SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

No. SDRCC DT 12-0179

CANADIAN CENTRE FOR ETHICS IN

SPORT (CCES)

And

ASHLEY KRAAVEVELD

And

TAEKWONDO CANADA

SOLE ARBITRATOR:	HUGH L. FRASER
REPRESENTING THE CCES:	YANN BERNARD
REPRESENTING THE ATHLETE:	JAMES BUNTING
	KRISTIN JEFFERY
DATE OF HEARING:	OCTOBER 4, 5, 2012
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF DECISION:	OCTOBER 29, 2012

1.0 PARTIES

1.1 The Claimant, The Canadian Centre for Ethics in Sport (CCES) is an independent non-profit organization responsible for maintaining and carrying out the Canadian Anti-Doping Program (CADP), including providing anti-doping services to national sports organizations and their members. CCES is signatory to the World Anti-Doping Code ("WADC").

1.2 The Respondent, Ashley Kraayeveld, is a 20 year old Taekwondo athlete, residing in Ontario, Canada. She has been a member of the Canadian Junior Taekwondo team for two years and was a gold medalist at the Junior Pan Am Championships.

1.3 Taekwondo Canada is the National governing body for the sport of Taekwondo in Canada.

2.0 UNDISPUTED FACTS

2.1 The following are facts that were; (a) admitted by the Parties in their respective briefs; (b) admitted by the Parties during the course of the hearing; or (c) not contested by the Parties.

2.2 Ashley Kraayeveld is a 20 year old student at Humber College. She has competed in Taekwondo since the age of 8 and has won many medals in both junior and senior competitions. She was considered as a potential member of the 2016 Olympic Team and has set that as one of her goals.

2.3 On June 28, 2012 she competed in the Canadian Senior Taekwondo Championships in Toronto. She won her division and was sent to doping control shortly after the event. The urine sample that she provided resulted in an adverse analytical finding for Furosemide.

2.4 Furosemide is a prohibited specified substance in the 2012 World Anti Doping Agency ("WADA") Prohibited List.

2.5 Ashley Kraayeveld admitted that she took Furosemide and in so doing committed an anti-doping rule violation. She stated that she ingested Furosemide on June 27, 2012, the evening before competing in the Senior Nationals when she took a pill given to her by her mother to relieve the pain and discomfort that she was experiencing due to the onset of her menstrual cycle.

2.6 Ashley Kraayeveld did not have a prescription for Furosemide. The drug had been prescribed for her father to treat a heart condition.

2.7 CCES does not dispute the source of the positive test. They accept that the Furosemide was ingested in the form of a pill prescribed for the athlete's father.

2.8 Ashley Kraayeveld had never been drug tested prior to June 27, 2012.

2.9 On August 2, 2012, Ms. Kraayeveld signed an Admission of an Anti-Doping rule violation and in so doing admitted that she violated section 7.23 of the CADP which states that the simple presence of a prohibited substance or its metabolites or markers in an athlete's bodily sample is an anti-doping violation.

3. 0 PROCEDURAL HISTORY

3.1 The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory on July 11, 2012. The CCES asserted therefore that Ms. Kraayeveld had committed an anti-doping rule violation pursuant to Rules 7.23 to 7.26 of the Doping Violations and Consequences Rules of the CADP.

3.2 An anti-doping rule violation can only be determined by a hearing before the Doping Tribunal unless the athlete acknowledges the anti-doping rule violation, accepts the sanction and waives her right to a hearing.

3.3 On August 9, 2012 Ashley Kraayeveld signed and confirmed her voluntary acceptance of a Provisional Suspension commencing on the date of the signed agreement.

3.4 On August 27, 2012, Ashley Kraayeveld submitted a signed request for an in person hearing to resolve a Doping Dispute.

3.5 On August 30, 2012 the Honourable Hugh L. Fraser was confirmed as arbitrator for these proceedings.

3.6 On September 10, 2012 a Preliminary Conference Call was convened by the arbitrator. In attendance were the athlete, her legal counsel, her advisor, counsel for the CCES, an executive with Taekwondo Canada as well as the SDRCC Executive Director and several other employees of the SDRCC.

3.7 The hearing took place in Toronto on October 4, 5, 2012.

3.8 During the hearing, the following people gave evidence.

(a) Ashley Kraayeveld;

(b) Kyung Sook Kim;

(c) Dorothy Kraayeveld;

(d) Ken Anstruther;

(e) Dr. Christiane Ayotte;

(f) Kate Noseworthy.

3.9 On October 10, 2012 the Tribunal announced its award with a full reasoned decision to be given by October 25, 2012.

3.10 Late afternoon on October 24, 2012 the Tribunal was notified by the SDRCC Executive Director that an issue had been raised with her by the CCES concerning the end date of the ineligibility period for Ms. Kraayeveld. The parties were advised through the Tribunal Secretariat to provide written submissions on this issue by October 26, 2012. Those submissions were in fact received on October 26, 2012 and will be incorporated into the reasons which follow.

4.0 RELEVANT ANTI-DOPING RULES

4.1 The relevant sections of the Canadian Anti-Doping Program Rules are reproduced as follows:

> 7.23 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's* bodily *Sample* is an anti-doping rule violation. [Code Article 2.1]
>
> 7.24 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish this anti-doping violation. [Code Article 2.1.1]
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> 7.25 Sufficient proof of an anti-doping rule violation under Rule 7.23 is established by either of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's* A *Sample* where the *Athlete* waives analysis of the B *Sample* and the B *Sample* is not analyzed; or, where the *Athlete's* B *Sample* is analyzed and the analysis of the *Athlete's* B *Sample* confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the *Athlete's* A *Sample*. [Code Article 2.1.2]
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> 7.26 Excepting those substances for which a quantitative reporting threshold is specifically identified in the *Prohibited List*, the presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an anti-doping rule violation. [Code Article 2.1.3]
>
> 7.27 As an exception to the general rule for this anti-doping rule violation, the *Prohibited List* or *International Standards* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously. [Code Article 2.1.4]
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> [...]

7.38 The period of *Ineligibility* imposed for a first violation of Rules 7.23-7.27 (Presence), Rules 7.28-7.30 (Use or Attempted Use*)* and Rules 7.34-7.35 (Possession) shall be two (2) years *Ineligibility*, unless the conditions for eliminating or reducing the period of *Ineligibility*, as provided in Rules 7.42-7.43 (Specified Substances) and Rules 7.44-7.48 (Exceptional Circumstances), or the conditions for increasing the period of *Ineligibility*, as provided in Rules 7.49 (Aggravating Circumstances) are met. [Code Article 10.2

[...]

Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

7.42 Where an *Athlete* or other *Person* can establish how a *Specified Substance* entered his or her body or came into his or her *Possession* and that such *Specified Substance* was not intended to enhance the *Athlete's* sport performance or mask the *Use* of a performance-enhancing substance, the period of *Ineligibility* found in Rule 7.38 shall be replaced with the following: First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years' *Ineligibility*.

7.43 To justify any elimination or reduction under Rule 7.42, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the Doping Tribunal the absence of an intent to enhance sport performance or mask the *Use* of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criterion considered in assessing any reduction of the period of *Ineligibility*. The *Athlete* or other *Person* shall have the onus of establishing that his or her degree of fault justifies a reduced sanction. [Code Article 10.4]

5.0 ISSUES

5.1 The athlete has admitted to committing an anti-doping rule violation. The only issue before the Tribunal is whether she has satisfied the requirements for a reduction of the proposed two (2) year sanction.

6.0 POSITION OF THE PARTIES

The Respondent

6.1 Ashley Kraayeveld submits that in ingesting Furosemide she had no intention of enhancing her performance. She further submits that her adverse analytical finding resulted from her lack of sophistication as an athlete, her lack of doping control experience and education and an error in judgment.

6.2 The Respondent further submits that the anti-doping movement is designed to cover an entire spectrum of athletes ranging from the weekend warrior with no doping control experience, to the Olympic or professional athlete who travels with an entourage of team doctors and physiotherapists and who has extensive anti-doping experience and education.

6.3 Ms. Kraayeveld maintains that her lack of education and exposure to anti-doping issues places her at a level closer to that of the average recreational athlete as opposed to a more experienced National Senior Team member or carded athlete.

6.4 Ms. Kraayeveld argues that a two-year sanction is entirely inappropriate having regard to her circumstances and in light of the *Lex Sportiva*.

The Claimant

6.5 The CCES submits that the two (2) year suspension should be maintained for Ashley Kraayeveld in that she had not satisfied the required onus and burden of proof of sections 7.42 and 7.43 of the Canadian Anti-Doping Program in order to obtain a reduction of her sanction.

6.6 The CCES argues that athletes have the responsibility of ensuring that no prohibited substance enters their body.

6.7 Although the CCES were satisfied on a balance of probabilities as to how the Furosemide entered her body, they were not satisfied that Ms. Kraayeveld met her onus to satisfy the Tribunal that she had no intent of enhancing her sport performance or to mask the presence of another prohibited substance when she ingested Furosemide.

6.8 The CCES further submits that because Furosemide is a known diuretic often used in weight class sports, it is more likely that Ms. Kraayeveld ingested the Furosemide to make her weight class, thus enhancing her performance.

6.9 A further argument that the CCES makes is that Ms. Kraayeveld is not a "weekend warrior" but is in fact an elite athlete who could have educated herself with regard to doping issues, but chose not to do so at her own peril.

6.10 The Claimant contends that Ashley Kraayeveld's degree of fault is very high given the information before the Tribunal and that the case law provided by the Respondent can be easily distinguished. The CCES submits therefore that even if the Tribunal were to find that Ms. Kraayeveld satisfied the three part test contained in sections 7.42 and 7.43 of the CADP, a sanction of between fifteen (15) months and eighteen (18) months commencing on the date of sample collection should be imposed.

7.0 DISCUSSION AND ANALYSIS

7.1 On August 2, 2012, Ashley Kraayeveld admitted that she violated section 7.23 of the CADP which states that the simple presence of a prohibited substance or its metabolites or markers in an athlete's bodily sample is an anti-doping violation.

7.2 In order to prove her entitlement to a reduced period of ineligibility under sections 7.42 and 7.43 of the CADP, Ms. Kraayeveld must establish: 1) how the specified substance (Furosemide) entered her body; and 2) that the specified substance (Furosemide) was not intended to enhance her sport performance or mask the use of a performance enhancing substance. She must also produce

corroborating evidence in addition to her word which establishes to the comfortable satisfaction of the Doping Tribunal the absence of an intent to enhance sport performance. If these requirements are met, the Doping Tribunal must then consider Ms. Kraayeveld's "degree of fault" to determine whether the presumptive two-year period of ineligibility should be reduced, and if so, by what period of time.

How the Specified Substance Entered the Athlete's Body

7.3 The CCES accepts Ms. Kraayeveld's declaration that the specified substance Furosemide entered her body as the result of her ingesting one of her father's prescribed pills.

Athlete's Intent to Enhance Sport Performance

7.4 In her written submission and in her testimony before this Tribunal, Ms. Kraayeveld steadfastly maintained that she did not intend to enhance her performance by taking Furosemide because she took it after the official weigh-in of the competition and only for the purpose of alleviating discomfort from her menstruation.

7.5 A number of weigh-in sheets were presented during the hearing. On Sunday, July 31, 2011, the weigh-in sheet for the 2011 Pan Am Games Team Trials (Sr.) has a weight of 63.7 kg for Ms. Kraayeveld. The weight category that she was competing in was 57.10 kg to 67.09 kg Ms. Kraayeveld competed in the same weight division at the 2012 Olympic Team Trials (Sr.) in January, 2012. In her first weigh in attempt she registered 67.30 kg at 4:17 p.m. She returned to the weigh-in later that day and registered a weight of 66.75 kg which made her eligible to compete in that division. At the 2012 National Senior Championships, Ms. Kraayeveld attended the weigh-in on June 27, 2012 and registered a weight of 61.6 kg which made her eligible to compete in the 57.01 kg to 62.00 kg division.

7.6 Ms. Kraayeveld testified that she competed in the under 62 kg division on three occasions prior to June 28, 2012. She explained her decision to compete in a lower division by stating that 62 kg is her more natural weight and she felt better competing in that division. She added that her teammate Melissa Pagnotta

had been competing in the under 67 kg division as well and their coach thought that they should compete in different divisions rather than competing against each other to give the club a better chance at winning more medals.

7.7 The Respondent also testified that it wasn't difficult to lose between ½ lb and 1 lb within the two hours that the athletes were given to make weight. To reduce her weight after the first weigh-in at the Olympic Team trials in January, 2012 she put on some extra clothing and did some skipping.

7.8 When Ms. Kraayeveld made the decision to move to the under 62 kg division she watched her diet, cut down on her food intake and trained harder. She testified that her weight had been around 63 kg in June, 2012, and that she had no concerns about making the required weight.

7.9 The Respondent testified that she had never taken a pill to help her lose weight or manage her weight. She added that her menstrual cycle varies and that she would generally gain between 0.5 kg and 1 kg during her cycle. She stated that she did not know that her cycle would be starting on June 27, 2012 and that it was more painful than any other that she could recall. She recalled weighing herself that morning and noting that her weight was less than 62 kg.

7.10 According to her testimony, Ms. Kraayeveld took the Furosemide pill at her mother's insistence and did not ask any questions about the contents of the tablet.

7.11 On cross-examination, the Respondent acknowledged that she had been worried that she might not be able to compete the next day if her menstrual pain persisted.

7.12 Kyung Sook Kim is the secretary at the Taekwondo Academy where Ms. Kraayeveld trains. She testified that one of her responsibilities is to monitor the athletes' weight. There are four senior athletes that she is responsible for and they are weighed each day after their training session. Ms. Kim recalled that most of the monitoring is done within a month to a month and a half prior to competition when the athletes will usually be weighed every day. She recalled that one week prior to the June 28 competition, Ms. Kraayeveld was 1 kg. to

1.5 kg. over her required weight. She added that she is never concerned about an athlete who is no more than 2 kg over their competition weight because that amount of weight is easy to take off by legitimate means.

7.13 Dorothy Kraayeveld the mother of the Respondent Ashley Kraayeveld, also testified during the hearing. She is a nurse by training, who retired 10 to 12 years ago after practising that profession for 25 years. Mrs. Kraayeveld testified that years ago when she was still experiencing menstrual cycles she took Furosemide tablets on four or five occasions to deal with bad cramps that she experienced during menstruation. She would access these pills from other nurses or Doctors that she worked with. She found the Furosemide tablets to be very effective in relieving her discomfort and thought that since Ashley was experiencing a great deal of pain, she might experience similar relief from the medication.

7.14 Mrs. Kraayeveld told the hearing that she took a Furosemide tablet from her husband's prescription bottle without telling him and gave it to her daughter around 9:00 p.m. on June 27, 2012. She testified that she had no idea that Ashley would be committing a doping infraction by ingesting Furosemide. She admitted that she was concerned when she heard her daughter say that she was not going to compete the next day because of the pain.

7.15 Mrs. Kraayeveld testified that she had given Advil to her daughter in the past but on this occasion believed that Furosemide would provide greater relief.

7.16 Ken Anstruther is a certified Taekwondo Coach and Referee. He testified that an athlete used to have only two chances to make weight in the specified time period, but the rule has been changed to allow an unlimited number of opportunities to make weight during the weigh-in period. Mr. Anstruther stated that athletes have been known to take a number of measures to make weight including going into a sauna and in one exceptional case, cutting her hair off after the first weigh-in attempt.

7.17 Dr. Christiane Ayotte is an organic chemist, a full professor at the INRS-Institut Armand-Frappier, a member of the WADA health medicine and research committee, as well as the IOC medical commission. She has been qualified as an

expert in many arbitration panels and was so qualified in this proceeding. In her testimony before this Tribunal, she confirmed the finding of her report of September 17, 2012 which stated that Furosemide is a diuretic, e.g. a potent medication prescribed by physicians to prove the elimination of fluid (Water) from the body in health conditions in which edema (fluid retention) needs to be treated such as congestive heart failure, hypertension, renal impairment, pulmonary edema, etc.

7.18 Dr. Ayotte confirmed that Furosemide and other potent diuretics are banned because they can be utilized as a masking agent in an attempt to alter the excretion of other prohibited substances or to dilute the urine sample; and they are abused to lose weight in sports in which athletes compete in separate weight categories.

7.19 Dr. Ayotte was asked to comment on whether Furosemide could be used to treat menstrual cramps. She noted that Furosemide is not a pain reliever and that there are well known medications such as Midol which are specifically made for menstrual pain and associated bloating and which do not contain prohibited substances.

7.20 With regard to the question of whether or not it is possible to determine when the Furosemide was ingested and in what quantity, Dr. Ayotte replied that the urine test which reveals the presence of Furosemide cannot determine how and when it entered the athlete's body or how long it has remained in the system.

7.21 On cross-examination, Dr. Ayotte conceded that the explanation given by Ashley Kraayeveld for her ingestion of Furosemide could be plausible because the combination of bloating and cramps from menstruation could cause pain. She added however, that there is a difference between bloating and pain, but Furosemide will accelerate the release of water.

7.22 The Claimant also called Kate Noseworthy a Program Manager at Taekwondo Canada as a witness. Ms. Noseworthy has been involved with Taekwondo for about 25 years as an athlete, coach, instructor and administrator. She also owns a taekwondo school which has within it a competitive program.

7.23 Ms. Noseworthy testified that Ms.Kraayeveld's teammate, Melissa Pagnotta is now so dominant in her weight category that she had just one opponent at the most recent National Championships. She agreed that competitors change categories for a variety of reasons including the desire to avoid competing against a dominant athlete.

7.24 Ms. Noseworthy testified that taekwondo athletes can gain weight by drinking a lot of water or eating a lot of bread. She recalled one occasion in which the athlete placed weights-in her bra in order to achieve the desired weight. She added that more athletes want to lose weight rather than gain weight and examples of athletes attempts to lose weight prior to the weigh-in include going into the sauna, not drinking any liquids on the day of the weigh-in, appearing in the nude for the weigh in, and shaving one's head. Ms. Noseworthy stated that it is common for athletes to put on weight between the weigh-in and the day of actual competition. She opined that Ms. Kraayeveld's weight loss from over 67 kg down to 62 kg, in a little more than three months seemed to be a large drop. Ms. Noseworthy also confirmed that Ms. Kraayeveld's voluntary suspension prevented her from going to a competition in Bolivia.

7.25 The CCES submits that Ms. Kraayeveld has not satisfied the burden of proof that rests with her to demonstrate that she did not intend to enhance her performance when she took Furosemide.

7.26 More particularly the CCES submits that the Tribunal should not be comfortable with the explanation given by Ms. Kraayeveld, and even if the Tribunal were to accept her explanation, the facts of this case do not present any mitigating circumstances.

7.27 The CCES points to the following factors in support of their submission.

1. The report from the expert witness, Dr. Ayotte establishes that Furosemide is a very strong diuretic often used in weight class events.
2. Dr. Ayotte's report establishes that Furosemide can enhance sport performance.

3. Ms. Kraayeveld is an elite Taekwondo athlete who took Furosemide on the eve of a significant competition.
4. Ms. Kraayeveld's weight changed significantly over the past year.
5. Taking Furosemide prior to a competition in order to relieve the discomfort from menstrual cramps could still imply an intent to improve performance.
6. Dorothy Kraayeveld called the Furosemide tablet a "water pill" meaning that she as well as her daughter would have been aware of its diuretic effects.
7. Ms. Kraayeveld is not a mere "weekend warrior" since she has been active in her sport since she was eight years old and has competed in local, provincial, national and international competitions and has been a member of the National Junior Team.
8. Ms.Kraayeveld is part of the Ontario Quest for Gold program and is a serious contender for the 2016 Olympic Games.
9. The athlete did not declare the use of Furosemide on the Doping Control Form despite having taken the substance the day before.
10. Furosemide is a controlled substance that is only available with a medical prescription. Ms. Kraayeveld has never sought a prescription for this substance.
11. Much of the corroborating evidence comes from the athlete's mother, and given her direct interest in the outcome of these proceedings, her testimony should be given less weight.
12. There are inconsistencies in the testimony of Ashley Kraayeveld and Dorothy Kraayeveld. Ashley stated that she was lying on the couch in her home when the menstrual cramps became most severe, while her mother Dorothy testified that her daughter was on her bed in her bedroom when she decided to offer her the Furosemide pill.

7.28 The Tribunal concludes that Ms. Kraayeveld's testimony, along with the corroborating evidence presented at this hearing establishes to the comfortable satisfaction that she did not intend to enhance her sport performance by ingesting Furosemide. The Tribunal finds that notwithstanding the skilled and

persistent cross-examination of the Respondent by the Claimant's counsel, she steadfastly maintained that the Furosemide was ingested after the weigh-in and for the purpose of relieving her discomfort from menstrual cramps. The fact that much of the corroborating evidence comes from the athlete's mother does not diminish the weight that should be afforded to such testimony. The issue of credibility is one of fact and the Tribunal finds that there is no basis to reject the testimony of Ashley Kraayeveld or Dorothy Kraayeveld. There were some inconsistencies in their testimony as pointed out by Claimant's counsel, but these inconsistencies are on minor matters and are to be expected if the witnesses have not discussed their anticipated evidence. An inconsistency in the recollection of where the athlete was positioned when the cramps became severe is a matter of detail that would not generally affect the credibility of the witness.

7.29 In coming to its conclusion that it is comfortably satisfied that Ms. Kraayeveld did not ingest Furosemide in order to enhance her sport performance, the Tribunal also considered the following evidence. The Respondent had made the under 62 kg weight in March, 2012, May, 2012 and June 5, 2012 as well as on the critical day of June 27, 2012. She had registered a weight of 66.75 kg. in January 2012, but had three months to get down to the 62 kg weight. Ms. Noseworthy of Taekwondo Canada had testified that some athletes can lose as much as 4 lbs in one day.

7.30 There was undisputed testimony that a coaches' decision was made to have Melissa Pagnotta move up to the higher weight division while Ashley Kraayeveld would move down a division. Furthermore, Kyung Sook Kim testified that Ms. Kraayeveld weighed approximately 63 kg in the week prior to June 27, 2012. The documentary evidence entered during the hearing established that Ms. Kraayeveld could lose 0.5 kg in less than two hours when she was required to make weight.

7.31 The Tribunal also considered the medical science evidence. In Drug Free Sport New Zealand v. Dawn Chalmers a doctor had prescribed Furosemide to "mitigate difficulties with swelling and pain that Ms. Chalmers had suffered from for several years associated with menstruation." Dr. Ayotte testified that

Furosemide is not a pain medication and that there are medications made specifically for menstrual pain and associated bloating that are not prohibited. She acknowledged however that the combination of bloating and cramps from menstruation could cause pain and that Furosemide could reduce the discomfort caused by bloating since it will accelerate the release of water. Although Dr. Ayotte could not support the use of Furosemide by anyone to relieve menstrual symptoms, she could not deny its effectiveness for that purpose and therefore acknowledged that the explanation given by Ms. Kraayeveld for the ingestion of the Furosemide pill was plausible.

7.32 One further point made by the CCES in arguing an intent to enhance sport performance is the failure of the athlete to mention that she took the pill on the declaration form that she signed when she went for doping control. The fact that Ms. Kraayeveld took a pill to relieve menstrual symptoms clearly should have been declared. Although she would not have known what the substance contained in the pill was at that stage, there was still an obligation to declare the fact that a pill was given to her by her mother and ingested by her. However, in light of the fact that it was Ms. Kraayeveld's first drug test, the Tribunal accepts her explanation that in the euphoria of her competition win she had not turned her mind to the events of the night before and the omission was not done out of an intent to hide or withhold information.

Athlete's Degree of Fault

7.33 Since Ms. Kraayeveld has satisfied the predicate requirements to justify an elimination or reduction in the presumptive two (2) year period of ineligibility, the Tribunal must now independently examine her "degree of fault" to determine whether any reduction in the period of ineligibility is appropriate.

7.34 The CCES submits that Ms. Kraayeveld's degree of fault is very high. She testified that she never takes pain medication of any kind, yet on the eve of a very important competition she took a pill given to her by her mother.

7.35 The CCES also maintains that Ms. Kraayeveld could have asked questions of her mother given the fact that her mother was employed as a nurse for many

years. They add that the athlete chose not to consult anyone, not a doctor, coach or adviser, and did not even ask her mother for the name of the pill or its origin. The CCES argues that this is a very different situation from that of an athlete who takes a contaminated supplement. In Ms. Kraayeveld's case she was aware that her mother was not knowledgeable regarding doping issues and according to the CCES position, her decision to keep herself uninformed amounts to negligence.

7.36 The CCES also takes issue with Ms. Kraayeveld's testimony that she did not read any material posted on the Taekwondo website or any other website about doping because she did not take drugs and saw no need to refer to the links that were referenced in the Taekwondo registration forms or Quest for Gold application forms. The CCES argues that for an athlete who does not normally take medication of any kind to take an unknown pill so close to competition is reckless and negligent and such an act would place her in no better position than Caroline Pyzik.

7.37 In Canadian Centre for Ethics in Sport (CCES), Taekwondo Canada v. Caroline Pyzik, a Doping Tribunal convened under the SDRCC dealt with a 17 year old Taekwondo athlete who had asked her trainer if he knew of any over the counter products that she could use to help her manage her weight prior to the upcoming Canadian Championships. The athlete had made it clear that she did not want a doping product and was advised by her trainer that he could provide her with a safe pill which could be taken two or three days prior to the competition in order to maintain her weight. Ms. Pyzik was apparently concerned that these championships would coincide with her menstrual period and the anticipated weight gain of up to 1 kg. that she usually experienced during such period.

7.38 Ms. Pyzik was given a half portion of an orange-coloured pill by her trainer and she ingested the pill two days prior to the competition. It was Ms. Pyzik's first doping control test and her first junior athlete competition. Although she declared having taken Advil and Tylenol on the doping control form she neglected to mention the half-pill that she had taken the Thursday prior to the competition.

7.39 The Tribunal accepted her testimony that she had received little if any doping information from her sport Federation, but ruled that in light of her acknowledgement that she took a prohibited substance in order to remain in her weight category she did not qualify for a reduction of the presumptive two (2) year period of ineligibility.

7.40 The CCES submits that at best Ms. Kraayeveld's degree of fault is similar to the finding made by a Court of Arbitration for Sport panel in Flavia Oliveira v. United States Anti-Doping Agency CAS 2010/A/2107. Ms. Oliveira was an international elite-level cyclist who suffered from severe allergies. She had taken a variety of over the counter and prescription medications on a regular basis for a number of years but found that those medications caused her to feel fatigued. She conducted research to discover a product called Hyperdrive that was a dietary supplement that did not contain prohibited substances.

7.41 In January 2009, Ms. Oliveira left for Italy to train and compete with her first professional team. She took her medications and supplements with her but in May 2009 her initial supply of Hyperdrive ran out. Ms. Oliveira then ordered a second bottle and had it shipped to an address in the United States for pick up by her husband who then brought the bottle to Italy when he came to visit his wife. Following an elite stage race for women in Italy in June, 2009, Ms. Oliveira provided a urine sample which tested positive for Oxilofrine, a stimulant listed as a prohibited substance in the World Anti-Doping Agency ("WADA") Code. Ms. Oliveira argued before the CAS panel that she had conducted extensive internet research on each of the Hyperdrive product's listed ingredients, she had consulted the USADA website and had checked the WADA prohibited substance list, and in light of these steps her level of fault should not be deemed significant.

7.42 The Respondent, USADA argued that proper research would have revealed the existence of a U.S. Food and Drug Administration warning that the Hyperdrive product most recently purchased by the athlete contained a banned substance and as a result, Ms. Oliveira should receive no reduction of her period of ineligibility.

7.43 Ms. Oliveira had not received any formal drug education from USADA or any other sports organization prior to her first in-competition drug test. But because Ms. Oliveira was an elite level athlete and a professional cyclist at the time of her first positive test as opposed to an intercollegiate or high school athlete, the Panel concluded that her period of ineligibility should be 75% of the maximum sanction (i.e. 18 months). The CCES submits that Ms. Kraayeveld was in a worse position than Ms. Oliveira given her lack of effort to educate herself about doping, but along with that submission was a concession that the educational efforts of the Taekwondo Federation were inadequate and as a result an 18 month period of ineligibility is being recommended.

7.44 The CCES submits that Ms. Kraayeveld's situation is far different from that of Dawn Chalmers, the New Zealand boxer who also tested positive for Furosemide. The CCES argues that Ms. Chalmers had a prescription for that substance and would therefore be less negligent than an athlete who ingested a Furosemide pill without a prescription.

7.45 The Claimant maintains that Ms. Kraayeveld is in a similar position to that of Serge Despres, a bobsleigh competitor whose urine sample returned an adverse analytical finding for Nandralone which was contained in nutritional supplements that he was taking following hip surgery. The CAS panel in Despres v. CCES, CAS 2008/A/1489 found that Mr. Despres' argument that he took HMB on the advice of the team nutritionist Mr. Berardi, to be an inadequate claim for establishing "no significant fault or negligence". The Panel noted that Mr. Despres did not check the nutritionist's advice with a doctor or follow up on the advice by asking a Doctor or Mr. Berardi himself about the specific brand. Thus, the CCES asserts that someone who blindly follows the advice of another is negligent and should receive the same fate as that of Mr. Despres, i.e. a finding of significant fault or negligence.

7.46 The Respondent acknowledges that she is at fault for ingesting Furosemide but submits that her degree of fault or responsibility must be assessed in consideration of her education and experience with anti-doping measures. It is argued by the Respondent that doping is generally not a significant issue in

Taekwondo. Ms. Kraayeveld testified that she thought that doping involved steroids or illegal recreational drugs.

7.47 To counter the argument made by the CCES that she was an experienced athlete who should have been far more aware of doping issues, Ms. Kraayeveld responds that although she had competed in 22 national or international events, winning medals in many, she had never been drug tested prior to June 28, 2012. She had no wallet card; she had never been invited to attend a seminar on anti-doping and had never received an email from either the provincial or national Taekwondo organizations on the subject of doping education.

7.48 In support of her argument that her degree of fault is very low, Ms. Kraayeveld submits that her situation is similar to that found in the Jasdeep Toor, Graydon Oliver, and Dawn Chalmers cases. In CCES v. Jasdeep Toor, Mr. Toor a recreational soccer player had been given no training or education in relation to the use of banned substances. His urine sample which was collected at an after-competition doping control, returned an adverse analytical finding for Methylexaneamine. The substance was contained in a protein milk shake that he had purchased at a national vitamin supplement store. Given his lack of exposure with regard to the use of banned substances, Mr. Toor was given a two (2) month suspension by the Arbitrator.

7.49 Graydon Oliver was a professional tennis player from the United States who tested positive for the presence of Hydrochlorothiazide after ingesting an herbal sleep aid. After establishing that he did not knowingly ingest the substance, an ATP Tour Anti-Doping Tribunal found that exceptional circumstances were present and imposed a suspension of two (2) months.

7.50 Both parties have made reference to the SDRCC decision of CCES v. Caroline Pyzik, SDRCC DT 11-0146, a case involving an athlete in the sport of Taekwondo. Of particular significance in the Pyzik case is the fact that the athlete had specifically asked her trainer for a pill that would help her make her weight prior to her competition. In this Tribunal's view, the facts of that case are quite different from that of Ms. Kraayeveld.

7.51 The decision in the matter of Drug Free Sport New Zealand v. Dawn Chalmers is perhaps the most relevant to the consideration of the degree of fault of Ms. Kraayeveld. Although each Tribunal must arrive at its conclusion based on the facts of the case before it, it is helpful to compare Ms. Chalmers situation with that of Ms. Kraayeveld.

Dawn Chalmers

- Had suffered for years from swelling and pain associated with menstruation,
- Her long time physician prescribed Furosemide to relieve her suffering,
- Her physician was aware of the risk and warned the athlete about taking Furosemide too close to completion,
- She confirmed the advice with her pharmacist,
- She did not clarify the parameters of "close to" or "around" in this context,
- She was given some misinformation from her physician,
- She did not check the advice with Drug Free Sport New Zealand,
- She did not seek to obtain a Therapeutic Use Exemption (TUE),
- She testified that she had never had a problem meeting any of the weight classes that she had competed in,
- She had been tested a number of times previously,
- She signed a form acknowledging her responsibilities as an athlete,
- She had received a wallet guide and athlete handbook from Drug Free Sport New Zealand,
- She was a senior athlete knowledgeable about her obligations.

Ashley Kraayeveld

- Had experienced previous discomfort from menstruation but this was the most acute experience,
- She was 20 years old at the time of her adverse analytical finding,
- She had never been drug tested,

- She had little or no knowledge about issues of doping in sport,
- She received virtually no education about doping issues,
- She made a spur of the moment decision to take a pill,
- She took the pill from her mother who is a trained nurse,
- She did not make any inquiries about the pill,
- She does not ordinarily take medication or supplements,
- She did not consult anyone else about the risks of taking medication.

7.52 The CCES have argued that there were a number of avenues open to Ms. Kraayeveld to educate herself about doping matters such as the links found on the Taekwondo registration forms, the references to the CCES website and the reference to submission for doping control in the Quest for Gold application forms. The difficulty with that submission is that an athlete in Ms. Kraayeveld's position whose exposure to doping control was so limited would hardly know what she was looking for. The Tribunal is satisfied that Ms. Kraayeveld was made well aware that she would be subject to doping control through information provided on the Taekwondo web site. There was no issue raised in this hearing that this somewhat naïve athlete was not aware that she would be subject to drug testing.

7.53 However, the CCES has accepted that Ms. Kraayeveld obtained the Furosemide tablet from her father's prescription and ingested it at some point in close proximity to her competition on June 28, 2012. Therefore it follows that at the time of her registration for the competition she would not have had any reason to turn her mind to the risk of taking a prohibited substance to relieve discomfort from menstrual cramps that she would not be experiencing until several weeks later. During the hearing, the Tribunal was taken to the Taekwondo website as part of a demonstration showing how one could find information on doping control. The Caroline Pyzik case was posted on the home page of the National Organization website for three to four weeks before it was moved to a different location. After that initial exposure any reference to the Pyzik case could only be found by going to the home page, clicking on National Team, then scrolling down to a box with the heading 'Medical'. When the

Medical box is opened it lists current cases involving doping in Taekwondo. One has to wonder how many athletes in Ms. Kraayeveld's situation would be savvy enough or curious enough to go through those steps in order to find the latest case on doping in their sport.

7.54 This Tribunal finds that more should have been done by Taekwondo Canada to provide the basics in doping control information to Ms. Kraayeveld. The Tribunal was told that Taekwondo is not one of the major participation sports in Canada and as such its resources are limited. Ms. Noseworthy made an interesting observation while commenting on the chatter surrounding the Pyzik decision. She mentioned that it was a topic of much conversation on Facebook . She added that in her estimation as many as 85% of Taekwondo Canada's members have Facebook accounts. Perhaps social media vehicles such as Facebook and Twitter might provide more direct avenues to get the basic message out to the athletes about the dangers of ingesting substances of unknown origin.

7.55 The Tribunal agrees with the submission of the Respondent's counsel that Ms. Kraayeveld would not have even known what questions to ask prior to ingesting the Furosemide tablet. This speaks to a significant gap in the doping awareness of athletes such as Ms. Kraayeveld. Now that she has taken the Drug Free Sport Course she is fully aware of the questions that should be asked by every athlete before taking any medication or supplements. On the evidence presented during this hearing, this Tribunal does not believe that Ms. Kraayeveld was sufficiently equipped to appreciate this responsibility prior to her adverse analytical finding.

8.0 CONCLUSION

8.1 As stated in the Tribunal's summary decision, Ms. Kraayeveld was somewhat reckless in taking the Furosemide pill without any further inquiry. But bearing in mind that she took the pill from her mother, a nurse, and someone that she would obviously trust as acting in her best interests, and in light of her

inexperience with regard to doping control and her lack of education about doping issues, her degree of fault is at the low end of the spectrum.

8.2 Ms. Kraayeveld's degree of fault is less than that found in the Dawn Chalmers case, but warrants a sanction greater than the three (3) months proposed by her counsel. For the reasons stated above, I had determined that the appropriate sanction in these circumstances for this athlete was a period of ineligibility of four (4) months commencing June 28, 2012 and ending at midnight on October 28, 2012.

8.3 In the summary award released on October 10, 2012 the parties were notified of the four (4) month period of ineligibility with a reinstatement date of October 28, 2012. On October 24, 2012 the Tribunal was notified of an issue being raised by the CCES. The CCES maintains that the period of ineligibility for Ashley Kraayeveld can end no earlier than December 10, 2012 on a strict application of Rule 7.13 of the CADP. In the alternative, the Claimant argues that if the period of ineligibility is determined by applying Rule 7.15 of the CADP, the period of ineligibility would end on December 9, 2012.

8.4 During the hearing on the merits of the case, the CCES affirmed that the start of the period of ineligibility for Ms. Kraayeveld should be the date of sample collection, June 28, 2012. This was based on the athlete's prompt admission of the violation which in accordance with the CADP rules is one of only two methods available to permit the start of the ineligibility period to be back dated to the sample collection date.

8.5 Rule 7.13 of the CADP reads as follows:

> Where the *Athlete* or other *Person* promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) unequivocally admits the anti-doping rule violation in writing after being confronted with the anti-doping rule violation that is being asserted by the CCES, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the *Athlete* or other *Person* shall serve

> at least one-half of the period of *Ineligibility* going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. [Code Article 10.9.2]

8.6 The CCES interpretation of this rule is that at least half of the four (4) month ineligibility sanction that was imposed must be served after the decision imposing the sanction which was rendered on October 10, 2012. This application of Rule 7.13 would mean that Ms. Kraayeveld's period of ineligibility would not end until December 10, 2012.

8.7 Alternatively, the CCES submits that Ms. Kraayeveld could waive her right to seek a benefit under Rule 7.13 and rely instead on rule 7.15 since she had accepted a provisional suspension on August 9, 2012. Applying Rule 7.15 Ms. Kraayeveld would receive credit for the period of ineligibility served since August 9, 2012 but her four (4) month total period of ineligibility would not end until December 9, 2012.

8.8 In response to the issue raised by the CCES after the conclusion of the hearing, Ms. Kraayeveld raises a number of arguments. The first argument advanced by the Respondent on this issue is that Rule 7.12 of the CAPD applies to her situation. Rule 7.12 provides as follows:

> Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete* or other *Person*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. [Code Article 10.9.1]

8.9 Ms. Kraayeveld submits that there have been substantial delays in the hearing of this matter that began with the athlete not being notified of the adverse analytical finding until July 31, 2012, 18 days after Taekwondo Canada was notified. Apparently Taekwondo Canada had an incorrect email address for the Respondent and as a result the first email notice went unanswered.

Furthermore, Ms. Kraayeveld submits that she and her counsel were prepared to commence a hearing as early as the week of September 17, or 24, but had to wait for a further two to three weeks due to scheduling issues that were not attributable to the athlete.

8.10 The CCES submits that an application of Rule 7.12 is not warranted on these facts and I agree with that submission. Any delays in bringing this matter to a hearing would not fall under the definition of "substantial" no matter how broadly one defines that term. Although some of the timelines stated in the CADP rules were not met, on the evidence before me it appears that both parties were diligent in dealing with this matter in a relatively expeditious fashion.

8.11 The second argument raised by the Respondent regarding the eligibility issue is that of estoppel. Estoppel is argued on the basis that it was the CCES who asked that the period of ineligibility commence from the date of sample collection without specifying whether it did so pursuant to Rule 7.12 or 7.13. Ms. Kraayeveld also notes that no submission was made during the hearing concerning Rule 7.13 and no mention was made of a request to have her serve 50% of her sanction after the date of the Decision. Another point raised in support of an estoppel finding is that Ms. Kraayeveld had accepted the CCES acknowledgement that her period of ineligibility commenced on June 28, 2012 and that any results achieved after that date were invalid. Finally it is argued that Ms. Kraayeveld, having been notified of the Tribunal's award on October 10, 2012 has made plans to begin competing again as of November 11, 2012, and the fact that she has been notified of this new issue just three days before the period of ineligibility was due to end has resulted in an additional psychological impact.

8.12 The final argument raised by the Respondent is that a proper application of Rule 7.13 would result in Ms. Kraayeveld's period of ineligibility ending on October 28, 2012. The Respondent argues that "the date the sanction is otherwise imposed" gives a Tribunal discretion to determine the date on which the sanction should be imposed. In this case, the athlete acknowledged that she had ingested Furosemide on August 1, 2012 and ceased competing as of that date. In furtherance of that argument the date of the sanction "otherwise

imposed" would be August 1, 2012 meaning that the athlete would have served more than half of her four (4) month sanction by the termination date of October 28, 2012.

8.13 Rule 7.13 of the CADP provides three different time periods for the clock to begin to run in order to achieve the one-half period of ineligibility. The first is from the date on which the athlete accepted the imposition of a sanction, the second is from the date of a hearing decision imposing a sanction and the third is from the date that the sanction is otherwise imposed. This wording which mirrors the World Anti-Doping Code Article 10.9.2, is written in a manner that clearly indicates that there are three scenarios that are contemplated. It is also noteworthy that the words "a sanction" are used twice, and the words "the sanction" once. Although the words "period of ineligibility" and "sanction", are often used interchangeably, it appears from the language used in both the World Anti-Doping Code and the Canadian Anti-Doping Program rules that there are different forms of sanction.

8.14 Article 10 of the World Anti-Doping Code is entitled **Sanctions on Individuals.** The sanctions mentioned in that article include, disqualification of an athlete's results for the event in which the Anti-Doping rule violation occurred; disqualification of an athlete's results for competitions subsequent to the event in which the sample was collected or in which the anti-doping rule violation occurred; the imposition of a period of ineligibility; and the imposition of financial sanctions. Section 7.0 of the CADP is entitled **Doping Violations and Consequences Rules**. That section contains sanctions for doping violations that are similar to the ones found in Article 10 of the World Anti-Doping Code, with one additional sanction, that being a reduction or elimination of Government financial assistance or benefits.

8.15 With all due respect, I do not accept the Claimant's argument that the one-half of the period of ineligibility referred to in rule 7.13 of the CADP can only be credited after the hearing imposing the sanction. To hold to that interpretation would be to render the other options meaningless and could in situations such as the present one, unfairly prejudice the athlete. On August 2, 2012 Ms. Kraayeveld

signed an Admission of an Anti-Doping Violation. In that Admission she acknowledged that she had violated an anti-doping rule due to the presence of Furosemide in her sample collection of June 28, 2012. She confirmed in this document that she had not competed since her receipt of the CCES Notification of her asserted violation, dated July 26, 2012. She also confirmed that she would not contest the fact of the violation. Furthermore, the Respondent acknowledged that she might attempt to have the sanction or sanctions associated with the violation ultimately determined by a Doping Tribunal at a hearing.

8.16 The other concern that I have with regard to such a strict interpretation of rule 7.13 of the CADP is that it could inadvertently create a situation in which the longer it takes the matter to come to a hearing, the longer the penalty will be for the athlete who has chosen to make a prompt admission of an anti-doping rule violation. While the ineligibility clock might start as early as the date of sample collection, if the hearing does not proceed expeditiously or if it commences and completion is delayed, the athlete will still have one-half of the finally determined sanction to serve commencing on the date when the Tribunal renders its decision. In the matter before me, the parties appeared to be demonstrating considerable co-operation, yet the matter was heard some 69 days from the date of the CCES notification even though the rules of the CADP state that a hearing must commence no later than 45 days from the date of such notification.

8.17 In the CCES Notification of an Anti-Doping Rule Violation dated, July 26, 2012, Taekwondo Canada was notified by the CCES that ***"an athlete with an alleged anti-doping rule violation is eligible to participate unless or until an anti-doping rule violation is determined (subject to Rule 7.8 of the CADP concerning Disqualification of Results in Competitions Subsequent to Sample Collection or commission of an Anti-Doping Rule Violation) unless a provisional suspension is imposed by a sport organization pursuant to Rule 7.73, or self-imposed as per Rule 7.15."***

A reading of this instruction would lead one to conclude that a provisionally suspended athlete under Rule 7.73 has had a "sanction" imposed on him or her, while an athlete who has agreed to a self-imposed provisional suspension as per

Rule 7.15 has in fact accepted the imposition of a "sanction". In Ms.Kraayeveld's case, she accepted a provisional suspension pursuant to Rule 7.15 of the CADP on August 9, 2012 which would mean that one-half of her four month period of ineligibility would have been served by October 9, 2012.

8.18 The Respondent has also submitted that the Tribunal could find that the date on which Ms. Kraayeveld accepted the imposition of a sanction was August 1, 2012. In actual fact, August 2, 2012 was the date on which she acknowledged the anti-doping rule violation. Ms. Kraayeveld accepted a sanction on that day in that she agreed that she would cease competing. She also knew that the CCES proposed sanction was one of two (2) years ineligibility. She would also have been aware that if she waived her right to a hearing, she would be accepting a two (2) year period of ineligibility commencing on the date that the waiver of hearing was signed. Rule 7.13 of the CADP clearly recognizes that a sanction could be imposed outside of a hearing.

8.19 In admitting the anti-doping rule violation on August 2, 2012, Ms. Kraayeveld accepted the proposed two (2) year ineligibility period that went with that admission, subject to her right to apply for a reduction of that sanction if certain requirements were met. If those requirements were not met, Ms. Kraayeveld had no choice. Her admission of the anti-doping rule violation (which by operation of Rule 7.13 could not be further contested) would mean that the presumptive two (2) year sanction would stand. The Tribunal finds therefore that as of October 2, 2012, Ms. Kraayeveld had served at least one-half of the period of ineligibility required by rule 7.13 of the CADP. In the final analysis, whether, Ms. Kraayeveld had accepted the imposition of a sanction on August 2, 2012 or August 9, 2012, the result is the same. Her period of ineligibility will end on October 28, 2012 at midnight.

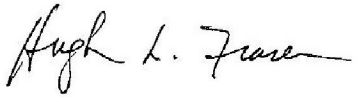
8.20 This ruling makes it unnecessary to address the Respondent's alternate arguments of issue estoppel and procedural fairness but perhaps a brief comment is warranted. If the Tribunal had been required to address these issues, it would have made a finding that procedural fairness required that the eligibility date of October 28, 2012 not be disturbed.

8.21 During the hearing the Claimant did not address the issue of whether the athlete had accepted the imposition of a sanction and if so at what point. Respondent counsel was never invited to address that issue even though he made it clear in his submissions that he was seeking a sanction of no more than three (3) months of ineligibility. The Tribunal rendered its decision on October 10, 2012 and the Respondent understandably began to organize her affairs for a return to competition as soon as she would be eligible. She learned three days before her anticipated reinstatement date that she might have to put her plans on hold. The Tribunal thought it appropriate to invite the parties to make further submissions. After considering those submissions, the Tribunal confirms its decision of October 10, 2012.

I wish to acknowledge the outstanding advocacy demonstrated by all three counsel who appeared on this matter. Your professionalism and diligence was of great assistance to the Tribunal.

Dated at Ottawa, Ontario, this 29th day of October, 2012.

Hugh L. Fraser



Sole Arbitrator