SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY JORDAN ARKKO ASSERTED BY THE CANADIAN CENTRE OF ETHICS IN SPORT AND CANADIAN INTERUNIVERSITY SPORT

No.: SDRCC DT 14-0206 (Doping Tribunal)	CANADIAN CENTRE FOR ETHICS IN SPORT CANADIAN INTERUNIVERSITY SPORT (Claimants) AND JORDAN ARKKO (Athlete) AND GOVERNMENT OF CANADA WORLD ANTI-DOPING AGENCY (Observers)

BEFORE: James W. Hedley

APPEARANCES:

For the Athlete:	Jordan Arkko (at first preliminary conference only)
For the Canadian Centre for Ethics in Sport:	David Lech (counsel) Kevin Bean
For the University of Saskatchewan	Basil Hughton (Athletic Director)
For Canadian Interuniversity Sport	No appearance
Government of Canada	No appearance
World Anti-Doping Agency	No appearance

DECISION

1. On March 3rd, 2014 Jordan Arkko (the "Athlete") provided a sample collected during an out of competition doping control conducted on March 3rd, 2014 in Saskatoon, Saskatchewan. The sample was duly tested by an accredited laboratory and an adverse analytical finding resulted from the analysis, namely the presence of GHRP – 2, classified as a prohibited substance according to the 2014 World Anti-Doping Agency Prohibited List.

2. The Athlete later waived his right to request analysis of his "B" sample.

3. The review undertaken by the Canadian Centre for Ethics in Sport ("CCES") pursuant to Rule 7.63 of the Canadian Anti-Doping Program ("CAPD") concluded that the Athlete had not been granted a Therapeutic Use Exemption and that there was no dispute as to whether the adverse analytical finding ought to be invalidated by any departure from the doping control rules of the CAPD or the laboratory process of analyzing the sample.

4. The Athlete was provisionally suspended as of April 25th, 2014 pursuant to Rule 7.72 of the CAPD.

5. The Athlete was a football player with the University of Saskatoon Huskies. His provisional suspension meant that he would be barred from competing in his chosen sport or in any other "Competition" as defined in the CAPD.

6. The CCES issued a notification to the Athlete and to Canadian Interuniversity Sport ("CIS") in which the Athlete was notified of four options still available to him, notwithstanding his provisional suspension, which included a) proceeding to a hearing, b) waiving his right to a hearing altogether or c) admitting to anti-doping rule violation and contesting the sanction proposed by CCES, in this case a two year suspension.

7. On May 12th, 2014, the Athlete signed a document entitled "Admission of an Anti-Doping Rule Violation" which is set out in full as follows:

> **Admission of an Anti-Doping Rule Violation**
>
> I, Jordan Arkko, acknowledge that the CCES has asserted an anti-doping rule violation against me for the presence of a prohibited substance (GHRP-2) arising from a sample collection session of March 3, 2104. The CCES' Notification of my asserted violation was dated April 25, 2014. I confirm that I have not participated in any competition subsequent to my receipt of the CCES' Notification. I retain the right to have this matter heard by the Doping Tribunal to determine the period of ineligibility, if any, that may be imposed.
>
> Pursuant to CADP Rule 7.13, I hereby voluntarily admit to the violation that has been asserted against me by the CCES in the Notification described above. I further confirm that I will not at any time in the future contest the fact of the violation. Notwithstanding the foregoing, I may still attempt to have the sanction(s) associated with the admitted violation determined by the Doping Tribunal at a hearing or I may accept a sanction proposed by the CCES and waive my right to a hearing.
>
> I confirm that I have received independent legal advice regarding this voluntary admission. Alternatively, I confirm that I have declined to receive independent legal advice despite having ample opportunity to acquire independent legal advice. The admission contained herein shall be effective on the date this document is signed.
>
> I intend to reply on and will seek to receive the benefit of CADP Rule 7.13 regarding the start date of the period of ineligibility.

Dated at Alberta, this 12th day of May, 2014.

"Jordan Arkko"
Jordan Arkko

8. On the same date he signed a "Request for a Hearing" pursuant to Section 3.4 of the Canadian Sport Dispute Resolution Code. The Request included grounds quoted as follows:

> The grounds of my request are that due to the intent not to enhance sport performance, nature of the substance, and the circumstances surrounding its use the sanction recommended by the CCES (2 years) may not be appropriate.

9. I was selected by the parties pursuant to subsection 6.8(b)(i) of the Code and appointed as arbitrator to sit as doping tribunal by the Sport Dispute Resolution Centre of Canada.

10. On April 30th, 2014, an administrative conference call was held. The Athlete was present together with a representative of CCES. This administrative meeting was, of course, held in my absence.

11. On May 22nd, 2014, a preliminary meeting with the parties was held by teleconference pursuant to Section 7.7 of the Code and Rule 7.94 of the CADP. Rule 7.94 is intended to settle procedural matters and the parties present included representatives of CCES, the University of Saskatchewan and the Athlete himself.

12. The main theme of the meeting was the Athlete's access to legal counsel. The Athlete indicated that he would like to have more time to find a legal representative and receive advice. It was suggested that a second preliminary meeting could be held in the future, thereby providing the Athlete with a reasonable period of time in which to contact and instruct a lawyer. The Athlete was informed as to how to find a lawyer with a background in the relevant area of the law, for example the SDRCC pro bono list or through the Sport Solution managers. The meeting was adjourned without a further date and the possibility of further mediation was discussed. The parties, other than the Athlete, said what they could during the first preliminary conference call to assist and encourage the Athlete in what is no doubt a difficult process. Again, the theme of the meeting was that some of the pressure could be relieved from him if he were to speak to someone with the necessary professional qualifications to cut away some of the more confusing and invasive aspects of a doping charge.

13. However, any momentum we might have developed seemed to dissipate after the first preliminary conference call. It came to my attention that the Athlete had effectively dropped out of sight and did not appear to be engaging himself in the procedures which were explained to him in the first preliminary conference.

14. I called a second preliminary conference which took place on June 18th, 2014. The Athlete was not present.

15. In the second preliminary conference call I asked the participants if they had had any contact with the Athlete. Counsel for CCES did indicate that he had tried to contact the Athlete many times by email and phone calls without success. Similarly, Basil Hughton, the University of Saskatchewan Athletic Director, had tried many times, again without success. It was known to the parties that the Athlete had relocated to Edmonton at the end of April but he was otherwise out of communication with the hearing attendees and with other interested individuals.

16. I expressed to the attendees my reluctance to proceed without the Athlete's participation and counsel for CCES agreed that there should be some additional steps taken to communicate with him. The method upon which we agreed was to set a date well in the future for filing by CCES of its formal submissions. We agreed upon a date of August 1st, 2014 and all attendees agreed to continue their attempts to reach the Athlete in some form or fashion. According to the time table we set, CCES did file its submission on July 30th, 2014, attaching the signed admission form of the Athlete and notification letter dated April 25th, 2014.

17. Following the receipt of the submission of CCES, I requested that the University of Saskatchewan representative and counsel for CCES provide a written report with reasonable detail of their efforts to contact the Athlete. I received a report from Mr. Hughton. He indicated that the University had reached out to the Athlete without any success, including an attempt by the head coach of the Huskies. Mr. Hughton did successfully speak to a person known to the Athlete and requested some assistance in

having the Athlete call him back, again to no avail. CCES indicated that after the second preliminary meeting, letters were sent to two addresses on file and further unsuccessful attempts to reach him by telephone were made. Throughout the entire procedure, all case-related correspondence was sent to the Athlete's email address which he had used to communicate with the SDRCC in the early stages of these proceedings, and there was no indication suggesting that the Athlete no longer used that email account.

18. Section 7.5 of the Canadian Sport Dispute Resolution Code states as follows:

> Provided that reasonable efforts had been made to contact the Person whom the CCES asserts to have committed a violation of the Anti-Doping Program, if that Person is unreachable, or is avoiding contact, or has not confirmed receipt of the notification from the CCES and/or the SDRCC which addresses that Person's right to a fair hearing and the consequences of not participating at the hearing, the panel may decide that the hearing will proceed without the participation of such Person.

19. A final attempt was made in furtherance of the above rule and the following notice was sent to the Athlete by email and posted on the SDRCC case management portal on August 26th, 2014:

Notice of Hearing to Mr. Jordan Arkko

> To: Mr. Jordan Arkko by email at [redacted email address of the Athlete],
>
> The SDRCC, CCES and Basil Hughton have all made several attempts to communicate with you since you submitted your Request for a Hearing Form on May 12, 2014 but have not received any further communication from you on this matter.

We wish to point out to you that Section 7.5 of the Canadian Sport Dispute Resolution Code reads as follows: "*Provided that reasonable efforts have been made to contact the Person whom the CCES asserts to have committed a violation of the Anti-Doping Program, if that Person is unreachable, or in avoiding contact, or has not confirmed receipt of the notification from the CCES and/or the SDRCC which addresses that Person's right to a fair hearing and the consequences of not participating at the hearing, the Panel may decide that the hearing will proceed without the participation of such Person.*" This means that this case can proceed in your absence and the Arbitrator can make a determination on the anti-doping rule violation and its consequences without your submissions or evidence.

We also wish to draw your attention to section 7.12(f) of the Canadian Sport Dispute Resolution Code stating: "*In a hearing on an anti-doping rule violation, the Doping Dispute Panel may draw an inference adverse to the Party who is asserted to have committed an anti-doping rule violation based on the Party's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or by telephone as directed by the Doping Dispute Panel) and to answer questions from the Doping Dispute Panel or the CCES.*"

You expressly admitted the violation asserted by CCES in your Admission of an Anti-Doping Rue Violation filed on May 12, 2014. As a reminder, the sanction proposed by the CCES consists of a **2-year period of ineligibility from sport.**

You have also indicated on your Request form that you wish for a hearing to take place by conference call. If this is still your intent, please contact the Tribunal at the above email address or by phone at 1-866-733-7767 (toll-free) no later than **4 p.m. (EDT) on September 2, 2014** to schedule the hearing date.

Furthermore, should you wish to respond to the submissions from the CCES of July 30, 2014, your written submissions must be filed no later than **4 p.m. (EDT) on September 2, 2014** by email at tribunal@crdsc-sdrcc.ca or by fax at toll-free 1-877-733-1246.

In the absence of any communication from you by that deadline, the Arbitrator will render his decision on the basis of submissions and evidence on the record by that date.

Cordially,

"Marie-Claude Asselin"
Marie-Claude Asselin

Executive Director

(emphasis contained in notice)

20. I am satisfied that every reasonable effort has been made to communicate with the Athlete and to advise him of his right either to participate in the hearing before me or to waive his right to a hearing. In my opinion, he has chosen not to participate and accordingly has failed to provide any evidence which would enable this tribunal to find "exceptional circumstances" as defined in the CAPD and reduce the otherwise applicable suspension period of two years.

21. The applicable period of ineligibility is two years as set forth in CADP Rule 7.38. The only suggestion of exceptional circumstances was made in his request for a hearing. This only amounted to a vague assertion, insufficient to satisfy the onus on the Athlete in these circumstances.

22. The Athlete's ineligibility from competition shall be deemed to have commenced on April 25th, 2014, the date of the provisional suspension.

Dated: September 11th, 2014

James W. Hedley