SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

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

No.: SDRCC DT 15-0217
(Doping Tribunal)

Between:

Canadian Centre for Ethics in Sport (CCES)

Canadian Wheelchair Sports Association (CWSA)

-and-

Ian Chan (Athlete)

-and-

Government of Canada
World Anti-Doping Agency (WADA)

(Observers)

BEFORE: Carol Roberts (Arbitrator)

Appearing:

For the Athlete: Paul Greene, Global Sports Advocates, LLC
For the CCES: Alexandre T. Maltas, Jeremy Luke, Lindsay Williams
For CWSA: Cathy Cadieux (observing only)

INTRODUCTION

Jurisdiction

1. The Sport Dispute Resolution Center of Canada ("SDRCC") was created March 19, 2003 by the *Physical Activity and Sport Act* (S.C. 2003, c.2) Under the *Act*, the SDRCC has exclusive jurisdiction to provide a national alternative dispute resolution service to the sport community. In 2004, the SDRCC assumed responsibility for all doping disputes in Canada.

The Parties

CCES

2. The Canadian Centre for Ethics in Sport ("CCES") is an independent, non-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the Canadian Anti-Doping Program ("CADP"), including the provision of anti-doping services to national sport organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code ("Code") and its mandatory International Standards. The CCES has implemented the Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the Code and of the CADP is to provide protection for the rights of athletes to fair competition.

3. The CADP applies to all members of, and participants in the activities of sporting organizations adopting it.

4. The Code underwent substantial revisions effective January 1, 2015. The CADP was likewise substantially amended. However, because the anti-doping violation occurred in December 2014, all references in this decision are to the 2009 version of the CADP.

The Athlete

5. Ian Chan is a four-time Canadian Paralympian (2000, 2004 (silver medal), 2008 (bronze medal) and 2012 (silver medal)) and is currently the co-captain of the Canadian Wheelchair Rugby Team. Mr. Chan is 37 years old and has completed a number of business courses at the college level. Mr. Chan is bound by the CAPD.

CWSA

6. Canadian Wheelchair Sports Association ("CWSA") is the national governing body for the sport of wheelchair rugby (www.cwsa.ca) and has adopted the CAPD. Although a party to the proceedings, CWSA participated in the arbitration as an observer only.

WADA

7. The World Anti-Doping Agency ("WADA") is the international organization responsible for administering the World Anti-Doping Program, which includes the Code. As with CWSA, WADA had the right to observe the proceedings. WADA did not participate in the hearing.

8. According to Rule 7.87 of the CADP, the SDRCC has the jurisdiction to constitute and administer a Doping Tribunal, which is obliged to conduct all hearings in accordance with Rules 7.79 to 7.97 of the CADP as informed, where necessary, by the Code.

9. I was selected by the parties to be the arbitrator for this dispute and was appointed by SDRCC on April 7, 2015 pursuant to Article 6.8 of the Canadian Sport Dispute Resolution Code (CSDRC) and held an oral hearing on June 4, 2015 in Vancouver.

10. On June 9, 2015, I issued my decision imposing a 16-month suspension on Mr. Chan, commencing December 13, 2014. The decision was issued with reasons to follow, in accordance with Article 6.21 (d) of the CSDRC.

11. My reasons are as follows.

Background

12. On December 13, 2014 at a competition in Longueuil, Quebec (the "Quebec competition"), Mr. Chan was subject to in-competition doping control. Analysis of his sample indicated the presence of Fentanyl and Oxycodone. Mr. Chan declared his use of Oxycodone on the doping control form. Both Oxycodone (also referred to as Percocet) and Fentanyl are classified as narcotics under section 7 of the 2014 WADA list of prohibited substances as well as under the CADP Rules (the "specified substances").

13. On March 2, 2015, CCES issued a Notice of Doping Violation to Mr. Chan, asserting a single anti-doping rule violation. CCES noted that during the initial review of the samples, Mr. Chan applied for a therapeutic use exemption (TUE) for the use of Percocet (Oxycodone), and that the application was still under review by the TUE committee.

14. Mr. Chan voluntarily accepted a provisional suspension on February 2, 2015, and on March 4, 2015, admitted an anti-doping rule violation, but retained the right to seek a reduction to the proposed sanction.

15. Mr. Chan admitted that he had the substances Oxycodone and Fentanyl in his bodily samples on December 13, 2014. I find that Mr. Chan committed an anti-doping violation.

CADP Rules relating to Sanction

16. Under CADP Rules, a two-year period of ineligibility is imposed following detection of the presence of a prohibited substance, unless that period is eliminated or reduced.

17. Where an athlete can establish how a specified substance entered his or her body and that such specified substance was not intended to enhance the athlete's sport performance or mask the use of a performance-enhancing substance, the period of ineligibility ranges from a reprimand to a maximum of two years' ineligibility. (Rules 7.42 – 7.45)

18. CCES agreed, for the purposes of this hearing, that Mr. Chan has established that Oxycodone entered his system through the ingestion of a combination of prescription and "street" Oxycodone pills and that the Fentanyl entered his system through the ingestion of "street" Oxycodone pills.

19. CCES further agreed, for the purposes of this hearing, that Mr. Chan has established that his use of both specified substances was not intended to enhance performance or mask the use of a performance-enhancing substance.

20. Mr. Chan's anti-doping violation occurred in 2014. The WADA Code was amended effective January 1, 2015. In light of CCES' position, it is unnecessary for me to address the distinctions between the 2009 and 2015 versions of the Code and CADP Rules, since the analysis is the same regardless of which version is used. However, all references are to the Rules in effect as of the date of the violation.

21. Rule 7.43 provides that the Athlete's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility, and that the Athlete has the onus of establishing that his or her degree of fault justifies a reduced sanction.

22. The sole issue before me is Mr. Chan's degree of fault and the appropriate sanction in light of that fault.

Evidence

23. I heard evidence from Mr. Chan and Dr. Andy Van Neutegem. I have also considered a March 25, 2015 letter Mr. Chan wrote to CCES shortly after being informed of the anti-doping violation, which was incorporated by counsel in his submissions to the Tribunal.

24. Dr. Van Neutegem has a Ph.D. in psychology and was the head of England's anti-doping program prior to the creation of UK Anti-Doping (UKAD), UK's equivalent to CCES. He worked with the Canadian Sport Institute Pacific in the area of high performance planning for national teams, and is currently CWSA's High Performance Director.

25. Mr. Chan became involved in wheelchair sports in 1997, and soon discovered a love for wheelchair rugby, participating in his first international competition in 1998. He said that sports eventually became the focus of his life. Mr. Chan said that because his life lacked balance, he often experienced periods of depression after returning from competitions. He said that he became depressed in August 2014 after returning from the World Championships.

26. Mr. Chan experienced medical issues for which he had been prescribed a variety of medication, including Percocet for shoulder pain. Mr. Chan said that he found that the drug helped him in his daily life and began to use it regularly. In the fall of 2014, Mr. Chan was hospitalized for a disability-related medical issue and issued a prescription for 5 mg of Oxycodone per day.

27. On October 10, 2014, as a member of Canada's Wheelchair Rugby team, Mr. Chan competed in an opening match between Canada and Japan at the 2014 Japan Para-Championships. When the Canadian team was told they would be subject to in-competition testing, Mr. Chan informed his coaches that he was taking Oxycodone.

28. Mr. Chan was pulled from the opening game and Dr. Van Neutegem made efforts to obtain a therapeutic use exemption ("TUE") on Mr. Chan's behalf. Mr. Chan had not previously informed team officials of his use of this medication nor had he obtained a TUE for the use of Oxycodone.

29. Following discussions with Dr. Thomas Zochowski, the team doctor, Dr. Van Neutegem understood that Dr. Zochowski would pursue a retroactive TUE on Mr. Chan's behalf, and informed Mr. Chan that he could play in the next match.

30. Mr. Chan said that he trusted the team doctors, and believed that he had obtained a TUE when Dr. Van Neutegem gave him the "thumbs up" to play. Mr. Chan believed that because TUE's were effective for one year, he had no need to follow up on the status of his TUE after returning from the competition. Mr. Chan took no steps himself to obtain the TUE, and did nothing to ensure that a TUE had been either applied for or obtained on his behalf.

31. Believing that he had a TUE, Mr. Chan declared his use of Oxycodone on his doping control form at the Quebec competition.

32. Dr. Van Neutegem, who described Mr. Chan as a good athlete who was "meticulous" in his preparation for competition, did not follow up with Mr. Chan about the status of the TUE as he assumed that both the CWSA and Mr. Chan were pursuing it. Dr. Van Neutegem acknowledged that he failed in his responsibility to Mr. Chan to ensure that the TUE was obtained.

33. Following the competition in Japan, Mr. Chan discovered that he had lost his entire life savings on a bad investment. Facing the loss of a significant amount of money and experiencing the lows following the competition, Mr. Chan said that he developed

"unhealthy routines and behaviours." In his March 25, 2015 letter, Mr. Chan said that although he had a prescription for 5 mg of Percocet (Oxycodone), he felt this dosage was insufficient and turned to "street Oxy's" after learning about his financial losses in October 2014. However, at the hearing, Mr. Chan testified that he began taking the "street Oxy's" in the summer or fall, leading up to the competition in Japan, and continued to use them between October and December.

34. At the hearing, Mr. Chan testified that he obtained the Oxycodone from a friend he had known for a long time and trusted. Although Mr. Chan said that he had "no idea" where his friend obtained the drug, he understood that his friend was selling Mr. Chan his own prescription medication. Mr. Chan saw the pills in a prescription bottle and while he was aware the bottle bore his friend's name, he did not read the label and did not know what the prescription dosage was. This evidence was inconsistent with Mr. Chan's letter, in which he stated that he knew "street Oxy's" were stronger than his own prescription. Mr. Chan also testified that he knew the Oxycodone supplied by his friend was stronger than his own, and that he never took a full dosage, cutting the pills up and supplementing his own prescription as he felt was appropriate to his needs on any given day.

35. Mr. Chan testified that the pills his friend sold him looked different than his and bore an "80" stamp on them. However, Mr. Chan believed that obtaining prescription medication from a friend was the same as obtaining it from a pharmacy and that there was no risk in taking it.

36. Mr. Chan says that there was no way of knowing that the Oxycodone he purchased from his friend was contaminated with Fentanyl and acknowledged that it was a "big mistake" to take "street Oxy's".

37. Mr. Chan admitted that he did not exercise due diligence in determining the source of the Oxycodone; putting "blind faith" in trusting that his friend obtained the medication from a legitimate pharmacy. He also acknowledged that he did not conduct any research into the possibility that the Oxycodone that he received from his friend might have been contaminated.

38. Mr. Chan also conceded that he did not approach his own doctor to ask for higher dose, and that he never discussed taking more Oxycodone than he was prescribed with team doctors. He said that he did not do so because he didn't think they would approve, and because he was ashamed and did not want anyone to know he was depressed.

39. Mr. Chan submitted his application for a TUE application on February 3, 2015. The CCES's TUE committee approved the TUE for the use of Percocet (Oxycodone) effective March 5, 2015 for a period of 4 years. Mr. Chan's TUE was for a 5 mg dose, administered orally, once per day. The Certificate of Approval contained the following note:

> **Attention athlete**: the dose, method and frequency of administration as prescribed by your physician have to be followed meticulously. Please carry a copy of this

form with you at all times. This form should be presented to the doping control officer at the time of testing.

40. The letter indicated that Mr. Chan was to submit a new TUE application if his prescribed medication changed or his prescribed dosage changed.

41. The CCES determined that Mr. Chan was not eligible for a retroactive TUE because, at the time it was submitted, it was not in response to an acute or emergency situation. CCES informed Dr. Zochowski that, had Mr. Chan sought the TUE after he returned from Japan, given that he had been prescribed Oxycodone for treatment of an acute condition, he would likely have been eligible for a retroactive TUE, but because the application was not filed until February 2015, four months later, the use of Oxycodone was no longer in response to an acute situation.

42. By the time he received the TUE, Mr. Chan was no longer using his friend's Oxycodone prescription. Since testing positive, Mr. Chan has been working with a clinical psychologist and is in a much better mental state.

43. Mr. Chan has been in the testing pool for many years and understands his obligations under the Code, including his responsibility for meeting anti-doping requirements. He says that he would never have knowingly taken any banned substance. He says he only took the Oxycodone because he thought he had a TUE following the competition in Japan.

Submissions

44. I have attempted to summarize the position of the parties without oversimplifying them. I have carefully considered all of the arguments, whether or not I have expressly referred to them.

Athlete

45. Mr. Chan argues that his degree of fault was low, given that his use of Oxycodone was prescribed and that his team officials' assurances made him believe he was cleared to play in the Quebec competition. Because he believed he had a TUE, Mr. Chan declared his use of Oxycodone on his doping control form prior to being tested on December 13, 2014.

46. Mr. Chan's counsel argued that the evidence did not support a finding that Mr. Chan's conduct was high risk. He contended that Mr. Chan obtained the Oxycodone from a trusted friend who supplied the drugs in a prescription bottle, and that the only way Mr. Chan could have known that the Oxycodone he was taking contained Fentanyl was to have it analyzed at a lab prior to taking them. He submitted that this is beyond an athlete's duty under the Code.

47. Counsel for Mr. Chan said that Mr. Chan did not intend to enhance his sport performance or mask the use of a performance-enhancing substance in ingesting either of the specified substances. He argued that a sanction on the low end of the 0-24 month range is appropriate given his low degree of fault and the fact that this was his first violation of the Code.

CCES

48. CCES contended that Mr. Chan's conduct in obtaining and ingesting illegal street drugs is high-risk conduct, representing a significant departure from the standard of conduct expected of an athlete in Mr. Chan's position.

49. While CCES acknowledged that Mr. Chan had a prescription for Oxycodone for pain and was facing a number of stressors in his life leading up to the Quebec competition, those factors can only minimally lessen the degree of fault. CCES argued that, despite having a valid prescription, Mr. Chan's use of Oxycodone was not in accordance with that prescription as he supplemented his prescription with street drugs. CCES submitted that neither the prescription nor the subsequently obtained TUE mitigates Mr. Chan's degree of fault for intentionally taking street drugs.

50. CCES contended that taking drugs from an unknown source is the antithesis of what is expected of an athlete, and to suggest that there was no way for Mr. Chan to know the Oxycodone was contaminated misses the point, which is that athletes assume significant risk in taking substances from unknown sources.

51. CCES contended Mr. Chan's degree of fault was at the high end of the fault continuum and that there should be a minimal reduction to the mandated two-year period of ineligibility. CCES sought a period of ineligibility between 16 and 20 months.

ISSUE

52. CCES conceded that Mr. Chan had established that his degree of fault justified a reduction to the presumptive two-year sanction. My task is to decide, in all the circumstances of this case, what that appropriate sanction is.

DECISION

53. The Code and CADP are based on the principles of personal responsibility and strict liability for the presence of prohibited substances:

> It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance […] found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish this anti-doping violation. (CADP Rule 7.24)

54. The commentary to the 2009 WADA Code provides that, "in assessing the Athlete's …degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's departure from the expected standard of behaviour".

55. The parties agreed that Mr. Chan's case was unique and referred me to decisions of anti-doping tribunals in a variety of jurisdictions, including the Court of Arbitration for Sport (CAS), the International Rugby Board, the UK National Anti-Doping Panel, and the United States Anti-Doping Agency:

- *Kutrovsky v. International Tennis Federation* (CAS 2012/A/2804)
- *Fauconnet v. International Skating Union* (CAS 2011/A/2615)
- *Foggo v. National Rugby League* (CAS A2/2011)
- *UCI v. Kolobnev* (CAS 2011/A/2645)
- *Lapikov v. International Weightlifting Federation* (CAS 2011/A/2677)
- *Qerimaj v. International Weightlifting Federation* (CAS 2012/A/2822)
- *Kendrick v. ITF* (CAS 2011/A/2518)
- *FINA v. Filho, Dias dos Santos, Barbosa and Waked* (CAS 2011/A/2495, 2496, 2497 and 2498)
- *WADA v. West and Federation Internationale de Motocyclisme* (CAS 2012/A/3029)
- *WADA v. Szabolcs* (CAS 2013/A/3075)
- *Paterson* (International Rugby Board, January 20, 2012)
- *UK Anti-Doping v. Warburton and Williams* (UK National Anti-Doping Panel, SR/0000120227, January 12, 2015)
- *USADA v. Cosby* (American Arbitration Association AAA No. 77 190 00543 09)
- *Marin Cilic v. International Tennis Federation* (CAS 2013/A/3327)
- *USADA v. LaShawn Merritt* (American Arbitration Association AAA No. 77 190 00293 10)
- *USADA v. Afsaw* (American Arbitration Association AAA No. 01-14-0001-4332)

56. Although the principle of *stare decisis* does not apply to Tribunal decisions, fairness demands a degree of consistency between decisions to ensure that athletes in similar circumstances receive similar treatment.

57. Of the cases referred to by the parties, the two most closely resembling Mr. Chan's circumstances are *Fauconnet* and *Kendrick.*

58. In *Fauconnet*, the athlete took medication belonging to his girlfriend, which contained a prohibited substance, to address breathing problems associated with a cold he developed during competition. The athlete did not have a TUE, nor had he declared the use of the medication on the doping control form. The athlete later obtained a medical prescription for the medication. The athlete admitted the violation. The athlete established how the product entered his body, and it was uncontested that he did not ingest the substance with the intent of enhancing his performance. The sole issue before the panel was the appropriate sanction. After considering a number of cases, the panel categorized the decisions into situations where a) the athlete's circumstances were so

rare or exceptional that the period of ineligibility was substantially reduced, b) where the athlete exercised a certain degree of care and c) cases where the athlete was negligent and a reduction would not be appropriate. The panel found the athlete to fall into the latter category, having failed to exercise some degree of reasonable care. The Panel noted that the athlete was a 26-year-old experienced international athlete who had failed to take even the most basic steps, either by consulting with his own doctor or team doctors or by conducting research on his own. In imposing an 18-month period of suspension, the Panel found that the athlete had demonstrated a significant lack of diligence.

59. In *Kendrick*, the athlete, a 31-year-old experienced tennis player from Florida, took a product designed to address the effects of jet lag when traveling to competitions in Europe. The athlete ingested capsules from an unmarked package handed to him by a certified teaching professional with over 30 years' experience whom he had known for four years. When asked if the capsules contained anything illegal or banned, the teaching professional assured the athlete that the product was "all natural and organic," and that he had not known of any other athlete who had tested positive after taking the product. The athlete's coach, who was present during the conversation, suggested that the athlete conduct his own internet research before taking the product. The athlete spent some time investigating the product on the internet but was unsuccessful in obtaining an ingredient list for the product. The Panel determined that the athlete had established how the substance entered his body and accepted that the substance was not taken with the intent to enhance his performance or mask the use of another illicit substance, so the sole issue was the degree of fault and the appropriate sanction. In imposing a suspension of 8 months, the Panel noted that although the athlete had conducted some internet research, it was inadequate, he had not consulted a doctor, and he had relied on unqualified people for advice on whether the product was safe or not. The Panel also noted that the athlete was under some stress, as the birth of his first child was imminent and he was preparing for his last high-level tournament before his retirement from the sport.

60. I am persuaded by the reasons of the Panel in *Cilic*, which attempts to establish a principled approach to a fault assessment and the determination of a sanction (and which was followed in *Asfaw*). The panel established three categories of fault as follows:

    a. Significant degree of or considerable fault: 16-24 months, with a "standard" significant fault leading to a suspension of 20 months;
    b. Normal degree of fault: 8-16 months, with a "standard" normal degree of fault leading to a suspension of 12 months; and
    c. Light degree of fault: 0-8 months, with a "standard" light degree of fault leading to a suspension of 4 months.

61. The Panel wrote that, in order to determine into which category of fault a particular case might fall, it was helpful to consider both the objective and subjective level of fault, with the objective element describing what standard of care could have been expected from a reasonable person in the athlete's situation, and the subjective element describing what could have been expected from that particular athlete, in light of his personal capacities.

The Panel also suggested that the objective element should be foremost in determining into which of the three relevant categories a particular case falls, with the subjective element used to move a particular athlete up or down within that category. (paragraphs 71 - 73)

62. The Panel further distinguished between substances prohibited in-competition from those prohibited out-of-competition, and medication designed for a therapeutic purpose. In the latter case, the Panel noted that a higher duty of care was called for because medicines are known to have prohibited substances in them.

63. The Panel noted that, while each case will turn on its own facts, the following examples of matters can be taken into account in determining the level of subjective fault: the athlete's age and experience, language or environmental problems, the extent of the athlete's anti-doping education and any other "personal impairments", including an athlete who may be experiencing a high degree of stress, or whose level of awareness has been reduced by a careless or understandable mistake.

64. Applying those factors, and considering the *Kendrick* and *Fauconnet* decisions, I conclude that Mr. Chan has demonstrated a high degree of fault. In my view, a higher standard of care could and should be expected from a reasonable person in Mr. Chan's situation.

Objective factors

- Mr. Chan is neither young nor inexperienced. He is a 37-year-old decorated athlete who was fully aware of the anti-doping requirements and of his obligation to know what substances entered his body.

- Despite professing knowledge of the anti-doping requirements, Mr. Chan left it to others to obtain a TUE on his behalf. He took no steps to either initiate the process, or ensure one had been obtained. As a mature and experienced athlete who was described as "meticulous", I would have expected Mr. Chan to have followed up to ensure that he had obtained a TUE following the competition in Japan (in *CCES v. Denman* (SDRCC DT 13-0203), the Tribunal imposed a two-month period of ineligibility on an athlete for failing to obtain a TUE).

- Although Mr. Chan had a prescription for Oxycodone, he deliberately exceeded the prescribed dosage. At no time did he conduct any research of the dangers of exceeding the prescribed dose, nor did he speak to his family physician to inquire into the possibility of obtaining a higher dose or to discuss the implications of taking more Oxycodone than had been prescribed, regardless of source. Although Mr. Chan did not have a TUE until March 2015, I note that it contained the following recommendation: "No escalation in dose of Percocet due to risk of analgesic rebound headaches". Furthermore, a simple internet search would have disclosed the dangers of the misuse of narcotic medication or taking Oxycodone in larger amounts than prescribed, including addiction, overdose and death.

- Although Mr. Chan contends that "he had nothing to hide" and declared his use of Oxycodone on his doping control form at the Quebec competition, he did not inform his team doctors that he was taking more Oxycodone than prescribed.

- Mr. Chan purchased drugs from a friend whom he said he trusted, and whom he believed was selling him his own prescription medication. Even if Mr. Chan was honestly not aware that the substance he was taking was illicit, I would have expected an athlete of Mr. Chan's age and experience to be suspicious of a friend's offer to sell him his own prescription medication.

- Despite professing an awareness of the risks of taking medication not prescribed for him, Mr. Chan did not ask his friend any questions as to whether or not the Oxycodone was obtained from a licensed pharmacist. In addition to asking no questions about the source of the drug or the implications of taking excessive amounts, Mr. Chan conducted no research of his own. Had Mr. Chan turned to the internet, he would have discovered that, in February 2014, the Canadian Centre on Substance Abuse had issued a Drug Alert advising that counterfeit Oxycodone containing Fentanyl had become increasingly available in several Canadian communities. The alert noted that the pills resembled Oxycodone tablets, and were referred to as "street Oxy" in Western Canada. I note that in his March 25, 2015 letter, Mr. Chan referred to the Oxycodone he took as "street Oxy's", which was the parlance used in the Drug Alert.

- Mr. Chan consulted no one about his use of excessive, non-prescription Oxycodone, not even the team doctors whom he trusted to have the best interests of athletes in mind, because, at least in part, he knew it was wrong.

- I am led to the conclusion that although Mr. Chan said that he believed his trusted friend provided him with his own prescription, Mr. Chan was aware that the Oxycodone was not properly sourced. His obligation to avoid ingesting contaminated substances was high in these circumstances.

- I conclude that while Mr. Chan did not intentionally take Fentanyl, he demonstrated a high degree of fault in how it entered his system. There is no evidence Mr. Chan took <u>any</u> steps to avoid the risk of taking prohibited substances, and in doing so, failed to meet the objectives and standards of the WADA Code with which he purports to be both familiar and in compliance with.

Subjective factors

- Although there is no evidence Mr. Chan was clinically depressed, he was experiencing significant personal stress stemming largely from the loss of a substantial amount of money, and was feeling the usual "lows" he felt after major competitions (in *Crosby,* the panel took both the athlete's severe depression and the fact that she was not in full control of her decision-making abilities into account in imposing a four month sanction).

65. I have concluded that Mr. Chan's degree of fault is at the highest level. In consideration of all of the evidence, and applying the *Cilic* factors, I impose a sanction of 16 months.

66. Mr. Chan appeared to be genuinely remorseful and is aware that his positive test may interfere with his continued participation in the sport as well as with his leadership aspirations. Mr. Chan appears to have significant support from CWSA and the team officials. Dr. Van Neutegem spoke highly of Mr. Chan and came to Vancouver to testify on his behalf. It is unfortunate that during the past year Mr. Chan found himself in circumstances that caused him to make choices he has come to regret. It is my hope that with the support he now has in place, he is able to pursue a healthy, balanced life and make positive contributions to the sporting community to which he belongs.

DECISION

67. Ian Chan is declared ineligible for a period of 16 months, commencing December 13, 2014.

68. Rule 7.97 of the CADP provides that I may award costs to any party payable as it directs. Neither party made a request for costs and none will be ordered.

DATED at Vancouver, British Columbia this 23rd day of June, 2015

_____

C. L. Roberts
Arbitrator