SPORT DISPUTE RESOLUTION CENTRE OF CANADA

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY STEVE STANISCLAUS ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No. SDRCC DT-04-0009
(Doping Tribunal)

CANADIAN CENTRE FOR ETHICS IN SPORT

FOOTBALL CANADA

GOVERNMENT OF CANADA

And

STEVE STANISCLAUS
Athlete

And

WORLD ANTI-DOPING AGENCY
Observer

Before :

Paule Gauthier (Arbitrator)

Appearances and Attendances :

For the Athlete	Was not represented
For the Canadian Centre for Ethics in Sport	Joseph de Pencier (General Counsel)- Jeremy Luke (Senior Manager of the Doping Control Program
For Football Canada	Bob Swan (Technical Director)
For the Government of Canada	Mary Warren (Sport Canada)

DECISION

[1] Steve Stanisclaus (the "*Athlete*") is a member of the North Shore Broncos of the Quebec Junior Football League and, as such, is a member of Football Canada ("*FC*"), the national sport organization governing amateur football.

[2] On November 7, 2004, while playing for his team against the Chateauguay Raiders in Pierrefonds, Quebec, the Athlete was one of three athletes from his team randomly selected for doping control administered by Canada's national anti-doping agency, the Canadian Centre for Ethics in Sport ("*CCES*") following the completion of the football game.

[3] The Athlete provided a urine sample which, following analysis, is alleged to have contained one substance, the presence of which in an athlete's sample is prohibited under the Canadian Anti-Doping Program ("*CADP*"), namely cannabis at a concentration of 130 ng/mL.

[4] The Athlete acknowledged that he used cannabis. However, the Athlete recognized having used cannabis after the game when he "*went off with some of the fans, smoked there, went in and got undressed then did the urine test*", which explains the reason why his results were so high.

[5] As set out in Rule 7.53 of the CADP, unless a person waives the right to a hearing, an anti-doping rule violation by a person and the appropriate consequence may not be determined and imposed without a hearing by a Doping Tribunal.

[6] Hearings to determine whether an anti-doping rule violation has been committed and, if so, the consequence(s), are conducted by a single arbitrator, appointed from

the roster of arbitrators of the Sport Dispute Resolution Centre of Canada ("SDRCC"), sitting as the Doping Tribunal pursuant to Rule 7.59 of the CADP.

Record of Proceedings

[7] The undersigned arbitrator has been appointed by Co-Chief Arbitrator of the SDRCC, Richard McLaren, to decide this matter and proceed in absence of the Athlete attending the hearing, if that is required, pursuant to Mr. McLaren's Ruling dated February 23, 2005.

[8] On March 2, 2005, the Doping Tribunal convened a preliminary hearing of all parties by telephone conference to settle procedural matters.

[9] The Athlete did not participate in the preliminary hearing held on March 2, 2005.

[10] On March 10, 2005, the Doping Tribunal received the Affidavit of Jeremy Luke, sworn March 8, 2005 and submitted by the CCES in discharge of the burden of proof set out in Rule 7.55 of the CADP.

[11] The Doping Tribunal did not receive any responses to the affidavit of the CCES from the Athlete as required on or before March 25, 2005.

[12] On April 1st 2005, the Doping Tribunal received the Written Submissions of the CCES.

[13] On April 1st 2005, at the Athlete's request, the Doping Tribunal convened a second preliminary hearing of all parties by telephone conference and allowed the Athlete to respond to the affidavit of the CCES and to file his Written Submissions on or before April 8, 2005.

[14] On April 8, 2005, the CCES received a written explanation from the Athlete dated April 8, 2005.

[15] On April 13, 2005, the Doping Tribunal convened a third preliminary hearing of all parties by telephone conference to settle procedural matters.

[16] The Athlete did not participate in the third preliminary hearing held on April 13, 2005.

[17] On April 14, 2005, the Doping Tribunal received the Second Written Submissions of the CCES.

[18] The Athlete did not respond to the Second Written Submissions of the CCES on or before April 22, 2005.

[19] On April 22, 2005, the Doping Tribunal convened a fourth preliminary hearing of all parties by telephone conference to settle procedural matters.

[20] The Athlete did not participate in the fourth preliminary hearing held on April 22, 2005.

[21] On May 2, 2005, at the Athlete’s request, the Doping Tribunal convened a fifth preliminary hearing of all parties by telephone conference to settle procedural matters.

[22] The Athlete did not participate in the fifth preliminary hearing held on May 2, 2005 notwithstanding the fact that the notice for the telephone conference and the Second Written Submissions of the CCES were delivered to him on April 28, 2005 and that he signed the receipt of delivery.

[23] Under these circumstances and with the agreement of the CCES, the Doping Tribunal did not conduct an oral hearing and declare itself satisfied with the documentary hearing.

[24] Therefore, the completion of the hearing was May 2, 2005, and was only documentary in the present case.

[25] The documents provided to the arbitrator were as follows:

a. Affidavit of Jeremy B. Luke, affirmed on March 8, 2005 together with the following exhibits:

1. Curriculum vitae of Jeremy B. Luke
2. The Canadian Policy Against Doping in Sport
3. World Anti-Doping Agency 2004 Prohibited List
4. Doping Control Officer Agreement between CCES and Joan Decarie dated October 25, 2003
5. Athlete Selection Order regarding Steve Stanisclaus dated November 7, 2004
6. Doping Control Form (Steve Stanisclaus) dated November 7, 2004
7. Chain of Custody Form
8. Doping Control Officer Report of Joan Decarie dated November 7, 2004
9. Supplementary Report Form of Joan Decarie dated November 11, 2004
10. Certificate of analysis, INRS-Institut Armand-Frappier dated November 15, 2004
11. CCES(Jeremy Luke) letter to Football Canada (Bob Swan) dated November 18, 2004 regarding Initial Review of Adverse Analytical Finding – In Competition Doping Control
12. Email message from Football Canada (Bob Swan) to CCES (Jeremy Luke) dated December 1, 2004 – re: Extensions in Timelines

13. CCES(Jeremy Luke) letter to Football Canada (Bob Swan) dated December 21, 2004 regarding Assertion of an Anti-Doping Rule Violation

14. Information about the Doping Tribunal from the Dispute Secretariat of SDRCC dated December 22, 2004

b. Athlete's letter of explanation dated April 8, 2005.

c. Answer to the Athlete's letter of explanation by Dr. Christiane Ayotte, director of the INRS laboratory in Montreal to CCES dated April 12, 2005.

d. Written Submissions of the CCES dated April 1st, 2005.

e. Second Written Submissions of the CCES dated April 14, 2005.

Events Preceeding the Hearing

[26] Based on the evidentiary record, I find that the following events occurred prior to the Hearing.

[27] On the day he was tested, the Athlete was informed of the doping control process by Joan Decarie, the certified Doping Control Officer.

[28] Under Ms Joan Decarie's supervision, and with the observation of a chaperone, the Athlete provided, divided and sealed his sample into "*A*" and "*B*" bottles. The sample number code on his sample collection kit was 669246.

[29] The Athlete and Ms Decarie completed the Doping Control Form. In the section of that form relating to prescription, non-prescription medications and nutritional supplements taken during the previous ten days, the Athlete wrote "*Zantac, Advil Sinus*". The Athlete indicated the following concerns on the Doping Control Form: *"I*

was misinformed about the way it was supposed to go. And the chaperone did a bad job at the start but he sucked it out at the end and he was great".

[30] The Athlete's urine sample (sample code 669246) was sealed in a CCES transport bag by Ms Decarie and delivered by secure chain of custody to the World Anti-Doping Agency accredited IRNS laboratory in Montreal pursuant to Rules 6.75 to 6.90 of the Doping Control Rules under the CADP. A representative for the INRS laboratory received the Athlete's urine sample on November 8, 2004.

[31] On November 7, 2004, Ms Decarie completed her Doping Control Officer Report in which she identified a number of concerns but did not identify any departures from the Doping Control Rules that would undermine the validity of the Athlete's adverse analytical finding.

[32] On November 11, 2004, Mr. James Sclater, Program Development Manager, Doping Control Program, reviewed Ms Decarie's sample collection documentation as required by the CCES' Internal Procedures and recommended that, based on the concerns raised in Ms Decarie's report and those identified by Mr. Stanisclaus on his Doping Control Form, follow-up with Ms Decarie was necessary.

[33] On November 11, 2004, Ms Decarie submitted to the CCES a Supplementary Report Form to her Doping Control Officer's Report dated November 11, 2004 confirming her concerns identified in her initial report.

[34] In her Reports, the Doping Control Officer indicated that the Athlete uttered obscenities at her and added that the Athlete was not at the Doping Control Station when she arrived, that she went back to look for him, to no avail and that finally he showed up within the allotted time.

[35] On November 16, 2004, the Certificate of Analysis from the WADA-accredited laboratory in Montreal relating to the Athlete's sample was sent to the CCES. The Certificate of Analysis indicated one adverse analytical finding for sample 669246: cannabis at a concentration of 130 ng/mL.

[36] Section 3.0 of the CADP incorporates and applies to Canadians subject to the programme the "Prohibited List International Standard" issued by the World Anti-Doping Agency ("*Prohibited List*"). Cannabis (at a concentration greater than 15 ng/mL) is a prohibited substance according to the Prohibited List. Cannabis is a threshold substance. Threshold substances are defined in the International Standard for Laboratories as "A substance listed in the Prohibited List for which the detection of an amount in excess of a stated threshold is considered an Adverse Analytical Finding." The threshold level for cannabis is greater than 15 ng/mL.

[37] Upon receipt of the Athlete's adverse analytical finding, the CCES commenced an *"initial review*" pursuant to Rule 7.45 of the Doping Violations and Consequences Rules. The "initial review" required the CCES to determine whether the athlete had a valid Therapeutic Use Exemption (TUE) or whether there was any apparent departure from the Doping Control Rules or the laboratory analysis that undermines the validity of the adverse analytical finding.

[38] After reviewing the relevant documents, the CCES confirmed that there was no apparent departure from the Doping Control Rules or the laboratory analysis that undermined the validity of the adverse analytical finding. Further, the CCES confirmed that it had no record of a TUE for the Athlete relating to use of cannabis.

[39] As part of the "*initial review*" process, CCES provided the Athlete with an opportunity to submit a written explanation regarding his adverse analytical finding.

[40] In conjunction with Football Canada, the CCES extended the timelines for the Athlete to submit an explanation regarding his adverse analytical finding to the CCES from November 29, 2004 to December 17, 2004.

[41] During that period of time, the Athlete did not submit to the CCES an explanation for the presence of cannabis within his sample nor did he establish that his use of the substance was not intended to enhance his sport performance.

[42] The CCES concluded the "*Initial Review*" on December 21, 2004 on the basis that the Athlete did not have a TUE with the CCES for use of cannabis and that there was no apparent departure from the Doping Control Rules of the CADP or the laboratory analysis that would undermine the validity of his adverse analytical finding. As a result, on December 21, 2004, the CCES issued a Notice to the Athlete pursuant to Rule 7.46 of the Doping Violations and Consequences Rules of the CADP.

[43] The CCES asserted within its Notice that the Athlete had committed an anti-doping rule violation pursuant to Rules 7.16 to 7.20 (Presence in the Sample) of the Doping Violations and Consequences Rules of the CADP. CCES based its claim on the certificate of analysis indicating the Athlete's sample contained cannabis (at a concentration greater than 15ng/mL). As this would be a first violation, the CCES proposed a sanction within its Notice pursuant to Rules 7.20 and 7.37 of the Doping Violations and Consequences Rules of the CADP: two years ineligibility and permanent ineligibility for direct financial support from the Government of Canada.

[44] However, with the permission of the Doping Tribunal and with the consent of all parties, on April 8, 2005, the Athlete submitted his written explanation for the presence of cannabis within his sample at such a high level and explained that after the game he went off with some of the fans and smoked before doing the urine test.

[45] In his letter of explanation, the Athlete also declared that he used profanities toward the Doping Control Officer and the Chaperone but he apologized to both of them for the hard time he gave them.

[46] On April 11, 2005, the CCES requested the Director of the WADA – accredited laboratory in Montreal comment on the Athlete's letter of explanation of April 8, 2005. On April 12, 2005, Dr. Christiane Ayotte, the Director of the laboratory commented on the Athlete's written explanation. She concluded that the presence of the main urinary metabolite of cannabis at a concentration of 130 ng/mL is consistent with past use of cannabis. However she could not say much with regard to the frequency of use, the time and mode of administration and the dose taken including the content in THC (the active ingredient in cannabis).

[47] The CCES considered the Athlete's letter of explanation along with the comments provided by Dr. Ayotte.

[48] In its Written Submissions dated April 1, 2005, the CCES submitted that it has discharged its burden of proof and that the affidavit of Mr Luke, and its exhibits, is uncontroverted on all relevant matters.

[49] The CCES also submitted that the evidence before the Doping Tribunal is that the sample collection, the chain of custody and the laboratory analysis were conducted according to the CADP.

[50] In its Second Written Submissions dated April 14, 2005, the CCES submitted that in his letter of explanation, the Athlete declared that after he was contacted by the Doping Control Officer and the Chaperone, he swore at them, ignored them and walked away to smoke marijuana with some of the fans (while still in his football gear). He then went to get changed, and provided a sample to the Doping Control Officer.

[51] Rule 6.42 (e) (i) of the CADP states, that when initial contact is made, the CCES, Doping Control Officer or Chaperone shall ensure that an athlete is informed of the athlete's responsibility to remain within sight of the Doping Control Officer or Chaperone at all times from the first moment of personal notification until the completion of the Sample collection procedure to prevent physical or chemical manipulation in order to avoid a positive test result. Failure to comply with this requirement can be treated as a refusal or failure to submit to Sample collection or otherwise evading Sample collection, an anti-doping rule violation that carries a two year suspension: CADP Rules 7.24 and 7.25.

[52] Under Rule 7.7 of the CADP, where an Athlete can establish that a "specified substance" such as cannabis was not intended to enhance performance, a first violation may be treated with "at a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year Ineligibility".

[53] The CCES asserted that if one gives the Athlete every benefit of the doubt, and accepts his written explanation at face value, then his post-game use of cannabis was not for the purposes of performance enhancement. If so, the matter can be treated under Rule 7.7 of the CADP as a "specified substance" not intended to enhance sport

performance, and the consequences for a first violation would be, at a minimum, a reprimand and a warning and, at a maximum, a one year suspension.

[54] Under Rule 7.37 of the CADP, a first violation under Rule 7.7 does not lead to permanent Ineligibility for direct financial support from the Government of Canada although it is government policy to temporarily suspend federal financial support for the period of any suspension.

[55] The CCES also asserted that according to his explanation, the Athlete clearly breached Rule 6.42 (e) (i) of the CADP. Moreover, his conduct in failing to remain within sight of the Doping Control Officer or Chaperone so that he could partake of a prohibited substance is clearly unacceptable and cannot be condoned.

[56] The CCES submitted that such conduct requires much more than the minimum sanction of a reprimand and a warning. In the decision imposing a suspension on university athlete Scott Lelievre (for the findings of cannabis and cocaine), the arbitrator noted that the "calculated risk" of an anti-doping rule violation for the use of cannabis deserved at least a short period of suspension: CCES v. Lelievre, SDRCC No. DT-05-0014, February 7, 2005, paras. 39-45.

[57] The CCES submitted that the Athlete's conduct has none of the sympathetic circumstances of Mr. Lelievre's (who was using cannabis for medical reasons to deal with a serious medical condition). In addition to likely being criminal, and based solely on his written explanation, the Athlete's behaviour was deliberate, vulgar, disrespectful and contrary to the spirit and the letter of anti-doping rules.

[58] For all these reasons, the CCES changed the sanction proposed within its Notice pursuant to Rules 7.20 and 7.37 of the Doping Violations and Consequences Rules of

the CADP and recommended the maximum suspension available under Rule 7.7 of the CADP: a one year suspension.

Issues

[59] The issues which arise as a result of the operation of the CADP and the positions taken by the parties are as follows:

a. Has CCES established that the Athlete has committed an anti-doping rule violation ?

b. If the Athlete is found to have committed an anti-doping rule violation, should the sanction proposed by the CCES within its Notice pursuant to Rules 7.20 and 7.37 of the Doping Violations and Consequences Rules of the CADP and modified in its Second Written Submissions pursuant to Rule 7.7 of the CADP be maintained at a maximum ?

[60] Rule 7.55 of the CADP addresses the burdens and standards of proof applicable in hearings to determine anti-doping rule violations and consequences:

> The CCES shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the CCES has established an anti-doping rule violation to the comfortable satisfaction of the Doping Tribunal 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. When these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

a) Has the Athlete committed an Anti-Doping Rule Violation ?

[61] The adverse analytical finding was for cannabis at a concentration of 130 ng/mL. The “presence” of a prohibited substance in an athlete’s bodily sample is an anti-doping rule violation. Under Rules 7.17 and 7.18 of the CADP, the athlete is responsible for any prohibited substance found to be present in his or her bodily

sample. It is not necessary that intent, fault, negligence or knowing "*use*" by an athlete be demonstrated to establish this anti-doping rule violation.

[62] The Athlete admitted that he had taken cannabis after the game but prior to being tested. The CCES recognized that if one gives him the benefit of the doubt and accepts his written explanation at face value, then his post-game use of cannabis was not for the purposes of performance enhancement.

[63] Dr. Christiane Ayotte, the Director of the laboratory concluded that the presence of cannabis at a concentration of 130 ng/mL is consistent with past use of cannabis but could not say much with regard to the frequency of use, the time and mode of administration and the dose taken including the content in THC.

[64] Under these circumstances, I give the Athlete every benefit of the doubt and accept his written explanation at face value. I also find that cannabis was not taken for the purposes of performance enhancement.

[65] The Athlete never mentioned that he did seek a therapeutic use exemption (TUE) or consult with his doctors about taking marijuana. Nor has he made a TUE application for marijuana since being informed of his adverse analytical finding.

[66] I therefore find that the adverse analytical finding for cannabis is valid and, as a result, that there has been an anti-doping rule violation by the Athlete.

b) Should the sanction proposed by the CCES be maintained at a maximum ?

[67] As a prohibited Cannabinoid, cannabis is a " *specified substance* " according to the World Anti-Doping Agency 2004 Prohibited List. According to Rule 7.7 of the CADP and in the case of first anti-doping rule violation, when an athlete can establish

that taking a "*specified substance*" was not intended to enhance performance, the period of Ineligibility for a "*presence*" violation found in Rule 7.20 shall be replaced with the following: *"At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year Ineligibility in first violation cases. If "exceptional circumstances" are established, this sanction can be eliminated or reduced (in the case of a second or third violation)".*

[68] According to Rule 7.7 of the CADP and in the case of a second or third anti-doping rule violation, this sanction can be eliminated or reduced if *"exceptional circumstances"* are established as provided in Rules 7.38 and 7.39 of the CADP.

[69] The present case is a first anti-doping rule violation by the Athlete and therefore the last paragraph of Rule 7.7 of CADP does not apply.

[70] Moreover, there will be no permanent Ineligibly for direct Government of Canada financial support for an athlete who commits and is sanctioned for a first anti-doping rule violation pursuant to Rule 7.7 of the CADP.

[71] In the Doping Control Officer's Report and in the Athlete's letter of explanation, it was made clear that the Athlete, after he was contacted by the Doping Control Officer and the Chaperone, swore at them, ignored them and walked away to smoke marijuana with some of the fans.

[72] CCES submitted that the Athlete breached Rule 6.42 (e) (i) of the CADP in failing to remain within sight of the Doping Control Officer or Chaperone and therefore such conduct required much more than the minimum sanction of a reprimand and a warning.

[73] In the Doping Control Officer's Report, it is mentioned that when initial contact was made with the Athlete and the Doping Control Officer, she told him to stay with the Chaperone who was close by. Her Report also indicates that she went back to look for him, to no avail but that the Athlete finally showed up within the allotted time.

[74] In his letter of explanation, the Athlete declared that he was sorry for all the time and efforts that the Doping Control Officer and the Chaperone had to put with him. He also demonstrated some remorse and expressed his intention to better behave in the future and finally apologized to the Doping Control Officer and the Chaperone for the hard time he gave them.

[75] In view of the fact that the Athlete committed a first anti-doping violation rule, I might have imposed a mere warning and reprimand rather than a year of suspension as a result of the Athlete's adverse analytical finding for cannabis. However, the general Athlete's behaviour, his attitude towards the Control Doping Officer and the Chaperone and his disappearance from their sight for a certain period of time can be considered as aggravating factors and requires the sanction to be at the maximum: one (1) year Ineligibility.

[76] Therefore, the sanction proposed by CCES in its Second Written Submissions is maintained.

Result

[77] While I recognized that the Athlete apologized for having been difficult with the Control Doping Officer and the Chaperone and that he said that he has learned to shut-up and do what he is supposed to do, I cannot ignore the fact that the Athlete did not obey the instructions of the Control Doping Officer to stay with the Chaperone

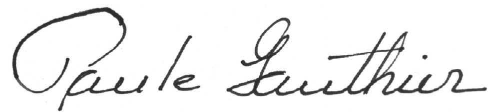
contrary to Rule 6.42 (e) (i) of the CADP, I find that a year suspension is reasonable in these circumstances.

[78] The CADP states that the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility. Any period of Provisional Suspension shall, however, if any, be credited against the total period of Ineligibility to be served.

Costs

[79] Under Rule 7.69 of the CADP, the Doping Tribunal may award costs to any party payable as it directs. Unless applied for, there shall be no award of costs in this matter. Should any party wish to apply for costs, a written request with supporting submissions should be filed with the SDRCC by no later than 5:00 p.m. Est on May 20, 2005. I will then give further directions concerning responding submissions.

QUEBEC CITY, QUEBEC, MAY 6, 2005



PAULE GAUTHIER
Arbitrator