

**INTERNATIONAL RUGBY BOARD**

**IN THE MATTER OF REGULATIONS RELATING TO THE GAME**

**AND IN THE MATTER OF A DOPING OFFENCE BY ADAM VAN STAVEREN**

**BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO IRB  
REGULATION 21**

Judicial Committee

Christopher Quinlan (Chairman)

Dr. Barry O'Driscoll

M. Paul Mauriac

*Appearances and Attendances:*

Tim Ricketts (Anti-Doping Manager, International Rugby Board)

For the International Rugby Board

Susan Ahern (Head of Legal Affairs, International Rugby Board)

Ben Rutherford (Counsel, at the adjourned hearing only)

The Player

Adam Van Staveren

For Rugby Canada

Trevor Arnold

Also Present

Eileen Kelly, Solicitor, observing (Counsel, at the January hearing only)

Heard: 8 January 2010 and 5 February 2010 by way of telephone conference call

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**DECISION OF THE BOARD JUDICIAL COMMITTEE**

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**Introduction**

1. Pursuant to the International Rugby Board ('IRB') Regulation 21.21.1 (Anti-Doping) we (Christopher Quinlan, Dr. Barry O'Driscoll and M. Paul Mauriac) comprise the Board Judicial Committee appointed to consider this alleged anti-doping rule violation.

2. Adam Van Staveren ('the Player') was tested as part of the IRB's Anti-Doping programme for the Americas Rugby Championship Tournament. The sample was taken from him on the final day of the tournament, namely the 17 October 2009. At the material time he was playing for the British Columbia representative side. The Player tested positive (A Sample 1883405) for cannabis metabolite: 11-nor-9-carboxy- $\Delta$ 9-tetrahydrocannabinol (Carboxy-THC) at a concentration of 40ng/ml ( $\pm$  3 ng/ml) which is greater than the permitted threshold level of 15ng/ml.
3. The detection of Carboxy-THC is consistent with the administration of the prohibited substance Tetrahydrocannabinol. Cannabis is a Prohibited substance classed under S8 Cannabinoids as listed in the World Anti-Doping A 2009 List of Prohibited Substances and Methods.
4. A preliminary review of the case was undertaken by Dr Ismail Jakoet (South Africa) on 6 November 2009 (*per* IRB Regulation 21.20.1). He determined that an anti-doping rule violation may have been committed contrary to IRB Regulation 21.2.1.
5. The IRB notified the Player of the adverse analytical finding by letter dated 8 November 2009. His Union, Rugby Canada informed the Player on 10 November that in consequence of the said adverse analytical finding he was provisionally suspended. Rugby Canada informed the IRB Anti-Doping manager (Tim Ricketts) of the provisional suspension by email on 12 November.
6. In an undated email sent by him and forwarded to Tim Ricketts by Trevor Arnold, Rugby Canada on 1 December 2009 at 17.36, the Player said this:  
*"...I don't believe in making excuses so here it is. I knew the consequences before I made a bad decision which made it an even worse decision, so I will accept whatever penalty I receive..."*
7. The Player did not communicate with the IRB, either accepting the A Sample results or requesting that the B Sample be tested. By efflux of time and the operation of IRB Regulation 21.20.5 he was deemed to have accepted the A Sample results. He was so informed by the IRB on 17 December.

8. Having read and considered the relevant documentation and at the written invitation of Ms Ahern, IRB Head of Legal Affairs, on 22 December 2009 the Chairman issued directions pursuant to Regulation 21.21.6. The IRB complied with those Directions, the Player did not.
9. The hearing took place by telephone conference call on 8 January 2010 and 5 February 2010.

### **Anti-Doping Rule Violation**

10. The IRB Anti-Doping Regulations 2009 set out the framework under which all players can be subjected to Doping Control and the procedures of any alleged infringement of those Regulations. Those Regulations adopt the mandatory provisions of the World Anti-Doping Code.
11. The Americas Rugby Championship 2009 Terms of Participation contained the Tournament Anti-Doping Programme. Section 10 thereof states that the *“Tournament Anti-Doping Programme shall be IRB Regulation 21”*. The Player signed the Player Consent Form dated 8 October 2009, whereby he agreed to be bound by the Tournament Anti-Doping Programme (‘TADP’). IRB Regulation 21 is repeated in the TADP. For ease of reference we refer only to the relevant IRB Regulation.
12. IRB Regulation 21.2 provides:  
*“Players or other persons shall be responsible for knowing what constitutes an anti-doping violation and the substances and methods which have been included on the Prohibited List. The following constitutes anti-doping rule violations:  
21.2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample”*
13. At the outset of the hearing on 8 January 2010, the Player admitted the presence of Carboxy-THC in his urine sample at the stated concentration and accordingly that he had used a Prohibited Substance. In consequence we are satisfied that the Player has committed an Anti-Doing Rule Violation contrary to Regulation 21.2.1.

## **Evidence**

14. The BJC had before it documents which included the Doping Control Form, the Certificate of Analysis, the Preliminary Review report from Dr Ismail Jakoet and correspondence between the IRB, Rugby Canada and the Player.
15. The hearing commenced on 8 January 2010 by way of telephone conference. As we heard the Player's account it became clear to us that he wished to rely upon IRB Regulation 21.22.3, as set out in paragraph 27 below. He was not represented by a lawyer, or at all. Accordingly, we advised him that it would be in his interests to seek an adjournment to obtain, if he could, evidence which might support ("corroborate") his account. He sought that adjournment to which Ms Ahern (fairly) did not object. We issued directions relating to use service of that evidence.
16. We reconvened the hearing on 5 February 2010. In advance thereof the Player provided an unsigned statement dated 18 January 2010 from one Dana Babineau which supported, in material terms, the Player's account. In response Mr Rutherford on behalf of the IRB issued a written request for a signed copy of the statement or that the witness "appear in person for examination at the hearing".
17. Before the adjourned hearing Mr Ricketts (rightly and helpfully) advised the Player that it was in his interests to obtain a signed copy of the statement and if at all possible make the witness available for the hearing.

## The Player's Account

18. The Player is thirty-four years of age. He started playing the Game aged nineteen years and he has played Rugby Union at the very highest level, having represented his country (Canada) twenty times. This was to be his last season of representative rugby playing for British Columbia in the Americas Rugby Championship. He plays for a club side and coaches a school team.
19. His is the (sadly) not unfamiliar tale of a player's social use of cannabis. He told us that after a game he met up with friends "a week or two" before 17 October 2009.

After the game and over a four hour period, he shared with a number of them “two or three” cigarettes which contained what he described as “marijuana”. He knew the cigarettes contained cannabis and knew also that it was a Prohibited Substance. He insisted that at “2.30 in the morning” he was not taking it to enhance sport performance. Quite why he did, he could not explain. He did tell us that at that time, he did not believe he would play representative rugby again, believing that he would not make the squad for the final on 17 October.

20. Asked about his use of cannabis on occasions other than the instant, he told us that he recalled first using the substance when at university. He had probably used it, he thought, five times in the last ten years. He said he last used it two-and-a-half to three years before the occasion in question.

21. The Player did not pretend before us that he was anything other than familiar with Anti-Doping regimes and regulations. By way of one example he acknowledged that he was a member of the Canada National team which participated in the Rugby World Cup 2003 in Australia; he was knowingly bound by that tournament’s anti-doping programme.

22. He told the BJC that after being told that his sample had tested positive for a Prohibited Substance he informed his club that he had decided not to play for the remainder of the season. He said he was “disgusted” with himself and to his credit did not seek to excuse what he had done. He could not face the prospect of “looking at the school boys and telling them I am not playing rugby”. The complete email referred to (in part) in paragraph 6 above reads:

*“Thanks for the letter and I appreciate your thoughts. I don’t believe in making excuses so here it is. I knew the consequences before I made a bad decision which made it an even worse decision, so I will accept whatever penalty I receive.*

*I’ve decided not to play in the second half of the year and have told Bayside so that takes care of your concern of notifying the club.”*

23. We adjourned the hearing on 8 January after the Player’s evidence. We did so for the reason set out above: upon hearing his account for the first time it was apparent that

he might be able to avail himself of Regulation 21.22.3. This is but one example of the delay and problems which can arise when a Player or Person does not comply with Directions designed to promote an efficient hearing. They are issued for the benefit of the parties and BJC and it is incumbent upon all to comply with them.

24. On 5 February the hearing recommenced with the Player being questioned by Ms Ahern. He believed it was the 19 September that he smoked cannabis. He did not take any more between then and the test on 17 October. He was the only member of the team who smoked cannabis, he said.
25. Thereafter we heard from Dana Babineau who was available and heard by way of telephone conference call. The evidence was in accordance with the unsigned statement. In short, on Saturday 19 September 2009, they met by chance in a pub in St Johns. They have known each other for twenty years. They spent the evening together, with the rest of the team and after closing joined a number of others smoking marijuana outside. They shared "two or three 'joints'" before going their separate ways. Questioned by Ms Ahern he said he thought they were part of five people in all smoking outside; the 'joints' were passed between them all, the others were, he believed 'locals'. This was an "isolated" incident.

### **Sanction Regime**

26. Regulation 21.4.5 provides

*"Specified Substances*

*For purposes of the application of Regulation 21.22 [Clause 22] (Sanction on Individuals) all Prohibited Substances shall be "Specified Substances" except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances."*

27. Cannabinoids are classified as "Specified Substances". Sanctions are set out in Regulation 21.22. The starting point for a first violation is a period of ineligibility of two years (Regulation 21.22.1). However, Regulation 21.22.3 provides-  
*"Elimination or Reduction of the Period of Ineligibility for Specified Substances Under Specific Circumstances.*

21.22.3 Where a Player or other Person can establish how a Specified Substance entered his body or came into his Possession and that such Specified Substance was not intended to enhance the Player's sport performance or mask the use of a performance-enhancing substance, the period of ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from the Game, and at a maximum, two (2) years of Ineligibility

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his word which establishes to the conformable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance-enhancing substance. The Player's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."

#### **Discussion**

28. In order to come within the ambit of Regulation 21.22.3 the burden is upon the Player to establish
- a. How the Carboxy-THC entered his body; and
  - b. the absence of intent to enhance sport performance or mask the use of a performance-enhancing substance.

29. The absence of an intention to enhance sport performance or mask the use of a performance-enhancing substance must be proved to the comfortable satisfaction of the hearing panel based upon the Player's own word *and* corroborating evidence.

#### *Anti-Doping Violation*

30. We are satisfied that, on the balance of probabilities, the Player's anti-doping violation resulted from his smoking cannabis on 19 September 2009.

*Intent to Enhance Sport Performance*

31. As is plain from the foregoing paragraph we accepted the evidence of the Player and the corroborating witness Dana Babineau. We are therefore satisfied, on the balance of probabilities that his smoking of cannabis on the occasion and in the circumstances they specified was neither to enhance his sporting performance nor to mask the use of a performance enhancing substance. We are so satisfied for the following reasons
- a. We accepted their evidence<sup>1</sup>.
  - b. The circumstances of its taking: with a friend and others in a social context in the early hours of the morning.
  - c. The timing of its taking: weeks before the event in question.
  - d. The substance involved: cannabis which is widely used in social and recreational settings. As the BJC commented in *IRB v Irakli Chkhikvadze*, 2 June 2009, “its [cannabis] potential performance-enhancing benefits for rugby union players are not great”<sup>2</sup>.
  - e. Their evidence was supported by the relatively low level in the sample<sup>3</sup>.

*Degree of Fault*

32. The use of cannabis is inconsistent with the spirit of sport. As decisions of this kind have repeatedly made clear when a participant in Rugby Union knowingly uses cannabis there will rarely if ever be circumstances where the sanction does not include a period of Ineligibility.
33. In assessing the Player’s degree of fault we have had regard to the following

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<sup>1</sup> Albeit with all the difficulties involved in assessing the credibility and reliability of witnesses whose evidence is received by telephone

<sup>2</sup> Para 30. See also *IRB v Vakhtang Mdzinarishvili* 22 July 2008 the BJC observed that “we are satisfied that given the well-documented effects of cannabis consumption (including impaired physical reactions and cognitive function) at the time it was used there was no intention on the player’s part to enhance performance...”.

<sup>3</sup> We received no scientific evidence of, for example, the drug half-life and elimination rate



- a. This was a deliberate consumption of cannabis, knowing that thereby he was running the risk of an adverse analytical finding. When selected, he could have informed his team management and withdrawn from the team.
  - b. It was repeated use, albeit on one occasion but against a background of some historical use.
  - c. It was by a Player who is well educated about anti-doping regulations and has not inconsiderable experience of anti-doping regimes.
  - d. He is a mature man who has played the game for many years and at the very highest level, including representing his country in the Rugby World Cup.
  - e. He is a coach of a youth side and so a role model, both by virtue of his being an international player but also as the coach of that young side.
34. To his credit, we had regard to
- a. His immediate admission as set out in the forwarded email set out in paragraphs 6 and 22 above.
  - b. His regret which we accepted as genuine. Insofar as one can tell when listening to someone by telephone, he presented as being genuinely contrite.
35. In addition to the cases cited hereinbefore, we also had regard to the following IRB anti-doping rule violations involving cannabis - *IRB v Nicolas Venegas*, 17 March 2009; *Russell Ward*, 14 August 2008; *Jovan Pupuke*, 15 July 2008; *Kasun De Silva*, 4 February 2008; *Davit Zhamutashvili & Davit Todua*, 27 September 2007; *Sireli Naqelevouki*, 16 March 2007; *Andrey Garbuzov & Yaroslav Rechnev*, October 2006; *Kolyshkin Vadym*, 25 July 2005; *Younes Ho*, 22 December 2004; and *Davy Larguet* 8 October 2004. Further assistance was to found in the following awards of the United Kingdom National Anti-Doping Panel: *British Boxing Board of Control and Bell*, 13 January 2009; *England Basketball and Sutton* 15 May 2009; *GB Wheelchair Basketball Association and Lahmar*, 17 July 2009; and *GB Wheelchair Basketball Association and Peasley*, 17 July 2009.
36. In light of the matters identified above, we consider this to be a serious anti-doping violation by an experienced Player participating in an IRB tournament. Having regard to the previous decisions to which we have referred and to the circumstances of this case, we considered the appropriate period of ineligibility to be one of six

months commencing on the date of his provisional suspension, namely 10 November 2009 and continuing up to and including 9 May 2010.

37. The meaning of Ineligibility is set out is to be found in Regulation 21.22.13, 21.22.13A(i) provides:

*“No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any member Union or Tournament Organiser. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team of squad, or involvement in the Game in any other capacity in any Union in membership of the IRB.”*

### **Decision**

38. The sanction for the anti-doping rule violation committed by the Player on 17 October 2009 by reason of the presence in the Player’s sample of 11-nor-9-carboxy- $\Delta^9$ -tetrahydrocannabinol (Carboxy-THC) at a concentration of 40ng/ml ( $\pm$  3 ng/ml), is a period of ineligibility of six months.

### **Appeal**

39. This decision is final, subject to a Post Hearing Review Body (Regulation 21.24) and, if applicable, an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is directed to Regulation 21.24.1, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be started.

### **Costs**

40. If the Board wishes us to exercise our discretion in relation to costs (Regulation 21.21.10), written submissions should be submitted to the BJC via Mr Ricketts by 16.00 GMT on Friday 26 February 2010, with any response from the Player in writing to be provided to Mr Ricketts by 16.00 GMT on Friday 5 March 2010.

A handwritten signature in black ink, appearing to read 'Chris Quinlan', written in a cursive style.

**Christopher Quinlan**  
**Chairman**  
Bristol, England  
17 February 2010