

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

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

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND A VIOLATION OF THE ANTI-DOPING RULES ALLEGED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT AGAINST ALEXIS BARRIÈRE

No.: SDRCC DT 19-0308
(Anti-Doping Tribunal)

Canadian Centre for Ethics in Sport
(CCES)

Boxing Canada

-and-

Alexis Barrière (Athlete)

-and-

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

BEFORE: Ross C. Dumoulin

APPEARANCES:

For the Athlete:

Mr. Gabriel Brault

For the Canadian Centre for Ethics in Sport:

Mr. Yann Bernard
Ms. Catherine Cayer

PRELIMINARY DECISION

September 14, 2019

[1] I was selected by the Parties pursuant to paragraph 6.8(b)(i) of the *2015 Canadian Sport Dispute Resolution Code (Code)* and appointed as Arbitrator to preside the Anti-Doping Tribunal by the Sport Dispute Resolution Centre of Canada (SDRCC) in order to examine and decide in the matter hereto. My appointment was confirmed by the SDRCC pursuant to paragraph 6.9(a) of the *Code*.

[2] This preliminary dispute relates to the Athlete's request to have his Provisional Suspension lifted.

[3] On January 14, 2019, in Montreal, Quebec, during an out-of-competition doping test, the Athlete provided a urine sample that produced an adverse analytical finding. The analysis certificate indicates the presence of "Stanozolol metabolites" (in the English certificate), a prohibited substance (anabolic agent) according to the 2019 Prohibited List of the World Anti-Doping Agency (WADA).

[4] The CCES received the adverse analytical finding from the WADA-certified laboratory on February 1st, 2019.

[5] A Notification from the CCES dated February 21, 2019 was sent to Boxing Canada and partly reads as follows:

This letter is a Notification under Rule 7.3.1 of the *Canadian Anti-Doping Program (CADP)*. The Canadian Centre for Ethics in Sport (CCES) asserts that Mr. Alexis Barrière, an athlete affiliated with Boxing Canada has committed an anti-doping rule violation.

The sample giving rise to the adverse analytical finding was collected out of competition on January 14, 2019, in Montréal, QC [...] The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory [...], indicating the presence of Stanozolol metabolites (S1

Anabolic Agents) classified as a prohibited substance on the 2019 World Anti-Doping Agency (WADA) Prohibited List.

[...]

The CCES asserts that Mr. Barrière has committed an anti-doping rule violation pursuant to Rule 2.1 of the CADP (Presence in Sample). As this would be a first violation, the CCES proposes that the sanction be a four (4) year period of ineligibility (in accordance with Rule 10.2.1 of the CADP).

Furthermore, effective the date of this Notification and in accordance with CADP Rule 7.9.1, the CCES hereby imposes a mandatory provisional suspension on Mr. Barrière. This provisional suspension means that Mr. Barrière is temporarily barred from participating in any *Competition* or other activities until such time as a decision is rendered by a Doping Tribunal, or a waiver of hearing is filed.

[6] On April 18, 2019, Mr. Barrière signed an admission pursuant to Rule 10.11.2 of the CADP in which he states, "I [...] admit to the violation that has been asserted against me by the CCES in the Notification [dated February 21, 2019] described above". He confirms that he "[has] not participated in any competition subsequent to [his] receipt of the CCES' Notification". The admission specifies that Mr. Barrière "[may] still attempt to have the sanction [reduced] [...]"

[7] Counsel for Parties agreed that the deadline to file the Athlete's submissions would be August 27, 2019 (extended until August 30th) and the deadline to file the CCES' submissions would be September 27, 2019.

[8] On August 30, 2019, Mr. Brault, Counsel for the Athlete, filed through the SDRCC Case Management Portal (CMP) its submissions and a detailed narrative of the alleged facts, with supporting documents, including two scientific reports from a laboratory. The Athlete's position is that a contaminated product is the

cause of the anti-doping rule violation since the stanozolol metabolites found in the urine samples come from this product he had unintentionally and unknowingly consumed. During an evening with friends on January 12, 2019, two days before the collection of the urine samples, his best friend, as a joke, had allegedly crushed two tablets of the said product into the Athlete's rum and Coke while the latter was not looking in that direction.

[9] According to the submissions filed by Mr. Brault, Ciaplex 25 is a contaminated product as described in *Appendix 1* of the CADP, since this product contained a prohibited substance, stanazolol, which was not disclosed on the product's label or in the information available during a reasonable search on the Internet. Hence, the degree of fault or negligence by the Athlete is very low, even nonexistent, and begs a reprimand with no period of ineligibility.

[10] On September 4, 2019, or three business days after filing his submissions, Mr. Brault filed through the CMP a request for a hearing to lift the Athlete's Provisional Suspension. The purpose of lifting the suspension would be to enable the Athlete to attend a boxing gala on September 20, 2019, organized by Groupe Yvon Michel, to help raise funds for Défi AlterGo, an organization working to support athletes with a disability. The Athlete invokes Rule 7.9.3.1 of the CADP to support the lifting of his Provisional Suspension.

[11] On September 6, 2019, the CCES filed its reply to the Athlete's request through the CMP. In respect of its position, the CCES stated it was "currently examining the validity of the Athlete's request to have the Provisional Suspension lifted pursuant to Rule 7.9.3.1 of the CADP, and more specifically, the Athlete's theory in which he states the violation involved a contaminated product (Rule 7.9.3.1 d) of the CADP)."

[12] On September 10, 2019, a hearing via telephone conference was held concerning to the Athlete's request to have his Provisional Suspension lifted. The Athlete testified during this hearing and confirmed several details about the events that took place on the evening of January 12, 2019. Mr. Yann Bernard, Counsel for the CCES, indicated that the CCES was still in the process of examining the Athlete's allegations concerning the contaminated product. He filed a report by Professor Christiane Ayotte, Director of the *INRS-Institut Armand-Frappier* Doping Control Laboratory, dated September 10, 2019.

[13] In her report, Prof. Ayotte provides an account of the evidence adduced by the Athlete regarding two bottles of contaminated product Ciaplex 25 mg, one bottle already opened, the other still sealed, which were sent by the Athlete for analysis to a private lab, located in the United States. She adds that a third bottle of Helix Pharma Ciaplex of the same origin "would have been sent to her over the past few days for confirmation of the analysis". Then, Prof. Ayotte states:

At this stage, it is impossible for me to conclude that the described scenario explains the results obtained from the analysis of urine sample 4316811. Briefly, the items that must be established more specifically are the following:

i) To date, it has not been possible for us to obtain Helix Pharma Cialis [sic] (Ciaplex) 25 mg from an independent source, nor any other product from this "company". Consequently, the Athlete, or his friend who had them in his custody, handled all of the bottles and tablets. One cannot exclude product manipulation.

[14] Prof. Ayotte listed several other items to be established more specifically, and concludes as follows:

In conclusion, based on the Athlete's explanation, one cannot objectively admit at this stage that the origin of the stanozolol metabolites stems from taking Cialis [sic] (Ciaplex), which was contaminated by it. It is possible that additional information expected from Korva Labs, as well as from our

analysis of the Cialis [sic] (Ciaplex), will lead to a different conclusion, but not at this time based on the evidence made available.

ANALYSIS AND DECISION

[15] Rule 7.9.3.1 of the CADP reads partly as follows:

A Provisional Suspension imposed pursuant to Rule 7.9.3.1 or 7.9.2 shall not be lifted unless the *Athlete* or other *Person* establishes that:

[...]

b) the *Athlete* or other *Person* has a strong arguable case that he/she bears *No Fault or Negligence* for the anti-doping rule violation(s) asserted, so that any period of *Ineligibility* that might otherwise be imposed for such a violation is likely to be completely eliminated by application of Rule 10.4; or

[...]

d) the violation is likely to have involved a *Contaminated Product*.

[16] The CADP definition of Contaminated Product reads as follows:

A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.

[17] Mr. Brault claims that the evidence provided with his submissions filed on August 30, 2019 and during the Athlete's testimony establishes that the Athlete has a strong arguable case to prove that he has committed no Fault or Negligence for the alleged anti-doping rule violation under Rule 7.9.3.1 b) of the CADP. The lawyer also claims that this evidence establishes that the violation likely involved a contaminated product under Rule 7.9.3.1 d) of the CADP.

[18] But it appears clear to me that the CCES has not yet had a fair and reasonable opportunity to examine the Athlete's request to have the Provisional Suspension lifted and to possibly counter his evidence related to the product he contends to be contaminated. On September 4, 2019, Mr. Brault filed through the CMP a request for a hearing to have the Athlete's Provisional Suspension lifted.

On September 6, 2019, in its reply to the Athlete's request, the CCES simply stated that they "are currently in the process of examining the validity of the Athlete's request to have the Provisional Suspension lifted".

[19] On September 10, 2019 at 6 pm, only four business days after filing the Athlete's request for a hearing to have his Provisional Suspension lifted, a hearing via telephone conference was held to address such request. Mr. Bernard, Counsel for the CCES, mentioned that the CCES was only beginning its analysis of the Athlete's allegations concerning the contaminated product. I believe him. He pointed out that the CCES was in the process of verifying the evidence submitted by the Athlete. Indeed, the following excerpts from Prof. Ayotte's report, dated September 10, 2019, show that this process is far from over:

At this stage, it is impossible for me to conclude that the described scenario explains the results obtained from the analysis of urine sample 4316811. Briefly, the items that must be established more specifically are the following:

i) To date, it has not been possible for us to obtain Helix Pharma Cialis [sic] (Ciaplex) 25 mg from an independent source, nor any other product from this "company". Consequently, the Athlete, or his friend who had them in his custody, handled all of the bottles and tablets. One cannot exclude product manipulation.

[...]

In conclusion, based on the Athlete's explanation, one cannot objectively admit at this stage that the origin of the stanozolol metabolites stems from taking Cialis [sic] (Ciaplex), which was contaminated by it. It is possible that additional information to come from Korva Labs, as well as from our analysis of the Cialis [sic] (Ciaplex), will lead to a different conclusion, but not at this time based on the evidence made available.

[20] As mentioned by Mr. Bernard, the CCES was caught off guard by the Athlete's hasty request. The CCES has not yet had the opportunity to obtain a sealed bottle of the product in question. The Tribunal cannot decide if the

violation likely involved a contaminated product solely based on the factual version of only one of the Parties.

[21] It is difficult and even hazardous for the Tribunal to assess the extent to which the arguments that show the Athlete committed no *Fault or Negligence* for the alleged anti-doping rule violation are strong and defensible, without consideration of the evidence and arguments by the opposing Party. I cannot render a decision as to whether or not the suspension normally imposed for such a violation is likely to be completely lifted based on the application of Rule 10.4 without giving the CCES the chance to present its evidence after having had a full opportunity to conduct the research it deems appropriate. Counsel for the Parties had previously agreed that the deadline to file the CCES' submissions would be September 27, 2019. Therefore, I must grant the CCES this delay to complete its analysis.

[22] Unfortunately for the Athlete, the event in which he wanted to participate will be held on September 20, 2019, but for the reasons stated above, lifting his Provisional Suspension at this stage is not justified, given the current circumstances. His request is therefore denied.

Ottawa, on September 14, 2019

Ross C. Dumoulin
Arbitrator