of the eye witnesses.

26. During her testimony, Chelse explained that Ms. Decarie had asked her not to open the test kit during the second attempt because there were people in the locker room. Whether this instruction was given or not, the fact remains that Chelse did not provide a sample and did not show that she was ready to do so.
27. Chelse read the reports submitted by doping control officers to support this arbitration proceeding and confirmed that the description of the facts was correct.
28. She confirmed that she had been tested on two previous occasions: in March 2008 and January 2009, in-competition. Chelse claimed that she was aware of how important it was for her to cooperate with the doping control officers.
29. She also confirmed that she had signed the "Athlete Selection Order" form but admitted not having read nor understood the explanation and the consequences of refusing to provide a sample. This form specifies, in bold print, that *refusing to provide a sample could constitute an anti-doping rule violation*.
30. Chelse also claimed to have signed the document when two other samples had been collected previously, without having read it.
31. This form comes in several copies, and the pink copy must be given to the athlete. The testimonials determined that the pink copy had not been handed to Chelse that night since she had not provided a sample. Under normal circumstances, the pink copy is remitted to the athlete once testing is complete, which is assumed to have been done both times samples were previously collected from Chelse.
32. There is clearly a major discrepancy between Chelse's desire to train as a weightlifter and her mother's ability to accept her daughter's commitment to this sport. Chelse explained that her mother is not the least bit interested in this sport. Chelse's mother confirmed this during her testimony as well. Her mother is unaware of Chelse's goal to participate in the 2012 Olympic Games.

33. Chelse explained her version of events on November 6, 2009: she was training from about 5:15 p.m. at the Centre Gadbois, located at 5489 Cote Saint-Paul in Montreal. By the time the doping control officers arrived at around 6:30 p.m., she had already finished training. She was preparing to leave for her night job since her shift started at 8:45 p.m.
34. Before getting to work, Chelse had planned to pick up her work clothes at her aunt's house in Hudson using public transit. Chelse does not have a car, and when questioned on how she had planned to get to Hudson at that time using public transit, she modified her version, specifying that she really only needed to go to John Abbott College in Sainte-Anne-de-Bellevue using public transit, where she would meet her aunt. This trip takes approximately 1 hour and 35 minutes using public transit, according to Google Maps.
35. Chelse's aunt was then going to drive her to her mother's house in Repentigny where she was expected for supper. This trip, using Google Maps, takes about 42 minutes by car. Chelse would have thus arrived at her mother's house at around 8:45 p.m., just when she was expected at work. Chelse works on Crescent Street in downtown Montreal. It takes about 30 minutes to drive from Repentigny to Chelse's workplace.
36. If we calculate that supper usually takes at least 30 minutes, Chelse would not have arrived at work before 9:45 p.m.; she would have been late by at least one hour.
37. Due to delays caused by the doping control officers, Chelse claimed that her mother picked up her work clothes at her aunt's house in Hudson (not at John Abbott) and dropped them off at a friend's house in St-Henri. By car, this trip takes approximately 1 hour and 39 minutes, according to Google Maps.
38. Chelse testified, however, that when her mother arrived at the training centre, she did not know her daughter was being tested by doping control officers. In other words, Chelse's mother would have driven for about 1 hour and 39 minutes, or 137 km, to pick up her daughter's work clothes and bring them to her without knowing why she would be late, when her daughter was expected for supper in Repentigny at 8:45 p.m.
39. Chelse heard the warning offered by both doping control officers, 'this could jeopardize your career,' but she did not understand the extent of the possible sanction, that she could be suspended for two (2) years. She believed that refusing to be subject to doping control would only have *small consequences*.

40. Chelse admitted that had she understood that refusing to be subject to doping control could mean that she would be unable to take part in the Olympic Games, she would have tried to make her mother understand why she could not leave.
41. Chelse was 17 years old when the doping control took place. Her date of birth is December 4. Approximately one month later, she turned 18 years of age.
42. Chelse's mother, Ms. Zarboni, also testified under oath before the Tribunal. By the evening of November 6, 2009, she had not seen her daughter for three (3) days, while she had parental authority over her child, who was a minor at the time. Chelse often spent the night at a girlfriend's house in St-Henri.
43. Contrary to Chelse's testimony, heard without her mother being present due to the exclusion of witnesses, Ms. Zarboni claimed before the Tribunal that she had been warned of the doping control via text message before she arrived at the training centre.
44. Ms. Zarboni arrived at the training centre with no knowledge of the doping control officers' roles; she was there to pick up Chelse and bring her back home with her. She claimed to have given little importance to the doping control officers' warnings, since she did not agree that her daughter's career be in sports.
45. She claimed before the Tribunal that she was expecting her daughter for supper at around 6:00 p.m. or 7:00 p.m. She did not know that her daughter was in training that evening.
46. Ms. Zarboni contacted Chelse via text message at around 9:15 p.m. That was when she learned that Chelse was at the training centre, but she did not believe her daughter. This was when Ms. Zarboni learned that her daughter was being tested by the CCES.
47. Ms. Zarboni said that Chelse had previously asked her to pick up her work clothes in Hudson and bring them to her girlfriend's house in St-Henri – the same 137 km route. She then went back to her house in Repentigny and was notified at 9:15 p.m. that Chelse was still at the training centre.
48. During the disclosure, it was determined that Chelse had sent and/or received 158 text messages between 6:30 p.m. and 10:00 p.m. the evening of November 6, 2009.



## DISCUSSION

49. When analyzing doping cases, and the refusal to supply a sample, the importance of witness credibility is substantial.
50. The refusal or failure to supply a sample can likely and reasonably stem from exceptional circumstances that allow for compelling justification.
51. In this analysis, the Tribunal must be able to consider the credibility of witnesses from the anti-doping agency, and the credibility of the athlete and her entourage in the refusal/failure to provide a sample.
52. To begin with, the written reports and verbal accounts submitted to the Tribunal by both doping control officers were relevant and credible.
53. This case involves doping control officers with extensive experience who were respecting a well-established protocol, and who ensured that the athlete's rights were protected. They also considered various alternatives to accommodate the athlete so that she would provide a sample, given her reluctance and passive attitude.
54. The doping control officers ensured the athlete, the two persons who accompanied her and the athlete's mother were aware of the importance of providing a sample and especially the consequence of refusing to submit to the testing process, by repeatedly stating that this could have a dramatic effect on the athlete's career (*'this could jeopardize your career'*).
55. The use of such terms is usually enough to convince a reasonable person of the severe resulting consequences. If any doubt remains in the mind of an athlete who acts in good faith, these terms would give rise to questions about the importance of said consequences. Neither Chelse nor her mother requested additional details, which leads me to believe that they were either aware of the consequences of an athlete's failure to submit to doping control or that they implicitly accepted the resulting consequences. Claiming ignorance after the fact drastically reduces the credibility of the athlete's – and her mother's – version of events.

56. Moreover, I simply do not believe the athlete and her mother when they both explained, each in her own way, the circus of events that took place between 6:30 p.m. and 10:00 p.m. so that Chelse's mother could drop off Chelse's work clothes.
57. First of all, the initial plans did not make sense. The facts presented were not credible, since Chelse would have been at least one hour late for work, even without doping control.
58. Secondly, for a mother who is so vigorously opposed to her daughter's wish to train in weightlifting, and who, according to her own testimony, does not know where her daughter works at night, the fact that she was willing to drive 137 km (one hour and a half) to pick up her daughter's work clothes because of a doping control test is simply incomprehensible. To top it off, she then left to go back to her home in Repentigny. There are too many contradictions and inconsistencies to blame on forgetfulness or naivety. This story simply does not make sense.
59. With regard to the allegations about offering Chelse a beer, this claim does not make sense either. It is not because the word "beer" is voiced in a conversation with a third party, that it becomes a proposition or even a suggestion.
60. The Tribunal does not grant any credibility to the version of the facts as presented by Chelse and her mother.
61. Given the impact on the credibility of the athlete's two (2) principal witnesses, what about the athlete's refusal/failure to submit to anti-doping tests? This must be analyzed taking into account the witnesses and the actions that transpired on the evening of November 6, 2009.
62. Chelse showed a lack of cooperation with the doping control officers throughout the entire evening. She only drank about 750 ml of water, and did not do the light physical exercises recommended by the officers to stimulate urine production. Chelse spent the evening sending 158 text messages and showed no remorse or regret when she could not produce a sample, even when she left at 10:00 p.m.
63. If Chelse wanted to evade supplying a urine sample, she certainly demonstrated all the characteristics of evasive behaviour.

64. To support her argument, the athlete raised her status as a minor in order to justify her absence of responsibility in her decision to evade doping control. Essentially, the athlete contends that, since she was a minor at the time of the doping control, she did not have the ability to decide for herself and was subject to the parental authority of her mother who decided of her own volition to bring Chelse back to her house at 10:00 p.m. In other words, one month shy of turning 18 years of age, Chelse maintained that she did not have the ability to make her own decisions in front of her mother.
65. The principles of the World Anti-Doping Code are included in the Canadian Anti-Doping Program (CADP) under Articles 1.1. and 1.2 which read: *"The Canadian Anti-Doping Program implements the mandatory and other portions of the World Anti-Doping Program, including the World Anti-Doping Code, the mandatory International Standards and the Models of Best Practice, and the guidelines set forth from time to time by the World Anti-Doping Agency (WADA)..."* and *"In particular, the Canadian Anti-Doping Program adopts and applies the anti-doping rule violations set forth in the Code."*
66. The World Anti-Doping Code addresses the issue of minors in the context of refusing/failure to submit to doping control, in the context of an absence of fault or significant negligence (Article 10.5.2). The comments that reference this article read: *"While Minors are not given treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 10.5.2. as well as Articles 10.3.3., 10.4 and 10.5.1."*
67. As such, the World Anti-Doping Code allows the athlete's young age to be taken into consideration but only to determine the existence of a fault, and not when considering the mitigation of the sanction.
68. Chelse's representative, Yvon Chouinard, wrote in an email dated December 30, 2009, that *"...we have decided to be heard by the arbitrator hear, only with regard to the sanction imposed following Chelse's refusal to supply a urine sample. As a result, we therefore accept the fact that she refused to supply the sample requested."*
69. This position was then confirmed in an email dated January 13, 2010, as well as during representations at the hearing.

70. Since the athlete has admitted her fault, it is therefore useless for the Tribunal to consider the arguments that refer to the athlete's status as a minor. The "minority argument" can only serve to determine the fault, not the mitigation of the sanction. Since fault was recognized, the Tribunal cannot further examine article 10.5.2 of the World Anti-Doping Code, and its equivalent rule 7.45 in the Canadian Anti-Doping Program (CADP).
71. The Tribunal must now evaluate the refusal violation pursuant to article 7.31 of the CADP, which reads as follows: *"Refusing or failing without compelling justification, to submit to sample collection after notification as authorized in applicable anti-doping rules or otherwise evading sample collection is an anti-doping rule violation."*
72. Since the athlete acknowledges that she refused or evaded the sample collection, it remains to be determined whether she had a compelling justification for doing so.
73. I have already determined that the athlete's status as a minor could not be used to justify a mitigation of the sanction.
74. I must therefore consider the facts to determine whether there was a compelling justification for the athlete to refuse or evade the sample collection.
75. The refusal violation is important to ensure the proper management of the anti-doping program. Doping controls with no advance notice have now become the rule worldwide and they represent an important component of doping control methods.
76. Evading doping control deprives the sport community from a powerful tool that maintains ethical rules in sport, not only before the population but among athletes who compete against each other.
77. Chelse did not explicitly refuse doping control but the factual elements in this case allow me to conclude that she evaded this control, which constitutes a violation pursuant to article 7.31.
78. The circumstances that led Chelse to leave the doping control location (her mother asked Chelse follow her), do not allow me to conclude that this was a valid, compelling justification.
79. Chelse is a mature and autonomous athlete: she was almost 18 years of age on November 6, 2009, she had a job, was enrolled in adult education classes

and spent several days sleeping at a friend's house, away from parental authority. She also managed her training on her own with her trainer. She registered for international meets. As she has for years now, she stands by her decision to continue weightlifting training, against her mother's expressed wishes.

80. Chelse makes most if not all of her decisions herself. I have no doubt that her decision to leave the doping control location on the evening of November 6, 2009, was her own decision. Chelse may have been influenced by her mother's urging to leave the training centre; however, she could have decided against her mother, given the consequences that leaving could have on her career.
81. There was no compelling justification for the athlete to evade the sample collection exercise on November 6, 2009, which confirms the violation of CADP rule 7.31.
82. CADP rule 7.39 provides for a reduced suspension period if the athlete is able to demonstrate that no fault or significant negligence was committed.
83. Chelse acknowledged the rule violation, and therefore the fault. Based on the facts presented to the Tribunal, she did not demonstrate the absence of significant negligence.

**DECISION**

CONSIDERING the documentary evidence submitted and the testimonials heard, I conclude that Chelse Zarboni-Berthiaume committed an anti-doping rule violation pursuant to rule 7.31 of the Canadian Anti-Doping Program (CADP).

The sanction provided for under rule 7.39 of the Canadian Anti-Doping Program provides for a two (2) year suspension, unless the athlete can demonstrate the absence of fault or significant negligence, which was not done to my satisfaction.

Since the Canadian Weightlifting Federation imposed a provisional suspension on the athlete on December 18, 2009, the suspension period will commence on this date as provided for under rule 7.14 of the CADP, and end on December 18, 2011.

I retain jurisdiction over this case in the event of a future dispute relating to the interpretation or implementation of this decision among the parties.

The whole without costs.

Montreal, February 11, 2010

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Patrice M. Brunet, Arbitrator