

**CAS 2014/A/3487 Veronica Campbell-Brown v. The Jamaica Athletics Administrative Association (JAAA) & The International Association of Athletics Federations (IAAF)**

## **ARBITRAL AWARD**

**delivered by the**

### **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

**President:** Mr. Philippe Sands Q.C., Barrister in London, United Kingdom

**Arbitrators:** Mr. Jeffrey G. Benz, Attorney-at-law in Los Angeles, USA and London, United Kingdom

The Hon. Michael J. Beloff Q.C., Barrister in London, United Kingdom

*Ad hoc* Clerk: Mr. Edward Craven, Barrister in London, United Kingdom

**in the arbitration between**

**Veronica Campbell-Brown**

Represented by Mr. Howard L. Jacobs, attorney-at-law in Westlake Village, California, USA, and Mr. Mike Morgan, of Morgan Sports Law LLP in London, United Kingdom

**Appellant**

**and**

**The Jamaica Athletics Administrative Association (JAAA)**

**First Respondent**

**The International Association of Athletics Federations (IAAF)**

Represented by Mr. Jonathan Taylor and Ms. Elizabeth Riley of Bird & Bird LLP in London, United Kingdom

**Second Respondent**

## **I. PARTIES**

1. Veronica Campbell-Brown (the “Athlete”) is an athlete of Jamaican nationality. She is a former Olympic Champion in the 200 metres sprint and former World Champion in the 100 metres and 200 metres sprint events.
2. The Jamaican Athletics Administrative Association (the “JAAA”) is the national governing body for the sport of athletics in Jamaica.
3. The International Association of Athletics Federations (the “IAAF”) is the international governing body for the sport of athletics recognized as such by the International Olympic Committee. It has its seat and headquarters in Monaco. The IAAF is a signatory to the World Anti-Doping Agency (“WADA”). The IAAF recognizes the JAAA as its member federation for Jamaica.

## **II. THE FACTS**

4. On 12 February 2014, the Athlete filed an appeal against the decision rendered by the IAAF Doping Review Board dated 10 February 2014 and the decision rendered by the JAAA Disciplinary Panel dated 10 February 2014.
5. Set out below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the CAS hearing on 21 February 2014. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to those parts of that material which it considers necessary to explain its reasoning.

### **A. Background Facts**

#### *The doping test on 4 May 2013*

6. On 4 May 2013, the Athlete participated at the Jamaica Invitational Meet (the “Event”) at the National Stadium (the “Stadium”) in Kingston, Jamaica. The Event was an IAAF World Challenge Meeting.

7. The Jamaica Anti-Doping Commission (“JADCO”) is the national anti-doping organisation in Jamaica, recognized as such by WADA and the JAAA. The IAAF engaged JADCO to act as its sample collection agent at the Event.
8. The Athlete competed in and won the women’s 100 metres race at the Event. Immediately following the race, the Athlete was informed that she had been selected for a mandatory doping control test. A chaperone from JADCO proceeded to escort the Athlete to the doping control area in the Stadium, where she was met by Ms. Danya Williams, a Doping Control Officer Assistant (“DCOA”). According to the Doping Control Form completed by Ms. Williams, the Athlete arrived at the doping control area at 20:56. She was accompanied by her husband and agent, Mr. Omar Brown.
9. Upon arrival at the doping control area, the Athlete drank ‘Wata’ branded bottled water and PowerAde, which were supplied by the Event organisers. These drinks (in sealed containers) were taken from an ice-filled cooler situated on the floor of the waiting room in the doping control area. When the Athlete felt ready to provide a urine sample she was accompanied to the bathroom by the DCOA. According to the Athlete’s witness statement, the DCOA pointed to a table with several plastic vessels sealed in plastic bags and instructed the Athlete to select one of the containers. The Athlete selected a container. She was then asked to wash and dry her hands at a nearby sink before passing urine into the container under the direct observation of the DCOA.
10. The Athlete’s first attempt to provide a sample produced less than the minimum requirement of 90ml of urine (this is known as a “partial sample”). The Athlete therefore placed the collection vessel on the floor, adjusted her clothes and placed the cover on the container. She was then told to wait in the waiting room. At this point, the DCOA was required to deal with the Athlete’s partial sample in accordance with Annex F of the WADA International Standards of Testing (“IST”) and the partial sample collection procedure contained in the 2011 IAAF Anti-Doping Regulations (the “2011 Regulations”).

11. The relevant provisions of Annex F and the 2011 Regulations are set out in detail below (see paragraphs 72 and 82-83). In short, the Regulations require an athlete who has provided a partial sample to select special partial sample collection equipment. Having done so, the athlete should then be instructed to open the relevant equipment, pour the partial sample into the container and seal it as directed by the DCOA. The DCOA should then verify, in full view of the athlete, that the container has been properly sealed. While waiting to provide an additional sample, the athlete should remain under continuous observation and be given the opportunity to hydrate. Once the athlete is able to provide an additional sample, they should be provided with a fresh collection vessel and instructed to provide a sample into that container. Once sufficient urine has been collected, the DCO and athlete should check the integrity of the seal on the partial sample vessel containing the first insufficient sample. Any irregularity in that seal should be recorded. The DCO must then direct the athlete to break the seal to that container and to combine the samples.
12. None of these steps were followed in the present case. Instead, under the supervision and direction of the DCO the Athlete took the partial sample with her in a covered (but unsealed) collection vessel and went to the waiting room where several other athletes and DCOAs were present. The Athlete placed the sample on the floor while she went to collect more water and PowerAde and did various exercises in an effort to produce more urine. At one point, the Athlete returned to the sink where she ran her hands under the tap water in a effort to induce urine. When the Athlete felt able to produce further urine – which may have taken up to an hour - she was accompanied to the bathroom by the DCOA, where she attempted to pass further urine into the collection vessel. On this occasion, she was able to produce enough urine which, when combined with her prior effort, exceeded the minimum specimen volume requirements.
13. Having produced a total of 160ml of urine, the Athlete was instructed to select a storage kit, remove the two containers inside (one for the A Sample and one for the B Sample) and pour her urine into both bottles.

14. An IAAF Doping Control Form (the “Form”) must be completed during every mandatory doping control collection process. In the present case, the Form was signed by the DCOA, the Athlete, and the JADCO Doping Control Officer, Ms. Rhonda Hutson. The Form indicates that the doping control exercise was completed at 22:19 on 4 May 2013. The Form contains a box entitled ‘Partial Sample / Échantillon Partiel’, which must be completed by the DCO whenever an athlete provides a partial sample. However, despite the fact that the Athlete provided an initial partial sample, that box was left empty when the Form was completed.

*Testing of the Athlete’s urine sample*

15. The Athlete’s urine sample was sent for testing and analysis at the Laboratoire De Control du Dopage in Montreal, Canada (the “Laboratory”). The Athlete’s sample was sent in a batch of 13 samples collected at the Event on 4 May 2013. On 7 May 2013, the Laboratory received the sample.
16. On 24 May 2013, the Laboratory issued a Certificate stating that it had identified the presence of Hydrochlorothiazide (“HCT”) and the metabolite chloraminophenamide in the Athlete’s A Sample. HCT is a diuretic that is used to treat a number of common medical conditions including high blood pressure. HCT is a prohibited substance under the 2013 WADA Prohibited List (see S5-Diuretics and Other Masking Agents). It is also a Specified Substance as defined in that list.
17. On 3 June 2013, the IAAF Anti-Doping Administrator, Dr. Gabrielle Dollé, informed the JAAA that the Athlete’s A Sample had tested positive for HCT presence. Later the same day, the JAAA informed the Athlete of that testing outcome.
18. On 4 June 2013, the Athlete wrote to Dr. Dollé, stating that she had never taken any illegal substances and indicating that she wished to exercise her right to be present at the opening and testing of her B-Sample. The Athlete also supplied the IAAF with a list of the dietary supplements that she had taken since the start of the 2012/13 athletics season.

19. On 13 June 2013, the Athlete attended the opening of her B Sample at the Laboratory in Canada. Later that day, the Laboratory issued a certificate confirming the result of the A Sample analysis.
20. On 16 June 2013, following that confirmation, the Athlete accepted a voluntary provisional suspension from the IAAF. As a result, the Athlete has been unable to participate in any domestic or international athletics competitions for over eight months. She was therefore unable to defend her world title at the 2013 IAAF World Championships in Moscow.
21. In June 2013, two other Jamaican athletes, Alison Randall and Travers Smikle, both discuss throwers, also tested positive for HCT following mandatory in-competition doping tests at the Stadium. One of those athletes (Mr. Smikle) tested positive after providing a partial sample that was collected in violation of the WADA IST and the 2011 Regulations on 22 June 2013.
22. On 3 July 2013, the Athlete underwent a polygraph examination conducted by Mr. Donald Harper, a polygraph expert based in Orlando, Florida. The Athlete gave negative answers when asked whether she had ever used HCT or any other prohibited substance. On the basis of that polygraph examination, Mr. Harper subsequently produced a report which concluded that:

*“After due and careful consideration of the physiological data collected in the polygraph charts of Veronica Campbell-Brown, it is the opinion of this examiner that there are not significant or consistent physiological reactions to the relevant questions. Numerical scoring rendered a conclusion of **No Deception Indicated**. It is the opinion of the examiner that the subject did not knowingly use hydrochlorothiazide, and further has never used performance enhancing drugs.”* (Emphasis original)
23. On 10 July 2013, the JAAA notified the Athlete that analysis of her B Sample had confirmed the result of her A Sample. The letter advised the Athlete of her right to request a hearing in accordance with IAAF ADR Rule 38.

24. On 18 July 2013, the Athlete's legal representative wrote to the JAAA informing the JAAA that, pursuant to IAAF ADR Rule 38.7, the Athlete requested a hearing.
25. The Athlete states that between July and August 2013 she submitted all of her nutritional supplements for testing for HCT contamination by the Aegis Science Corporation. All of the supplements tested negative for HCT.

**B. Proceedings before the JAAA Disciplinary Panel**

26. Between 2 and 5 September 2013, a hearing took place before a JAAA Disciplinary Panel in Kingston, Jamaica. The Disciplinary Panel was chaired by retired Jamaican Supreme Court Chief Justice Lensley Wolfe.
27. During the course of the hearing, the Disciplinary Panel heard evidence from the Doping Control Officer at the Event, Dr. Rhonda Hutson, and the JADCO Lead Doping Control Officer, Dr. Paul Wright. Both Dr. Hutson and Dr. Wright confirmed that the mandatory partial collection procedures contained in the IST and the 2011 Regulations had been departed from.
28. During cross-examination Dr. Hutson confirmed that she was aware of the mandatory partial collection procedures under the WADA IST, but had not complied with them. Instead, she stated it was 'customary when that occurs, [that] the athlete is advised that they will need to provide additional samples and is requested to keep the urine container and it is taken by the witness to the waiting area...' (4 September 2013, pp. 10-11). Dr. Hutson agreed that she had not complied with the requirements of paragraphs F.4.2 – F.4.8 of Annex F of the WADA IST (transcript of 4 September 2013, pp. 43 -48). Dr. Hutson also accepted that she had not recorded any information about the Athlete's partial sample on the Doping Control Form. In this respect, she explained that: 'I was not provided with a partial sample collection kit and it is customary or that is what as the DCO since I have been doing the work with JADCO that the athlete holds on to the urine, nothing is recoded until the second time that it is deemed to be adequate volume.'

So that was then my role and that is how the process is ever since I have been doing it since 2009’ (transcript of 4 September 2013, p. 40).

29. By contrast, the JADCO Site Coordinator, Ms. Cara-Anne Bennett Sudeene, stated that the DCOs did have partial sample kits at the Stadium, but did not use them (transcript of 5 September 2013, p. 19).
30. Dr. Hutson further confirmed that during the time between the collection of the first partial sample and the collection of the second sample the collection vessel was not sealed (transcript of 4 September 2013, pp. 58-59). In cross-examination by the Athlete’s representative, she agreed that, in those circumstances, she could not definitively prove that the sample had not been tampered with (transcript of 4 September 2013, pp. 67-68).
31. The DCOA, Ms. Williams, also gave evidence at the Disciplinary Panel hearing. Ms. Williams confirmed that she had been responsible for supervising other athletes at the same time as she was supervising the Athlete, and she had therefore not been with the Athlete at all times in the doping control area. Ms. Williams also stated that the Athlete had made three separate attempts to provide urine, whereas according to the Athlete she had only made two attempts. As explained below, this discrepancy caused the Chairman of the Disciplinary Panel to express significant doubts about the reliability of the JAAA’s evidence.
32. On or about 1 October 2013, the majority of the JAAA Disciplinary Panel (Mr. Lincoln Eamon and Dr. Aggrey Irons) held that the JAAA had discharged the burden of proving the presence of HCT in the Athlete’s body (page 5). The majority concluded that, ‘the departure could not have reasonably led to the Adverse Analytical Findings because the Athlete was in control of the sample collection vessel which had a lid with a sprout from the time that she collected it until the sample was divided into A and B samples and sealed’. It added that there was ‘no evidence of any other person or persons coming into contact with it or being in a position to touch it’. Moreover, the Athlete had signed the Doping Control Form, ‘indicating she was satisfied with the collection process and did not raise any concerns at the time’ (p. 7). Accordingly, the majority of the Disciplinary



Panel held that the Athlete had committed an Anti Doping Violation contrary to IAAF rule 32.2(a).

33. Notwithstanding their conclusion regarding the Adverse Analytical Finding, the majority of the Disciplinary Panel added that it was ‘necessary to state that it seems that JADCO has adopted a policy of non-compliance with the Partial Collection Procedure which is to be considered unacceptable’. The Disciplinary Panel noted that Dr. Wright had stated that the policy of non-compliance was adopted with the approval of WADA, however ‘[h]e is not able to provide any evidence in writing’ to corroborate this. The Disciplinary Panel added that:

*“Both Dr. Wright and Dr. Hutson have never used any Partial Collection Kits and were not aware JADCO had any although Mrs. Bennett-Sudeen says some were in the suitcase but cannot say exactly how many. This is unacceptable whether due to slackness or lack of finances and shows the need for WADA to not only monitor labs properly but also National Doping Organisations.*

*The JAAA also showed a failure in monitoring the practices of JADCO as it is their duty to ensure that JADCO complies with the IST and the IAAF Anti Doping Regulations as their athletes would be affected.”*

34. The majority of the Disciplinary Panel went on to find that the particular circumstances of the Athlete’s case merited the application of a reduced penalty under IAAF ADR Rule 40.4. In reaching that conclusion, the Disciplinary Panel relied on the following three factors: (a) the polygraph evidence, which ‘add[ed] force to the Athlete’s declaration of innocence’; (b) the evidence of witnesses from the Caribbean Toxicology Laboratory that quantitative analysis ‘revealed such a minute amount [of HCT] so as to rule out its clinical use as a diuretic or masking agent for any performance enhancing substance’; and (c) the fact the specific gravity of the tested sample indicated that the Athlete’s urine was not diluted and so was not in keeping with an expected diuretic effect.
35. On the basis of these considerations the majority of the Disciplinary Panel concluded that, ‘although the specified substance was found in her body it was neither intended to enhance sport performance nor mask the use of a performance

enhancing substance’. The Disciplinary Panel therefore held that a reprimand without any period of ineligibility was an appropriate sanction (page 8).

36. The Chairman of the Disciplinary Panel issued a separate decision explaining his view that the Athlete had not committed an anti-doping violation. The Chairman expressed significant concern about Ms Williams’ evidence, stating that: ‘[the] evidence that she required three (3) attempts to produce that amount of urine for testing [is] a very serious discrepancy and in my view discredits the whole procedure. It makes me wary to act upon the Analytical Finding...I am not prepared to accept the result of the testing in light of this irreparable discrepancy.’ On the other hand, he found Mr. Harper’s polygraph evidence to be ‘most compelling’. In these circumstances, the Chairman expressed his view that the Athlete did not violate any anti-doping regulations.
37. The Chairman added that he ‘support[ed] wholeheartedly the comments made by my colleagues as to the steps needed to be taken by the Jamaica Athletics Administrative Association to ensure that the procedures governing the IAAF Anti Doping Regulations are faithfully observed.’

### **C. The IAAF Doping Review Board**

38. On 1 October 2013, the JAAA sent the IAAF a copy of the decision of the JAAA Disciplinary Panel.
39. On 8 October 2013, the IAAF wrote to the JAAA explaining that, in the case of an international-level athlete, the determination of whether there are exceptional/special circumstances can only be made by the IAAF’s Doping Review Board, pursuant to IAAF ADR Rule 38.16. (The disciplinary panel of the national governing body is limited to considering whether there may be special circumstances that would justify the imposition of a lesser penalty.)
40. On 9 October 2013, the JAAA wrote to the Athlete advising her that the matter would be referred to the IAAF’s Doping Review Board with the support of the JAAA. On the same day, the JAAA confirmed to the IAAF that it supported the Disciplinary Panel’s referral to the IAAF Doping Review Board.

41. On 13 October 2013, the IAAF received a letter from the Athlete's lawyer enclosing the Athlete's written submissions to the IAAF Doping Review Board.
42. On 6 January 2014, not having heard from the Doping Review Board, the Athlete's lawyer wrote to the IAAF stating that almost three months had elapsed since the last communication from the IAAF and requesting the Doping Review Board to render its decision.
43. On or about 3 February 2014, the IAAF informed the Athlete (through her counsel) that the IAAF Doping Review Board disagreed with the majority of the JAAA Disciplinary Panel regarding the existence of exceptional circumstances in the Athlete's case. On 10 February 2014, the IAAF Doping Review Board provided its reasons for that decision.
44. The Doping Review Board began by noting that it had no power under the IAAF ADR Rules to revisit the JAAA Disciplinary Panel's finding that the Athlete had committed an Anti-Doping Rule Violation. Instead, its role was limited to determining whether special circumstances existed that would warrant reducing the standard sanction for the Anti-Doping Rule Violation found to have been committed by the JAAA Disciplinary Panel. For these purposes, allegations regarding departures from sample collection procedures do not fall within the category of special circumstances under the IAAF ADR Rules (para. 18).
45. The Doping Review Board went on to explain that, 'the issue of how the Specified Substance got into the athlete's body is crucial. Unless and until that is established, there can be no meaningful consideration of the athlete's claim that the Specified Substance was not intended to enhance her performance or to mask the use of a performance-enhancing substance; and nor can there be any meaningful consideration of the athlete's claim that she bears no (or limited) fault for its presence in her body.' (para. 20). In particular, 'the athlete has to provide a specific explanation of the route by which and the factual circumstances in which the Specified Substances got into her body, and to produce competent and persuasive evidence establishing that that explanation is more likely than not to be correct'. For these purposes, merely denying any intentional ingestion and asserting that the

cause must therefore be inadvertent ingestion, contamination or spiking is not enough (para. 21).

46. Based on the available evidence, the Doping Review Board found that the Athlete had not met this burden. The Athlete had firmly denied any intentional use of HCT and argued that the source of the HCT found in her urine sample must be either sabotage or contaminated food/drink (the latter being the more likely explanation). In support of that argument, the Athlete relied upon polygraph evidence to disprove intentional consumption. However, the Doping Review Board said it was ‘not aware of any evidence that shows that it is more likely than not that the source of the hydrochlorothiazide in Ms Campbell Brown’s sample was contaminated supplements or food or drink’ (para. 22). In these circumstances, the Doping Review Board concluded that the Athlete had not met the necessary standard of proof in establishing special circumstances in her case for the purposes of IAAF ADR Rule 40.4 (para. 23).
47. The Doping Review Board therefore remitted the matter back to the JAAA in accordance with IAAF ADR Rule 38.21. Since the Doping Review Board’s determination on the absence of special circumstances was binding on the JAAA Disciplinary Panel, the JAAA was required to impose the mandatory sanction prescribed by IAAF Rule 40.2, namely two years’ ineligibility.

**E. Decision of the JAAA dated 10 February 2014**

48. In a decision letter to the IAAF dated 10 February 2014, the JAAA confirmed it had received the result of the IAAF Doping Review Board, which it accepted as the final result of the JAAA Disciplinary Panel in accordance with IAAF ADR Rule 38.21. Accordingly, the JAAA stated it would impose the sanction of two years’ suspension required under IAAF ADR Rule 40.2.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

#### **A. The appeal**

49. On 12 February 2014 the Athlete filed her Statement of Appeal, Arbitrator Nomination and Appeal Brief with the CAS Court Office. Pursuant to CAS Rule 48, the Athlete designated Mr. Jeffrey Benz as an arbitrator in the appeal.
50. In view of the urgency of the matter, the Athlete and the IAAF agreed (with the approval of the CAS Court Office) on an expedited timetable for the hearing of the appeal. In order to enable the Athlete to be able to register to participate in the 2014 World Indoor Championships in the event her appeal was successful, the parties agreed that a hearing would take place in London on 21 February 2014. The operative portion of the CAS Award would then be issued on or before 23:59 on 24 February 2014 (Monaco time).
51. On 16 February 2014 the IAAF and JAAA exercised their right to designate the Hon. Michael J. Beloff Q.C. as an arbitrator in the matter.
52. On 17 February 2014, the CAS appointed Professor Philippe Sands Q.C. as President of the CAS Panel.
53. After disclosures by both arbitrators in accordance with the appropriate rules, no party objected to any arbitrator's service on the Panel in this case.
54. On 19 February 2014, the IAAF filed its Answer Brief and exhibits.
55. On 20 February 2014, the Athlete's lawyer wrote to the JAAA seeking information regarding the circumstances in which urine samples were collected from two other athletes who tested positive for HCT following anti-doping testing at the National Stadium in June 2013. The Athlete's letter also requested that a representative of the JAAA attend the CAS hearing on 21 February 2014.
56. On that same day – 20 February 2014 – the IAAF signed and returned the Order of Procedure for this case.

57. On 21 February 2014, the hearing was held at Matrix Chambers in London, United Kingdom. The Athlete was represented by Mr. Howard L. Jacobs and Mr. Mike Morgan. The IAAF was represented by Mr. Jonathan Taylor and Ms. Elizabeth Riley. The JAAA did not take part in the appeal and was not represented at the hearing.
58. Just prior to the hearing, the Athlete's counsel signed and submitted the Order of Procedure for this case. The JAAA did not execute the Order of Procedure, but did not state any objection to the appeal or the procedure before the CAS.
59. The Panel was assisted at the hearing by Mr. Brent J. Nowicki (Counsel to the CAS) and Mr. Edward Craven (Ad hoc clerk).
60. The following witnesses gave evidence at the hearing:
  - Professor Christiane Ayotte – Professor and Director of the Doping Control Laboratory, INRS Institute Armand-Frappier (testifying by telephone from Sochi, Russia).
  - Professor Peter Sever – Professor of Clinical Pharmacology and Therapeutics and Head of the Department of Clinical Pharmacology at Imperial College London (testifying in person).
  - Mr. Donald Craig Harper – Polygraph Examiner based in Orlando, Florida (testifying in person).
61. The Athlete gave oral evidence at the hearing, including under cross-examination by the IAAF.
62. In addition, the following persons attended the hearing: Juanita Bryan (Athlete's co-agent); Claude Bryan (Athlete's co-agent) and Thomas Capdevielle (IAAF Manager).

**B. The issues**

63. The issues that arise for determination by the CAS Panel in this appeal may be summarised as follows:

- (a) Has the IAAF adduced sufficient evidence to satisfy the Panel to the requisite standard of proof that the Athlete committed the anti-doping violation rule charged?
- (b) If so, do exceptional circumstances exist within the meaning of IAAF ADR Rule 40.4 that would justify the imposition of a lighter penalty than the standard mandatory sanction of two years ineligibility?

**C. The relevant regulations**

64. Before summarising the parties' submissions, the Panel sets out the relevant WADA and IAAF anti-doping and testing rules and regulations.

*The WADA World Anti Doping Code*

65. The WADA World Anti-Doping Code (the "WADA Code") establishes international standards and rules regulating anti-doping testing and enforcement. The contents of the WADA Code are binding on the IAAF and the JAAA as signatories to WADA: Part of 1 of the Code. (See the 'Osaka Rule' case: United States Olympic Committee v International Olympic Committee, CAS 2011/O2422, and British Olympic Association v International Olympic Committee, CAS 2011/A/2658.)

66. The Introduction to the WADA Code identifies the purposes of the World Anti-Doping Program and Code as follows:

*"The purposes of the World Anti-Doping Program and the Code are:*

- *To protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide; and*

- *To ensure harmonized, coordinate and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.”*

67. The introduction also identifies the ‘main elements’ of the World Anti-Doping Program. These include: ‘Level 2: International Standards’. The Code provides for mandatory compliance with International Standards:

*“International Standards for different technical and operational areas within the anti-doping program will be developed in consultation with the Signatories and governments and approved by WADA. The purpose of the International Standards is harmonization among Anti-Doping Organizations responsible for specific technical and operational parts of the anti-doping programs. Adherence to the International Standards is mandatory for compliance with the Code. The International Standards may be revised from time to time by the WADA Executive Committee after reasonable consultation with the Signatories and governments. Unless provided otherwise in the Code, International Standards and all revisions shall become effective on the date specified in the International Standard or revision.”* (Emphasis added)

68. Article 5.2 of the WADA Code makes further reference to International Standards for Testing:

***“5.2. Standards for Testing***

*Anti-Doping Organisations with Testing jurisdiction shall conduct such Testing in conformity with the International Standard for Testing.”*

69. The International Standard for Testing (“IST”) sets out the required practice for the collection, storage, transmission and analysis of anti-doping tests. The Introduction to the IST states that:

*“The International Standard for Testing, including all annexes, is mandatory for all signatories to the Code.”*



70. Section 7 of the IST is entitled ‘Conducting the Sample Collection Session’. Section 7.1 identifies the objective of the IST in this area:

*“7.1 Objective*

*To conduct the Sample Collection Session in a manner that ensures the integrity, security and identity of the Sample and respects the privacy of the Athlete.”*

71. Section 7.4.1 requires the DCO to collect urine samples from athletes in accordance with the protocol laid down in Annex D (‘Collection of urine samples’). Paragraph D.1 of the Annex identifies the underlying objectives of the protocol. These include:

*“To collect an Athlete’s urine Sample in a manner that ensures:... c) The Sample has not been manipulated, substituted, contaminated or otherwise tampered with in any way.”*

72. Paragraph D.3 explains that:

*“The DCO has the responsibility for ensuring that each Sample is properly collected, identified and sealed.”*

73. Athletes are required to provide a minimum of 90ml of urine when they undergo a mandatory drug test. Paragraph D.4.10 and D.4.11 prescribe the process that must be followed where an athlete is unable to produce that quantity of urine on a first attempt:

*“D.4.10 The DCO shall verify, in full view of the Athlete, that the Suitable Volume of Urine for Analysis has been provided.*

*D.4.11 Where the volume of urine is insufficient, the DCO shall conduct a partial Sample collection procedure as prescribed in Annex F – Urine Samples – insufficient volume.”*

74. Annex F of the International Standard for Testing prescribes the process that must be followed in collection of a partial urine sample:

*“Annex F – Urine Samples – Insufficient Volume*

*F.1 Objective*

*To ensure that where a Suitable Volume of Urine for Analysis is not provided, appropriate procedures are followed.*

*F.2 Scope*

*The procedure begins with informing the Athlete that the Sample is not of a Suitable Volume of Urine for Analysis and ends with the provision of a Sample of sufficient volume.*

*F.3 Responsibility*

*The DCO has the responsibility for declaring the Sample volume sufficient and for collecting the additional Sample/s to obtain a combined Sample of sufficient volume.*

*F.4 Requirements*

*F.4.1 If the Sample collected is of insufficient volume, the DCO shall inform the Athlete that a further Sample shall be collected to meet the Suitable Volume of Urine for Analysis requirements.*

*F.4.2 The DCO shall instruct the Athlete to select partial Sample Collection Equipment in accordance with Clause D.4.4.*

*F.4.3 The DCO shall then instruct the Athlete to open the relevant equipment, pour the insufficient Sample into the container and seal it as directed by the DCO. The DCO shall check, in full view of the Athlete, that the container has been properly sealed.*

*F.4.4 The DCO and the Athlete shall check that the equipment code number and the volume and identity of the insufficient Sample are recorded accurately*

*by the DCO. Either the Athlete or the DCO shall retain control of the sealed partial Sample.*

*F.4.5 While waiting to provide an additional Sample, the Athlete shall remain under continuous observation and be given the opportunity to hydrate.*

*F.4.6 When the Athlete is able to provide an additional Sample, the procedures for collection of the Sample shall be repeated as prescribed in Annex D – Collection of urine Samples until a sufficient volume of urine will be provided by combining the initial and additional Sample/s.*

*F.4.7 When the DCO is satisfied that the requirements for Suitable Volume of Urine for Analysis have been met, the DCO and Athlete shall check the integrity of the seal(s) on the partial Sample container(s) containing the previously provided insufficient Sample(s). Any irregularity with the integrity of the seal/s will be recorded by the DCO and investigated according to Annex A – Investigating a Possible Failure to Comply.*

*F.4.8 The DCO shall then direct the Athlete to break the seal/s and combine the Samples, ensuring that additional Samples are added sequentially to the first entire Sample collected until, as a minimum, the requirement for Suitable Volume of Urine for Analysis is met.*

*F.4.9 The DCO and Athlete shall then continue with Clause D.4.12 or Clause D.4.14 as appropriate.” (Emphasis added)*

#### *The 2013 IAAF Anti-Doping Rules*

75. The 2013 IAAF Anti-Doping Rules (the “IAAF ADR”) are contained in Chapter III of the IAAF Competition Rules.
76. IAAF ADR Rule 32.2(a)(i) establishes a principle of strict liability for ingestion of prohibited substances:

*“it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his 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 an anti-doping rule violation under Rule 32.2(a).” (Emphasis added)*

77. For these purposes IAAF ADR Rule 38.2(a)(ii) provides that:

*“sufficient proof of an anti-doping rule violation under Rule 32.2(a) 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 analysed; or, where the Athlete's B Sample is analysed 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.”*

78. IAAF ADR Rule 33 establishes various principles regarding the burden and standard of proof for establishing anti-doping violations. Rule 33.1 places the burden of establishing an anti-doping violation on the IAAF, national member or other prosecuting authority:

*“The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.”*

79. Rule 33.2 explains that, save in two specific circumstances, where a burden is placed on athlete to rebut a presumption the standard of proof shall be the balance of probability.

80. Rule 33.3 then establishes several specific ‘Methods of Establishing Facts and Presumptions’. The introductory paragraph explains that:

*“Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information.”*

81. The first two rules are of particular relevance in the present appeal:

*“(a) WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories has occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding.*

*(b) Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other anti-doping rule or policy has occurred which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation, then the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.” (Emphasis added)*

82. IAAF ADR Rule 38.15 addresses the circumstances in which exceptional circumstances may exist that warrant the non-application of the mandatory penalty of two years' ineligibility for an anti-doping violation:

*“All decisions taken under these Anti-Doping Rules regarding exceptional circumstances must be harmonised so that the same legal conditions can be guaranteed for all athletes, regardless of their nationality, domicile, level or experience. Consequently, in considering the question of exceptional circumstances, the following principles shall be applied:*

*(c) it is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they shall be held responsible for any prohibited substance found to be present in their bodies (see Rule 32.2(a)(i) above).*

*(d) ...*

*(e) special circumstances may exist in the case of an Adverse Analytical Finding for a Specified Substance where the Athlete can establish how the Specified Substance entered his body or came into his Possession and that such Specified Substance was not intended to enhance the Athlete's performance or mask the use of a performance enhancing substance.”*

83. IAAF ADR Rule 40.4 provides:

*“Where an Athlete 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 Athlete's sport performance or mask the Use of a performance enhancing substance, the period of Ineligibility in Rule 40.2 shall be replaced by the following:*

*First Violation: At a minimum, a reprimand and no Ineligibility from future competition and, at a maximum, two (2) years' Ineligibility.*

*To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing body the absence of an intent to*

*enhance performance or to 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 in period of Ineligibility.*

*This Article only applies in those circumstances where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking a Prohibited Substance did not intend to enhance his sport performance.”*

*The 2011 IAAF Anti-Doping Regulations*

84. The IAAF Anti-Doping Regulations 2011 (the “2011 IAAF Regulations”) establish a mandatory procedure for partial sample collection which repeats almost verbatim the mandatory procedure enshrined in Annex F. Paragraphs 4.33 to 4.42 of the 2011 IAAF Regulations provide:

*“Urine Samples – Insufficient Volume*

*4.33 Where the volume of urine is insufficient (see 4.24 above), the DCO shall inform the Athlete that a further Sample shall be collected to meet the Suitable Volume of Urine for Analysis requirements.*

*4.34 The DCO shall instruct the Athlete to select a partial Sample container or kit from a selection of sealed containers or kits and to check that all the seals on the selected equipment are intact and that the equipment has not been tampered with.*

*4.35 The DCO shall then instruct the Athlete to open the relevant equipment, pour the insufficient Sample into the container and seal it as directed by the DCO. The DCO shall check, in full view of the Athlete, that the container has been properly sealed.*

*4.36 The DCO and the Athlete shall check that the equipment code number and the volume and identity of the insufficient sample are recorded accurately by the DCO. The DCO shall retain control of the sealed partial Sample container.*

*4.37 While waiting to provide an additional Sample, the Athlete shall remain under continuous observation and be given the opportunity to hydrate if necessary.*

*4.38 When the Athlete is able to provide an additional Sample, the procedures for collection of the Sample shall be repeated as set out above.*

*4.39 When the DCO is satisfied that the requirements for Suitable Volume of Urine for Analysis have been met, the DCO and Athlete shall check the integrity of the seal(s) on the partial sample container(s) containing the previously provided insufficient Sample(s). Any irregularity with the integrity of such seal(s) will be recorded by the DCO in writing and may be subject to further investigation, as appropriate.*

*4.40 The DCO shall then direct the Athlete to break the seal(s) of the partial Sample container and combine the Samples, ensuring that the additional Sample is added sequentially to the first entire Sample collected until, as a minimum, the requirement for Suitable Volume of Urine for Analysis is met.*

*4.41 The DCO and the Athlete shall then continue with the Sample collection process as described in 4.31 above.”*

85. There is one material difference between the 2011 IAAF Regulations and Annex F of the IST. Whereas rule F.4.4 of the IST provides that: ‘Either the Athlete or the DCO shall retain control of the sealed partial Sample’, paragraph 4.36 of the 2011 Regulations provides that: ‘The DCO shall retain control of the sealed partial Sample container.’ The conflict between these two provisions is resolved by paragraph 1.9 of the 2011 IAAF Regulations, which provides that: ‘In the event of any differences between these Anti-Doping Regulations and the International Standards, these Anti-Doping Regulations shall prevail.’



#### IV. Submissions of the Parties

86. The parties' submissions, in essence, may be summarized as follows.

##### *The Athlete*

87. The Athlete's Appeal Brief asks the CAS to grant the following relief:

- (a) *Annulment of the decision of the JAAA dated 12 February 2013 [sic] and the decision of the IAAF dated 10 February 2013 [sic];*
- (b) *Confirmation that there is no valid or admissible evidence upon which to find that the [Athlete] has committed an anti-doping rule violation and that there are therefore no consequences to be imposed on her;*
- (c) *Alternatively, confirmation that the [Athlete] has met the criteria of Rule 40.4 of the IAAF ADR and that any applicable period of ineligibility:*
  - (i) *commence no later than 4 May 2013*
  - (ii) *be limited to the period of suspension already served by her, such that she may [be] reinstated to sports participation with immediate effect.*
- (d) *The Respondent's to be ordered to reimburse the [Athlete's] legal costs.*

88. The Athlete submits that the JADCO DCOs were required to comply with certain fundamental procedural safeguards prescribed by the IST and the 2011 Regulations. Those safeguards are an essential counterbalance to the imposition of strict liability for ingestion of prohibited substances. They are specifically designed to protect the integrity of samples obtained during mandatory drug testing. In the present case the JAAA manifestly, knowingly and systematically failed to adhere to those fundamental safeguards. The JAAA's failures, which went to the very purpose of the IST, made it impossible to guarantee the integrity of the sample collected from the Athlete. The Athlete submits that the results of any analysis conducted on a sample obtained in fundamental violation of the IST must be declared inadmissible and invalid. If the Panel were to find that the violation does not matter, then it

would effectively create a double standard where athletes are bound to follow rules but governing bodies and doping enforcement agencies are not.

89. In relation to the application of IAAF ADR Rule 33.3(b), the Athlete submits that the meaning of ‘could reasonably have caused’ is closer to ‘might have caused’ than proof of causation on the balance of probabilities. In support of that interpretation, the Athlete relies on the drafting history of the WADA Code, including the various proposed amendments considered before the revised version of the Code came into force on 1 January 2009. In particular, the Athlete notes that in 2007 a proposal was considered that would have required athletes to prove that the departure from the IST ‘might have caused the Adverse Analytical Finding’. Notwithstanding that this amendment was not adopted, it was said to be supportive of the athlete’s submission set out above.
90. Accordingly, the Athlete submits that the IAAF bears the burden of establishing to the comfortable satisfaction of the Panel that the Athlete did ingest a Specified Substance. The Athlete submits the IAAF is unable to discharge that burden:
- (a) The first partial sample was left exposed to the elements, at times unsupervised, for over an hour.
  - (b) The waiting room contained other athletes, DCOs and athlete support personnel.
  - (c) In these circumstances, it is impossible for the IAAF to prove that the exposed partial sample was not compromised in some way.
91. In relation to the existence of exceptional circumstances for the purposes of IAAF ADR Rule 40.4, the Athlete submits that three conditions must be satisfied for Rule 40.4 to be applicable. First, the Athlete must establish that the anti-doping violation involved a Specified Substance. Second, she must establish how, on a balance of probability, that Specified Substance entered her body. Third, she must establish there was no intention to enhance sporting performance or to mask the use of a performance enhancing substance.

92. HCT is a Specified Substance; there is therefore no dispute as to the first condition. As to the second condition, the Athlete submits that Rule 40.4 does not specify that the exact source of the substance must be identified. Instead, it requires the Athlete to establish, on a balance of probability, how the substance entered her body. The Athlete has given evidence that she did not knowingly ingest HCT. That account is supported by polygraph evidence. If the Panel accepts that evidence then it follows that the HCT must have entered the Athlete's body through inadvertent ingestion. This is sufficient to establish the second condition. In relation to the third condition, the Athlete submits that if the Panel accepts that she did not knowingly or deliberately ingest the Specified Substance then it must necessarily accept that there was no intent within the meaning of Rule 40.4.
93. In these circumstances, the Athlete submits that any sanction should be limited to a period of suspension no greater than the period already served by her. In support of this argument, she relies on the following factors:
- (a) The Athlete takes her anti-doping obligations very seriously. She is cautious about all supplements and medications she takes. She leads a quiet life and did not expose herself to any situation in which her food or drink might easily have been sabotaged with HCT.
  - (b) If the Panel accepts that the HCT entered her body without the Athlete's knowledge then it can only plausibly have done so by food/drink contamination or sabotage. The Athlete has taken extensive steps to investigate the source of the HCT. She has subjected all supplements and ointments she was using in the weeks prior to 4 May 2013 to chemical analysis. She has also '*repeatedly, obsessively reconstructed the events leading up to 4 May 2013*'. Despite her considerable efforts, the Athlete has been unable to trace the source of the Specified Substance.
  - (c) The anti-doping rules were created to deter athletes from cheating or gaining an unfair advantage, even where the advantage has been gained inadvertently. However none of these factors is present in this case.

*The IAAF*

94. For its part, the IAAF accepts that it bears the burden of establishing that the Athlete committed the anti-doping violation charged ‘to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made’. This standard of proof ‘is greater than a mere balance of probability but less than proof beyond reasonable doubt’ (Rule 33.1). However, it relies on IAAF ADR Rule 32.2(a), which provides that: ‘sufficient proof...is established...where the *Athlete’s B Sample is analysed 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*’ (Rule 32.2(a)(ii)). In this connection, the IAAF emphasises that anti-doping violations are strict liability offences: ‘*it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a)*’.
95. The IAAF submits that the evidence before the Panel is sufficient to discharge the burden of proof under Rule 33. It argues that the Athlete’s reliance on the departure from the partial collection procedure does not displace this conclusion. The Athlete is effectively inviting the CAS to adopt what it calls a ‘per se’ rule, whereby any departure from the partial testing IST automatically shifts the burden onto the IAAF.
96. The IAAF notes that under the 2003 World Code, if an athlete established any departure from the IST then the burden would automatically shift to the Anti-Doping Organisation to show that the departure was not the cause of the Adverse Analytical Finding. However, the 2009 version of the Code replaced those provisions with a requirement that the burden would only shift to the Anti-Doping Organisation if the departure from the IST ‘could reasonably have caused the Adverse Analytical Finding’. It notes that in *Devyatovskiy v IOC*, CAS 2009/A/17552, the CAS Panel described this as ‘a substantial change from the burden of proving the mere fact of a departure from the ISL’ (para 4.10).

97. On this basis, the IAAF submits that IAAF ADR Rule 33.3(b) requires the Athlete to prove on the balance of probabilities that the departure could reasonably have been the reason why HCT was found in her urine sample. In this respect, the Athlete must adduce cogent evidence of supporting facts that prove that it is more likely than not that the departure from the IST was the cause of the adverse finding. However, if the Athlete cannot discharge that burden then the departure is not material and must be disregarded for the purposes of establishing liability for the charged anti-doping violation.
98. The IAAF submits that there is no evidence to support the thesis that the Athlete's sample could have been deliberately spiked:
- (a) It is unlikely that both the Athlete and her husband would have left the sample unsupervised and out of sight for a sufficiently long period of time to enable someone to spike the sample.
  - (b) A person intending to spike the Athlete's sample could not have known in advance that the Athlete was going to produce a partial sample, let alone that it would be left in her custody in the waiting room in an unsealed container.
  - (c) In any event, as Professor Ayotte explains, successfully spiking the sample would have required significant knowledge, skill, resourcefulness and planning.
99. The IAAF also submits there is no evidence to suggest the sample was inadvertently contaminated:
- (a) Contrary to the Athlete's suggestion, the partial sample was not in an 'open' container with a 'gaping open spout'. Instead, it was in a covered collection vessel with an open spout measuring 1cm wide and 2 – 3mm long.
  - (b) The partial sample remained indoors at all times, in the custody of the Athlete in the doping control area.

- (c) In order for HCT contamination to have occurred, there would have had to been HCT in the room in some form not noticeable by any human senses, but in sufficient quantities that 80ng of the chemical could have entered the collection vessel through the opening in the spout.
  - (d) If HCT contamination were possible, one would expect many more positive results in mandatory doping tests. However, the evidence establishes that such results are very rare.
  - (e) Alternatively, if there were extraordinary reasons why environmental contamination occurred at the National Stadium on 4 May 2013, one would expect all other samples collected on the same day to have tested positive for HCT. However in fact no samples tested positive for HCT.
100. In these circumstances, the IAAF submits that the Athlete has failed to demonstrate facts that show it is more likely than not that the departure from the partial testing IST could reasonably have caused the HCT presence in the Athlete's sample. Accordingly, the Panel should uphold the finding that an anti-doping violation occurred.
101. In relation to the Athlete's submissions concerning IAAF ADR Rule 40.4, the IAAF submits that in order to bring her case within the scope of the Rule, the Athlete must prove how the prohibited substance entered her system. This requirement has been strictly applied by previous CAS Panels (see, for example, *WADA v Stanic & Swiss Olympic Association*, CAS 2006/A/1130; *IRB v Keyter*, CAS 2006/A/1067; *IWBF v UKAD & Gibbs*, CAS 2010/A/2230). The IAAF submits that the Athlete is unable to meet this burden:
- (a) The Athlete submits that there are only a limited number of ways in which the HCT could have entered her body. She denies deliberately ingesting HCT and, on the basis of that denial, therefore concludes that her ingestion of the substance was unknowing. However this type of 'Sherlockian' reasoning (see *Gibbs* at para. 11.5) is wholly insufficient to meet the burden of establishing how the substance got into her system.

- (b) The IAAF's Doping Review Board rightly rejected the Athlete's plea in mitigation on precisely the same basis as the previous CAS decisions.

102. The IAAF asks the CAS to dismiss the appeal and:

- 60.1 confirm Ms Campbell-Brown's commission of an anti-doping rule violation under IAAF Rule 32.2(a) (presence of the prohibited substance HCTZ and its metabolite chloraminophenamide in the urine sample collected from her on 4 May 2013 at the Jamaica International Meeting in Kingston, Jamaica);
- 60.2 confirm the automatic disqualification of Ms Campbell-Brown's results from the Jamaica International Meeting and all other competitive results from 4 May 2013 (the date of sample collection) to 16 June 2013 (the date Ms Campbell-Brown accepted a provisional suspension), with all resulting consequences (including forfeiture of all titles, awards, medals, points and prize and appearance money), in accordance with IAAF Rules 39, 40.1 and 40.8; and
- 60.3 confirm the imposition of a period of ineligibility of two years pursuant to IAAF Rule 40.2, commencing on 16 June 2013 (the date on which Ms Campbell-Brown accepted a provisional suspension). [See IAAF Rule 40.10(c)].

#### *The JAAA*

103. Although the JAAA was a Respondent to the appeal, it did not actively participate or file any submissions in the proceedings before the CAS, and did not attend the hearing.

#### *Expert evidence*

104. The Panel was assisted by evidence from two expert witnesses instructed by the parties, Professor Christiane Ayotte and Professor Peter Sever.

#### *Professor Christiane Ayotte's expert report*

105. Professor Ayotte produced a written expert report dated 19 February 2014. Her report explains that HCT is a purely synthetic chemical and does not exist in nature. It is commonly prescribed for medical purposes to treat conditions such as high blood pressure. However, HCT's diuretic effects means that it can also be abused by athletes to control their weight, body mass or shape, in particular by facilitating rapid weight loss. In addition, it can be used as a masking agent to conceal the ingestion of other performance-enhancing substances.
106. Professor Ayotte's report states that the presence of HCT and its metabolite in the Athlete's urine sample is an indication of past ingestion of HCT. However, the timing, dosage and frequency of consumption cannot be straightforwardly deduced from the adverse analytical finding.
107. In relation to the possibility that HCT could have entered the Athlete's urine sample after the production of the first partial sample, Professor Ayotte's report states that this 'cannot be ruled out in theory'. However there are only two possibilities ways that such contamination could have occurred, 'each of which is so unlikely that I discount it entirely'.
108. First, there is the possibility of deliberate spiking by a third party. Professor Ayotte rejects that possibility for the following reasons:
  - (a) The total sample volume was 160ml. The total amount of HCT was approximately 80ng. One blood pressure pill commonly contains 12.5mg of HCT in a starch or powder excipient. The addition of one pill into the Athlete's sample would therefore introduce 12,500,000ng of HCT. The total amount detected in the sample was one 150,000<sup>th</sup> of one pill. In Professor Ayotte's opinion it would require '*great skill (to say the least) to isolate such a microscopic amount*'.
  - (b) The only practical way of adding such an amount of HCT to the sample would be by dissolving it in a liquid and then introducing that liquid to the Athlete's urine via a syringe. This would be very hard to execute without arousing suspicion.



- (c) In any event, it is implausible that a person attempting to spike the same would jeopardize the success of the mission by using such a tiny amount of HCT (since there is a risk the testing laboratory would be unable to detect it).
109. The second possibility is that HCT could have entered the partial sample as a result of environmental contamination through the spout of the collection vessel. Professor Ayotte said this possibility was ‘unrealistic’ for the following reasons:
- (a) HCT is not a natural substance and does not have any natural precursor. It is purely the result of chemical synthesis and is only available by prescription for therapeutic purposes. It is not found in food or household products.
  - (b) If environmental contamination with HCT were possible, one would expect adverse findings for HCT to be common, if not prevalent. However, very few urine samples test positive worldwide for HCT presence. In 2012, for example, there were just 101 adverse analytical findings for HCT out of a total of 194,393 WADA sport testing samples (a hit rate of just 0.05%). In the Laboratory where the Athlete’s sample was tested, in 2012 there were 9 reported HCT findings out of 18,876 samples (again a hit rate of just 0.05%).
110. For these reasons, Professor Ayotte concluded that deliberate or inadvertent contamination of the Athlete’s urine sample could be excluded as a possible explanation for the adverse analytical finding.

*Professor Peter Sever*

111. Professor Peter Sever did not provide a written expert report and instead gave evidence in person at the hearing. Professor Sever began his testimony by expressing his agreement with the majority of Professor Ayotte’s written statement. However, he did not agree with Professor Ayotte’s conclusion that HCT could confer performance-enhancing benefits on athletes specialising in short-distance sprint events. In his view, the disadvantages of diuretic usage would probably

outweigh the potential advantages, and he saw ‘no reason’ why any sprint athlete would take HCT.

112. Professor Sever also disagreed with Professor Ayotte’s conclusions regarding the possibility of water or food contamination as an explanation for the presence of HCT in the Athlete’s urine sample. Professor Sever explained that HCT is ‘widely prevalent’ in wastewater, groundwater and drinking water. The chemical is probably the most widely used drug for treating high blood pressure. It is excreted in human waste and therefore can be found in human urine, feces, sweat, skin and hair. HCT can enter the water supply through human water and is unusually resistant to removal through normal water purification processes. The academic literature contains a number of accounts of HCT contamination of groundwater, wastewater and drinking water in several different countries. Although none of those studies concern HCT contamination in Jamaica, they do reveal a very large range of different HCT concentrations in different water supplies (as much as a thousand-fold variation across different tested water sources).
113. Professor Sever considered that the ‘most likely explanation’ for the presence of HCT in the Athlete’s sample was the ingestion of food or drink that contained HCT as a result of environmental contamination. However he also stated that a urine sample contaminated by a relatively small amount of sweat or water containing HCT would be capable of producing a positive HCT result. In his view, it was therefore ‘unlikely, but possible’ that the Athlete’s positive HCT finding could have been caused by contamination of the sample with sweat or water containing HCT. On the basis of the evidence available, this could not be excluded as a possibility.
114. Furthermore, in considering the possible explanations for the HCT presence in the Athlete’s sample, Professor Sever attached particular significance to the statistical evidence. He noted that of the 100 athletes who were tested at the Stadium in May and June 2013, three had tested positive for HCT. Of those three, it was known that two were ‘partial sample’ cases. Of the remaining 97 samples that tested negative for HCT, it was unknown how many (if any) involved a partial collection. Professor Sever said he would regard the high number of positive HCT results following

partial collections as potentially ‘significant’ and that the correlation would ‘surely focus your mind’ on the possibility of HCT contamination occurring in the doping control room. In his view it was ‘possible...but unlikely’ that the three positive samples from the same venue were simply a coincidence. Instead, the concurrence of the positive samples was suggestive of a common environmental cause.

*Professor Ayotte’s oral testimony*

115. In addition to her written statement, Professor Ayotte also gave evidence by telephone at the hearing and was cross-examined by the Athlete’s legal representatives.
116. Professor Ayotte disagreed with Professor Sever’s opinion that HCT has no possible performance enhancing applications for athletes competing in short distance sprint events. Professor Ayotte stated that athletes of all kinds - including track and field athletes that have no weight category - use diuretics for the purpose of general weight management and to assist in achieving an optimum bodyweight/strength ratio. In particular, the ability to lower body mass without reducing muscle power has clear performance enhancing possibilities for sprint athletes. Athletes may also use diuretics such as HCT for cosmetic purposes, to improve skin tone and body definition by losing extra water.
117. During the course of her oral evidence, Professor Ayotte repeated her opinion that the low number of positive HCT tests was inconsistent with widespread environmental contamination of food and water. She accepted that in areas where a large number of people are being treated with medication containing HCT, it is possible for traces of the chemical to be found in rivers; however in her opinion a person would have to drink a large volume of contaminated water to produce a detectable quantity of HCT in their urine. Moreover, if there were widespread HCT contamination of water supplies in Jamaica then Professor Ayotte would expect WADA laboratories to detect the substance in significantly more samples.
118. Professor Ayotte added that if there was a possibility of environmental contamination occurring in the doping control area then it would be difficult to see why the likelihood of contamination occurring would be greater merely because the

sample collection vessel remained open for a longer period of time. In her view, the fact that three athletes competing at the same stadium had all tested positive for HCT within the space of two months was a coincidence and was not suggestive of environmental contamination. However, Professor Ayotte was nonetheless ‘troubled’ by JADCO’s departure from the IST, which she agreed undermined the integrity of the entire testing and analysis process.

*Mr. Harper – The polygraph expert*

119. The Athlete adduced evidence from Mr. Donald Craig Harper, a polygraph expert from the United States who conducted a polygraph test on the Athlete on 3 July 2013. The Panel notes that the utility and probative value of polygraph evidence is a matter of contention between the parties. Moreover, courts and tribunals in different jurisdictions have adopted significantly different approaches to the reliability of such evidence. Having regard to the contents of the expert from Professor Ayotte and Professor Sever, and the other factors set out below, the Panel does not consider it necessary to consider the admissibility or reliability of the polygraph evidence. In these circumstances, the Panel therefore concludes that it need place no weight on Mr. Harper’s oral testimony or written report, and, while noting that previous CAS cases have considered this issue (see, for example, UCI and WADA v Contador and RFEC, 2011/A/2384 & 2386; WADA v. Swiss Olympic Association & Daubney, CAS 2008/A/1515) the Panel expresses no view as to the probative value of this testimony or the written report.

*The Athlete*

120. The Athlete gave oral evidence at the hearing before the Panel. During questioning by her own lawyer, she described the circumstances in which her urine sample was collected on 4 May 2013. The Athlete explained that, upon arrival in the doping control area, there were approximately 8 to 10 other people in the room. The Athlete remained in the waiting room for approximately 40 to 45 minutes before she was asked to provide her urine sample. After entering the testing room with the DCO, the Athlete was instructed to wash her hands with water from the sink at the end of the bathroom. She was then directed to deliver a urine sample into the

collection vessel under the observation of the DCO. Having provided a partial urine sample, the Athlete readjusted her clothes and replaced the lid on the collection vessel. She then placed the collection vessel on the sink in the bathroom and washed her hands, before returning to the waiting area with the partial sample.

121. While she was waiting to provide a further sample, the Athlete stated that she returned to the sink on a further two occasions and did exercises in an effort to encourage urine production.
122. Under cross-examination the Athlete confirmed that no one else touched the collection vessel while she was in the bathroom. However, after returning to the waiting room there were short periods of time when she did not have sight of her sample. On two occasions she went to the sink and turned on the taps in an effort to induce urination. In addition, she had left the sample on the floor when she stood up to take a drink from the cooler. The Athlete confirmed that she had not seen anyone touch the sample at anytime, however she could not exclude the possibility since it had not been in her sight at all times. She reiterated that she had never knowingly ingested HCT or any other performance-enhancing substance.

#### **IV. JURISDICTION**

123. Article R47 of the Code of Sports-related Arbitration (the “CAS Code”) provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.”*

124. Rule 42 of the IAAF ADR sets out the procedure for appealing decisions made under the ADR. The decisions that may be appealed include ‘a decision that an anti-doping rule violation was committed’ and ‘a decision imposing Consequences

for an anti-doping rule violation’ (Rule 42.2). International-Level Athletes have a right to appeal the decision of the relevant body to the CAS (Rule 42.3 and 42.5).

125. Article 52(1) of the JAAA’s Articles of Association provides that, ‘the Association shall apply and be regulated by those rules of the IAAF which are required by it as a condition of membership to be included in the Constitution, rules and/or by-laws of its member federations including but not limited to the Anti-Doping Rules and Procedural Guidelines of the IAAF’.
126. Both the Athlete and the IAAF accept that the Athlete is an International-Level Athlete and that CAS has jurisdiction under the IAAF ADR. The JAAA has not made any representations contesting the CAS’s jurisdiction in relation to this matter. Both the Athlete and the IAAF confirmed CAS’s jurisdiction by signature of the Order of Procedure. In these circumstances, the Panel is satisfied that CAS has jurisdiction to hear the Athlete’s appeal.

## V. ADMISSIBILITY

127. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”*

128. Under the IAAF ADR, an appellant has 45 days in which to file their statement of appeal with the CAS, starting from the date of communication of the written reasons of the decision to be appealed (Rule 42.13).
129. In the present case, the decisions of the JAAA and IAAF were both dated 10 February 2014. The Athlete filed her Statement of Appeal to CAS on 12 February 2014. No objection to the admissibility of the appeal has been raised by the IAAF or JAAA. It follows that the appeal is admissible.

## **VI. SCOPE OF THE PANEL’S REVIEW**

130. As regards the scope of the Panel’s powers in the appeal, Article R57 of the CAS Code provides:

*“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance...”*

131. Rule 42.20 of the IAAF ADR similarly provides that:

*“All appeals before CAS (save as set out in Rule 42.21) shall take the form of a re-hearing de novo of the issues on appeal and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal or the IAAF to be erroneous or procedurally unsound. The CAS Panel may in any case add to or increase the Consequences that were imposed in the contested decision.”*

132. In his opening statement on behalf of the IAAF, Mr. Taylor accepted that the Panel had jurisdiction to undertake a de novo determination of the decisions under appeal from the IAAF and the JAAA.

133. Accordingly, the Panel is satisfied that it has power to undertake a full de novo rehearing of the issues determined by the IAAF Doping Review Board and the JAAA Disciplinary Panel. In conducting that rehearing it will take account, to the extent it considers appropriate, the factual findings and conclusions expressed in those decisions, especially where based on oral testimony of witnesses who did not appear before the Panel in this appeal.

## **VII. APPLICABLE LAW**

134. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or*

*sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

135. Rule 42.22 of the IAAF ADR provides:

*“In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations)...”*

136. Rule 42.23 provides:

*“In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise.”*

137. Accordingly, in deciding this appeal the Panel will apply the IAAF’s Constitution, Rules and Anti-Doping Regulations and, subsidiarily, Monegasque law.

## **VIII. MERITS**

### ***A.) Did the Athlete commit the charged anti-doping violation?***

#### *The undisputed facts*

138. The Panel begins its analysis of the merits by noting that there is no dispute between the Athlete and the IAAF about the following factual matters:

- (a) The Athlete underwent a mandatory in-competition drugs test at the Stadium on 4 May 2013.
- (b) The Athlete’s urine sample collection was conducted by employees of JADCO, which was engaged by the IAAF to undertake anti-doping tests on athletes competing at the Event.



- (c) The DCOs who obtained the urine sample from the Athlete knowingly violated the mandatory partial collection procedures set out in the WADA IST and the 2011 IAAF Anti Doping Regulations. In particular:
  - (i) After collecting the initial partial urine sample, the DCO failed to store the partial sample in a sealed, special-purpose partial collection vessel.
  - (ii) As a result, the partial sample remained in an unsealed collection vessel with a lid containing a small aperture while the Athlete was waiting to produce further urine.
  - (iii) The partial sample remained in the possession of the Athlete, and not the DCO, while the Athlete was waiting to provide a further sample.
  - (iv) When the Athlete was ready to provide a further urine sample, she was instructed to use the collection vessel containing the initial partial sample, rather than a fresh collection vessel.
  - (v) The DCO who oversaw the sample collection failed to record any information about the partial sample when completing the mandatory Doping Control Form.
- (d) The Athlete's A and B Samples both tested positive for the presence of HCT.
- (e) HCT is a Prohibited Substance and a Specified Substance under WADA's Prohibited List.
- (f) The Laboratory that analysed the Athlete's sample is a WADA accredited testing facility.
- (g) The Laboratory did not depart from any aspect of the WADA IST or the 2011 Regulations when it tested the Athlete's A and B samples.

- (h) Several JADCO doping control officers told the JAAA Disciplinary Tribunal that JADCO routinely failed to comply with the mandatory partial collection procedures contained in the WADA IST and the 2011 Regulations.
- (i) Prior to the doping test on 4 May 2013, the Athlete had never tested positive for any performance enhancing substance.

*The burden of proving an anti-doping violation*

139. Under IAAF ADR Rule 33.1 the IAAF has the burden of establishing that an anti-doping rule violation has occurred. For these purposes, *‘[t]he standard of proof shall be whether the IAAF [...] has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation made.’* As noted above, this standard is *‘greater than a mere balance of probability but less than proof beyond a reasonable doubt’*.

140. IAAF ADR Rule 33.3 provides that: ‘Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information’. Rule 33.3 then enumerates four specific rules of proof applicable in doping cases. The second of those rules concerns proof of doping violations where there has been a departure from an IST:

*“(b) Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other anti-doping rule or policy has occurred which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation, then the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.”* (Emphasis added)

141. Rule 33.3(b) is based on Article 3.2 of the WADA World Anti Doping Code 2009, which states:

*“Methods of Establishing Facts and Presumptions*

*Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*

...

*3.2.1 Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate as such the results. If the Athlete or other Person establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation occurred, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.”*

142. The Panel must therefore begin by considering the meaning of Rule 33.3(b), and in particular the words ‘could reasonably have caused the Adverse Analytical Finding’. As a preliminary point, the Panel notes that it will be relatively rare for an IST departure itself to directly cause an adverse analytical finding. Instead, it appears that the rule is primarily intended to address situations where an IST departure creates an opportunity for an intervening act (for example, of accidental contamination or deliberate sabotage) to compromise the integrity of the athlete’s sample.
143. Although this rule has been applied in a number of previous cases, the meaning of the words does not appear to have been the subject of a close scrutiny, or clearly articulated. In this respect, the Panel wishes to record its concern about the ambiguous wording of Rule 33.3(b). Whether or not a particular event caused a particular outcome is a matter of fact. The application of the evaluative qualification ‘reasonably’ in that context makes little sense, as a matter of ordinary English, and tends to impede rather than assist the determination of the standard of

proof required of the athlete (although it appears plain in its intent to establish for the athlete the initial burden of proof), in order to shift the burden back to the IAAF

144. To resolve that ambiguity, it is necessary to have regard to the underlying purpose of the provision and the reason for introducing the adverb ‘reasonably’ into Rule 33.3(b). In so doing, the Panel is mindful of IAAF Rule 47.2, which provides that the IAAF ADR Rules ‘are to be interpreted as an independent and autonomous text and not by reference to existing laws or statutes of the Signatories or Governments’. While mindful of this, the Panel is also cognisant of the requirement set forth in the WADA Code obliging signatories to follow the mandatory provisions of the WADA Code.
145. The Panel notes the authorities cited by the Athlete to support the proposition that the shift in the burden of proof under Rule 33.3 is a quid pro quo for the imposition of strict liability for violations of anti-doping regulations. For example, the Athlete refers to *USADA v Jenkins* (AAA No. 30 190 00199 07), where the American Arbitration Association panel (consisting exclusively of CAS arbitrators) stated that:

*“In view of the grave implication for athletes...who are held strictly to account for any transgression of applicable anti-doping rules, testing laboratories must also be held strictly to account for any non-compliance with those same rules...The strict liability regime which underpins the anti-doping system requires strict compliance with the anti-doping rules by everyone involved in the administration of the anti-doping system in order to preserve the integrity of fair and competitive sport.”*

146. Similarly, in *Devyatovskiy and Tsikhan v International Olympic Committee*, 2009/A/1752 and 1753 the CAS stated that:

*“Doping is an offence which requires the application of strict rules. If an athlete is to be sanctioned solely on the basis of the provable presence of a prohibited substance in his body, it is his or her fundamental right to know that the Respondent, as the Testing Authority, including the WADA-accredited laboratory working with it, has strictly observed the mandatory safeguards.*

*Strict application of the rules is the quid pro quo for the imposition of a regime of strict liability for doping offenses. This fundamental rule which has formed the anchor for CAS rulings for more than two decades of anti-doping arbitrations was laid down eloquently in USA Shooting & Q./ International Shooting Union already in 1995:*

*‘The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule appliers must begin by being strict with themselves.’”*

147. The Panel accepts there is considerable force in the proposition that, in order to justify imposing a regime of strict liability against athletes for breaches of anti-doping regulations, testing bodies should be held to an equivalent standard of strict compliance with mandatory international standards of testing. This is particularly important in view of the principal purpose of the WADA IST, namely to ensure ‘the integrity, security and identity of the Sample’ (section 7.1). The need for a balanced approach to a regime of strict liability, on the one hand, and strict compliance with international standards, on the other, contributes to that purpose.
148. Furthermore, the Panel takes note of the CAS jurisprudence that recognises the existence of certain international standards which are considered to be so fundamental to the fairness of the doping control regime and so central to ensuring the integrity of the sample collection and testing process that any departure from them will result in the automatic invalidation of the outcome of the testing procedure.
149. In *Tchachina v International Gymnastics Federation*, CAS 2002/A/385, for example, the Appellant submitted that the Respondent’s failure to invite her to attend the opening of her B Sample deprived her of her right to be present or represented during the testing of the B Sample and, therefore, the testing procedure could not be regarded as valid. The Panel observed that the athlete’s right to verify the integrity of the seal on the sample bottle, and to inspect the sample for any apparent variations or irregularities, ‘is completely taken away from the athlete when the analysis of the B-sample is conducted without the athlete or his/her

federation being given due notification of the relevant date and time. The athlete is then simply treated as the object of the doping test procedure and not its subject’ (para 29). An IST departure of that nature is incapable of being remedied in the course of the arbitral process (para 33). The Panel therefore concluded that:

*“As a matter of principle, the Panel is of the opinion that, even if a procedural error is unlikely to affect the result of a B-sample analysis, such error can be so serious as to lead to the invalidity of the entire testing procedure.”* (Para 26)

150. In *Varis v IBU*, CAS 2008/A/1607, the CAS Panel endorsed the approach in *Tchachina*, explaining at para 32 that:

*“an athlete’s right to be given a reasonable opportunity to observe the opening and testing of a “B” sample is of sufficient importance that it needs to be enforced even in situations where all of the other evidence available indicates that the Appellant committed an anti-doping rule violation.”*

151. Similarly, in *Wen Tong v International Judo Federation*, CAS 2010/A/2161, the Panel stated that, ‘it is now established CAS jurisprudence that the athlete’s right to attend the opening and analysis of her B sample is fundamental and, if not respected, the B-sample results must be disregarded’ (para 9.8). The Panel went on to explain that, ‘[the] Appellant had a fundamental right to be present whenever her B sample was analysed, regardless of who asked for it... Violation of this essential right renders the B-sample analytical results invalid’ (paras 9.21 – 9.22). It followed that the results of the B-sample analysis could not validly confirm the A-sample analytical results, with the consequence that the Federation could not establish a doping violation by the Appellant.

152. These cases reflect a position whereby, notwithstanding Rule 3.2.1, certain IST requirements are considered to be so fundamental to the just and effective operation of the doping control system that fairness demands that any departure should automatically invalidate any adverse analytical finding. In other words, certain IST departures will be treated as so serious that, by their very nature, they will be considered to undermine the fairness of the testing process to such an extent that it

is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred. In the light of the Panel's conclusion (see below) that the IAAF cannot rely on Rule.3.2.1, it is unnecessary to consider whether the appeal should be allowed on this basis as well.

153. The IAAF submits that the amendment of the WADA Code in 2009 was intended to effect a substantial change in the scope of Rule 3.2.1. In particular, the modification was intended to require the athlete to establish on the balance of probabilities that it is more likely than not that the IST departure could reasonably have caused the adverse analytical finding. The Athlete, on the other hand, submits that the amendment was simply intended to exclude cases based upon trivial and inconsequential departures from the IST (for example a failure to obtain adequate professional liability insurance) that could not conceivably be responsible for causing an Adverse Analytical Finding.
154. The Panel had sight of earlier drafting proposals, as well as the comments of interested parties offered in the course of the drafting process. In the view of the Panel, those earlier drafts do not materially assist one way or another.
155. Having considered the parties' submissions and the relevant aspects of the applicable rules referred to in support of those arguments, the Panel considers that Rule 33.3(b) requires a shift in the burden of proof whenever an athlete establishes that it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Finding. In other words, the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible.
156. The Panel considers that this interpretation – which does not set the bar for a shift in the burden of proof to an unduly high threshold – strikes an appropriate balance between the rights of athletes to have their samples collected and tested in accordance with mandatory testing standards, and the legitimate interest in preventing athletes from escaping punishment for doping violations on the basis of

inconsequential or minor technical infractions of the IST. In this respect, the Panel agrees with the Athlete that IAAF ADR Rule 33.3(b) and rule 3.2.1 of the WADA Code are the quid pro quo for the imposition of strict liability for anti-doping violations.

157. Since there is no mens rea requirement for anti-doping violations, a finding that an athlete's sample contains a prohibited substance is ipso facto a finding that the athlete has committed an anti-doping violation (see IAAF Rule 33.2). In these circumstances, any reasonable possibility that the positive finding could be the result of sample contamination rather than ingestion of a prohibited substance must be subjected to the most anxious scrutiny. The mandatory IST are designed to eliminate the possibility of contamination affecting the outcome of anti-doping tests. To ensure that anti-doping bodies strictly adhere to those standards, and to ensure that athletes are not unfairly prejudiced if they failed to do so, IAAF Rule 33.3(b) must be interpreted in such a way as to shift the burden of proof onto the anti-doping organisation whenever a departure from an IST gives rise to a material – as opposed to merely theoretical – possibility of sample contamination.
158. This interpretation gives full effect to the wording of Rule 33.3(b), which requires the Athlete to establish that a reviewing panel would be acting 'reasonably' were it to conclude that the departure 'could' have caused the Adverse Analytical Finding. In this respect the panel emphasises that Rule 33.3(b) uses the word 'could' and not the word 'did', which would certainly impose a higher burden for establishing causation.
159. This interpretation is also consistent with the approach adopted in previous cases dealing with rules of proof based on Rule 3.2.1 of the WADA Code, which seek to exclude inconsequential IST departures from the scope of the burden-shifting provisions. For example, in *WADA v Wium*, CAS 2005/A/908, a DCO accidentally left the Respondent's urine sample at the Respondent's premises at the conclusion of the collection procedure. The sample was left unattended for 45 minutes in a sealed and tamper-proof 'Berlinger test kit'. The CAS held that departures from IST 'did not cast any doubt on the reliability of the test results', since the Panel 'cannot imagine any hypothesis under the given circumstances that



would indicate that any other person, whether identified or not, might have used the period during which the samples were unattended, for any act of sabotage with a possible impact on the result of the laboratory analysis’ (para 6.7).

160. Similarly, in *IAAF v Da Silva*, CAS 2012/A/2779, the athlete provided a partial urine sample following a post-race anti-doping test. The anti-doping officials who conducted the test permitted the athlete to leave the doping control station carrying her unsealed sample bottle. The athlete then took part in a media interview. During the interview, she placed the sample on the floor and covered it with a cloth. She then returned to the doping control station and provided the remaining portion of her sample. The sole arbitrator did not find that any departure from the IST had occurred. However he held that, even if a departure had occurred, ‘it is doubtful whether such departure led or would reasonably have led to the adverse analytical finding’. This was because: (i) the athlete was always in control of the sample bottle during the media interview, (ii) she had signed the Doping Control Form indicating her satisfaction in the manner in which the sample had been collected, (iii) she ‘did not summon any expert to rebut Prof. Christiane Ayotte’s expert evidence which explained that even if the sample had been spiked with recombinant EPO, it would have been strikingly obvious at the time of the analysis because the analytical image would have been overloaded with recombinant EPO’, and (iv) the athlete ‘has not summoned or adduced expert evidence proving that the unsealed Sample Bottle could still have been contaminated despite the fact that it was covered with a white cloth’ (para. 210).
161. The facts of *Da Silva* are therefore significantly different to the present case. In particular, (a) there is no dispute in the present case that a significant departure from the IST occurred; (b) the Athlete has adduced expert evidence disagreeing with Professor Ayotte’s analysis regarding the possible origins of the prohibited substance; and (c) the Athlete has adduced expert evidence explaining how the sample could have been contaminated in the doping control area.
162. In CAS 2010/A/2277 the Appellant underwent an in-competition doping test. The sample obtained tested positive for a prohibited anabolic androgenic steroid. The Appellant claimed that the sample had been collected in violation of the IST

relating to the collection of partial samples, since he had not been asked to check that his partial samples had been properly sealed before attending a medal ceremony, and had not been accompanied by a chaperone to the ceremony. The CAS rejected the appeal. The Panel accepted the evidence of the DCO as to the circumstances in which the Appellant's partial samples were collected, including the DCO's compliance with the relevant partial sample IST procedures under Annex F (para 4.8). The Panel then went on to explain that, even if there had been a departure from the IST (which the Panel did not accept there had been), the Appellant was unable to prove that the alleged departure could reasonably have caused the adverse analytical finding. The Appellant contended that, due to his attendance at the medal ceremony, 'the chain of custody had been broken' and there was therefore no proof the urine that was tested in the lab had come from him. The Panel rejected this submission on the basis that the argument 'amounts to mere speculation without any supporting facts'. The DCO had 'made it clear that there had always been at all times a DCO to supervise and to secure the samples, so that there has never been any break in the chain of custody'. The Appellant did not actually allege that the samples referred to in the doping control form were not his own, and he admitted that there was no basis to argue that someone had deliberately sought to incriminate him. The Appellant had not presented any evidence that someone could have tampered with his sample, nor how such tampering could have occurred (para 4.10).

163. The Panel notes that, unlike in *CAS 2010/A/2277*, the Panel has not rejected the Athlete's account about the circumstances in which the sample was collected. Furthermore, the Athlete has adduced credible expert evidence explaining how the sample could have been contaminated in the doping control area. This is therefore not a case of 'mere speculation without any supporting facts'. In addition, the DCO did not comply with the partial sample collection procedures. These features distinguish the present case from the facts and outcome of the case *2010/A/2277*.
164. In *Wilson v UK Anti-Doping* (NADP Appeal Tribunal decision dated 19 January 2012), the Appellant's urine sample tested positive for two prohibited anabolic steroids. She challenged the finding of the NADP Tribunal that she had committed an anti-doping violation. The Appellant contended, inter alia, that the DCOs had

failed to comply with the IAAF rules regarding the collection of partial samples. The alleged departures included instructing the Appellant to remove the strip sealing the partial sample container and leaving an unsealed partial sample in a shower room. The Appeal Tribunal noted that UKAD had established that none of the alleged departures had occurred (para 36.12). It further noted that, for adulteration to have taken place, the DCOs would have had to be involved in a conspiracy. The DCOs both denied adulterating the Appellant's sample and the Appellant disclaimed any suggestion that anyone at UK Athletics or UKAD had a motive to harm her (para 36.13). In these circumstances, the UKAD Appeal Tribunal rejected all of the Appellant's grounds of challenge and upheld the finding of an anti-doping rule violation. Again, unlike in the present case, in *Wilson* the existence of an IST departure was rejected by the Appeal Tribunal. Nor was any evidence adduced regarding the possibility of inadvertent environmental contamination.

165. The salient question in the present case, therefore, is whether it would be reasonable for the Panel to conclude that the JAAA's admitted departure from the partial collection procedure could be the cause of the HCT presence in the Athlete's urine sample. Answering this question requires careful consideration of the evidence adduced by the parties concerning the precise circumstances of the doping test and any possible mechanisms through which the sample could have been contaminated.

*Analysis of the evidence*

166. The Panel considers that there are at least four potential theoretical explanations for the presence of HCT in the Athlete's urine sample: (a) deliberate consumption of HCT; (b) inadvertent consumption of HCT as a result of unintentional food or water contamination; (c) deliberate spiking of the sample by a third party; or (d) inadvertent environmental contamination of the sample occurring as a result of the failure to comply with the mandatory partial testing procedure.
167. Possibilities (a) and (b) would both involve the commission of an anti-doping violation.
168. In relation to possibility (c), the Panel agrees with the IAAF and the expert witnesses that deliberate spiking may be rejected as a possible cause of the Adverse Analytical Finding. The evidence suggests that any attempt to spike the Athlete's sample in the doping control room would have required exceptional skill, planning and opportunity, and would have been fraught with risk. The Panel notes there is no evidence before it to suggest any individual (either identified or unidentified) was behaving suspiciously in the doping control area. Nor is there any evidence to suggest that any individual (either identified or unidentified) may have had the skill, equipment, opportunity or indeed the motive to spike the Athlete's sample during the short window of time between the collection of her first and second urine samples.
169. Having discounted the possibility of deliberate spiking, the question is therefore whether in the circumstances of this case it would be unreasonable for the Panel to conclude that (d) could have been the cause of the Adverse Analytical Finding. If the answer is yes, then it follows that the Athlete has committed the charged anti-doping violation. However if the answer is no, then the burden shifts back to the IAAF to persuade the Panel to the requisite standard of proof that the Athlete did consume the prohibited substance.
170. On this issue, the Panel finds by a majority that, on the basis of the evidence before it, it cannot exclude the possibility that environmental contamination arising out of the failure to comply with the partial collection procedure could have been the

cause of the Adverse Analytical Finding. Accordingly, it would be reasonable to conclude that the departure from the applicable IST could reasonably have caused the Adverse Analytical Finding. The Panel bases its conclusion on the following factors.

171. First, the Panel notes the evidence of Professor Sever, who the Panel considered to be a highly experienced and reliable witness. Professor Sever explained that HCT is a commonly prescribed medicine for a very common medical condition (high blood pressure). He described how HCT contamination of drinking water and groundwater can occur as a result of the excretion of HCT by individuals who are taking the substance for therapeutic purposes. Once HCT has entered the water supply it is difficult to remove by normal treatment processes. It can persist for some time in drinking water and groundwater. In addition, individuals taking HCT for therapeutic purposes will excrete the substance in their sweat.
172. The evidence establishes that a number of individuals were present in the doping control area after the Athlete produced her first partial sample. There is no evidence as to whether any of those individuals had recently consumed HCT. However, in view of its widespread therapeutic use the Panel cannot exclude this possibility. The evidence also establishes that the Athlete's hands made contact with bottles stored in ice in a communal cooler and that she washed her hands at the sink in the adjacent bathroom on several occasions. She therefore came into contact with various water sources that could, potentially, contain quantities of HCT.
173. Professor Sever noted that the partial collection vessel contained a spout with an opening through which contaminated water or sweat could potentially pass. In these circumstances, Professor Sever stated that, while unlikely, there was a more than negligible possibility that water and/or sweat containing HCT could have entered the Athlete's sample collection vessel in the doping control area. The Panel accepts Professor Sever's evidence as to the existence and magnitude of this possibility.
174. Second, the statistical evidence is striking and lends support to the possibility that environmental contamination of the Athlete's sample may have occurred in the doping control area.

175. The Panel notes the significant disparity between the proportion of positive HCT test results worldwide in 2012 (0.05%) and the proportion of positive HCT results amongst athletes competing at the Stadium during a two-month period in 2013 (3%). That sixty-fold disparity is, on its face, as consistent with deliberate substance misuse as with environmental contamination: since most athletes do not take performance-enhancing substances, the detection of deliberate substance misuse in a particular locality will always result in a significantly higher percentage of positive test results in that locality compared with the global average. However, the disparity acquires a probative significance when viewed in light of the IAAF's concession that the Panel could proceed on the basis that at least two of the three positive HCT tests at the Stadium occurred following partial samples which were collected in violation of the mandatory partial collection IST.
176. It was admitted at the hearing that the JAAA has consistently failed to record the occurrence of partial samples on the mandatory doping control forms. The Athlete must not be prejudiced by the absence of accurate collection data that would enable the Panel to evaluate the significance of this correlation. In these circumstances, the IAAF made an appropriate concession at the hearing, to the effect that the Panel could proceed on the basis that, of the 97 samples which tested negative for HCT, none involved a partial sample. On the basis of the IAAF's concession, the Panel agrees with Professor Sever that the striking correlation between the partial tests and the incidence of positive HCT findings (a 100% positive HCT finding in relation to partial samples taken at a single venue in a two-month period) is significant and cannot reasonably be dismissed as a mere coincidence.
177. However, an alternative possibility is that there is a greater opportunity for environmental contamination whenever an athlete provides a partial urine sample and (as here) the DCO fails to comply with the partial test procedure. In those circumstances, the partial sample is stored in a collection vessel with a small aperture that is potentially capable of facilitating ingress of contaminated water or sweat. In addition, under the defective collection procedure adopted in this case, the lid of the partial sample was removed and replaced an additional time when the Athlete attempted to 'top up' the first insufficient sample. This may also have increased the likelihood of introducing contaminated water or sweat, in particular

by the athlete herself but also by unidentified others in the room (for example through shared contact with the ice-filled cooler or the sink in the bathroom). In view of Professor Sever's evidence regarding the possibility of water/sweat contamination, the Panel considers that it would be reasonable to conclude that the IST departure could have caused the presence of the HCT in the Athlete's sample.

178. In these circumstances, the Panel concludes that the Athlete has succeeded in shifting the burden of proving an anti-doping violation under IAAF Rule 33.3(b).

*Is the Panel comfortably satisfied that the Athlete committed the charged anti-doping violation?*

179. The next question, therefore, is whether the IAAF can establish to the comfortable satisfaction of the Panel that the Athlete did in fact commit the anti-doping violation charged. For the reasons set out below, the Panel is not so satisfied.

180. First, the Athlete has established a credible and non-negligible possibility that the Adverse Analytical Finding could have been caused by a serious departure from an international standard and not by ingestion (deliberate or inadvertent) of HCT. In this regard, the Panel considers that the departures from the IST increased the possibility (or were capable of increasing the possibility) of contamination occurring, since they created more opportunities, for example, of contaminated water or sweat to enter the unsealed collection vessel. Having succeeded in establishing that possibility, it would require particularly cogent and persuasive evidence for the Panel to be comfortably satisfied that the Adverse Analytical Finding was not, in fact, caused by the deviation from the IST. In particular, the IAAF would need to either (a) provide convincing evidence positively demonstrating that the Athlete ingested HCT, or (b) provide convincing evidence demonstrating why the fundamental and dramatic IST departure could not realistically have been the cause of the HCT presence in the Athlete's sample, for example by excluding to the Panel's comfortable satisfaction the possibility that the sample could have been contaminated. In view of the compelling expert and statistical evidence, and in the absence of any positive evidence indicating that the

athlete did consume a specified substance, the Panel concludes that the IAAF has failed to establish either (a) or (b).

181. Second, the burden of satisfying the Panel that a doping violation has occurred is substantially higher where the anti-doping body has engaged in a knowing, systematic and persistent failure to comply with a mandatory IST that is directed at the integrity of the sample collection and testing process. Strict liability for doping violations is an essential cornerstone of anti-doping enforcement. Although capable of operating harshly against athletes who inadvertently consume prohibited substances, strict liability is a necessary means for ensuring that athletes assume the highest degree of personal responsibility for all substances that enter their bodies. Only by cultivating a culture of responsibility, diligence and absolute intolerance of doping can fairness in professional sport be achieved and maintained, in a manner that protects all athletes. Anti-doping agencies play a critical role in that endeavor. However, their ability to hold athletes to that strict standard of accountability is necessarily attenuated in circumstances where those agencies manifestly and willfully fail to uphold their side of the bargain. This is particularly so where, as here, the failure creates a possibility of sample contamination and unreliable testing results. In such cases, the IST departure strikes at the very heart and purpose of the anti-doping regime. To adopt a different approach might be said to encourage non-compliance with international standards and could render such standards a nullity.
182. In this case, the evidence before the Panel establishes that the JAAA has persistently failed to comply with the mandatory partial testing IST. That systematic and knowing failure, for which no reasonable explanation has been advanced, is deplorable and gives rise to the most serious concerns about the overall integrity of the JAAA's anti-doping processes, as exemplified in this case by the flaws in JADCO's sample collection and its documentation. The Panel notes the contradictory explanations provided by the JADCO witnesses to the JAAA Disciplinary Panel in September 2013, which cause further concern about the reliability of the evidence adduced against the Athlete. In these circumstances, the evidence put forward by the JAAA and IAAF to rebut the suggestion that the IST departure could have caused the positive HCT result is insufficient to enable the Panel to comfortably conclude that the Athlete committed an anti-doping violation.



183. Finally, the Panel notes that it had the benefit of observing the Athlete give evidence under examination by her own counsel and cross-examination by the IAAF. On the basis of that testimony, the Panel saw nothing that causes it to reach a different conclusion. While the Panel places no weight on the polygraph evidence, it notes that, notwithstanding the supplementary testimony she has offered in the course of this proceeding as compared with that given in earlier proceedings, she has given a detailed and materially consistent account of the relevant facts throughout the disciplinary process. The Panel accepts that the Athlete's denial of deliberate HCT consumption cannot affect the likelihood of inadvertent consumption; it is nevertheless a further factor to be taken into account when considering the overall likelihood of HCT having entered the Athlete's body. The Panel's assessment of the Athlete's testimony fortifies its conclusion that the evidence is insufficient to establish a doping violation to the requisite standard of proof.

*Conclusion on Anti-Doping Violation*

184. For these reasons, the Panel concludes that the Athlete's appeal should be allowed on the ground that the Panel is not comfortably satisfied that the Athlete committed the charged anti-doping violation. Accordingly, the decisions of the IAAF and JAAA dated 10 February 2014 should be set aside and the Athlete's provisional suspension terminated with immediate effect.

***b.) Existence of special circumstances under IAAF ADR Rule 40.4***

185. In view of the Panel's conclusion that the IAAF has failed to discharge the burden of establishing that the Athlete committed an anti-doping violation, it is unnecessary to consider the parties' arguments concerning the application of IAAF ADR Rule 40.4.

186. [...]

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Veronica Campbell-Brown on 12 February 2014 is upheld.
2. The decision of the Doping Review Board of the International Association of Athletics Federations dated 10 February 2014 is set aside.
3. The decision of the Jamaica Athletics Administrative Association dated 10 February 2014 is set aside.
4. [...]
5. [...]
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 10 April 2014

Operative part of the award notified on 24 February 2014.

## THE COURT OF ARBITRATION FOR SPORT

Philippe Sands Q.C.  
President of the Panel

Jeffrey G. Benz  
Arbitrator

Michael J. Beloff Q.C.  
Arbitrator

Edward Craven  
*Ad hoc* Clerk