IMPORTANT NOTE: This version is a translation of the original French version.

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND OF AN ALLEGED ANTI-DOPING RULE VIOLATION BY FRANÇOIS VALIQUETTE ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No: SDRCC DT 14-0212
(Doping Tribunal)

Canadian Centre for Ethics in Sport
(CCES)

Canadian Weightlifting Federation
(CWFHC)

-and-

François Valiquette (athlete)

-and-

Government of Canada
World Anti-Doping Agency (WADA)
(observers)

BEFORE: Ross C. Dumoulin

APPEARANCES:

For the athlete: François Valiquette
Guy Marineau
Claude Valiquette

For the Canadian Centre for Ethics in Sport: Annie Bourgeois
Erika Pouliot

DECISION

December 9, 2014

[1] I was selected by the parties pursuant to Article 6.8(b)(i) of the *Canadian Sport Dispute Resolution Code* (2011) (Code) and appointed as arbitrator to preside over the Anti-Doping Tribunal by the Sport Dispute Resolution Centre of Canada (SDRCC) to examine and provide a decision in this case. My appointment was confirmed by the SDRCC pursuant to Article 6.9(a) of the Code.

[2] On August 5, 2014, a preliminary meeting with the parties was held by telephone conference pursuant to Article 7.7 of the Code and Rule 7.94 of the *Canadian Anti-Doping Program* (2011) (CADP).

[3] On November 3 and 28, 2014, two arbitration hearings were held in the presence of the parties in Montréal pursuant to Article 7.9 (b) of the Code and Rule 7.95 (b) of the CADP.

[4] This award is a decision with reasons issued pursuant to Article 6.21 (d) of the Code and Rule 7.88 (c) of the CADP.

THE FACTS

[5] I have considered all the facts presented by the parties. However, in the reasons herein, I will refer only to the evidence that I consider necessary to explain my reasoning.

[6] The Athlete, Mr. François Valiquette, has been practicing weightlifting for six years. He is 18 years old. He is a member of the Canadian Junior

National Team. From January 1 to June 30, 2014, he was ranked third in Canada in the 77 kg category.

[7] On June 15, 2014, in Lachute, Québec, during an out-of-competition doping control, the Athlete provided a urine sample that produced an Adverse Analytical Finding. The Certificate of Analysis indicates the presence of a methandienone metabolite, a prohibited substance (anabolic agent) on the World Anti-Doping Agency (WADA) 2014 Prohibited List. Methandienone is an anabolic steroid taken to increase strength and muscle mass that is considered very effective.

[8] The CCES received the Adverse Analytical Finding from the WADA-accredited laboratory on June 30, 2014.

[9] A Notification from the CCES dated July 8, 2014, was sent to the Canadian Weightlifting Federation (CWFHC) and reads in part as follows:

> This letter is a Notification under Rule 7.66 of the Doping Violations and Consequences Rules of the Canadian Anti-Doping Program (CADP). The Canadian Centre for Ethics in Sport (CCES) asserts that Mr. François Valiquette, an athlete affiliated with CWFHC, has committed an anti-doping rule violation.
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> . . .
>
> Therefore, the CCES asserts that Mr. Valiquette has committed an anti-doping rule violation pursuant to Rules 7.23 to 7.26 of the Doping Violations and Consequences Rules (Presence in Sample). This would be a first violation and the CCES proposes that the sanction be two (2) years of ineligibility (pursuant to Rule 7.38 of the CADP).
>
> Furthermore, effective the date of this Notification and pursuant to CADP Rule 7.72, the CCES hereby imposes a provisional suspension on Mr. Valiquette. This provisional suspension means that Mr. Valiquette is

> temporarily barred from participating in any Competition until such time as a decision is rendered by a Doping Tribunal, or a waiver of hearing is filed.

[10] On July 11, 2014, Mr. Valiquette signed an admission pursuant to Rule 7.13 of the CADP in which he states [translation] "having committed the violation found against me by the CCES and stated in the notification [from July 8, 2014, cited above]".

[11] Before the doping control of June 15, 2014, around April 20, 2014, Mr. Mathieu Marineau, Mr. Valiquette's training partner, bought him a container of "Con-Cret" creatine manufactured by ProMera Sports at the Popeye store in Laval, Québec. Creatine is a supplement used by athletes to improve performance while enabling more effective training sessions. It is not a prohibited substance. The Athlete used this container of creatine from April 21 to May 17, 2014, with the goal of qualifying for the Commonwealth Games at the Canadian Senior Championships in Saskatoon on May 17 and 18, 2014. He had around a scoop and a half of creatine at each training session, as well as on days when he did not have any training sessions, therefore around six to nine times per week.

[12] Mr. Guy Marineau has been the Athlete's coach for around five to six years. He testified that Mr. Valiquette possesses impressive physical strength. His biggest weakness is his technique. He has progressed at a normal rate with training. Mr. Marineau explained that there are two lifts that are evaluated during a weightlifting competition: the "snatch", which is a technical lift, and the "clean and jerk", a strength lift. At two competitions held on November

30, 2013, and May 17-18, 2014, Mr. Valiquette had the same score of 160 in the clean and jerk. Mr. Marineau was of the opinion that the Athlete could have scored between 165 and 170 if he were stronger.

[13] After Mr. Valiquette learned of the result of the doping control of June 15, 2014, in Lachute, he and his coach eventually concluded that his container of creatine had been contaminated and that the only place this could have happened was at a special training session in La Prairie on April 26, 2014, because the other training sessions all took place at the same location, in their offices in an old school. Nevertheless, Mr. Marineau admitted that it was possible that another athlete in the group that was training, such as the athlete who was chosen for the Commonwealth Games due to Mr. Valiquette's suspension, had contaminated Mr. Valiquette's container of creatine, but the witness explained that he did not like to think about that.

[14] Mr. Valiquette then had the container of creatine that he had used tested by Professor Alexandra Furtos, PhD, manager of the Regional Mass Spectrometry Centre in the Department of Chemistry of the Université de Montréal. He also had the same individual test a sealed container of "Con-Cret" creatine manufactured by ProMera Sports, but from a different batch, that he bought around mid-August 2014 at the same Popeye store in Laval. Then, around September 10, Professor Furtos bought a second sealed container of "Con-Cret" creatine manufactured by ProMera Sports, this time from the same batch as the container used by Mr. Valiquette, from a Popeye store in Montréal. Professor Furtos testified that she analyzed the three containers of creatine upon Mr. Guy Marineau's request, in September 2014, to determine

whether methandienone was present. Her report indicates the presence of this substance in the unsealed container that was used by the Athlete and no presence of the substance in the sealed containers. She added that she would be [translation] "uncomfortable" determining the quantity, that is, the concentration, of the substance in the unsealed container.

[15] Professor Furtos specified that she could not determine the source of the methandienone in the Athlete's container, nor could she conclude that the substance came from the manufacturer.

[16] In an email dated September 8, 2014, sent to Mr. Guy Marineau, Professor Furtos stated in part as follows:

> [translation]
> ...As for the source of the substance, we know that it is present in the container analyzed but we don't know when it was introduced. Since the container is already open, it is possible that someone else added it after it was opened. We cannot hold the manufacturer responsible as long as we do not have a sealed container that we can analyze. It is therefore very important to find the same batch; otherwise, our analysis is of no value...

[17] And, in an email from September 15, 2014, addressed to Mr. Marineau, Professor Furtos came to the following conclusion:

> [translation]
> I have just looked at the MS results of the last creatine sample: the container recently bought from the same batch and in the same flavour as the Athlete's. In this one, we did not detect any methadienone [sic]. We must therefore conclude that the methadienone [sic] was added to the Athlete's container after it was opened.

[18] The Athlete testified by reading a text that he had written. These are the relevant parts of that text (uncorrected):

After receiving the test with suspicious samples from the test of June 15, 2014. First I wanted my sample B tested, because I believe that the product, methandienone, should not have been in my urine sample. After the sample B test, which was also positive, I signed an admission to violating anti-doping rule since there was no way to deny the presence of the product in my urine sample.

After that I wanted to find out how the product could have been in my test. At first I thought of an eczema cream that I have been using for several years that is a corticosteroid cream. After contacting the company and getting information on this, it proved impossible that it could come from this.

Next I considered my options, not immediately considering the possibility of contamination of my creatine...

Which brings me to my real point. After that, I wanted to have my creatine tested, since I had no other option to look into. Note that I had not considered the creatine earlier, since I thought it was safe. The creatine I was taking, Con-Cret Creatine HCL from ProMera Sports™, was not chosen at random. Considering that the creatine I was taking came to me on the suggestion of another very high-level athlete and training partner, Mathieu Marineau, I do not see myself as negligent in the choice of this creatine. The fact is that the athlete suggested that I use a creatine that he had been using for a long time, whose details he had looked into with the company as the email indicates, and that he had proven through many negative tests, while on this creatine, I cannot find myself negligent for having considered this creatine okay. After all, there would be no good, logical reason to consider the statements of a very high-level athlete, who has lots of experience with anti-doping, and considering that he had proven his claims through many negative tests. Especially considering that I had never taken supplements before this creatine, and that my anti-doping experience was virtually non-existent, considering that the only thing I knew about it was what I could see, since I had never been tested, nor had I taken a True Sport course before my test. Saying that I should know a lot given my level is not fair, since I'm not an

international level athlete, having not competed at this level, and since the national level is not unusual in weightlifting. Most athletes with some talent find themselves at the national level at 16 years old, which does not make these individuals experienced in anti-doping simply by way of being at the national level. I was taking the same as Mr. Mathieu Marineau, who had the company's certification that it was safe, and that is said to be certified on the container itself, which was shown by several negative tests obtained while using it. Although it is not recommended by the CCES to take creatine, I was absolutely not negligent in my choice of creatine.

So I had my creatine tested by Professor Alexandra Furtos, manager of the Regional Mass Spectrometry Centre in the Department of Chemistry at the Université de Montréal. The result shows that in my unsealed container, there was methandienone, but not in the sealed containers of the same batch. Note that I only had the creatine tested for traces of methandienone and not for any other product, and that I did not have it tested for the quantity present, since I only needed to know if it was through the creatine that the substance found its way into my body and I didn't have the financial means to have a full test done. Nevertheless, Professor Furtos' results are perfectly reliable and accurate; there was methandienone in my unsealed container of creatine.

Considering the presence of the product in the creatine, but not in the sealed container from the same batch, I leaned more toward contamination by a person than contamination of the product. I think that probably during a training camp in La Prairie, on April 26, 2014, where there were many athletes, including several of my rivals, someone must have contaminated my container of creatine. That would be the only day since otherwise all my things were with me in my bag at all times. This could easily have happened while I was taking a shower or getting changed for my weigh-in, since there was a weigh-in at this camp. I consider that I was in no way negligent since I can't bring my bag into the shower, since the container of creatine was in my bag, and since during a weigh-in you are in an isolated room to undress to be weighed without clothes and so you bring nothing with you. Considering that it is possible for certain people to tamper with the containers of certain athletes... this hypothesis is very much worth considering... it would be impossible to ascertain whether these people [high-level weightlifters from Québec] are the people implicated in my case. It's simply to show that this is something that is perfectly plausible...

It is equally possible to consider that the reason for doing this is to eliminate me from the ranks by having me tested, to guarantee that I wouldn't take part in the Commonwealth Games, thus creating an additional spot, since I took the last spot available. This is logical, since I did not gain weight during this period and my weights didn't increase significantly for a doped athlete. In fact if you compare my development to several high-level athletes of my age, you clearly see that my development is not out of the ordinary in any way. Considering that, it seems clear to me that the substance must come from my creatine that must have been contaminated by someone.

Ms. Ayotte's thoughts on the possible amount in my container not being able to produce a positive test puzzle me. According to her, an amount of 5 mg can be detected from 11 to 19 days after ingestion and so my end period for the creatine does not add up. Two things are therefore possible, the first being that this would mean I had taken the substance in question after my competition of May 17, but would have stopped between 11 and 19 days, before June 15. This seems completely illogical to me from a technical standpoint. If I had voluntarily wanted to dope, why would I have continued after my qualifying competition only to stop a few days later, well before the Commonwealth Games. No logical reason could have made me do that.

Which ties into my second point. Ms. Furtos' report never states the concentration of methandienone in my creatine and Ms. Ayotte clearly states that she is estimating the amount in the container. These amounts of concentration that she is basing her allegations on are in other words just an estimate, which means that there's nothing to say that the creatine couldn't have contained a higher concentration. The person contaminating my creatine could very well have put in a concentration higher than Ms. Ayotte's estimate, and I would like to know what she is basing herself on to give a concentration that was never calculated, whether it's in Ms. Furtos' report or the amount found in my urine sample of June 15. Which means, it's very possible that the concentration was higher than the 5 mg that lasts between 11 and 19 days, and that this higher concentration lasted long enough, and that my positive test really does come from the contamination of the creatine as my allegations state.

Also… there is no logical reason for me to deliberately dope with methandienone. Considering that this product increases the user's mass and strength, these are things that I'm absolutely not looking for. I had to, first, lift in the same weight category where I had been for several competitions in order to have a chance of qualifying for the Commonwealth, and seeing as I'm already above the maximum weight in my category during training, taking a product that could increase my body mass would be equivalent to destroying my chances for this competition by being too heavy for my category. Second, it would be useless for me to use a product that would increase my muscular strength. From the beginning of my career, I was identified by my coach, Mr. Marineau, for my great physical strength. All along my development as an athlete, it was seen that I have a very very big weakness from a technical point of view. My weights developed during my career only because of the great physical strength that I have naturally. At one point I had plateaued in my weights, my competition bars were practically not increasing, since my technical deficiency was limiting me, regardless of my strength which continued to improve with training. It turned out that with time only, the work I put into my lifts by improving the technique allowed me to increase my weights. I found myself, with years of training, actually much too strong in terms of strength lifts compared to the technical lift used in competition. I achieve feats of strength, being close to several of the best athletes in Canada, but I'm still very far from the totals they're making in competition, because strength doesn't allow you to perform a good lift allowing you to get a good total in competition. So it would be entirely useless to use a product to improve my physical strength, since it is already much too high for the weights I'm lifting. I don't practice any strength lifts during training, since that doesn't help me in any way.

[19] In cross-examination, the Athlete testified that from April 21 to 26, 2014, he trained with eight other weightlifters, five men and three women. He was taking creatine during these training sessions.

[20] A special training session was held on April 26, 2014, in La Prairie. The goal was to support the preparation of the athletes who would be participating in the Canadian Senior Championships in May 2014, which was

the last qualifying event for the Commonwealth Games. Seventeen men and nine women took part in the special training session, as well as six coaches.

[21] Mr. Valiquette specified in cross-examination that during the training session of April 26, 2014, in La Prairie, he had with him a bag containing his creatine, as well as his clothes, shoes and other items. He went to the change room to change, then to the training room with his bag that was by his side and under his supervision at all times while he was training. He left his bag in an adjoining room, got undressed, and weighed himself in a separate room in the presence of an official who took note of his weight. It took him two minutes to weigh himself. People weighed themselves before and after him. During this time, according to the Athlete, [translation] "anyone" could have had access to his bag. Then, he put his bag in a locker and took a shower behind a curtain. He estimates that his shower took at least five minutes. There was one empty shower. He was not alone in the change room.

[22] Mr. Valiquette claims that while he was taking his shower, someone contaminated his creatine. He suspects his rivals and especially his main rival in his category, but he added that no one raised his suspicions. Indeed, he admitted that he does not know who the guilty party is — it could be any of the men present at the training session. He had no conflicts with these athletes.

[23] Mr. Valiquette lives with his parents. He leaves his bag at home.

[24] At the Canadian Senior Championships that took place in Saskatoon on May 17 and 18, 2014, Mr. Valiquette placed second in his category. This result allowed him to qualify for the Commonwealth Games that took place from

July 23 to August 3, 2014, in Glasgow, Scotland. At the beginning of June, he found out he had qualified for these Games.

[25] Professor Christiane Ayotte, PhD, is a professor and director of the INRS–Institut Armand-Frappier Doping Control Laboratory in Montréal. The laboratory is accredited by international sport federations, the International Olympic Committee (IOC) and the World Anti-Doping Agency (WADA). Professor Ayotte offered her expert opinion on the Athlete's explanation of the result of the doping control conducted on June 15, 2014. Her report, dated October 31, 2014, reads in part as follows:

[translation]
At your request I reviewed the elements supplied by the Athlete to explain the result that is mentioned above. To do this, I consulted the document presented as being an analytical report done by Ms. Furtos from the Regional Mass Spectrometry Centre at the Université de Montréal, and I exchanged a few emails with her to obtain information that did not appear in it. I also requested and obtained clarification via the CCES on the use of the creatine supplement by the Athlete...

. . .

Result of the analysis of the Athlete's sample:

The presence of methandienone in the Athlete's sample was shown by the formal identification of a metabolite, 17β-hydroxyméthyl-17α-méthyl-andros-1,4,13-trien-3-one. This metabolite was identified by the laboratory in Cologne a few years ago as being the one that remains the longest after administration of methandienone, extending the detection period by one week compared to the other metabolites that are present in the few days following oral ingestion. Following administration of a 5-milligram tablet to two volunteers, they were able to detect this metabolite in their urine up to 11 and 19 days respectively.

The Athlete having indicated that he stopped consuming the creatine a month before the test, we would not have been able to detect this metabolite.

Based on the information presented in Ms. Furtos' analytical report, and although the absence of internal standards makes this exercise scientifically questionable, I estimated the concentration of methandienone in the contaminated creatine at 0.08 milligrams (mg) / g of powder. Ms. Furtos indicates, with reservations, that at most, this amount could be 0.200 mg / g (I do not know how to explain this value based on the documents). Based on the photos of the container and the Internet, a box of Pro-Mera creatine contains 48 g (48 doses of 1 g): the entire box would have contained from ¾ to 2 5-milligram tablets of methandienone. It would have been necessary to ingest half the box at once to reproduce the amount studied in Cologne. According to the Athlete, he was taking, at training sessions and daily, one and a half spoonfuls or 1.5 g of creatine from April 21 to May 17. Since the container was not empty, the amount consumed could not be greater than that.

Therefore, even allowing for the contamination of the creatine by methandienone, the amount potentially ingested, the time between the last dose and the test would not have made detection of the metabolite possible.

In conclusion, the explanation put forth by the Athlete cannot explain the presence of the methandienone metabolite in sample 2876242.

[26] Professor Ayotte claims that every four days, 90% of the methandienone is excreted and, therefore, doses are not [translation] "added" to previously taken doses. She specified that the concentration (per gram) of methandienone in the contaminated creatine of 0.200 milligrams (mg) / g of powder estimated by Professor Furtos represents only 1/25th of the amount of methandienone consumed (5 mg) in the study by the Cologne laboratory. According to the witness, if we assume that Mr. Valiquette took nine doses of 1.5 grams of creatine per week until May 17, 2014, he would not have had enough methandienone in his system for it to be detectable on June 15, 2014,

the day of the doping control. The Athlete's explanation (contamination of his container of creatine on April 26 and his use until May 17, 2014) is therefore unlikely. However, in response to my questions, Professor Ayotte acknowledged that the number of subjects (two volunteers) in the study by the laboratory in Cologne was minimal and that the variation in the results (that the metabolite was detected in their urine up to 11 and 19 days respectively) was great. Indeed, 11 days to 19 days is a difference of 72.7%.

[27] Professor Ayotte acknowledged that she did not have the containers of creatine at hand to conduct an analysis. She admitted in cross-examination that the concentration of methandienone in the creatine could be higher or lower than she estimates, that she was not comfortable estimating this concentration and that it's possible that a dose of methandienone of 5 mg could be detected 30 days after consumption.

POSITIONS OF THE PARTIES

The Athlete:

[28] Mr. Valiquette submitted an oral and written argument. Here are the salient excerpts of his text (without corrections):

[translation]
I would now like to make connections with [a] particular previous case... SDRCC DT 12-0186... CCES versus Chris Korol... April 5, 2013.

Mr. Korol stated that his vitamin supplements had been spiked by someone else, in his case an athlete named Derek Plug. He stated the fact that this

person could have, at a certain point, having been at his house, spiked his vitamins. Although this hypothesis was not necessarily more likely than what the CCES put forth, namely that he deliberately took the substance and spiked his vitamins himself afterward, it was ruled that the hypothesis was not less likely than the other, and that on top of that the Athlete had no logical reason for voluntarily doping in addition to having committed no significant negligence. The Athlete's suspension was reduced to 15 months.

So my case is similar to Mr. Korol's. Although I can't specifically name a given individual, since at my camp there were many athletes present… it should be noted that it was never proven that Plug spiked Korol's vitamins. So it becomes more abstract to name someone clearly or not, since in either case, it was impossible to prove, except upon the contaminator's admission, that the person actually did it. This is like in Korol's case, a hypothesis clearly directed toward something plausible that was not less probable than what was proposed by the CCES.

… So considering that my hypothesis is just as probable as that of the CCES and that it would be ridiculous for me to use a product like methandienone, my case is similar to Mr. Korol's.

… there was never any suggestion that the supplement was contaminated by manufacturing methods, and so the real negligence to take into account would be regarding contamination by an individual. On this matter, I did not behave negligently, at least, not significantly. My creatine is with me at all times, in my bag during training sessions, the only time it could have been contaminated was therefore at the camp mentioned. I do not believe that taking a shower for a few minutes and therefore leaving your bag in the change room nearby constitutes major negligence. I couldn't have closely watched it during my shower, and the athlete can't constantly be expected to have a constant unhealthy vigilance bordering on paranoia. Considering these points, my case is similar to Mr. Korol's, and so I should have at least a reduced sanction similar to his, namely at least 15 months.

[29] During this oral argument, Mr. Valiquette admitted that he cannot say who contaminated his container of creatine. He could not find the guilty party.

He admitted that it's possible that someone from his club contaminated his container, but the idea seemed to disgust him. The Athlete stressed that if he was suspended, other athletes could receive study bursaries and tax credits.

[30] Mr. Valiquette remarked that if he used methandienone, it would be more difficult for him to make his weight because this substance increases muscle mass. And he doesn't need more muscular strength because greater strength wouldn't enable him to lift heavier weights if his technique remained the same. But, he admitted that if you compare two weightlifters with the same technique, the stronger one will lift more weight.

[31] Mr. Valiquette insisted that he did not take methandienone.

[32] The Athlete requested that the tribunal reduce his sanction by at least one year.

[33] Mr. Guy Marineau, the Athlete's coach, pointed out that Professor Ayotte admitted that she could not explain the value she had attributed to the concentration of methandienone in the Athlete's container of creatine. He argued that one cannot rely on assumptions to suspend an athlete.

[34] Mr. Marineau asked the question that if according to the study done by the Cologne laboratory, two subjects produced results of 11 and 19 days of substance retention, if there were three subjects, would the result be 30 days?

[35] The Athlete's coach requested the elimination of the period of ineligibility because he considers that Mr. Valiquette has already served the harshest suspension possible by missing the Commonwealth Games.

The CCES:

[36] Ms. Bourgeois submitted on behalf of the CCES an oral and written argument. The salient excerpts of the text follow:

[translation]
The Athlete acknowledged an anti-doping rule violation due to the presence of methandienone in his body, a prohibited substance according to the World Anti-Doping Agency ("WADA") 2014 Prohibited List...

. . .

The CCES therefore submits that this tribunal has only to determine the length of the sanction.

The CCES submits that due to the Athlete's violation of anti-doping rules by having the presence of methandienone in his urine sample, a prohibited substance on the WADA 2014 Prohibited List, the Athlete must be made ineligible for a period of two (2) years pursuant to Rule 7.38 of the CADP...

. . .

The Athlete can only obtain the elimination or reduction of a sanction if he is able to prove exceptional circumstances on the balance of probability, as required by Rules 7.44 and 7.45 of the CADP, since methandienone is a prohibited substance on the WADA 2014 Prohibited List.

The CCES submits that in this case, the Athlete has presented no proof of exceptional circumstances, as required by Rules 7.44 and 7.45 of the CADP, to allow the arbitrator to eliminate or reduce the Athlete's two (2) year suspension.

. . .

In the Keyter decision, the tribunal specified that the Athlete must demonstrate, according to the balance of probability criteria, how the substance entered his body...

. . .

The principle upon which the Athlete is required to provide more than simple hypotheses was also upheld... in the *Lelièvre* case...

. . .

It is clear from the *Keyter* and *Lelièvre* decisions that an athlete must, in order to relieve himself of the burden of proof required by Rules 7.44 and 7.45 of the CADP, convince the tribunal that the proof he has submitted shows in a more probable than improbable manner how the substance entered his body;

The CCES submits that the Athlete filed no evidence which would establish that that the possibility of his container of creatine being altered by a competitor is more likely than him knowingly ingesting the prohibited substance and then tampering with his own supplement.

The CCES submits that the Athlete is merely speculating, without any foundation of proof, that he was the victim of sabotage during a training camp (a training session of about 3 hours). More precisely, the Athlete is not able to specify in any way: who might have contaminated his container of creatine; why an alleged competitor might have contaminated his container of creatine; how his container of creatine might have been contaminated; and when, during the training session, his container might have been contaminated.

The CCES submits [that]... the evidence in the case also does not demonstrate, according to the required burden of proof, that the methandienone present in the Athlete's body came from his container of creatine. Indeed, several pieces of evidence in the case make the Athlete's alleged version improbable to the effect that the source of the methandienone was the Athlete's container of creatine, in particular that:

The Athlete admitted that he was not taking, at the time he was tested on June 15 2014, creatine from the unsealed container of ProMera Sports Con-Cret that was given to Professor Furtos on May 17, 2014...

. . .

The Athlete's version of the facts has changed... only on the first day of the hearing did the Athlete claim that the contamination was due to the fact that he was the victim of sabotage by an alleged competitor...

Professor Furtos' report submitted by the Athlete seems rather to demonstrate a case of tampering and not a case of contamination of the container of creatine in question… In all likelihood, the contents of that container were altered after it was opened under the responsibility of the Athlete…

The CCES submits that Professor Christiane Ayotte's report also confirms that the version alleged by the Athlete to the effect that the methandienone entered his body following the consumption of contaminated creatine is unlikely…

. . .

It is also unlikely that the methandienone metabolites found in the Athlete's urine sample came from the unsealed container of creatine given that (i) these metabolites, which last the longest after administration of the substance, can be detected in the urine between 11 and 19 days after significant consumption of methandienone, (ii) the Athlete stopped consuming his creatine nearly a month before his doping test, (iii) in light of the results obtained by Professor Furtos, the unsealed container of creatine must have contained the equivalent of ¾ to 3.5 5-milligram tablets of methandienone, an amount insufficient to have been able to make the metabolites last in the Athlete's system for the 29 days between the test (June 15, 2014) and the last consumption of the supplement (May 17, 2014) and (iv) Professor Furtos' report pertains only to what was in the three (3) containers she analyzed at the time of the analysis.

. . .

In light of the above, the CCES submits that the most plausible and probable explanation is that the Athlete knowingly ingested methandienone and that, following the positive test of this past June 15, he added methandienone to the container of creatine that he sent to Professor Furtos to be tested in order to be able to claim that it was a case of contamination, and that, following discussions with Professor Furtos, he could only claim that it was a case of sabotage.

The CCES thus submits that the Athlete's proof is far from demonstrating, based on the standard of proof required (balance of probability), the Athlete's claims regarding how the prohibited substance (methandienone) entered his body, and therefore, neither the CCES nor the arbitrator can reduce the two (2) year sanction imposed upon the Athlete.

. . .

The CCES submits that the *Korol* case should be read together with the *CCES and Plug* case, SDRCC DT 12-0182, a decision also rendered by arbitrator Mew before the *Korol* decision.

. . .

The CCES respectfully submits to this tribunal that the facts submitted by the Athlete in this case differ significantly from the *Korol* case*...*

. . .

The CCES submits, as a result of the foregoing, that the violation of the CADP by the Athlete has been admitted and that the conditions for the application of Rules 7.44 and 7.45 of the CADP to obtain an eliminated or reduced sanction have not been fulfilled. Consequently, the two (2) year period of ineligibility is the appropriate sanction under the circumstances.

[37] During her oral argument, Ms. Bourgeois repeated several elements of her written submissions. She stressed that the Athlete's sabotage theory is speculation without corroborating evidence to support it.

[38] The prosecutor cited Rule 7.81 of the CADP which stipulates that the standard of proof for the Athlete's evidence must be based on a balance of probability.

[39] According to Ms. Bourgeois, the Athlete did not present concrete proof of sabotage.

[40] In addition, the CCES argued that the evidence established that the concentration of methandienone in the contaminated creatine of 0.200 milligrams (mg) / g of powder estimated by Professor Furtos represents only 1/25th of

the amount of methandienone consumed (5 mg) in the study by the laboratory in Cologne. It is therefore improbable that the contamination of Mr. Valiquette's container of creatine caused the positive test 30 days later.

ANALYSIS AND DECISION

[41] Rule 7.23 of the *Canadian Anti-Doping Program* (CADP) stipulates that the presence of a prohibited substance "in an *Athlete's* bodily *Sample* is an anti-doping rule violation". On June 15, 2014, during a doping control, Mr. Valiquette, the Athlete, provided a urine sample that produced an Adverse Analytical Finding. The Certificate of Analysis indicates the presence of methandienone, a prohibited substance, namely an anabolic androgenic steroid, according to the World Anti-Doping Agency (WADA) 2014 Prohibited List that forms part of the World Anti-Doping Code.

[42] Moreover, on July 11, 2014, Mr. Valiquette signed an admission pursuant to Rule 7.13 of the CADP in which he declared [translation] "having committed the violation found against me by the CCES and stated in the notification [from July 8, 2014, cited above]". The CCES' notification states that Mr. Valiquette "has committed an anti-doping rule violation pursuant to Rules 7.23 to 7.26 of the Doping Violations and Consequences Rules (Presence in Sample)".

[43] Rule 7.38 of the CADP stipulates the sanction that is applicable for a first violation of doping rules (presence in the sample) admitted by Mr. Valiquette:

> **7.38** The period of *Ineligibility* imposed for a first violation of Rules 7.23-7.27 (Presence)... shall be two (2) years *Ineligibility*, unless the conditions for eliminating or reducing the period of *Ineligibility*, as provided in Rules... 7.44-7.48 (Exceptional Circumstances)... are met.

[44] Thus, the only issue to settle in this case is whether Mr. Valiquette has met the conditions for the elimination or reduction of the period of ineligibility, pursuant to Rules 7.44 and 7.45 of the CADP (Exceptional Circumstances).

[45] These two rules read in part as follows:

> **No Fault or Negligence**
> **7.44** If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Rule 7.23-7.27 (Presence) the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated... [Code Article 10.5.1]
>
> **No Significant Fault or Negligence**
> **7.45** ...if an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable... When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Rule 7.23-7.27 (Presence) the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced. [Code Article 10.5.2]

[46] In order to have the period of ineligibility reduced or eliminated pursuant to Rules 7.44 and 7.45 of the CADP, Mr. Valiquette had the burden of proof to demonstrate how the prohibited substance entered his body for the period of ineligibility to be lifted pursuant to Rule 7.44 of the CADP or to have a reduced ineligibility period pursuant to Rule 7.45 of the CADP.

[47] Rule 7.81 of the CADP stipulates as follows with respect to the aforementioned burden of proof upon the Athlete and the standard of proof that is required in this case:

> 7.81 … When these Rules place the burden of proof upon the Athlete… [to] establish specified facts or circumstances, the standard of proof shall be by a balance of probability…

[48] For the following reasons, consideration of the evidence presented before this tribunal leads me to conclude that the Athlete did not succeed in demonstrating, according to a balance of probability, how the methandienone entered his body.

[49] The Athlete and his coach, Mr. Guy Marineau, maintain that the container of creatine in question was contaminated and that the only place where this could have happened was at a special training session in La Prairie on April 26, 2014. But a total of 26 athletes participated in this special training session, as well as six coaches. This is a fairly high number of people who are potentially guilty and leads me to ask, who in that group might have contaminated the container? Who in the group knew that Mr. Valiquette was taking creatine? Who had the motivation, as well as the character and dishonesty, to do such a thing?

[50] The Athlete simply states that he suspects his rivals, especially his main rival in his category, but added that no one raised his suspicions. So, his line of thinking is only vague speculation. Mere suspicion does not constitute reliable proof. Indeed, he admitted that he does not know who the guilty party is — it could be any of the men present at the training session and he did not have any conflicts with these athletes. Moreover, he testified that [translation] "it would be impossible to ascertain whether these people [high-level weightlifters from Québec] are the people implicated in my case." This in no way contributes to establishing how the prohibited substance entered his body.

[51] The tribunal in the case of *IRB vs. Keyter, CAS 2006/A/1067* declared as follows concerning speculation at paragraph 6.10:

> 6.10 ... even if the Panel were to accept that the Respondent did go to a night club and did drink something offered by strangers (*quod non*), the Panel must in any event underscore that cocaine contamination through a "spiked drink" is only a speculative guess or explanation uncorroborated in any manner. One hypothetical source of a positive test does not prove to the level of satisfaction required that factor (a) (see *supra* at 6.8) is factually or scientifically probable. Mere speculation is not proof that it did actually occur.

[52] In the case of *CCES and Lelièvre, SDRCC DT 04-0014*, the facts are similar to the present case and I draw the same conclusion:

> 47. ... In this case, the Athlete has suggested two possibilities: that his unsealed sample was left unattended in the doping control station for a period of time and that this may have given someone an opportunity to tamper with it...

> 51. Bearing in mind that the Athlete has the burden of establishing on a balance of probabilities that he bears no fault of negligence, or no significant fault of negligence for the anti-doping violation, there must be evidence of contamination of the marijuana used by the Athlete if I am to be persuaded that exceptional circumstances that would result in elimination or reduction of the normal penalty exist. While recognising that obtaining such evidence might be difficult if not impossible, mere speculation as to what may have happened will not satisfy the standard of proof required.

[53] Next, in this case, the question is, who had access to the room where Mr. Valiquette left his bag when he was weighing himself and who had access to the locker in which he put his bag when he was taking a shower? His reply: [translation] "anyone" could have had access to his bag. Who saw him put his bag in a locker? Who finished showering before him? No witness to the events has corroborated the Athlete's theory. There is no specific and concrete proof with respect to the identity of the guilty party or the method used to contaminate the container. For example, no evidence was presented regarding a statement from one of the other athletes, questionable actions or conflict with Mr. Valiquette.

[54] This lack of proof contrasts with the evidence that convinced arbitrator Mew regarding a clearly identified person in the case of *CCES and Korol, SDRCC DT 12-0186*:

> In the present case, there are, however, a number of other circumstances which do provide support for the theory put forward by the Athlete. In no particular order these circumstances include the following:
>
> a. The role played by Plug. Plug is an athlete who has been found to have committed an anti-doping rule violation based on

> the presence in his system of the same Prohibited Substance that was found in the system of the Athlete in this case. While the Tribunal in the Plug case was not prepared to accept that the source of the SARM S-22 was necessarily a spiked vitamin D3 supplement, it nevertheless appears that Plug had in his possession at least two bottles of vitamin D3 supplement, one of them from an identical batch number to that supplied for testing by the Athlete (and subsequently found to contain SARM S-22) at or about the time that he was staying at the Athlete's residence. The probability that Plug played some role in the events leading to the Athlete's Adverse Analytical Finding is bolstered by his comment to AB (whose evidence I accept) that there would be other people that would test positive.

[55] Moreover, in this case, other possibilities exist as to the cause of the contamination of the Athlete's container: Mr. Guy Marineau admitted that it was possible that another athlete among the eight weightlifters at his club who were training from April 21 to 25, 2014, at their offices in an old school, such as the athlete chosen for the Commonwealth Games due to Mr. Valiquette's ineligibility, contaminated Mr. Valiquette's container of creatine. And, these training sessions doubtlessly continued between April 27 and May 17, 2014, the start date of the Canadian Senior Championships and end date of the use of creatine by Mr. Valiquette. These numerous opportunities to contaminate the Athlete's container create even more uncertainty as to the manner in which methandienone entered his body. The evidence in no way shows who, why, where, when or how it happened.

[56] The reasoning and the conclusion of the tribunal in section 6.11 of the case of *IRB vs. Keyter*, *supra*, applies in this case:

> 6.11 The Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. Unfortunately, apart from his own words, the Respondent did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of cocaine occurred. The Panel, therefore, finds that the Respondent's explanation was lacking in corroborating evidence and unsatisfactory, thereby failing the balance of probability test. In other terms, the Panel is not persuaded that the occurrence of the alleged ingestion of cocaine through a "spiked drink" is more probable than its non-occurrence. This failure to establish how the prohibited substance entered his bodily specimen means that exceptional circumstances have not been established and there can be no reduction in the sanction from the otherwise established two year ineligibility.

[57] The evidence presented by the CCES established a certain degree of doubt as to the contamination of Mr. Valiquette's container of creatine being the cause of his positive test for methandienone. In her report, Professor Ayotte referred to a study by the Cologne laboratory: following administration of a 5-milligram tablet to two volunteers, they were able to detect the metabolite in question in their urine up to 11 and 19 days respectively. Professor Ayotte thus concluded as follows in her report:

[translation]
The Athlete indicating that he stopped consuming the creatine a month before the test, we would not have been able to detect this metabolite.

... Ms. Furtos indicates, with reservations, that at most, this amount could be 0.200 mg / g (I do not know how to explain this value based on the documents). Based on the photos of the container and the Internet, a box of Pro-Mera creatine contains 48 g (48 doses of 1 g): the entire box would have contained from ¾ to 2 5-milligram tablets of methandienone. It would have been necessary to ingest half the box at once to reproduce the amount studied in Cologne. According to the Athlete, he was taking, at training sessions and daily, one and a half spoonfuls or 1.5 g of creatine from April

21 to May 17. Since the container was not empty, the amount consumed could not be greater than that.
Therefore, even allowing for the contamination of the creatine by methandienone, the amount potentially ingested, the time between the last dose and the test would not have made detection of the metabolite possible.

In conclusion, the explanation put forth by the Athlete cannot explain the present of the methandienone metabolite in sample 2876242.

[58] Professor Ayotte claims that every four days, 90% of the methandienone is excreted and, therefore, doses are not [translation] "added" to previously taken doses. She specified that the concentration (per gram) of methandienone in the contaminated creatine of 0.200 milligrams (mg) / g of powder estimated by Professor Furtos represents only 1/25th of the amount of methandienone consumed (5 mg) in the study by the Cologne laboratory. According to the witness, if we assume that Mr. Valiquette took nine doses of 1.5 grams of creatine per week until May 17, 2014, he would not have had enough methandienone in his system for it to be detectable on June 15, 2014, the day of the doping control. The Athlete's explanation (contamination of his container of creatine on April 26 and his use until May 17, 2014) is therefore unlikely.

[59] I acknowledge that this scientific evidence also contains an element of doubt: the number of subjects (two volunteers) in the study by the laboratory in Cologne was minimal and the variation in results was large. Professor Ayotte admitted that the concentration of methandienone in the creatine could be higher or lower than her estimate, that she is uncomfortable estimating this concentration and that it's possible that a 5 mg dose of methandienone could be detected 30 days after consumption. But Mr. Valiquette was taking only 1.5

mg of creatine per day/training session, that is, around 0.300 mg of methandienone per dose.

[60] Neither does the evidence allow me to conclude that the Athlete deliberately contaminated his container of creatine before having it tested, or that he used methandienone. But I cannot completely eliminate this possibility. Mr. Marineau explained that one of the lifts that is evaluated during a weightlifting competition is the "clean and jerk", a strength lift, and he was of the opinion that the Athlete could have obtained a higher score with greater strength during the two competitions held on November 30, 2013, and May 17-18, 2014. Methandienone is an anabolic steroid taken to increase strength and muscle mass that is said to be very effective.

[61] At the Canadian Senior Championships that took place in Saskatoon on May 17 and 18, 2014, Mr. Valiquette placed second in his category. This result allowed him to qualify for the Commonwealth Games that were held from July 23 to August 3, 2014, in Glasgow, Scotland. At the beginning of June, he found out he had qualified for these Games. So, starting at that time, he could have had the motivation to take methandienone to increase his muscular strength in preparation for the Commonwealth Games. By improving his technique, as he has done in the past according to his testimony, as well as his muscular strength with the help of methandienone, he could have hoped for better results, even if this would have caused him greater difficulty in making weight in his category.

[62] Rule 7.24 of the CADP specifies that "*Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their

Samples." The rule adds that "Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish this anti-doping violation." These principles reflect the fact that Mr. Valiquette is not being accused of voluntary doping. Rule 7.23 states simply that the presence of the prohibited substance in the Athlete's sample is sufficient to constitute a violation.

[63] In the end, for the reasons explained above, the fact remains that the Athlete did not succeed in showing how the methandienone entered his body. Therefore, he did not satisfy the burden of proof stipulated as a condition for eliminating or reducing the ineligibility period, pursuant to Rules 7.44 and 7.45 of the CADP. As a result, the ineligibility period of two (2) years is upheld.

[64] On July 11, 2014, Mr. Valiquette signed an admission pursuant to Rule 7.13 of the CADP in which he stated that he committed the violation found against him by the CCES.

[65] Rule 7.13 specifies in part as follows:

> 7.13 Where the *Athlete*... promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) unequivocally admits the anti-doping rule violation in writing... the period of Ineligibility may start as early as the date of *Sample* collection...

[66] Mr. Valiquette's sample was collected on June 15, 2014.

[67] On December 3, 2014, this tribunal issued the following decision pursuant to Article 6.21 (d) of the Code and Rule 7.88 (b) of the CADP:

> It is ordered that the sanction recommended by the CCES of two (2) years of ineligibility be upheld. The ineligibility period will be served from June 15, 2014 to June 15, 2016.

[68] I hereby confirm this order.

Ottawa, December 9, 2014.

Ross C. Dumoulin
Arbitrator