

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  
JASDEEP TOOR (Athlete)  
ASSERTED BY  
THE CANADIAN CENTRE FOR ETHICS IN SPORT (CCES);

AND

IN THE MATTER OF A HEARING BEFORE THE DOPING TRIBUNAL

(SDRCC File No. DT 11-0165)  
(Doping Tribunal)

SOLE ARBITRATOR: JOHN P. SANDERSON, Q.C.

REPRESENTING THE CCES: PETER R. LAWLESS

REPRESENTING THE ATHLETE: MORGAN MARTIN

DATE OF HEARING: JANUARY 23, 2012

PLACE OF HEARING: VIA TELECONFERENCE

DATE OF DECISION: FEBRUARY 3, 2012

## DECISION

### INTRODUCTION

This arbitration is pursuant to the application of Section 7 of the Canadian Anti-Doping Program (CADP) concerning Jasdeep Toor, a provincial senior level soccer athlete resident in Vancouver, who is a member of the soccer team that competes in the Premier Division of the Vancouver Metro Soccer League (VMSL). The issue in summary form is whether Mr. Toor has committed an anti-doping rule violation and if so, what are the consequences of that violation.

The Canadian Centre for Ethics in Sport (CCES) is an independent non-profit organization which is responsible for maintaining and carrying out the CADP, including providing anti-doping services to national sports organizations and their members. CCES submits to this tribunal that Mr. Toor has committed an anti-doping rule violation involving a prohibited substance. CCES further submits the appropriate sanction is a seven month period of ineligibility from competition. The position of CCES is that there are no proper reasons for eliminating or reducing the period of suspension from eligibility below the seven month level.

Mr. Toor does not dispute that an anti-doping rule violation occurred in the circumstances of this case. However, Mr. Toor claims there are “exceptional circumstances” that justify a reduction in the period of suspension. Mr. Toor submits that taking into account the totality of the evidence, particularly the lack of fault on his part as the athlete, as well as his conduct throughout, the appropriate suspension should be reduced to a period of three weeks, commencing with the date of December 17, 2011.

## BACKGROUND FACTS GIVING RISE TO THE ARBITRATION

CCES is a signatory to the World Anti-Doping Code (“Code”) and is responsible for ensuring that the Canadian Anti-Doping Program is consistent with international best practices. The general purpose of the Code is to protect the rights of athletes and the integrity of sport.

On October 10, 2011, the CCES conducted an after-competition doping control in Brossard, Quebec. A sample collection was provided by Mr. Toor. Mr. Toor’s sample was delivered by secure chain of custody to the appropriate laboratory in Montreal where it was analyzed. The certificate of analysis indicated an adverse analytical finding. Specifically, the sample contained methylhexaneamine. Mr. Toor has not challenged the finding nor has he required that the B sample to be tested.

Section 3.0 of the CADP incorporates the Prohibited List International Standard issued by the World Anti-Doping Agency (“WADA”). Methylhexaneamine is a prohibited substance according to the Prohibited List. Mr. Toor did not have a therapeutic use exemption from the CCES for the use of methylhexaneamine and consequently, a notice was issued by the CCES that Mr. Toor had committed an anti-doping rule violation according to rules 7.16 to 7.20 of the CADP. As this was a first violation of a recreational athlete with no anti-doping training, the CCES proposed a sanction of seven months of ineligibility from competition.

There is no dispute between the parties that Mr. Toor committed an anti-doping rule violation due to the presence of methylhexaneamine in his sample. The CCES does not dispute that the adverse analytical finding and the resulting anti-doping rule violation

was caused by Mr. Toor taking a commercially sold supplement “Jack 3D”, which he purchased at a drug store over the counter.

#### THE ISSUE FOR DETERMINATION

According to the CADP, an athlete is responsible for any prohibited substances found to be present in his or her body. It is not necessary that intent, fault, negligence, or knowledge be demonstrated to establish a violation. A first “presence” violation requires a period of ineligibility for two years unless there are “exceptional circumstances”. The CADP sets out what are exceptional circumstances. There are two categories: “no fault or negligence” and “no significant fault or negligence”. If either can be established by evidence in accordance with a standard of proof by balance of probability, the imposed sanction can be reduced or eliminated. Mr. Toor claims “no fault or negligence” and “no significant fault or negligence” and seeks to reduce his sanction as set out above.

The CADP Glossary incorporates part of the World Anti-Doping Code, including its Commentary as a source of interpretation of the CADP. The phrases “no fault or negligence” and “no significant fault or negligence” are defined in the Glossary as follows:

##### No Fault or Negligence:

The *Athlete’s* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method*.

No Significant Fault or Negligence:

The *Athlete's* establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

According to the Commentary, World Anti-Doping Code Articles 10.5.1 and 10.5.2, the equivalent of CAPD rules 7.44 and 7.45 respectively are meant to be applied “where the circumstances are truly exceptional and not in the vast majority of cases”. The Commentary in part reads as follows:

[Comment to Articles 10.5.1 and 10.5.2:

The Code provides for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two-year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 10.5.2 may be applied to any anti-doping rule violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where *No Fault or Negligence* would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of *No Fault or Negligence* in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without

disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on *No Significant Fault or Negligence*. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.) For purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

...]

As I have already noted, the facts surrounding the manner in which the prohibited substance became present in the athlete's body are not significantly in dispute. Rather, the issue is the proper conclusion to be drawn from those facts. In addition, it is common ground there were no breaches of the testing rules and procedures and no unfairness in the collection process.

## THE EVIDENCE AND THE POSITIONS OF THE PARTIES

Mr. Toor is an impressively hardworking and capable man of 27 years old. As a witness, he is entirely credible. As I have already noted, the facts surrounding the manner in which the prohibited substance became present in his body are not

significantly in dispute. His evidence was clear and delivered in a straight-forward manner.

Mr. Toor lives in Vancouver, British Columbia. He makes his living working full-time nights as a longshoreman and during the day he assists his parents in the operation of their grocery store.

Mr. Toor has a passion for sport and in particular, soccer; he has participated in that sport since he was very young. As a youth, he was a member of British Columbia's under 15 and under 17 Provincial soccer teams. He is presently a member of ICST Pegasus ("Pegasus"), a recreation men's team participating in the Vancouver Metro Soccer League. He has never applied for nor received any Provincial or Federal funding nor been a part of a carding program from Sport BC or Sport Canada. In fact, he pays out of his own pocket all costs associated with his soccer activities.

Mr. Toor testified that throughout his time playing soccer at any level of competition he did not receive any anti-doping information, training or education from any person or source. More specifically, he testified that at no point was he warned or made aware that he might be subject to doping control by virtue of his participation on a soccer team, including Pegasus.

In 2011, Mr. Toor again signed up to play recreational soccer in the Premier Division of the Vancouver Metro Soccer League. Twelve teams participated in this division including his team, Pegasus. The winner of the VMSL Premier Division qualifies to compete in the Provincial Cup, a competition involving three other B.C. Soccer Leagues. As a result of Pegasus winning the 2011 Men's Provincial A Cup in British Columbia, they earned the right to compete in the Challenge Cup national championships. The

Challenge Cup is a Canadian amateur soccer tournament under which the champions of the individual amateur provincial soccer associations compete against one another. The 2011 Challenge Cup was hosted by the Quebec Soccer Federation in Brossard, Quebec from October 5 to October 10, 2011.

Mr. Toor testified that he is extremely conscientious with respect to his personal health. He does not drink alcohol, smoke and he has never taken any hard drugs or narcotics. He said he regularly shops at GNC, a national and reputable vitamin supplement, mineral, herb and sports nutrition store, for the purpose of purchasing items such as vitamins, energy drinks and protein powder for shakes.

While he was in Quebec for the Challenge Cup in October 2011, Mr. Toor and his teammates were housed for the period of the tournament in Montreal. He testified that one evening he ran out of his usual protein shake powder; accompanied by a teammate, he did what he had done for many years and went to the local GNC store to make that purchase.

The GNC store did not have any of Mr. Toor's regular protein shake powder in stock. Mr. Toor asked for a recommendation of a similar and equivalent product. The clerk showed him several comparable products, including "Jack 3D"; the clerk recommended that he purchase "Jack 3D". Mr. Toor said he questioned the clerk about "Jack 3D" to find out if it was similar in price, results and quality to his regular protein shake powder. He said he was satisfied with the information he received from the clerk. As a result, Mr. Toor purchased the Jack 3D product and his upon return to his hotel room, he mixed and drank the shake in his usual manner.



Mr. Toor said it never crossed his mind that he should ask questions of the clerk about the ingredients in the Jack 3D product. His evidence on this point was very clear. He said he knew very little on the subject of prohibited substances and what he did know he had learned from watching television and/or reading stories about elite athletes and doping charges. Mr. Toor said he had never linked what he was doing in his soccer activities to the possibility of a doping offence being committed by an athlete such as himself.

Mr. Toor's team did well in the competition for the Challenge Cup tournament and placed second, losing the final game to a Saskatchewan team. As the players, including Mr. Toor, were leaving the field at the end of the final game, he was asked by an official to provide a urine sample as part of the anti-doping test for that particular competition. Mr. Toor said he was surprised but he went with his coach to the area assigned and provided a sample. Mr. Toor had been chosen at random and was the only player from his team asked to provide a sample.

Prior to the tournament, the Challenge Cup organizers and Canadian Soccer representatives had provided Pegasus coaching staff with an information bulletin stating that there was a possibility of doping control tests being conducted during the Challenge Cup. The Pegasus coaching staff did not notify or advise any players on the team that they could be subjected to unannounced testing, nor did they give any players any information with respect to banned substances. At the Challenge Cup itself, the tournament organizers did not address the athletes on any aspects of the anti-doping policy in any form or manner.

Mr. Toor's sample was analyzed and returned an adverse finding for methylhexanamine, a specified substance on the 2011 WADA Prohibited List. When

given that information, Mr. Toor acknowledged the violation, did not challenge any of the doping control rules or procedures and did not require the “B sample” to be tested.

Subsequently, Mr. Toor provided a statement to the CCES as to how the substance entered into his system. His statement, in part, reads as follows:

**HOW THE METHYLHEXANAMINE ENTERED MY SYSTEM:**

I am a very health conscious person who is very particular and strict with my diet. I regularly take vitamins and supplements to help my body receive the proper care I would like it to. I don't drink alcohol, I don't smoke and I have never taken any drugs. That makes this process and the aforementioned revelation even more difficult to comprehend. I regularly shop at GNC and purchase everything from Vitamin C to Energy drinks and powders for my protein shakes. After receiving news of the adverse blood test I have to admit it was a rude awakening. I purchased a product called Jack 3D at the GNC on St. Catherine Street in Montreal on Thursday, October 6<sup>th</sup> along with some “PowerGels” and “Elevate Me” energy bars. I usually take the product GNC Pro Performance AMP Amplified Recovery Protein XR (I since checked and there is no methylhexanamine in that product). However GNC did not have this product in stock and they recommended a similar product called Jack 3D. I did not hesitate as it was similar in price and according to the specialist at GNC it was similar in results. I subsequently used these products over the weekend of October 7<sup>th</sup> to October 10<sup>th</sup>. It is a routine I do on a regular basis. It never crossed my mind that I would be ingesting a banned substance. I am aware of blood doping and steroids which is something I am vehemently against but by no means would I ever imagined that a reputable store like GNC would be selling “banned substances”. After further self investigation it was the Jack 3D product that contained the banned substance methylhexanamine. I was naïve to think and assume that buying a product over the counter would be allowed and acceptable. Trust me as I tell you that this is a very difficult lesson to have learned.

As a result of the investigation of Mr. Toor and speaking with team officials and other persons, the CCES concluded that Mr. Toor was unaware the supplement product

contained the prohibited substance and that he did not intend to enhance his performance by using it. Thus, it was conceded that he was eligible for a reduced sanction and that the CCES should conduct a “degree of fault analysis” to determine the appropriate sanction.

The CCES conducted a thorough analysis of the degree of fault of Mr. Toor in order to determine the appropriate period of ineligibility. The factors considered by the CCES in the evaluation of Mr. Toor’s degree of fault and provided to me at the hearing are as follows:

### **Degree of Fault**

22. The following factors were considered and weighed during the CCES’ evaluation of Mr. Toor’s degree of fault:
  - a. Age/Level of athlete: at 27 years of age this individual played organized soccer for many years in BC and is now an elite Club player but is no threat being on the National Soccer team. The standard of care demanded and the level of anti-doping knowledge required in such a case is decreased somewhat from the very highest obligations imposed on elite level and National team athletes;
  - b. Level of support/education: This athlete through his soccer club had no team doctor or trainer readily available; no formal doping education was provided to the athlete by the coach or the club team;
  - c. The ingredient in Jack 3D was that a Prohibited Substance on the Prohibited List was, in fact, on the supplemental label but was listed under a different name (1,3-dimethylamylamine (Geranium)); and
  - d. The prohibited substance methylhexaneamine has recently been seen far more often in supplements – this athlete was not specifically made aware of this.

23. Each of these factors tends to decrease Mr. Toor's degree of fault for having ingested methylhexanamine in a supplement product.
24. However, Mr. Toor is a mature and experienced athlete. He blindly relied on an unknown sales clerk's advice and yet he did not:
  - a. Verify the clerk's advice in any way, contact CCES or review the CCES web site, and thereby access all the expertise and advice available from CCES, as invited to do;
  - b. Check the supplement's label and consider whether any ingredient might be problematic for an athlete;
  - c. Ask a medical professional, trainer or coach about the risks associated with taking supplements in general and this supplement in particular; and
  - d. Turn his mind in any way to the risks associated with taking supplements and the chance an ingredient might be a Prohibited Substance.

in fact, he performed no research and did no investigation whatsoever regarding the supplement he decided to consume on the advice of an unknown sales clerk.
25. While Mr. Toor has claimed that he has absolutely no knowledge regarding doping control and has no knowledge regarding the various Prohibited Substances (which the CCES does not agree with), the CCES says that at minimum he must be deemed to be generally aware of the risks of using supplements as these risks are well known to the public and have been very widely publicized.
26. By ignoring completely the well known risk to athletes of consuming supplements and by failing to make even the most minimum of investigations into the supplement product he consumed, the CCES says the athlete's conduct is a significant departure from the expected standard of behavior and accordingly the athlete's degree of fault is thereby elevated.

27. At best, Mr. Toor was willfully blind regarding the risks associated with supplement use and his obligations as an athlete.
28. This sort of willful blindness in an experienced and mature athlete cannot be justified or condoned and is a significant deviation from the expected standard of behavior by such an adult athlete.
29. While a significant reduction from the mandated sanction of 2 years is common for methylhexanamine in situations where there is a first violation involving carelessness and non-intentional use, the CCES is particularly concerned in this case regarding:
  - a. the athlete's total absence of investigation regarding the potential Prohibited Substances he might be consuming in his supplements; and
  - b. his failure to list the supplement he used on the Doping Control Form.
30. Both of these factors are serious deviations from the expected standard of behavior this athlete should have demonstrated and accordingly, after also weighing the mitigating factors in paragraph 22, the athlete's overall degree of fault was determined by CCES to be moderate.

As has been noted, Mr. Toor cooperated fully with the requirements of the testing procedures and openly provided all the information he was asked to give. He testified that he very much regrets purchasing the "Jack 3D" protein shake powder and that it never crossed his mind he was doing anything wrong, much less committing a doping offence. He testified that he now realizes that methylhexaneamine is a prohibited substance, but that no one had ever given him that information or that he must avoid this substance as an athlete.

## DECISION

This is a case in which the parties agree on most of the facts. The question is whether the facts merit a penalty of seven months ineligibility or whether that penalty should be reduced. The answer to that question hinges on the degree of Mr. Toor's fault in the circumstances of this case. I have carefully reviewed and considered the various arbitration rulings submitted by CCES and the athlete at the hearing to see if similar or parallel cases have arisen and been subject to arbitration. Obviously, the various cases are driven by their own particular facts. In this situation, there is only limited guidance available from an examination of the decided cases.

To begin with, Mr. Toor is not an elite athlete. He is a recreational athlete, playing soccer for his own personal satisfaction and to get relief from the stress of his life. He receives nothing else from his sport; in fact he has to pay to play. Not only does he have full-time employment as a longshoreman but after his shift, he helps his aging parents run their store. Soccer is his own personal means to achieve physical and psychological relief from the rest of what is a demanding lifestyle, not to mount a podium.

For the same reasons, it is not surprising that Mr. Toor did not think of doping rules or issues having any application to himself. He had no motive and no purpose to always be on guard whenever he made a purchase of something to eat or drink.

Mr. Toor testified the possibility of a banned substance being in the protein shake powder he bought in the Montreal store of the same chain he used in Vancouver simply never occurred to him. I have no difficulty believing him. But should he have known better? Was he at fault in not questioning the store clerk about the contents of the

product and the ingredients as is asserted by CCES? Should he have checked with them or other sources before he made his purchase? It is ironic that had he done so and read the label, the list of ingredients on the package did not use the name “methyllhexaneamine” but used a different name for the substance.

The reality is that Mr. Toor had been given no training in relation to the use of banned substances as an athlete. He was not provided with information regarding banned substances such as were encountered here. No one alerted or warned him of the risks of committing a doping infraction, neither his soccer coach, the team manager, members of the Provincial Association nor officials of the National Association.

It is also relevant that the protein shake powder was sold by a reputable national vitamin supplement store over the counter. The fact the product was marketed and sold over the counter while containing a banned substance cannot be ignored when the athlete’s degree of fault is assessed in this case. Everyone involved in this unfortunate situation bears some responsibility and some fault for what happened to Mr. Toor.

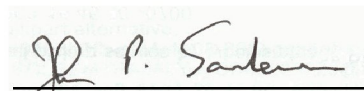
As I have said, the various Tribunal decisions cited and reviewed by the parties are of limited value; the facts here are what they are. In my view, the suspension of seven months, as proposed by CCES, is disproportionate to the degree of fault of this athlete in this situation having regard to all the relevant factors and the totality of the evidence. On the other hand, the three week suspension proposed by the athlete’s counsel is also disproportionate but in the opposite direction.

I am impressed with the sincerity of the athlete and his immediate acceptance of responsibility when confronted with the facts. I believe him when he says he has learned a difficult lesson. Mr. Toor was naïve and unduly trusting; to that extent he

was at fault. Others shared fault for his predicament. He was not “willfully blind” but he was blind to the realities of the use of banned substances in sport. He has accepted responsibility for what he did or, more accurately, did not do. He has undertaken his offence will not be repeated and he will be held to that commitment. Accordingly, I have determined that a two month suspension from eligibility, commencing December 17, 2011 and ending at midnight, February 17, 2012 is an appropriate response to these circumstances. It is so ordered.

In the result, for the reasons expressed above, I hereby confirm my summary decision dated January 27, 2012. I wish to thank the parties and their representatives for their able assistance in dealing with this case.

Dated at Vancouver, British Columbia this 3<sup>rd</sup> day of February 2012.



John P. Sanderson, Q.C.  
Sole Arbitrator