

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 ISAAC HAACK
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT**

**No.: SDRCC DT 12-0171
(Doping Tribunal)**

Canadian Centre for Ethics in Sport (CCES)

Canadian Lacrosse Association

-and-

Isaac Haack (Athlete)

-and-

**World Anti Doping Agency (WADA)
(Observer)**

BEFORE:

Carol Roberts (Arbitrator)

Appearing:

For the Athlete:

No one appeared

For the Canadian Centre for Ethics in Sport:

David Lech, Jeremy Luke and Carolyn Chmiel

For Canadian Lacrosse Association:

No one appeared

INTRODUCTION

1. The Canadian Centre for Ethics in Sport (CCES) is an independent, non-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the Canadian Anti-Doping Program (CADP), including the provision of anti-doping services to national sport organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code (Code) and its mandatory International Standards. The CCES has implemented the Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the Code and of the CADP is to provide protection for the rights of athletes to fair competition.

Background

2. Isaac Haack is an athlete participating at an elite level in British Columbia in the sport of lacrosse. He is a member of the British Columbia Lacrosse Association and a player on the Nanaimo Junior 'A' Timbermen, a team in the British Columbia Junior 'A' Lacrosse League. According to Rules 1.3, 1.7 and 1.8 of the CADP, its provisions apply to all members of, and participants in the activities of, sport organizations adopting it. The Canadian Lacrosse Association adopted the Rules of the CADP on November 15, 2008. As an athlete who was a member of the British Columbia Lacrosse Association and a participant in the activities of the Canadian Lacrosse Association, Mr. Haack is subject to the Rules of the CADP.
3. By letter dated January 23, 2012, the CCES issued an Initial Review regarding a potential anti-doping rule violation by Mr. Haack following a report by the Royal Canadian Mounted Police (RCMP) that Mr. Haack had been criminally charged and pleaded guilty to the charge of Possession for the Purpose of Trafficking. The CCES did not receive a response from Mr. Haack.
4. On February 22, 2012, CCES issued a Notice of Doping Violation to Mr. Haack pursuant to Rule 7.71 of the Rules, asserting a single anti-doping rule violation. The SDRCC also sent Mr. Haack an information package informing him of the notice and requesting that he indicate his intention to either waive or exercise his right to a hearing before the SCRCC.

5. Rule 7.23 of the CADP provides that a Doping Tribunal must hold a hearing to impose the consequences provided for under the Rules unless the athlete waives the right to a hearing. Mr. Haack did not waive his right to a hearing.
6. I was appointed the arbitrator in this matter on March 29, 2012 and convened a preliminary teleconference on April 11, 2012.

Attempted Notice to Athlete

7. On May 11, 2011, Mr. Haack completed a registration card for the Canadian Lacrosse Association on which he provided his email address, mailing address and telephone number. CCES made several attempts to contact the athlete at his email address. Mr. Haack did not respond to any of the emails. Telephone calls made by CCES to the athlete's telephone number were met with a recorded message that the number was no longer in service. Mr. Haack also did not respond to any of the emails sent to him by the SDRCC. On April 25, 2012, the SDRCC sent a warning letter to Mr. Haack at his address by registered mail. This mail was returned with the notation "moved, return to sender". Despite several attempts by CCES and the SDRCC to communicate with Mr. Haack, Mr. Haack has not responded to those communications.
8. Section 7.5 of the Canadian Sport Dispute Resolution Code states:

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 is avoiding contact, 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.
9. I am satisfied that every reasonable effort was made to contact Mr. Haack to advise him of his right to participate in a hearing before me and ordered, pursuant to Rule 7.5, that the hearing proceed in the absence of the athlete. I further ordered that the hearing be conducted by way of written submissions and that Mr. Haack had the right to make submissions at any time in the process. The parties were advised that I would make a decision based on the written submissions I received.
10. On May 10, 2012, the CCES filed the affidavit of Jeremy Luke, the Director of the Anti-Doping Program for CCES and a supplementary affidavit of Carolyn Chmiel, an employee of the CCES. The affidavits and their exhibits provide the information and business records of the CCES regarding the alleged anti-doping allegation and constitute the evidence of CCES. Copies of these documents were sent to the Athlete.
11. The records show that on December 9, 2011, following a guilty plea, Mr. Haack was convicted of one count of Possession for the Purpose of Trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act* (CDSA) in British Columbia Provincial Court. The count for which this conviction was obtained was with respect to selling anabolic steroids. Possession and trafficking or attempted trafficking of anabolic steroids is prohibited at all times by athletes subject to the CADP.

12. CCES relies on Mr. Haack's guilty plea and conviction as uncontested facts that are irrebuttable proof against the Athlete that he both possessed and trafficked or attempted to traffic in anabolic steroids.
13. The issue of fault or negligence on the part of Mr. Haack for his actions or conduct may only be addressed after the violations have been determined when considering the proper sanction to apply, and only then in the context of whether "exceptional circumstances" exist. CCES says that the uncontested facts of the guilty plea, the conviction and the sentence are determinative evidence against Mr. Haack with regard to CCES' obligation to prove the asserted violations.
14. Mr. Haack had the right to file his written response, if any, by May 18, 2012. CCES filed its written submission on May 10, 2012. As Mr. Haack did not respond in any way to the CCES evidence or submission by May 18, 2012, this decision is made on the basis of the documentation before me as of that date.

Submissions of CCES

15. CCES submits that the evidence, which has not been contradicted, establishes that Mr. Haack committed a violation involving the possession and trafficking of anabolic steroids and ought to be suspended for four years in accordance with Rule 7.40 of the CADP.
16. CCES says that there are no "exceptional circumstances" warranting a reduction of the period of suspension that must fall between four years and a lifetime.

DECISION

17. The Doping Tribunal shall conduct all hearings in accordance with Rules 7.79 to 7.97 of the CADP as informed, where necessary, by the Code.
18. Mr. Haack did not respond to the many attempts made to seek his participation in a hearing or to indicate a waiver of his right to a hearing. CADP Rule 7.85 provides that I may draw an adverse inference against an athlete for refusing or failing to participate in the hearing process.
19. The CCES has the burden of proof to establish an anti-doping rule violation to the comfortable satisfaction of the Doping Tribunal bearing in mind the seriousness of the allegation being made.
20. The records of the Nanaimo Court Services, Criminal Registry establish that on December 9, 2011, Mr. Haack was convicted, following a guilty plea, of possession of a controlled Drug/Substance, specifically anabolic steroids, for the purposes of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*. There has been no appeal of the conviction. Pursuant to CADP Rule 7.84, this evidence constitutes irrebuttable proof that the athlete both possessed and trafficked or attempted to traffic anabolic steroids. Anabolic steroids are banned substances according to the 2011 WADA prohibited list.

21. I am comfortably satisfied, on the evidence before me and in the absence of any contrary evidence or satisfactory explanation, that CCES has met its burden of establishing that Mr. Haack has committed an anti-doping violation under CADP Rules 7.34 to 7.36 (Possession, Trafficking or Attempted Trafficking).
22. This is Mr. Haack's first violation. Rule 7.38 provides that, for a first anti-doping rule violation involving Possession, the period of ineligibility shall be two years unless the existence of "exceptional circumstances" can be demonstrated. Rule 7.40 provides that for a first anti-doping rule violation involving Trafficking or Attempted Trafficking, the period of ineligibility shall be a minimum of four years up to a lifetime unless the existence of "exceptional circumstances" can be demonstrated. In both instances, the athlete bears the burden and obligation of proving those exceptional circumstances. In circumstances where there are violations of both Possession and Trafficking or Attempted Trafficking, the violation that carries the most severe sanction (Trafficking or Attempted Trafficking) must be used to calculate the proper first violation sanction. (CADP Rules 7.38, 7.40, 7.44 - 7.48, 7.54)
23. As Mr. Haack has failed to demonstrate any exceptional circumstances to reduce the applicable sanction, I am bound to impose at least the minimum sanction of a four year period of ineligibility according to Rule 7.40. CCES submits that the minimum sanction of four years is both fair and proportionate to the conduct that occurred.
24. In the absence of any submissions from the Athlete, and in consideration of all of the evidence, I impose a sanction of four years. The period of ineligibility commences on the date of this decision.
25. No submission was made on costs and I make no order.

DATED at VANCOUVER, BRITISH COLUMBIA this 22th day of MAY, 2012



C. L. Roberts
Arbitrator