

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

**N°: SDRCC DT 18-0304**  
(Doping Tribunal)

Between:

**CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)**  
**U SPORTS**

– and –

**GRANT McDONALD**

**Athlete**

– and –

**GOVERNMENT OF CANADA**  
**WORLD ANTI-DOPING AGENCY (WADA)**

**Observers**

**Tribunal :** Patrice Brunet (Sole Arbitrator)

**Date of Hearing:** March 18<sup>th</sup>, 2019

**Appearing:**

**For the CCES:** Adam Klevinas, Counsel

**For the Athlete:** Paul Greene, Counsel

**For U Sports:** Tara Hahto

## **REASONS FOR DECISION**

### **ABSTRACT**

Grant McDonald (the “Athlete”) was a 19 year-old university football player at the time he submitted to an in-competition test on November 3, 2018. He declared that he was taking protein powder, creatine, fish oils and BCAA (branched-chain amino acids). None of those products appear on the list of Prohibited substances.

The Athlete was later informed that the test returned a positive result for *higenamine*, a Specified substance.

During the hearing, the Athlete explained that, before purchasing the product, he had only verified the first ingredients listed on the label against the Global DRO website, but had stopped just before higenamine. He never completed his search later.

The Athlete promptly admitted his fault, and offered his full collaboration to the CCES. He explained candidly that he made a mistake. The CCES also recognized that the Athlete is not a cheater.

Nevertheless, the Athlete is found to have been negligent in the discharge of his anti-doping responsibilities.

On the one hand, he consulted the list of ingredients against a CCES-recognized website (Global DRO), albeit partially, purchased the product from a store and not the internet, and consumed a product that is usually considered a safe supplement (BCAA).

On the other hand, he failed to verify the full list of ingredients, and did not appear to take the anti-doping online course as seriously as he should have.

Factors such as his young age, the fact that this was his first test, and the absence of a solid resource person in his sport entourage at the university were considered.

His overall character is honest, with good values. He made a mistake, which he totally owned.

For these reasons, he is found to have committed an anti-doping rule violation, and is suspended for a period of ten (10) months from November 3, 2018, until September 2, 2019.

## **I. INTRODUCTION**

1. On November 3, 2018, Grant McDonald (the “Athlete”), a football player for the University of Calgary, was required to submit to an In-Competition sample collection after playing a game in Calgary, Alberta.
2. On November 22, 2018, the Athlete was informed by the CCES that his “A” sample had returned an Adverse Analytical Finding (“AAF”) for higenamine, classified as a Specified substance on the 2018 World Anti-Doping Agency (WADA) Prohibited List.
3. On November 28, 2018, the Athlete requested the analysis of his B Sample, which confirmed the presence of higenamine.
4. On December 12, 2018, the Athlete was notified of an AAF under Rule 7.3.1 of the 2015 Canadian Anti-Doping Program (the “CADP”). The notice stated that he had committed an anti-doping rule violation based on the sample provided during the game on November 3, 2018.
5. The Canadian Centre for Ethics in Sport (the “CCES”) certifies that the analysis of both samples provided by the Athlete revealed the presence of higenamine.
6. The Athlete does not dispute that his sample contained higenamine and he recognized the violation on December 17, 2018. Prior to this admission, the Athlete had accepted a voluntary Provisional Suspension on November 28, 2018.

7. However, he is challenging the sanction proposed by the CCES, which considers that the Athlete's period of ineligibility should be between 16 and 20 months.
8. The Athlete considers that his sanction should be in the range between 6 and 10 months, considering his degree of fault.

## **II. THE PARTIES**

9. The CCES is an independent, not-for-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the CADP, including the provision of anti-doping services to national sports organizations and their members. As Canada's national anti-doping organization, the CCES is in compliance with the World Anti-Doping Code ("the WADA Code") and its mandatory International Standards. The CCES has implemented the WADA Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the WADA Code and of the CADP is to provide protection for the rights of athletes to fair competition.
10. U Sports is the national governing body of university sport in Canada.
11. Mr. Grant McDonald is a football player at the University of Calgary, Alberta.
12. The World Anti-Doping Agency ("WADA") is the international organization responsible for managing the World Anti-Doping Program which includes the WADA Code. WADA is an observer and did not take part in the hearing.
13. The Government of Canada is an observer and did not take part in the hearing.

### III. FACTUAL BACKGROUND

14. The Athlete has been playing football since a young age. He played NCAA Division 1 football at the University of Maine. At the time of the doping control, he was playing football for the University of Calgary.
15. On October 14, 2018, the Athlete went to a Popeye's supplement store in Calgary with his older brother to refresh his supply of supplements. Initially, the Athlete wanted to buy the same branched-chain amino acids ("BCAA") product he used at the University of Maine. However, the clerk suggested a new supplement which he assured the Athlete was guaranteed to be *free from banned substances* at the University level. The clerk convinced him that the product would also allow him to concentrate better, and that it was a good seller among the university student community.
16. The new product he purchased was labelled *Amino IQ* under the brand *Beyond Yourself* and was manufactured by a Canadian company, which enhanced the feeling of trust for the Athlete.
17. The Athlete testified that he conducted a search on the Global DRO website on his cellphone, at the cash counter in the store, to verify whether the ingredients listed on the label were safe for sport. However, he did not complete his verification, and stopped at the 8<sup>th</sup> ingredient (caffeine) for the following reasons:
  - a. Since caffeine was in 8<sup>th</sup> position on the list of ingredients, he assumed there would only be traces of ingredients for those that followed, and that they must not be important (mostly flavours);
  - b. His brother was his driver on that day, and he repeatedly insisted that he pay and leave the store;
  - c. Other customers were getting in line behind him, and he did not want

to hold them up;

- d. The clerk had assured him the product was safe for sport, there was a logo on the product that stated *free from banned substances*, the manufacturer was Canadian and the nature of the product (BCAA) was not usually associated with Prohibited substances.

18. Between October 14, 2018, and November 3, 2018, the Athlete used the Amino IQ supplement once every morning.

19. On November 3, 2018, he played a football game with the University of Calgary. After the game, the Athlete was asked to submit to an anti-doping test. He declared on the doping control form that he had taken protein powder, creatine, fish oil and BCAA in the previous days.

20. The Athlete stated that he received anti-doping training. He successfully completed the CCES' e-learning anti-doping education course *True Sport Clean* on August 2, 2018, at the beginning of the 2018 football season.

21. On December 12, 2018, the Athlete received a notice for an adverse analytical finding. The notice informed him that he committed an anti-doping rule violation on November 3, 2018.

22. The certificate of analysis of the Athlete's A sample indicated:

*Higenamine, roughly estimated at 160 ng/ml.*

23. When his coach explained to him that he had tested positive for higenamine, the Athlete immediately reviewed the ingredient labels of the supplements he was taking and realized that higenamine, a Specified substance, was listed as an ingredient on the Beyond Yourself Amino IQ supplement label. The substance was listed right after caffeine.

24. On November 28, 2018, the Athlete accepted a voluntary provisional

suspension.

25. The Athlete did not dispute that his sample contained higenamine and he recognized the violation on December 18, 2018.

#### **IV. PROCEDURAL BACKGROUND**

##### **A. Preliminary Stages**

26. On December 12, 2018, the CCES issued a notification of an anti-doping rule violation in compliance with CADP rule 7.3.1. At paragraphs 1 and 2 of the notice, the CCES stated the following:

*The Canadian Centre for Ethics in Sport (CCES) asserts that Mr. Grant McDonald, an athlete affiliated with U SPORTS (Football), has committed an anti-doping violation.*

*The sample giving rise to the adverse analytical finding was collected in-competition on November 3, 2018, in Calgary, AB, in accordance with the CADP. The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory on November 28, 2018, indicating the presence of Higenamine (S3 Beta – 2 Agonists) classified as a specified substance on the 2018 World Anti-Doping Agency (WADA) Prohibited List.*

27. On January 28, 2019, I was appointed as Arbitrator in the present case.

28. On February 2, 2019, a preliminary conference call was held between the Parties, the SDRCC and the undersigned Arbitrator, to cover preliminary matters and plan the next steps in the proceedings.

29. On February 8, 2019, the Athlete and his counsel filed their written submissions.

30. On February 21, 2019, the CCES and its counsel filed their written submissions.

31. On March 1, 2019, the Athlete and his legal counsel filed their written reply submissions.

## **B. The Hearing**

32. All Parties agreed that the hearing would be held by video conference on March 18, 2019.

## **C. Short Decision**

33. On March 25, 2019, I issued a short decision, with the following conclusions:

*Both the CCES and the Athlete agree that the latter bears No Significant Fault or Negligence. I also agree with this statement and find no reason to review their agreement. Because of this conclusion, under Rule 10.5.1.1 of the CADP, I am then required to analyze the Athlete's degree of fault to establish his Period of Ineligibility.*

*After considering the evidence, including testimonies during the hearing, and for reasons to be enunciated in my reasoned decision, I find that the Athlete bears a normal degree of fault, based on the standard found in the Cilic decision.*

*Although I am not compelled in my analysis to follow Cilic, I found the reasoning in that decision to be quite helpful in establishing both the*



*objective and subjective criteria upon which I have come to base my decision.*

*Based on the sliding scale, which considers the subjective factors, and which will be more detailed in my reasoned decision, I find that the Athlete's degree of fault should rest on the lower side of the scale, at 10 months. This is not to say that the fault is minimal, as the normal degree of fault is what it says it is. But there are a number of factors that allowed me to conclude that this Athlete is a good, honest person and made a mistake that should be punished by a suspension that is commensurate with the overall perspective of his sport, age, attitude and circumstances.*

*THEREFORE, I find Grant McDonald to be ineligible for a period of ten (10) months, beginning on November 3, 2018, the date of sample collection, considering the Athlete's timely admission of the rule violation, and ending on September 2, 2019.*

## **V. JURISDICTION**

34. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19, 2003<sup>1</sup>.

35. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sports community, among others, a national alternative dispute resolution service for sport disputes.

36. In 2004, the SDRCC assumed responsibility for all doping disputes in Canada.

---

<sup>1</sup> The *Physical Activity and Sport Act*, S.C. 2003, c.2

37. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.

## **VI. SUBMISSIONS**

38. This section summarizes the oral and written submissions of the Parties. Although this is not a detailed record, I carefully examined all submissions presented by the Parties.

### **A. The Athlete**

39. The Athlete submits that the CCES-proposed sanction, between 16 and 20 months, should be reduced by a sanction in the range of 6 to 10 months based on the unique circumstances surrounding his inadvertent ingestion of the specified substance, higenamine.

40. He also submits that his fault is not significant in regard to his anti-doping violation and that based on the *Cilic*<sup>2</sup> decision, his degree of fault is at the high end of the light range, or the low end of the normal range.

41. Following the *Cilic* analysis, the Athlete states that the objective elements used to determine an athlete's level of fault were met. According to him (1) the Athlete read the label of the product used and relied on the logo which stated that the supplement was *free from banned substances* (2) he cross-checked the ingredients on the label by using the Global DRO website (3) he ensured the product was reliably sourced by purchasing it at a physical store (and not on the internet) (4) for a 19 year-old athlete, the clerk at Popeye's was an appropriate expert for supplements.

42. The Athlete also explains that the fact that the clerk at the store kept

---

<sup>2</sup> *Cilic v. International Tennis Federation*, CAS 2013/A/3327

- assuring him that the product was *free from banned substances* influenced him in purchasing the Amino IQ supplement.
43. Furthermore, he submits that his sanction should be, at most, at the low end of the normal degree of fault range when the subjective elements from *Cilic* are considered.
44. In his opinion, the subjective factors are favourable to him. He was only 19 years old when he tested positive. He has never had a doping or disciplinary infraction in his athletic career. It was also his first time being tested.
45. According to him, the extent of his anti-doping education was limited. He received anti-doping education at the University of Maine and from the CCES. However, he claims that neither program taught him that a supplement labelled *free from banned substances* could contain a prohibited substance, although he conceded having been cautioned against the possibility of supplements being contaminated by Prohibited Substances.
46. The Athlete also explained that his level of awareness was reduced by a careless but understandable mistake, by not conducting a full search on Global DRO for all the ingredients listed on the supplement's label. The fact that he consulted the list, albeit only partially, is testimony to his seriousness and commitment to verify compliance with the anti-doping program. He relied on the store clerk's opinion since the supplement was made by a Canadian company and its label mentioned that it was *free from banned substances*.
47. The Athlete claims that his declaration on the doping control form on November 3, 2018, is another factor acting in his favour when analyzing his degree of fault, especially since he did not omit declaring that he was taking BCAA.

48. Finally, the Athlete states that he had no access to a nutritionist or a trainer with proper knowledge on supplements. He also explained that it would be highly unlikely that his own family doctor from British Columbia would have had the knowledge to provide him with meaningful advice about the supplement. In addition, under the Canadian health system, it is unusual that medical advice is provided any other way than in-person. Travelling to BC for this purpose would simply be unimaginable. Finally, the Athlete does not have the resources of an elite athlete.

## **B. The CCES**

49. The CCES submits that the Athlete's degree of fault is significant based on the five objective factors listed in the *Cilic* decision.

50. First of all, the CCES states that the Athlete has failed to verify every ingredient of the Amino IQ supplement on Global DRO when he knew it was his responsibility to ensure due diligence.

51. Although the CCES understands that the Athlete may have been rushed to conduct a complete search of all the ingredients at the Popeye's store, it considers that he had time, before his Doping Control on November 3, 2018, to cross-check all the ingredients on the supplement label and complete his verification on Global DRO. He failed to do this, and he had ample opportunity.

52. Furthermore, the CCES submits that the Athlete's previous purchase and use of other supplements at Popeye's is not a reasonably sufficient assurance of the reliability of the source. According to the CCES, an athlete cannot consider that a supplement is safe, only because it is made by a Canadian company, nor sourced from a physical retail outlet.

53. The CCES contends that the Athlete failed to consult the appropriate

experts to determine the safety of the Amino IQ supplement and that a store clerk at a supplement store is not considered an appropriate expert.

54. The CCES also claims that the Athlete had access to a support entourage as a university football player and as a result, he should have consulted the coaches, staff members or even his own doctor regarding the safety of the Amino IQ supplement. There was no urgent need for the Athlete to use the Amino IQ without making the necessary verification and consulting with appropriate experts.

55. Regarding the subjective factors listed in *Cilic*, the CCES claims that the Athlete had a reasonable level of anti-doping experience as a kinesiology major at the University of Maine and as an experienced football player at the NCAA Division 1 level.

56. The CCES claims that the Athlete had sufficient anti-doping education and awareness regarding supplements and performance-enhancing drugs. The Athlete had successfully completed the CCES' e-learning anti-doping education course. As a result, he should have known that there was an inherent risk in taking Amino IQ without making the proper verification.

57. Furthermore, the CCES submits that the Athlete failed to complete the necessary investigative steps to verify the Amino IQ supplement before using it and that he failed to exercise an appropriate level of care, which is reasonably expected from an elite athlete.

58. Finally, the CCES claims that the Athlete's period of ineligibility should be between 16 and 20 months since it considers that his degree of fault is significant.

## **VII. APPLICABLE RULES**

### **Canadian Anti-Doping Program (CADP)**

59. The CADP is largely based on the WADA Code.

60. Under Article 1.3 of the CADP, Athletes and other Persons accept the CADP as a condition of participating in sport and shall be bound by the rules contained in the WADA Code and the CADP.

61. An athlete is defined in the CADP definitions (Appendix 1) as someone who competes in sport at the international level or at the national level. Mr. McDonald is an individual who fits this description, therefore he is bound by the CADP and there were no objections to this effect.

62. The following provisions of the CADP rules are particularly relevant to the present proceedings. It should be noted that these provisions are repeated, almost word for word, in the WADA Code:

#### ***2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample***

*2.1.1 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 or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

*2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete*

*waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

[...]

### **10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

*10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.*

#### *10.5.1.1 Specified Substances*

*Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.*

[Underline added]

[...]

## **APPENDIX 1 DEFINITIONS**

**Fault:** *Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations*

such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

[underline added]

#### 10.11.2 Timely Admission

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by CCES, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility already has been reduced under Article 10.6.3.

[underline added]

#### WADA Code

63. Articles 2.1, 10.5, 10.11.2 as well as Appendix 1 of the CADP are largely based on articles 2.1, 10.5, 10.11.2 and Appendix 1 of the WADA Code.



64. The WADA Code is also complemented by the International Standards, which include WADA's Prohibited List.

65. WADA's 2018 Prohibited List included the following provision regarding higenamine:

*S3. BETA-2 AGONISTS*

*All selective and non-selective beta-2 agonists, including all optical isomers, are prohibited. Including, but not limited to:*

*[...]*

*Higenamine*

*[...]*

## **VIII. RELEVANT JURISPRUDENCE**

66. Both parties submitted several authorities to support their arguments. For the sake of brevity, I will focus on the existing jurisprudence that is most relevant to this case.

*Cilic v. International Tennis Federation, CAS 2013/A/3327*

67. Even though it was rendered before the adoption of the 2015 WADA Code, this case is probably the most relevant because it sets the principles applicable to the length of the period of ineligibility for Specified Substances under certain circumstances.

68. In this decision, Mr. Cilic, a professional tennis player, tested positive to N-ethylnicotinamide, a metabolite of nikethamide, which is prohibited in competition. The Anti-Doping Tribunal of the ITF imposed a period of ineligibility of nine (9) months. Mr. Cilic appealed this decision to the Court of Arbitration for Sport.

69. In its analysis, the Panel establishes three degrees of fault:

- a. *Significant degree of or considerable fault;*
- b. *Normal degree of fault;*
- c. *Light degree of fault.*

70. Applying these three degrees of fault to the possible sanction range of 0 to 24 months, the Panel arrives at the following sanction ranges:

- 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;*
- c. *Light degree of fault: 0-8 months, with a “standard” light degree of fault leading to a suspension of 4 months.*

71. In this decision, the Tribunal stated the following:

*71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*

*72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*

73. *The subjective element can then be used to move a particular athlete up or down within that category.*

74. *Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.*

*aa) The objective element of the level of fault*

*At the outset, it is important to recognize that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.*

75. *However, an athlete cannot be reasonably expected to follow all of the above steps in every and all circumstances. Instead, these steps can only be regarded as reasonable in certain circumstances: [...]*

72. In the end, the Panel found that it was a “standard” case of light degree of fault and determined that the appropriate amount of time was in the middle of the applicable range of 0-8 months, i.e. four (4) months. Therefore, Mr. Cilic was suspended for a period of four (4) months.

## **IX. DISCUSSION**

73. Objectively, this is not a case where the Athlete should have consulted a doctor, should have received better anti-doping education, nor should have been more careful in choosing his supplements. His main fault was to have

been negligent by failing to verify all the ingredients contained in a new brand of supplements he started to use.

74. I am mindful, and grateful, for the Parties to have ensured that the whole picture has been presented before me in order to set the Athlete's anti-doping obligations.

75. In the end, the Athlete was aware of his anti-doping obligations. He made a simple, but important, mistake by stopping short of consulting all the ingredients on the label. That was his main error, for which there must be a consequence.

76. I commend both Parties for having been reasonable and articulate in their representations. They have not made outrageous requests, and have been levelled and balanced in their admissions throughout the process. The Athlete rapidly admitted his fault, provided full disclosure. The CCES was quick not to label him a cheater and agreed that the Athlete bears no Significant Fault or Negligence.

77. In *Cilic*, the Court of Arbitration for Sport established a 2-part test: one containing an objective analysis, the other one subjective. The objective analysis describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective analysis describes what could have been expected from that particular athlete, in light of his personal capacities.

78. The **objective** analysis requires that the Athlete comply with the following steps: (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.

79. I found that the Athlete complied with most of the objective elements<sup>3</sup>. He was, however, nonchalant by failing to verify all the ingredients on the label. Had he done so, not only would his degree of fault have certainly been reduced to *light*, but in fact, he would most definitely not have purchased the product, after having verified higenamine against the Global DRO website. Naturally, he would not have returned an AAF.

80. It is only because I have been persuaded that the Athlete has exercised most of the steps contained in the objective analysis that I have not considered that the Athlete bears a significant degree of, or considerable fault.

81. Now, turning to the analysis of the subjective elements, the sliding scale guides me to consider a sanction that ranges between 8 and 16 months, based on what could have been expected from a reasonable person in the Athlete's position.

82. The Athlete was 19 years-old at the time of the sample, it was the first time that he was tested, and he demonstrated transparency and humility when confronted with his mistake. His testimony was nothing short of candid and open. BCAAs are known to be a recovery product, not performance-enhancing, and generally not associated with Prohibited substances.

83. While I may have been tempted to apply the lower end of the scale when considering the sanction (8 months), I found that his opinion of the importance of following the CCES doping online education e-course, at the time, lacked seriousness. This was echoed by his brother's testimony, and what seems to be his football team's overall approach. Perhaps if the

---

<sup>3</sup> Because of the nature of the product (BCAA) and my overall understanding of the particulars of this case, I have chosen to depart from the *Cilic* requirement to require the consultation of a physician, and to ignore this criterion. To impose this requirement in the analysis of the objective requirement would simply not make sense, under this reality.

importance of this course had been reinforced by the Athlete and his entourage, he would have paid more attention to the full list of ingredients on the package. For this lack of seriousness towards the anti-doping program, I have counted 2 months of suspension, scaling up from the suggested 8-month baseline of the *normal degree of fault*.

## **X. DECISION**

CONSIDERING the documentary evidence and testimonies:

I find that Grant McDonald has committed an anti-doping rule violation under Rule 2.1 of the Canadian Anti-Doping Program.

CONSEQUENTLY, Grant McDonald is declared ineligible for a period of ten (10) months, beginning on November 3, 2018, the date of sample collection, considering the Athlete's timely admission of the rule violation, and ending on September 2, 2019.

I retain jurisdiction with respect to any issue which may arise concerning the interpretation or implementation of this decision.

Signed in Montreal, on April 8<sup>th</sup>, 2019.



---

Patrice Brunet, arbitrator