

**THE ATP TOUR ANTI-DOPING TRIBUNAL
APPEAL OF RYAN NEWPORT**

OPINION

An ATP Tour Anti-Doping Tribunal {"Tribunal"} consisting of Prof. Richard H. McLaren, Esq., Chair; Prof. Arturo Marti, technical scientific member; and Prof. Eduardo Henrique De Rose, MD, medical member, was formed by Gayle David Bradshaw the Vice President Administrator of Rules and Competition, following a Review Board {"RB"} determination that Ryan Newport {"the Player"} had a case to answer under the Tennis Anti-Doping Program 2005 {"Anti-Doping Rules"}. Those rules are contained within the ATP 2005 Official Rulebook {"Rules"} at pgs. 143 through 173. The Anti-Doping Rules are designed to maintain the integrity of men's professional tennis and protect the health and rights of all tennis players. The Program includes (i) doping tests in and out of competition, (ii) the imposition of penalties for Doping Offenses, and (iii) support and assistance to players when applicable.

The Player represented himself.

John MacLennan, Esq. represented the ATP {the "Tour" or the "ATP"}.

In accordance with Anti Doping Rule K.1.f., the Chairman of the Tribunal convened a telephone conference call with the above-mentioned representatives of the parties on 11 November 2005. During the course of that conference call, the Player indicated that he would provisionally elect to admit a doping offense under Rule K.1.c. On 15 November 2005, the Player admitted to a doping offense. Therefore, under the Anti-Doping Rules the Player must accede to the consequences specified in the letter of 28 October 2005 advising that he had a case to answer under the Anti-Doping Rules. The notice within the letter advised that a sanction could be two years of Ineligibility from ... *any ATP or Challenger Series event or other activity authorized or organized by the ATP* and may result in suspension under ... *ITF Rules from Grand Slam Tournaments, Davis Cup ties, Futures and Satellite Series Circuit Tournaments*. The notice further advised that if the use involved a Specified Prohibited Substance not intended to enhance performance then a sanction in a range from a public warning and no period of Ineligibility through to a one year period of Ineligibility, the effect of which would be similar to the two year sanction, could be applied.

The admission by the Player meant that a hearing before the full Tribunal was no longer required. Under Anti-Doping Rule K.1.c. the Chairman issues this decision confirming the commission of the Doping Offense specified in the Notice. After consultation with the other members of the Tribunal, the Chairman of the Tribunal orders by this decision such Consequences as are provided for under the Anti-Doping Rules.

In accordance with Procedural Order No. 1 issued on 11 November, 2005 the receipt of the written submissions were completed on 25 November 2005. A conference call was held on 5 December 2005 to listen to the Player's statement and for him to answer the questions of the Chairman.

BACKGROUND FACTS

1. The Player is a professional tennis player from the United States who is currently a member of the ATP Tour.
2. The ATP is a not-for-profit membership organization composed of male professional tennis players and tournament organizations. The ATP sanctions tennis tournaments and provides league governance and support to its member tournaments and players. Pursuant to this role, the ATP has adopted rules for the conduct of both tournaments and players.
3. The Player competed in an ATP sanctioned tournament in Vancouver, B.C., Canada. As a result he is bound by and shall comply with all of the provisions of the Anti-Doping Program as provided for by Rule B.1.
4. The Player, while aware of his right to legal counsel under Rule K.2.b., has elected to represent himself in these proceedings.
5. The Player provided an in-competition urine sample pursuant to the Anti-Doping Rules during the Odium Brown Vancouver Open, an ATP sanctioned tournament on 30 July 2005. By this proceeding, Rule J.2.e. and his admission the Player has accepted the analysis of the Laboratoire de Contrôle du Dopage INRS Institut Armand-Frappier {"the Lab"}, located in Pointe-Claire, Quebec, Canada which is accredited as a World Anti-Doping Agency {"WADA"} laboratory. The Lab Doping Control Report states that the A sample of the Player indicated the presence of *Cannabis: 11-nor-9-*

carboxy-delta9-tetrahydricannabinol, in a concentration measured at 186 ng/ml. Analysis of the B sample confirmed the presence of the Prohibited Substance found in the A sample. Cannabis is a Prohibited Substance listed in Appendix 3 (*The 2005 Prohibited List*) under heading S8. Cannabinoids in the Anti-Doping Rules. Cannabinoids are defined as Specified Substances under those rules.

6. By e-mail correspondence with the Chairman the Player admitted a Doping Offense on 15 November 2005. He explained that he was in Houston the weekend before leaving for the Vancouver tournament. He went to a bar from which he left with some friends to go to one of their places. He admits to having participated in the passing around of a joint after having a few drinks. He apparently believes his positive analytical result was caused by this indiscretion.
7. The ATP and the Player filed submissions in accordance with Procedural Order No. 1 by 25 November 2005. A conference call was held on 5 December 2005 at which time the Chairman raised various questions with the Player. At that time he indicated that he had taken it upon himself not to compete after completing a tournament on 24 October 2005. Therefore, at the time of this decision he has voluntarily imposed upon himself a suspension in excess of five weeks by not competing.

Written Submissions on behalf of the Player

8. The Player submitted on his own behalf that he had made a really bad decision after a few too many drinks. He further submits that this was just a one-time thing and he no longer participates in such activities. He asserts his conduct was a one-time mistake for which he ought to be punished but leniently having expressed sincere regret for his actions.
9. The Player submitted that he did not compete in any further events after hearing the news of the alleged offense. He had planned to play in several other tournaments but decided not to do so. The last tournament event he played was in Carson, California on 24 October 2005.
10. The Player submits that he would accept the 60-day period of Ineligibility suggested by the ATP as fair punishment. This is his first offense under the ATP Anti-Doping Program.

Written Submissions on behalf of the ATP

11. The presence of the cannabis metabolite constitutes a Doping Offense under Rule C.1. and has been admitted by the Player. Cannabis is a Specified Substance under the Rules.
12. The Player in his admission stated that he did not intend the use of cannabis as a performance enhancing substance. The ATP has no evidence to contradict this assertion. Therefore, Rule M.3 may be applied to reduce the period of Ineligibility for a First Offense otherwise applicable.
13. The ATP recommends a period of Ineligibility of sixty (60) days based on the following: i) the Player has acknowledged the doping offense and has saved the cost of a full hearing before this Anti-Doping Tribunal; ii) it is the Player's first doping offense; iii) there is no evidence that the Player's use of Cannabis enhanced his sport performance; and iv) the Player's use of Cannabis appears to have been casual and not repeated.
14. Rule M.8.c. provides for the period of Ineligibility to begin on the date the decision is issued. However, voluntary withdrawal from competition may cause the period of Ineligibility to be at an earlier date in accordance with Rule M.8.c.i. The Player has advised the ATP that he did withdraw from competition following notification of his Vancouver test result. Accordingly, the period of Ineligibility could commence from 24 October 2005.
15. The ATP recognises that the tournament season for this calendar year is ending and that should the Player receive a period of Ineligibility commencing shortly he will not be Ineligible for as many tournaments as would have been the case had the suspension occurred during a different time of year. However, the Rules do not call for any adjustment of the commencement date in recognition of such a fact.
16. **THE RELEVANT ANTI-DOPING RULES**
B. Covered Players and Events

1. *Any player who enters or participates in a Competition, Event or activity organized,*

sanctioned or recognized by the ATP, or who is an ATP member or who has an ATP ranking (a “Player”) shall be bound by and shall comply with all of the provisions of this Program ... Further, for each calendar year all such players shall, as a condition of entering or participating in any event organized or sanctioned by the ATP, deliver to the ATP a signed consent in the form set out in Appendix 2.

...

C. Doping Offenses

Doping is defined as the occurrence of one or more of the following (each, a “Doping Offense”):

1. *The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Specimen, unless the Player establishes that the presence is pursuant to a therapeutic use exemption granted in accordance with Article E.*

...

K. Due Process

1. *Commencing proceedings before the Anti-Doping Tribunal*

...

c. The Participant shall be entitled at any stage to admit that he has committed the Doping Offense(s) specified in the Notice and to accede to the Consequences specified in the Notice. In such circumstances, a hearing before the Anti-Doping Tribunal shall not be required. Instead, the Chairman of the Anti-Doping Tribunal shall promptly issue a decision confirming the commission of the Doping Offense(s) specified in the Notice, and ordering the imposition of such Consequences (including, where this Program specifies a

range of possible Consequences, specifying what the Consequences should be in that particular case). Where a range of possible Consequences is specified in the Program, written submissions may be made by or on behalf of the Participant in mitigation at the time of admission of the Doping Offense, and the Chairman of the Anti-Doping Tribunal shall be entitled to take those submissions, as well as any rebuttal submitted by the ATP, into account in determining what Consequences should apply.

...

L. Automatic Disqualification of Individual Results

1. *A Doping Offense committed by a Player in connection with or arising out of an In-Competition test automatically leads to Disqualification of the individual result obtained by the Player involved in that Competition with all resulting consequences, including forfeiture of any medals, titles, computer ranking points and prize money (without deduction for tax) obtained in that Competition.*

...

M. Sanctions on Individuals

2. *Imposition of Ineligibility for Prohibited Substances and Prohibited Methods*

Except where the substance at issue is one of the specified substances identified in Article M.3, the period of Ineligibility imposed for a violation of Article C.1 (presence of Prohibited Substance or its Metabolites or Markers), Article C.2 (Use or Attempted Use of Prohibited Substance or Prohibited

Method) or Article C.6 (Possession of Prohibited Substances and/or Prohibited Methods(s)) shall be:

First Offence: Two (2) years' Ineligibility.

Second Offence: Lifetime Ineligibility.

However, the Participant shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article M.5

3. Lesser Sanction for Specified Substances.

The Prohibited List may identify specified substances that are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or that are less likely to be successfully abused as doping agents (a "Specified Substance"). Where a player can establish that the Use of such a Specified Substance was not intended to enhance sport performance, the period of Ineligibility found in Article M.2 shall be replaced with the following:

First offense: At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year's Ineligibility.

...

7. Disqualification of Results in Competitions Subsequent to Sample Collection

In addition to the automatic Disqualification, pursuant to Article L, of the results in the

Competition that produced the positive Sample, all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other Doping Offense occurred through to the date of commencement of any Ineligibility period shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences, including forfeiture of any medals, titles, computer ranking points and prize money (without deduction for tax).

...

8. *Commencement of Consequences*

Any Consequences set out in the decision of an Anti-Doping Tribunal shall come into force and effect on the date the decision is issued, save that:

c) The period of Ineligibility shall start on the date that the decision is issued, provided that:

i) any period during which the Player demonstrates he has voluntarily foregone participation in Competitions shall be credited against the total period of Ineligibility to be served.

**APPENDIX THREE
THE PROHIBITED LIST**

<p>SUBSTANCES AND METHODS PROHIBITED IN-COMPETITION</p>
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PROHIBITED SUBSTANCES

Section S8. Cannabinoids

Cannabinoids (e.g. hashish, marijuana) are prohibited.

SPECIFIED SUBSTANCES

“Specified Substances” are listed below:

...
Cannabinoids.
...

REASONS

17. A *Doping Offense* has been established under Anti-Doping Rule C.1. because of the Lab report indicating the presence of cannabis and by virtue of the admission made pursuant to Rule K.1.c. A *Doping Offense* is so found by this Tribunal.
18. The Player committed a *Doping Offense* pursuant to an *In-Competition* test. Under Rule L.1. of the Anti-Doping Rules, this leads to the automatic *Disqualification* of the individual results obtained by the Player in that competition. The Player must forfeit any medals, titles computer ranking points and prize money {without deduction of tax} obtained in that *Competition*. This Tribunal finds that the automatic *Disqualification* and forfeiture apply to this case.
19. Cannabis is listed in Appendix 3 (*The 2005 Prohibited List*) at S. 8 in the Anti-Doping Rules. It is also a Specified Substance under the same Appendix. Under Rule M.3 the sanction for a first offense is at a minimum a warning and reprimand and at a maximum one (1) year's *Ineligibility*.
20. Under Rule M.3, a lesser sanction is applicable when a player establishes that his use of the substance “*was not intended to enhance sports performance*”. The Player submits and the ATP has no evidence to contradict his assertion that he did not intend to enhance his sport

performance. There is nothing in the record before me that would lead me to conclude anything to the contrary. Therefore, I must find that the Player's use of *Cannabis* was not intended to enhance his performance, thereby requiring the application of the lesser sanctions under Rule M.3.

21. The Player, after thinking of the consequences, agreed to make an admission of using marijuana. In so doing he saved the time and expense of having a complete hearing and Tribunal review of his case. The use of marijuana was of a social nature. The Player admits that his conduct was mistaken and undertaken using bad judgement. The event was an isolated occurrence without apparent repetition and no history of use. This matter is a first offense of a Specified Substance. He appeared to be remorseful when speaking with the Chairman. Furthermore, as provided for in Rule M.3. the use of marijuana, while intentional, is unlikely to be successfully abused as a doping agent in all of the circumstances.
22. As I indicated previously in *Miguel Gallardo Valles v. ATP*¹ remorse and the fact that the use of Cannabis was not intended to be performance enhancing, does not relieve a Player of his responsibilities for his conduct. Rule C.1.a. places upon the Player a personal duty to ensure that no *Prohibited Substance* enter his body. That personal duty is not lessened by the fact that the player suffered a temporary lapse in judgment no matter how understandable that might be. For all of these reasons I exercise my judgement in this matter, after consultation with my colleagues on the Tribunal, to set the period of Ineligibility at 60 days, which is a two-month period of Ineligibility.
23. The Player's actions were a one-time infraction of the Rules. There was no performance enhancing effect and no repeat conduct or continuing effect in subsequent tournaments. That being the case, there is absolutely no reason why this Player should have any subsequent competitive results following sample collection impacted by his Doping Offense. Under the provisions of Rule M.7. I find that fairness demands that no other competitive results after sample collection should be disqualified. The Tribunal so orders.
24. Rule M.8.c. provides that any period of Ineligibility is to commence on the date this decision is issued. There is a provision that if the Player demonstrates he has voluntarily foregone participation in Competitions then

¹ A decision of an ATP Anti-Doping Tribunal dated 8 November 2005.

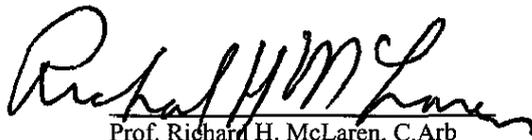
clause i) permits that period to be credited against the total period of Ineligibility. I was uncertain of the Player's motives in not participating in competitions after 24 October 2005. I resolved that uncertainty by having a telephone conference call with the Player and the ATP Tour's lawyer Mr. MacLennan. As a consequence I am satisfied that he voluntarily chose not to participate in ATP events as he indicates. However, he did not communicate that decision to anyone at the ATP Tour. I find that one of the requirements to demonstrate foregoing participation in subsequent Competitions is to provide notice to the ATP Tour that one is doing so. It is important that a Player not only make a decision not to play but that decision is confirmed by communicating with the ATP. In this case, the Player is not represented by a lawyer and may be unaware of such a requirement. I am satisfied that he did make a personal decision. Therefore, I propose to take account of one half of the period that he voluntarily chose not to play tennis. From the 24th of October until my conference call with the Player on the 5th of December is 42 days or 6 weeks. I propose to take account of three weeks of that six-week period and commence the sanction 21 days prior to the date of this decision. The period of Ineligibility shall commence in accordance with Rule M.8.c.i. on 16 November 2005.

DECISION

The Tribunal makes the following orders based upon the foregoing grounds and discussion in the above opinion.

1. The Player under Rule K.1.c. admitted a First Doping Offense thereby establishing the Doping Offense defined in Rule C.1. The Doping Offense involved the use of a Specified Substance Cannabinoids referred to in S. 8. of Appendix Three "*The 2005 Prohibited List*".
2. Rule L.1. disqualifies the results obtained at the ATP sanctioned Tournament in Vancouver, B.C. Canada in July 2005. Any medals, titles, computer ranking points and prize money (without reduction for tax) obtained at that Competition are forfeited. The commencement of the foregoing Consequences is to be effective in accordance with Rule M.8.
3. Under Rule M.3. the period of Ineligibility otherwise applicable is determined to be two {2} months. In accordance with Rule M.8.c.i. Ineligibility shall commence on the 16th day of November 2005.
4. Under Rule M.7. fairness dictates that there is to be no Disqualification of results from the time of sample collection until the commencement of the period of Ineligibility.

Dated this 7th day of December 2005



Prof. Richard H. McLaren, C.Arb
Chairman
Barrister

SIGNED AT: London, Ontario, CANADA