

IN THE MATTER OF:

AN ANTI-DOPING RULE VIOLATION BY CURTIS CATES
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

ARBITRATOR:

KEVIN M. BURKETT

DECISION

This is a hearing under Section 7 of the Canadian Anti-Doping Program (CADP) to determine if Mr. Curtis Cates has committed an anti-doping violation and, if so, the consequences of that violation. There is no dispute with respect to my jurisdiction as a single arbitrator to determine these matters.

Mr. Cates was at all relevant times participating as an athlete in Football Canada sports activities. According to rules 1.3, 1.7, 1.8 and 1.13 of the CADP, its provisions apply to all members of, and participants in the activities of, sport organizations adopting it. The CADP was issued for adoption by Canadian sport organizations on October 15, 2008, to be operational on January 1, 2009. Football Canada adopted the CADP on December 10, 2008. Therefore, as an athlete who was a member of Football Canada and a participant in the activities of Football Canada, Mr. Cates is subject to the rules of the CADP.

A teleconference hearing in this matter was conducted on February 23, 2010. The hearing was then adjourned pending receipt of further evidence and supplementary submissions from the Canadian Centre for Ethics in Sport (CCES). This evidence and these submissions were received on March 2, 2010.

The CADP sets out the burdens and standards of proof on the CCES and on the person asserted to have committed an anti-doping rule violation. The CCES has the burden of proof to establish an anti-doping rule violation to the comfortable

satisfaction of the doping tribunal, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. In situations where the burden of proof is placed upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standards of proof shall be by a balance of probability unless otherwise indicated that a higher standard will be required.

The CCES has asserted the anti-doping rule violation of "presence" against Mr. Cates. The CCES asserts that cannabis was detected in Mr. Cates' sample in an amount greater than the permitted threshold of 15ng/ml. The mere "presence" of a prohibited substance such as cannabis or its metabolites in an athlete's sample above the threshold of 15ng/ml is an anti-doping rule violation. Moreover, the athlete is responsible for any prohibited substance or its metabolites found to be present in his/her sample. It is not necessary that intent, fault, negligence or knowing use by an athlete be demonstrated to establish a "presence" violation. Whether the cannabis was ingested by Mr. Cates negligently or intentionally is not a relevant factor to consider when determining the fact of the violation. The issue of fault on the part of Mr. Cates may only be addressed after the violation has been determined when considering the proper sanction to apply and only then in the context of whether CADP rules 7.42 and 7.43 should operate so as to permit a reduced sanction. In this case, the CCES says that it has discharged its burden of proof to the required standard that the asserted

anti-doping rule violation was committed. No evidence to the contrary was tendered by Mr. Cates who admitted to the fact of the anti-doping rule violation asserted by the CCES.

I have reviewed and weighed the evidence before me and I am satisfied that the CCES has discharged its burden of proof to the required standard. Accordingly, I hereby find that Mr. Cates has committed the anti-doping rule violation that has been alleged.

The issue that remains to be decided concerns the consequences that follow from this violation. Cannabis is a specified substance. For a first anti-doping rule violation involving the "presence" of cannabis, the two-year period of ineligibility set out in rule 7.38 can be imposed, unless the athlete demonstrates that the conditions for reducing the sanction in rules 7.42 and 7.43 are met. In addition, it is possible that aggravating circumstances might increase the period of ineligibility to longer than the standard two-year sanction. Accordingly, Mr. Cates has the obligation to prove the existence of the conditions that might allow for a reduction in the mandated two-year sanction. Mr. Cates has tendered to the CCES and to the doping tribunal a letter that provides his evidence in support of the conditions that must be met for reducing the sanction as described in rules 7.42 and 7.43. A signed letter dated March 1, 2010 was provided that confirms the substantive content of an oral discussion between the CCES and Mr. Cates on February 26, 2010. The CCES is satisfied that Mr. Cates has demonstrated on a balance of probabilities how cannabis entered his system. The

evidence before the doping tribunal is that he smoked cannabis for a significant period of time before the sample collection session on October 10, 2009. The CCES has accepted this evidence. The CCES is also satisfied that Mr. Cates has demonstrated, to the required onus, that he had no intent to enhance his sport performance or mask another prohibited substance by using cannabis. His explanation, in summary, is that he used cannabis socially and only in recreational settings. He smoked cannabis in the week prior to the sample collection session on October 10, 2009. Mr. Cates does not believe cannabis could ever enhance his sport performance as a football player and, in fact, believes that smoking cannabis diminishes his ability to play. This explanation by Mr. Cates regarding his lack of intent to enhance his sport performance has been corroborated.

The CCES feels that the requirements in rules 7.42 and 7.43 have been satisfied by Mr. Cates and that it is appropriate for the doping tribunal to consider his degree of fault and to select a reduced sanction. Factors that the CCES believes to be relevant to any athlete's degree of fault involving a specified substance are: the actual specified substance detected; the level of cannabis detected; how the cannabis entered the athlete's system, when and with whom; personal factors unique to the athlete; mitigating factors; aggravating factors. Other factors might well be considered on a case-specific basis. In this matter, the CCES feels that Mr. Cates' degree of fault for this violation is high. Importantly, the level of cannabis detected in Mr. Cates' urine sample was extremely high. Considering that Mr. Cates stated that he did not smoke

cannabis immediately before the game where the sample was collected, a detected level of 422ng/ml post-competition strongly suggests that he was engaging in regular and/or long-term use of this substance and supports the additional inference that he was smoking significant quantities when he did use the drug. This conclusion is generally consistent with Mr. Cates' own evidence that he did not use the drug regularly during the season. The CCES is concerned with the presence of such high levels of cannabis in Mr. Cates' system during the actual football competition. Mr. Cates admitted that cannabis hindered his ability to play. As well, his admitted pattern of use was not inadvertent. He knew that cannabis is banned in sport and is illegal but made a decision to use cannabis as part of his lifestyle; his conduct was knowing and intentional.

Therefore, the CCES submits that based on the evidence now disclosed, Mr. Cates should be sanctioned by the doping tribunal to a period of ineligibility of five months' duration. The CCES feels that such a sanction is fair and proportionate to Mr. Cates' degree of fault for the anti-doping rule violation that has been determined. However, the doping tribunal has the absolute discretion to select the proper sanction in every case and may accept the period proposed by the CCES or impose a lesser or greater sanction, as long as the period of ineligibility falls within the permitted range.

I agree with the CCES in this regard and, therefore, I adopt its recommendation for sanction in this matter. Accordingly, I hereby rule that athlete Curtis Cates is

sanctioned to a period of ineligibility of five months' duration, commencing from March 5, 2010.

Dated this 12th day of March 2010 in the City of Toronto.

Kevin Burkett

KEVIN BURKETT