

**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)**

**N°: SDRCC DT 21-0325  
(DOPING TRIBUNAL)**

**CANADIAN CENTER FOR ETHICS IN SPORT  
(CCES)**

**CANADIAN POWERLIFTING UNION  
(CPU)**

**AND**

**DARREN GAGNON-MALTAIS  
(ATHLETE)**

**AND**

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

**TRIBUNAL DECISION**

**INTRODUCTION**

1. The Canadian Centre for Ethics in Sport ("CCES") has charged Mr. Darren Gagnon-Maltais ("the Athlete") with an Anti-Doping Rule Violation ("ADRV") for the presence and use of a prohibited substance or its metabolites or markers, namely, LGD-4033 (or "Ligandrol") in violation of Rules 2.1 and 2.2 of the Canadian Anti-Doping Program ("CADP").
2. The Athlete denied intentional use of LGD-4033 and submitted that a reduction in his four-year presumptive sanction is warranted due to his lack of intent, fault, and significant negligence.

**PARTIES**

3. The Athlete is a member of the Canadian Powerlifting Union (CPU), the national federation governing powerlifting in Canada. The CPU and all its members, including the Athlete, are subject to the CADP.
4. The CCES is an independent, not-for-profit organization responsible for the maintenance and administration of the CADP, including the provision of anti-doping services to national sport organizations and their members. The CCES is a signatory to the World Anti-Doping Code.

## **THE UNDISPUTED FACTS**

5. On August 1, 2021, the Athlete was tested out-of-competition by the CCES in Donnacona, QC on behalf of the CPU and provided a urine sample bearing the code number 4518996. He signed the doping control form confirming that the test was conducted properly.
6. Sample 4518996 was sent to the *Institut national de recherche scientifique* (INRS) in Laval, QC, a laboratory accredited by the World Anti-Doping Agency ("WADA"), and its analysis revealed the presence of metabolites of LGD-4033 (Ligandrol).
7. The 2021 WADA Prohibited List classifies LGD-4033 and its metabolites as a prohibited substance under Class S4: Hormones and Metabolic Modulators. Its use is prohibited in-competition and out-of-competition under the CADP.

## **PROCEEDINGS**

8. Having completed its initial review required by CADP Rule 7.2, on September 2, 2021, the CCES notified the Athlete of this Adverse Analytical Finding and the option to voluntarily accept a Provisional Suspension in accordance with CADP Rule 7.4. The CCES also informed the Athlete that he had until September 9, 2021 to exercise his right to have his B sample analyzed and to provide an explanation for the Adverse Analytical Finding for Ligandrol.
9. On September 12, 2021, the Athlete voluntarily accepted a provisional suspension.
10. On September 16, 2021, having noted the Athlete's silence regarding the B Sample analysis, the CCES notified the Athlete that it considered that he had waived his right to the B Sample analysis and that, pursuant to Rule 2.1.2, he had committed a violation of the CADP. The CCES invited the Athlete to choose from five (5) options and to confirm by October 6, 2021 his position with respect to the alleged CADP violation.
11. The Athlete did not choose any of the results management options, viz. to make an admission and enter into a settlement agreement in order to receive a one-year reduction of his presumptive sanction. The Athlete chose the fourth option available to him and requested a hearing before the SDRCC Doping Tribunal for a decision regarding the appropriate consequences.
12. On October 11, 2021, by mutual agreement of the Parties, the SDRCC informed the Parties that Janie Soublière had been appointed as the sole Arbitrator to decide this matter.
13. On October 20, 2021, a preliminary meeting was held at which the Athlete conceded that he had violated the CADP and clarified that the hearing would be limited to the appropriate consequences arising from his ADRV. This is important because it confirms that the CCES had established a breach of the CADP (pursuant to CADP Rule 2.1.1), and, therefore, the Athlete will be the first to make submissions to the Tribunal. A procedural schedule was set accordingly.

14. The schedule was adhered to by both Parties. The filing of submissions was in accordance with the schedule and the video conference hearing was held as scheduled on January 18, 2022.
15. Present at the hearing were Me Janie Soublière, Arbitrator, Me Marc Olivier Brouillette and Darren Gagnon-Maltais for the Athlete and Me Annie Bourgeois, Me Thomas Stelmazuk-Coté and Mylène Lee for the CCES. Chris Robb of the CPU declined to attend as an observer.
16. The witnesses called by the Athlete and heard were the Athlete and Dave Powell, the Athlete's powerlifting coach. No witnesses were called by the CCES.
17. At the conclusion of the hearing, all Parties confirmed that their rights to be heard and to make representations had been respected and that they were satisfied that the disciplinary process was conducted in an independent and impartial manner.

## **JURISDICTION**

18. According to CADP Rule 8.1.2, the SDRCC Doping Tribunal has the jurisdiction to constitute an Anti-Doping Panel to hear and determine any anti-doping matter.
19. Having been appointed by mutual agreement of the Parties, the Parties did not challenge my appointment to the Doping Panel as sole Arbitrator or the jurisdiction of the Tribunal to preside and render a decision in this matter.

## **APPLICABLE RULES**

20. It is undisputed that the CADP applies to this proceeding. The relevant rules follow.
21. CADP Rule 2 describes the circumstances and conduct that constitute anti-doping rule violations.
22. Under CADP Rule 2.1, the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample constitutes an anti-doping rule violation:

*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 Rule 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.*

23. CADP Rule 10.2.1 states: (emphasis mine)

*10.2.1 The period of Ineligibility, subject to Rule 10.2.4, shall be four (4) years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, **unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.***

*[Comment to Rule 10.2.1.1: While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, **it is highly unlikely that in a doping case under Rule 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.**]*

*10.2.1.2 The anti-doping rule violation does not involve a Specified Substance or a Specified Method and the CCES can establish that the violation was intentional.*

24. CADP Rule 10.2.3 defines intentional as follows (emphasis mine):

*As used in Rule 10.2, the term "intentional" is meant to identify those Athletes or other Persons **who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.** (...)*

## **SUBMISSIONS**

25. The submissions and arguments of the Athlete and the CCES, as well as the precedents they rely upon, have all been carefully considered. The submissions of the Parties are summarized below in summary form.

### **The Athlete**

26. The Athlete submitted that he had not consumed a product containing any of the ingredients on the 2021 World Anti-Doping Agency Prohibited List and that he strongly believed that he had consumed a contaminated product.

27. The Athlete submitted that the product "Kaos" would likely be the source of the positive result considering the following:

- a. It was the first and only time that the Athlete used the product "Kaos";
- b. The Athlete had never tested positive for doping prior to August 1, 2021 despite having been subject to multiple doping tests;

- c. The Athlete began consuming the product "Kaos" shortly before the August 1, 2021 sample collection in preparation for the August 21, 2021 competition;
  - d. The Athlete had discontinued the use of the product "Kaos" approximately two (2) weeks after the August 1, 2021 collection;
  - e. On August 21, 2021 another sample was taken from the Athlete; and
  - f. The Athlete's August 21, 2021 sample tested negative for prohibited substances.
28. The Athlete claimed that he had not been adequately educated about the dangers of supplements. He explained that he had very little experience in organized sport, that he is a young athlete who had not had a thorough education on the subject. He alleged that at no time did Mr. Nicolas Déry, a person in a position of authority to whom the Athlete asked several questions related to anti-doping, advise him to check the said products on websites such as Global DRO in order to validate whether they contained prohibited substances. Nevertheless, he did approach Mr. Déry, his coach Mr. Powell, and the salesclerks and relied on their advice. He admitted his mistake in this regard.
29. The Athlete also submitted that he was cautious in noting prior to use that the product "Kaos" had a Canadian flag on its label, which flag the Athlete, despite his limited education about anti-doping rules, interpreted as being an NSF and/or Informed Choice product. He mistakenly believed that the product was certified and therefore did not contain any prohibited substances.
30. The Athlete finally submitted that it would be manifestly contrary to the rules of natural justice for him to be prejudiced by the fact that: a) The Kaos product purchased and consumed by the Athlete is no longer available to collect a sample due to the length of time that had elapsed between the date of purchase (June 2, 2021) and the date he was informed of the Adverse Analytical Finding (September 2, 2021); b) He had neither the resources nor the financial means to attempt to track down a manufacturer's lot number and to have an independent analysis performed in a specialized laboratory in order to confirm the contamination of the product.
31. Summarily, the Athlete explained that he did not intentionally take the substance "SARM LGD-4033 metabolite" and added that it was not mentioned in the list of ingredients of the product "Kaos".
32. In conclusion, the Athlete submitted that it was clear from the evidence of record and the factual background that he had no intent to commit an anti-doping rule violation and that there was no significant fault or negligence on his part and that his sanction should be reduced.

## **The CCES**

33. The CCES submitted that the Athlete admitted in his submissions that he committed an ADRV (presence of Ligandrol in his body). Furthermore, pursuant to CADP Rule 2.1.2, the Athlete was deemed to have committed an ADRV as he had waived his right to request a B sample urine analysis.
34. The CCES disagrees with the Athlete's position and rejects his arguments that (i) his product Kaos is likely the source of his positive result, (ii) he exercised due care and

diligence, (iii) he did not knowingly consume the Ligandrol and (iv) there was no significant fault or negligence on his part.

35. Relying on CADP Rules 10.2.1 and 10.2.3, the CCES submits that in order to prove that his ADRV was not intentional, the Athlete must prove, in accordance with CADP Rule 10.2.3:

- i. That he did not knowingly or willingly consume Ligandrol; and/or
- ii. That he did not engage in conduct that constituted a significant risk that he would commit an ADRV and manifestly disregarded that risk.

36. The CCES, relying on several decisions of the Court of Arbitration for Sport (CAS), argued that there is a jurisprudential consistency that an athlete will only succeed in proving the absence of intent without proving the source of the prohibited substance in the most exceptional cases, and that this case is not one of them.

37. The CCES is of the view that only if the Athlete is able to demonstrate, on a balance of probabilities, how Ligandrol entered his body that the Tribunal can analyze/assess whether his ADRV was unintentional (i.e., that the Athlete did not knowingly or intentionally consume Ligandrol and did not engage in conduct that constituted a significant risk of committing an ADRV and manifestly disregarded that risk). Otherwise, it is only in very exceptional cases that an athlete can show lack of intent without proving how the substance entered his metabolism.

38. In the event that no concrete evidence was submitted as to how the prohibited substance entered the Athlete's body, as the CCES submitted is the case here, the burden is on the Athlete to show that his ADRV was unintentional even if he did not know how the prohibited substance entered his body. This burden rests with the Athlete and in the view of the CCES, the explanation he offered is only a theory and is clearly insufficient to meet his burden of establishing, on a balance of probabilities, the source of the Ligandrol. To summarize:

- The CCES education program contains, inter alia, an entire section dedicated to the dangers of taking supplements including an explanation of how to read supplement labels and what logos to look for to confirm their certification. It is unfortunate that the Athlete did not pay more attention to the course content - but that is the Athlete's responsibility.
- The two pieces of evidence submitted by the Athlete, i.e., the bank statement submitted that he made a purchase at the Venice Gym Charles Bo on June 2, 2021, does not in any way demonstrate the alleged purchase of Kaos and the photo of a bottle of Kaos cannot constitute sufficient evidence to support his claim that the Ligandrol came from this product.
- The Athlete's behavior is far from exemplary, and the extent of his actions are laconic and correspond to the second part of Rule 10.2.3.
- There is a total lack of concrete, real, corroborated, and verifiable evidence of how the Ligandrol got into his body.

39. The CCES therefore submitted that the Athlete who is subject to the CADP has strict objective liability for any substance found in his system. In the view of the CCES, the

Athlete did not establish the source of the Ligandrol and failed to discharge his burden under Rule 10.2.3 of the CADP. Finally, in the view of the CCES, the Athlete engaged in conduct that constituted a significant risk that he would commit an ADRV and manifestly disregarded that risk.

40. The CCES also noted that Kaos is not “Informed Choice”, “NSF”, or “GMP” certified (all of which are assured marks of reliability), that the Kaos manufacturer's website does not appear to be reliable or reputable, and that based on product descriptions on a Kaos supplement retailer's website, there are clear risks that Kaos may contain prohibited substances.

41. The CCES explained that:

- Some of the ingredients on the Kaos ingredient list cannot be found on the Global DRO site. Therefore, the Athlete was taking a risk by choosing to consume it.
- The Athlete's checks against the Kaos were insufficient and very succinct in both 2020 and 2021.
- All athletes are responsible for the products they ingest.
- The risks of taking supplements are well known.
- The Athlete had completed the CCES True Sport course in 2020.
- The Athlete had been tested 3 times in the past for doping.
- The Athlete made incomplete approaches to the Quebec Powerlifting Federation, his coach and clerks to discuss supplements.
- The Athlete knew or should have known that by obtaining supplements, including Kaos, there was a significant risk that he would commit an ADRV.

42. In short, the CCES submitted that given the Athlete's admission of an ADRV (presence of Ligandrol in his body) and the fact that the evidence does not demonstrate, on a balance of probabilities, the unintentional nature of the ADRV (no evidence of how the substance entered his body and no evidence of exceptional circumstances), the mandatory period of ineligibility of four (4) years must be imposed by this Tribunal.

## **QUESTIONS TO BE DECIDED**

*A. Has the CCES established that the Athlete has committed a CADP violation?*

*B. Intent and Fault*

- *Is the Athlete's Violation unintentional so that the Athlete may benefit from the application of CADP Rule 10.2.2?*
- *If the Athlete satisfies the Tribunal that he qualifies under Rule 10.2.2, may the Athlete receive a further reduction in his period of ineligibility after having established the origin of the Ligandrol?*

## **DELIBERATIONS**

### A. Has the CCES established that the Athlete has committed a CADP violation?

43. CADP Rule 2.1.2 states that:

*Sufficient proof of an anti-doping rule violation under Rule 2.1 is established when the presence of a Prohibited Substance is detected in the A Sample, the B Sample is analyzed, and following analysis of the B Sample, the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample is confirmed.*

44. Ligandrol is a non-specified prohibited substance which was detected by the INRS Laboratory analysis of the Athlete's A sample. The ADRV was confirmed by the fact that the Athlete waived his right to the analysis of the B sample.

45. As a result of the foregoing review, and the Athlete's admission during the preliminary meeting, the Tribunal is satisfied that the CCES has met its burden of proof and established a violation of the CADP through the presence of Ligandrol in the Athlete's A sample, the waiver of analysis of his B sample and his admission before the Tribunal. The presence of Ligandrol in violation of CADP Rule 2.1 is therefore manifestly established.

46. It remains for the Tribunal to deliberate on the applicable consequences.

### B. Intent and Fault

- *Does CADP Rule 10.2.1.1 apply and can the Athlete benefit from the application of CADP Rule 10.2.2?*

#### *Burden of proof*

47. Since the CCES established that the Athlete has violated the CADP, the burden of proof is reversed. It is up to the Athlete to establish specific facts or circumstances that may justify a reduction in the sanction. The standard of proof to support this must be established on a balance of probabilities as per CADP Rule 3.1.

48. Under CADP Rule 2.1.1, it is the responsibility of each athlete to ensure that no prohibited substances enter their system. The presence of a prohibited substance is a breach of this obligation and is the basis upon which a period of ineligibility may be applied under CADP Rule 10.
49. Pursuant to CADP Rule 10.2.1(a), unless this Tribunal can be satisfied by a balance of probabilities that his violation of the CADP was not intentional, the applicable suspension period is 4 years.
50. The Athlete is asking the Tribunal to reduce the four-year period of presumptive suspension provided for in CADP Rule 10.2.1 because he submitted that his use of LGD-4033 was unintentional. At the hearing, counsel for the Athlete requested first a reduction to a two-year sanction and then a reprimand.
51. The Athlete's defense rests on a protest of innocence based solely on his word and the content of text message exchanges, his assertion unsupported by concrete or reliable evidence that his violation was unintentional due to his lack of education, and an assumption that LGD-4033 was likely in his Kaos supplement which he used for a few weeks and then stopped using, without having analyzed the supplement to demonstrate this.
52. Without conducting an analysis of his supplements to try to establish that they were the origin of the Ligandrol, as advised by the CCES course, it is difficult for the Athlete to meet his burden of proof in this regard. Just as the Athlete was unable to establish the origin of the Ligandrol in his urine sample on the balance of probabilities, he also failed to provide any evidence that he took the necessary precautions to avoid ingesting prohibited substances - necessary precautions, in the absence of exceptional circumstances, called for by CADP Rules 10.2.1.1, 10.6.1 and 10.6.2.
53. In truth, as submitted by the CCES, and as he must acknowledge, the Athlete presented no tangible or compelling evidence with respect to his lack of intent or reliable evidence to support his assumption that Kaos is the likely origin of the Ligandrol found in his urine - elements which are virtually essential to a reduction of the presumptive 4-year sanction as clearly set out in CADP Rule 10. 2.3 which defines the word "intentional" as used in the CADP, and to a reduction in sanction under Rules

10.2.1.1, 10.6.1 or 10.6.2 and as established in numerous CAS decisions cited by the CCES<sup>1</sup>.

*The CADP definition of "intentional"*

54. The CADP provides a stringent definition of "intentional" as defined in the World Anti-Doping Code. The term

*"intentional" as used in the CADP and the World Anti-Doping Code is intended (inter alia) to identify athletes or other Persons who engaged in conduct that they knew constituted an anti-doping rule violation or that there was a significant risk that it might constitute or result in an anti-doping rule violation, and manifestly disregarded that risk.*

55. That the Athlete did not knowingly take the Ligandrol, which is necessarily a possibility as alleged, is not relevant to the present determination of the intentional nature of the violation as defined by the CADP. What matters most under the CADP is that he engaged in conduct that he knew constituted an anti-doping rule violation or that there was a risk that such a violation might result.

56. Although the Athlete alleged that the education provided by the CCES was not sufficient, this argument is rejected - the education program offered by the CCES is internationally recognized and is comprehensive and thorough - particularly with respect to the risks associated with supplementation. The Arbitrator notes in this regard that in the evidence of record (CCES-01), pages 103 to 144 of the CCES education program specifically address the risks associated with supplementation, as pointed out by CCES counsel at the hearing. Furthermore, the Athlete by his own admission conceded at the hearing that when he took the CCES course [translation] *"he was at work, was distracted during his exam week and was doing something else at the same time"*. He was not paying attention as he should have been, and this was to his detriment.

57. His text exchanges with Nicolas Déry also specifically warned him to avoid using supplements and should have served as an additional deterrent:

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<sup>1</sup> CAS 2016/A/4377, CAS 2016 / 4662, CAS 2015/A/4563, CAS 2016/A/4626, CAS 2016/A/4845, CAS 2016/A/ 4534, CAS 2016/A/4919, CAS 2018/A/5784.

[translation] *"Don't take any shit besides protein, creatine and caffeine and you'll be safe"*.

58. Alas, this was not the case, and the Athlete went on to use Kaos and other supplements - all of which could conceivably be the origin of Ligandrol.
59. Furthermore, although the Athlete claimed that the Canadian flag mark on his supplement led him to believe that it was a "safe" product, his text message exchange with Nicolas Déry, and the photos included, indicate instead that it was the "Informed Choice" label that was to be looked for as a certification of the manufacturer and not a Canadian flag - which as written on the same photo only means "Made in Canada" i.e., that "the product is made in Canada".
60. The Athlete himself admitted at the hearing that he spoke to the salesclerk about the Kaos product, and that he assured him 1. That Kaos contained caffeine, 2. That it tasted good. 3. That it was reasonably priced. He says that he asked the clerk [translation] *"in passing"* if he believed the product was certified and that the clerk reportedly said [translation] *"he wasn't sure but he said yes in a vague way"*, and conceded that he did not undertake any further research online, on the Global DRO site or otherwise because [translation] *"a year later, he didn't remember much about the fact that it was possible that there might be Prohibited Substances in these products"*. The CCES submitted that the salesclerk's response should have immediately prompted further investigation by the Athlete. The Arbitrator agrees with the CCES on this point. Following his CCES course, as is his obligation as an Athlete subject to the CADP, the Athlete should have been warned and recognized the risks associated with the use of all his supplements. He should have adopted a prudent and diligent behaviour that would have allowed him to avoid unknowingly ingesting Ligandrol. Any athlete subject to the CADP (and the World Anti-Doping Code) has this strict regulatory obligation. Unfortunately for the Athlete, it is unavoidable.
61. CAS jurisprudence has long established this obligation of all athletes to avoid ingesting prohibited substances. In this regard, an excerpt from the CAS Advisory Opinion - FIFA and WADA (CAS 2005/C/976 & 986, April 21, 2006), which has often been invoked in doping cases, describes well in paragraph 73 the *"duty to exercise utmost caution"* that is imposed on all athletes subject to anti-doping rules. Specifically, in that same paragraph, CAS emphasizes that:

*“... this standard is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition...”*

62. In his testimony, the Athlete seemed sincere, friendly and passionate about powerlifting. His coach, Mr. Powell, testified that his work ethic has always been outstanding, both at school, with his family, at work and in powerlifting. Therefore, the Athlete cannot necessarily be accused of a premeditated or voluntary ADRV. The Arbitrator accepts that the Athlete did not want to and did not know that he had consumed Ligandrol.

63. However - as submitted by the CCES in its written and oral submissions - this does not meet the definition of an "intentional" ADRV under the CADP and more specifically its second component. Thus, although he says that he was not aware that his behaviour could result in an ADRV, the definition of "intentional" in Rule 10.2.3 explains instead that the intentional nature of the ADRV attributed to him is that he should have known that his behaviour (i.e., using supplements without sufficient research), was a significant risk.

64. The evidence on the record is that the Athlete engaged in conduct *"that he knew or ought to have known posed a significant risk that it would constitute or result in an anti-doping rule violation and that he manifestly disregarded that risk"*. Therefore, through his actions and inactions, he cannot meet his burden of proof. His actions and inactions, i.e., his conduct, therefore, specifically follow the definition of an "intentional" violation under CADP Rule 10.2.3 and fail to convince this Tribunal by a balance of probabilities that his anti-doping rule violation was not intentional. The Athlete shall not be entitled to the benefit of CADP Rule 10.2.2.

65. As stated in SDRCC DT 15-0225 at page 32:

*Since the undertaking of that risk, in the manner in which it occurred, meets the definition of "intentional" under Rule 10.2.3, that circumstance, as standing on its own establishes the period of Ineligibility as four years pursuant to article 10.2.1 because instead of establishing that the anti-doping rule violation was unintentional, it demonstrates the opposite.*

The CCES also correctly cites several CAS decisions that have considered the issue of determining the intentional nature of ADRVs committed by athletes in different circumstances<sup>2</sup>.

66. It is not necessary for me to address the applicability of these relevant cases to this matter. I need only refer to CADP Rule 10.2.3 to conclude that considering:

- that he practices powerlifting, a sport with a high risk of prohibited substance abuse,
- that he completed CCES education programs that specifically and repeatedly warn all athletes of the risks associated with supplement use,
- that Mr. Nicolas Déry specifically warned him on many occasions not to use supplements (see exchanges of text messages filed in documentary evidence DGM-1 and DGM-2),
- that the only effort he made to verify the reliability of the contents of the Kaos was the stamp of the Canadian flag on its container (alleging that this flag alone would serve as sufficient proof of its quality and reliability) without looking for an Informed Choice, Manufacturer Security Guarantee or other stamp, and
- that the undeniable and well-recognized reality in the world of amateur sport is that many supplements contain prohibited substances and that it is the responsibility of each Athlete to ensure that he or she does not ingest or use any prohibited substances,

the Athlete's ADRV shall be considered intentional under CADP Rule 10.2.3, despite the Athlete's claims of innocence.

*Establishing the origin of the Ligandrol*

67. As submitted by the CCES, in order to demonstrate that a violation was not intentional, numerous CAS panels have established that it is necessarily incumbent upon an

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<sup>2</sup> CAS 2016/A/4534, CAS 2016/A/4919, CAS 2018/A/5784

athlete to first demonstrate how the substance entered his or her body<sup>3</sup>. CAS described why establishing the origin of the prohibited substance is crucial to elimination or reduction in CAS 2006/A/1130, in which the panel stated:

*Obviously this precondition is important and necessary otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up. To allow any such speculation as to the circumstances in which an athlete ingested a prohibited substance would undermine the strict liability rules (...)*

68. While some courts have held, as confirmed in the commentary to CADP Rule 10.2.1.1, that it is possible for an athlete to establish a lack of intent without establishing the origin of the prohibited substance, a view with which the Arbitrator agrees, those courts have also clarified that this would only be possible in the most extraordinary circumstances.
69. Where exceptional circumstances exist and an athlete produces credible and persuasive evidence in support of his or her defense, there is an opportunity for the Tribunal to reduce the presumptive sanction from 4 years to 2 years by applying CADP Rule 10.2.2, even if an athlete is unable to prove the origin of a prohibited substance. However, "*without exceptional circumstances, an ADRV must be found to be intentional*"<sup>4</sup>.
70. This case presents neither such exceptional circumstances, nor the compelling evidence that would suggest such an outcome.
71. The simple fact is that Ligandrol was detected in the Athlete's sample. There are no exceptional circumstances that have been presented in this case. The Athlete clearly disregarded the unmistakable risks of ingesting supplements - which is exactly the definition of an intentional CADP violation. And the Athlete likely failed to explain how this exogenous substance got there, other than by an unsupported assumption that one of his supplements "must be the cause" without concrete evidence to support it<sup>5</sup>.

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<sup>3</sup> CAS 2018/A/5784 para 58

<sup>4</sup> CAS 2017/A/5392 para. 2

<sup>5</sup> This point has been made in numerous CAS decisions and specifically in CAS 2018/A/5784 at para. 2 cited by the CCES.

72. The Arbitrator acknowledges that the Athlete submitted in good faith that the evidence he produced, in addition to his testimony at the hearing, is the best and only evidence available. However, it is clearly insufficient to satisfy either his burden of proof that his violation was not intentional (as defined in CADP Rule 10.2.3) or his burden of proof to establish the source of the Ligandrol.
73. In circumstances that are now neither exceptional nor unique, a reduction in the applicable presumptive sanction is neither possible nor provided for by the CADP.
74. Contrary to the reasons given by the Athlete, the Arbitrator does not consider it contrary to the rules of natural justice to reach such a decision. A three-month delay is not insurmountable in attempting to find a product with the same manufacturer's lot number, and the costs associated with a laboratory analysis of the supplement are not necessarily onerous. The principle of strict liability that each athlete is responsible for what he or she ingests and for any product found in his or her body applies first and foremost. And the CADP, to which the Athlete is subject, clearly states that the burden is on him to produce sufficient evidence to establish the origin of the Ligandrol found in his urine sample. His failure to do so in this case cannot be considered a breach of the rules of natural justice with respect to him.

## **CONCLUSION**

75. In the absence of tangible, reliable or compelling evidence that the applicable period of ineligibility should be reduced, based on the Athlete's lack of intent with respect to the violation and the establishment of the origin of the Ligandrol, the presumptive 4-year sanction applicable in this case under the CADP cannot be reduced<sup>6</sup>.
76. The Athlete must surely recognize that it is impossible for this Tribunal to rule in his favour without him succeeding in demonstrating his assumption that Kaos is the origin of the Ligandrol, especially since he has neither fulfilled his responsibilities nor taken sufficient steps to eliminate the well-known risks associated with supplementation. Such an outcome would be immediately appealed as it would not meet the clear criteria of the CADP, the guidelines of the CCES, or the explicitly established case law on all these points.

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<sup>6</sup> CAS 2016/A/4439 para 45

## **DECISION**

77. The CCES has discharged its burden under CADP Rule 2.1 and established that the Athlete has committed a violation of the CADP.
78. Under CADP Rule 2.1.1, and as explained in the CCES Education Program, it is the responsibility of each athlete to ensure that no prohibited substances enter their system. The presence of a prohibited substance is a breach of this obligation and is the basis for a period of ineligibility under CADP Rule 10.
79. In the absence of compelling and concrete evidence, the Athlete can neither convince the Tribunal nor discharge the burden of proof that the applicable period of ineligibility should be reduced or eliminated for lack of intent or significant fault.
80. Under CADP Rule 10.2.1, because Ligandrol is classified as a non-specified substance and the Athlete failed to establish that his ADRV was not intentional, the applicable mandatory period of ineligibility is four years.
81. Under CADP Rule 10.13, the period of ineligibility begins on the date of the decision. However, pursuant to CADP Rule 10.13.2.2 because the Athlete voluntarily accepted and complied with a Provisional Suspension, that period of Provisional Suspension shall be deducted from the 4-year period of ineligibility imposed hereunder.
82. In accordance with CADP Rules 9 and 10.10, this violation of the CADP automatically leads to the annulment of the results obtained since the doping control on August 1, 2021, with all the resulting consequences, including the withdrawal of medals, points, participation and recognition bonuses and awards.
83. This decision may be appealed exclusively in accordance with the procedures set out in CADP Rule 13.

## **PUBLICATION**

84. The CCES will publicly disclose this decision in accordance with CADP Rule 14.3.1.

Decision rendered in Beaconsfield, Quebec, this 24th day of January 2022.

Janie Soublière, Arbitrator