

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)**

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM

AND IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY LANE RAPOSO  
ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

No.: SDRCC DT 17-0279  
(Doping Tribunal)

Between:

Canadian Centre for Ethics in Sport (CCES)  
U SPORTS

-and-

Lane Raposo (Athlete)

-and-

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

BEFORE: Carol Roberts (Arbitrator)

Appearing:

For the Athlete: Hayleigh Cudmore, Student-at-Law  
For the CCES: Alexandre Maltas, Meredith MacGregor  
For U SPORTS: Tara Hahto (observing only)

## INTRODUCTION

### Jurisdiction

1. The Sport Dispute Resolution Centre of Canada (“SDRCC”) was created March 19, 2003 by the *Physical Activity and Sport Act* (S.C. 2003, c. 2). Under the *Act*, the SDRCC has exclusive jurisdiction to provide a national alternative dispute resolution service to the sport community. In 2004, the SDRCC assumed responsibility for all doping disputes in Canada.

### The Parties

#### *CCES*

2. The Canadian Centre for Ethics in Sport (“CCES”) is an independent, non-profit organization that promotes ethical conduct in all aspects of sport in Canada. The CCES also maintains and carries out the Canadian Anti-Doping Program (“CADP”), including the provision of anti-doping services to national sport organizations and their members.
3. As Canada’s national anti-doping organization, the CCES is in compliance with the *World Anti-Doping Code* (“Code”) and its mandatory International Standards. The CCES has implemented the Code and its mandatory International Standards through the CADP, the domestic rules that govern this proceeding. The purpose of the *Code* and the CADP are to provide protection for the rights of athletes to fair competition.
4. The CADP applies to all members of, and participants in, the activities of sporting organizations adopting it. U SPORTS adopted the CADP on December 19, 2014.

#### *U SPORTS*

5. U SPORTS (formerly Canadian Interuniversity Sport) is the national governing body for all university sports. U SPORTS adopted the CAPD on December 19, 2014. Although a party to the proceedings, U SPORTS participated in the arbitration as an observer only.

#### *The Athlete*

6. Lane Raposo is an athlete in the sport of Football (American) (U SPORTS). As a participant in U SPORTS activities, Mr. Raposo is subject to the CADP.

## WADA

7. The World Anti-Doping Agency (“WADA”) is the international organization responsible for administering the World Anti-Doping Program, which includes the Code. As with U SPORTS, WADA had the right to observe the proceedings. WADA did not participate in the hearing.
8. According to Rule 8.1 of the CADP, the SDRCC has the jurisdiction to constitute and administer a Doping Tribunal, which is obliged to conduct all hearings in accordance with the CADP as informed, where necessary, by the *Code*.
9. I was selected by the parties to be the arbitrator for this dispute and appointed by the SDRCC on December 22, 2017 pursuant to Article 6.8 of the Canadian Sport Dispute Resolution Code. I conducted an oral hearing by teleconference on May 18, 2018 in accordance with Rule 8 of the CADP.

## Background

10. Mr. Raposo is a member of the York University Lions football team. On September 28, 2017, Mr. Raposo was subject to an out-of-competition doping control. Analysis of his sample indicated the presence of Methenolone and Boldenone (Anabolic Agents) and Tamoxifen (Hormone and Metabolic Modulators). Both Methenolone and Boldenone are prohibited substances, that is, prohibited both in and out-of-competition, under Article 4.1 of the *Code* as well as under Rule 4 of the CADP. Tamoxifen is a specified substance that is also prohibited both in-competition and out-of-competition.
11. On November 1, 2017, CCES notified Mr. Raposo of the adverse analytical finding. On November 9, 2017, CCES issued a Notice of Doping Violation to Mr. Raposo asserting a single anti-doping rule violation (“ADRV”) pursuant to Rule 2.1 of the CADP and proposed a four-year period of ineligibility.
12. Mr. Raposo voluntarily accepted a provisional suspension on November 7, 2017. On, December 15, 2017, Mr. Raposo admitted he had the substances Methenolone, Boldenone and Tamoxifen in his bodily samples thereby committing an ADRV, but retained the right to seek a reduction to the proposed four-year sanction.
13. Based on the evidence and the admission, I find that Mr. Raposo committed an ADRV under Rule 2.1 of the CADP. The sole issue before me was the appropriate period of sanction.
14. On May 22, 2018, I issued my decision imposing four-year suspension on Mr. Raposo, commencing October 21, 2017. The decision was issued with reasons to follow, in accordance with Article 6.21 (d) of the Canadian Sport Dispute Resolution Code.
15. These are my reasons.

## Evidence

### *The Athlete*

16. Mr. Raposo played football in Calgary, Alberta in his youth as a midget and in high school. He received no anti-doping education during his youth athletic career.
17. Mr. Raposo played football for the University of Western Ontario Mustangs (“Western”) during the 2015 season and participated in post-season workouts with the team until April 2016. During the season, Mr. Raposo sustained a torn anterior cruciate ligament (ACL) and what he described as a fairly serious concussion. Because of those injuries, Mr. Raposo did not receive the bursaries he anticipated and returned to Calgary at the end of the school year. During his time at Western, Mr. Raposo received anti-doping education as required by his participation in what is now known as U SPORTS. Mr. Raposo asserted that this was the first and only time he received anti-doping education prior to the September 2017 violation.
18. After tearing his ACL, Mr. Raposo received a single cortisone injection into his knee from the team doctor in the football’s medical clinic. The team doctor recommended that Mr. Raposo avoid putting significant pressure on his knee for 24 to 48 hours following the injection.
19. Upon his return to Calgary, Mr. Raposo had no plans to continue his football career. As he was unsure of his athletic future, he worked with his father as a welder and heavy-duty mechanic assistant. From April 2016 until October 2016, Mr. Raposo was not on any sports team and did not play football.
20. In October 2016, Mr. Raposo was invited to play with the Calgary Colts of the Calgary Junior Football League (“CJFL”). Although the CJFL is subject to anti-doping educational requirements, Mr. Raposo said that he did not complete any anti-doping education because he joined the Colts mid-season. While playing with the Colts, Mr. Raposo developed an elbow injury. He said that the medical team told him that his elbow injury was caused by constant strain due to his position on the offensive line, and he received treatment in the form of ultrasound therapy and muscular manipulation. Mr. Raposo was advised to ice and rest the injured area and take Advil and Tylenol as necessary. None of the medical professionals from whom Mr. Raposo received treatment recommended any type of injection, including cortisone, to relieve the symptoms.
21. On January 29, 2017 following a successful season with the Calgary Colts, Mr. Raposo was invited to play with the York University Lions for the 2017 season, commencing in August 2017.
22. Mr. Raposo began working as a security guard at a nightclub in February 2017 and continued to work there until he left for York University in the fall. He trained on his own for the upcoming football season. Because his elbow injury continued to cause him pain, he sought advice from a sports therapist who advised him to take three to four weeks off

training to allow the inflammation to resolve itself. Mr. Raposo testified that he did not feel that resting his elbow was an option in the circumstances.

23. Mr. Raposo testified that while commiserating about his elbow injury with a bartender at the nightclub where he was employed, the bartender, whose name was "Liam," described an anti-inflammatory similar to cortisone that had solved his own injuries. Mr. Raposo agreed to try this remedy, as he believed he could not rest his elbow for the three to four weeks recommended by the medical professionals.
24. Although Mr. Raposo originally asserted through his lawyer that he did not know Liam's last name and that he had not been able to locate him, at the hearing Mr. Raposo conceded that he knew Liam's last name and that he knew Liam had relocated to a community in British Columbia. Mr. Raposo said that he had unsuccessfully attempted to contact Liam both through his social media accounts and through a former girlfriend.
25. Mr. Raposo said that in mid-July 2017, he went to Liam's house and that Liam injected a substance into Mr. Raposo's upper arm. Mr. Raposo did not think the site of the injection was unusual because Liam explained that injecting into the upper arm would help the substance "run down his arm evenly." He said that he believed Liam when Liam told him that the injection was an anti-inflammatory, even though he knew Liam was not a medical professional. The only question Mr. Raposo asked Liam about the substances he was taking was "how it worked." When he asked Liam how he obtained the substance, Liam told him that he got it from his friend's mom, who was a nurse. Mr. Raposo conceded that Liam's advice to take an injection that was a "quick fix" was contrary to the advice of all the medical professionals, who told him to rest his elbow for a few weeks.
26. Liam then gave Mr. Raposo a small yellow tablet that he told Mr. Raposo was also an anti-inflammatory and which he instructed Mr. Raposo to take later to ensure the optimal effects of the injection. In an affidavit sworn January 7, 2018, Mr. Raposo affirmed that Liam told him to take the tablet four hours after the injection. At the hearing, Mr. Raposo testified that Liam told him to take the tablet 12 hours after the injection.
27. Mr. Raposo did not recall if there was any writing on the tablet. Mr. Raposo did not ask any of the medical professionals he had access to, including his own doctors, team doctors, coaches or therapists, about the injection or the tablet.
28. Mr. Raposo testified that he received only one injection and took only one pill.
29. Mr. Raposo reported to football training camp at York University in August 2017.
30. Mr. Raposo testified that he was "shocked" and "confused" after being informed of the positive test. Only after meeting with a medical doctor who asked him if he had received any injections did Mr. Raposo determine that the only possible source of the prohibited substances was the injection he received from Liam.
31. Mr. Raposo agreed that he had become involved in a "weird and bizarre" situation, but he did not intend to cheat and ruin his football career.

32. He acknowledged that, as a result of his anti-doping education, he had received an outline of what substances were prohibited and that he was aware of his responsibility not to consume banned substances and that he was responsible for all substances in his system.

*CCES*

33. I heard evidence from Dr. Christiane Ayotte, who has been the Director of the Doping Control Laboratory at INRS-Institute Armand-Frappier (a WADA-accredited lab) since 1991, on behalf of CCES. Dr. Ayotte, who has a Ph.D. in organic chemistry, was qualified to give expert opinion evidence in this hearing.
34. The CCES sought Dr. Ayotte's opinion on Mr. Raposo's explanation as to how the substances entered his system. Dr. Ayotte provided a written opinion on March 6, 2018, and supplemented that opinion during her oral testimony.
35. According to Dr. Ayotte, Boldenone and Methenolone are prohibited anabolic steroids that have no legitimate medical application in Canada. Consequently, the black-market is the only source of Boldenone, which is solely used as a veterinary anabolic steroid. Tamoxifen is a selective estrogen receptor modulator which is utilized in the treatment of breast cancers and is used in sport to mask the use of anabolic steroids.
36. Boldenone is a steroid that must be injected, while Tamoxifen and Methenolone are found most frequently in pill form.
37. In Dr. Ayotte's opinion, the amounts of Boldenone and Tamoxifen found in Mr. Raposo's sample strongly suggest that they were taken shortly prior to the collection of the sample and not two months before, as Mr. Raposo asserted.
38. Dr. Ayotte indicated that because these compounds come from the black-market, their purity and dosage are highly variable and no scientific experiments can be conducted in humans. Furthermore, since Boldenone is uniquely used for veterinary purposes, the only comparisons that can be made are with samples from athletes that are likely produced by black-market products.
39. Dr. Ayotte indicated that the majority of findings of the presence of Boldenone in other athletes' samples were at levels below 10 ng/mL compared to the 100 ng/mL found in Mr. Raposo's sample. Of the samples that have been collected at the lab, (over 36,000 per year since approximately 1994) the detection window does not support Mr. Raposo's explanation. Based on three sample test results of other athletes, conducted by the INRS laboratory, Dr. Ayotte was of the opinion that the Boldenone in Mr. Raposo's system had been injected much closer to the date of the sample collection than described by Mr. Raposo. In the first case relied upon by Dr. Ayotte, the initial sample result contained Boldenone at a level estimated to be 140 ng/mL. The presence of Boldenone in a follow-up sample collected 10 days later had dropped to 1.2 ng/mL and a follow up sample collected 4.5 months later tested negative. In the second case, the initial sample contained

Boldenone at a level of 3.5 ng/mL and no presence of Boldenone was found in a sample collected three months later. For a third athlete, the initial sample contained Boldenone in the estimated amount of 2 and 1.6 ng/mL. That athlete's sample tested negative two weeks later. Based on the testing results, it was Dr. Ayotte's opinion that it was impossible for Mr. Raposo's sample to contain 100ng/mL if he had injected Boldenone two months earlier, as he asserted.

40. In cross-examination, Dr. Ayotte testified she was unaware of any substances that could be used to retard excretion rates or lengthen the detection window.
41. Dr. Ayotte indicated that the detection window for Tamoxifen was much less than 2 months. She was of the opinion that the relatively high level of 70 ng/mL of Tamoxifen found in Mr. Raposo's sample was not compatible with the end of the excretion period. In scientific studies conducted with volunteers, there was no trace of Tamoxifen in samples taken 7 days after ingestion. In Dr. Ayotte's view, the scientific evidence does not support the presence of Tamoxifen in a sample two months after ingestion.
42. In Dr. Ayotte's opinion, not only was there no medical justification for Mr. Raposo to use the three compounds that were found in his system, it was not plausible that the Boldenone and Tamoxifen were injected or ingested in mid-July 2017, as Mr. Raposo testified they were.
43. I also heard evidence from Kevin Bean, the Senior Manager of the CADP for CCES. Mr. Bean confirmed that Mr. Raposo completed the 2015 True Sport Clean 101 course by e-learning on August 9, 2015 as a member of U SPORTS, as well as True Sport Clean Review on September 13, 2016 as a member of the Canadian Junior Football league. Mr. Raposo also completed the True Sport Clean 2017 e-learning course on August 9, 2017.
44. Mr. Bean testified that, based on his experience as a manager overseeing CCES cases and his own research, it was his understanding and belief that Tamoxifen is often used to counter the negative physical effects of steroid use. Since 2007, CCES has pursued 12 anti-doping rule violations involving the presence of Tamoxifen, seven of which involved the presence of at least one prohibited anabolic agent.

#### Submissions

45. I have attempted to summarize the position of the parties without oversimplifying them. I have carefully considered all of the arguments, whether or not I have expressly referred to them.

#### *Athlete*

46. Mr. Raposo argued that he did not intend to cheat. While he conceded that his decision to receive an injection from a non-medical source demonstrated a dangerous lack of judgement, he said that when the substances entered his body, he was not able to turn his mind to cheating because he was too far removed from any doping-controlled sport.

47. Mr. Raposo argued that his lack of anti-doping education should be given significant weight and that he should not be held to the standard of national-level athletes who receive ongoing anti-doping education.
48. Mr. Raposo's counsel also argued that although Mr. Raposo was unable to call Liam as a witness, Mr. Raposo has otherwise been forthcoming, candid and cooperative, and the lack of corroborating testimony should not be used against him.
49. Mr. Raposo argued that his degree of fault was low, given his lack of anti-doping education and the fact that he was not a "habitual user" of prohibited substances.
50. Relying on *Cilic v International Tennis Federation* (Court of Arbitration for Sport 2013/A/3327) and *CCES v. Chan* (SDRCC DT 15-0217) Mr. Raposo sought a 24-month sanction, contending that he was entitled to a reduction in sanction due to his lack of intention and degree of fault.

#### CCES

51. CCES contended that Mr. Raposo's explanation that the substances entered his system due to a single injection and the ingestion of one pill is not credible nor believable, and that, accordingly, he has failed to prove how the substances entered his system. Relying on *CCES v. Banner* (SDRCC DT 15-0229), CCES sought a four-year sanction.
52. CCES submitted that because Mr. Raposo has failed to establish how the prohibited substances entered his system, he cannot take advantage of the CADP provisions which allow for a reduction in sanction.
53. In the alternative, CCES submitted that if I accept Mr. Raposo's explanation of how the prohibited substances entered his system, he had not demonstrated that his conduct was not intentional.

#### DECISION

##### Code and CADP Rules relating to Sanction

54. The *Code* and CADP Rules are based on the principles of personal responsibility and strict liability for the presence of prohibited substances:

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* [...] 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 this anti-doping violation under Rule 2.1.

55. Under the CADP, a four-year period of ineligibility is imposed following detection of the presence of a prohibited substance, unless the athlete can establish that the ADRV was not intentional (Rule 10.2.1.1).



56. The period of ineligibility for an ADRV under Rule 2.1 that is the Athlete's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Rule 10.4, 10.5 or 10.6:

10.2.1 The period of ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a *Specified Substance* unless the *Athlete* [...] can establish that the anti-doping rule violation was not intentional.

57. Article 4.2.2 of the *Code* provides that:

For the purposes of the application of Article 10, all *Prohibited Substances* shall be *Specified Substances* except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the *Prohibited List* [...]

58. In order to obtain a reduction of the period of ineligibility based on No Significant Fault or Negligence, an athlete is required to establish how the prohibited substance entered his or her system in addition to establishing no significant fault or negligence (See definition of *No Significant Fault or Negligence* in Appendix 1 to the CADP).
59. Intentional, for the purposes of the *Code* and CADP Rules, requires that an athlete engaged in conduct which he knew constituted an anti-doping rule violation or knew there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. (Rule 10.2.3)

#### Analysis

60. The issue before me is not whether Mr. Raposo intended to cheat; rather, I must assess a) whether Mr. Raposo has established how the prohibited substances entered his system, and, then, only if he has met that burden, b) whether he can demonstrate that the ADRV was not intentional, as that is defined in Rule 10.2.3. The Athlete has the burden of proof of establishing both of these criteria on a balance of probabilities.

#### Has the Athlete established how the prohibited substances entered his body?

61. In my view, Mr. Raposo's explanation about how the substances entered his system both lacks credibility and is implausible in light of the scientific evidence.
62. Mr. Raposo asserted that his ADRV was the result of a single injection followed by the ingestion of a single pill, in mid-July 2017 administered by a nightclub bartender with whom he worked.

63. The only evidence offered by the Athlete was Mr. Raposo's own testimony. Because that testimony was uncorroborated, I must assess the credibility and reliability of that evidence.
64. Credibility is assessed on the basis of a number of factors. The integrity and intelligence of a witness, his powers of observation, his capacity to remember and his ability to describe clearly what he heard and did are important. It is also important to determine whether or not the witness is honestly endeavouring to tell the truth, whether he is sincere and frank or whether or not he is biased, reticent and evasive. I have also considered whether Mr. Raposo's evidence was in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions:" *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), p. 357.
65. I am troubled by Mr. Raposo's somewhat inconsistent identification of Liam and his evidence about his attempts to locate him. Mr. Raposo initially asserted, through his counsel, that he did not remember Liam's last name and that he had been unable to locate him. At the hearing, Mr. Raposo admitted that he did know Liam's last name, and further indicated that Liam had moved to a community in British Columbia. Also for the first time at the hearing, Mr. Raposo indicated that he attempted to contact Liam through Facebook and through Liam's former girlfriend, without success. Mr. Raposo's lack of candor about both Liam's identity and his whereabouts do nothing to bolster his credibility. The fact that Liam has apparently discontinued all communication with Mr. Raposo leads to an inference that his evidence would be of no assistance to Mr. Raposo or to Liam.
66. I am also troubled by Mr. Raposo's sworn assertion that his anti-doping education was limited to one anti-doping course while at Western, and by his denial that he received any anti-doping education while playing for the Calgary Colts. Mr. Raposo asserted this lack of anti-doping education as a basis for mitigating any suspension. The evidence presented at the hearing demonstrates that Mr. Raposo completed anti-doping courses in 2015 and 2016 as well as in August 2017, approximately one month after he asserted that he had received the injection of an unknown substance. Although Mr. Raposo did not deny the evidence when it was presented to him, he professed not to have remembered much of it.
67. Mr. Raposo's testimony at the hearing about when Liam instructed him to take the pill following the injection was also inconsistent with his affidavit evidence. In his January 7, 2018 affidavit Mr. Raposo affirmed that Liam gave him a pill which he instructed him to take four hours after the injection. At the hearing, Mr. Raposo testified that Liam instructed him to take the pill 12 hours after the injection.
68. In short, I found Mr. Raposo to be less than candid and forthright.
69. I also found Mr. Raposo's evidence was not in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize reasonable in that place and in those conditions."

70. Although Mr. Raposo conceded that allowing a non-medically trained individual to inject a substance into his arm without asking basic questions about it demonstrated a lack of judgement and was dangerous, I found it demonstrated much more than that.
71. Mr. Raposo is a young adult with some university education. He had received some anti-doping education and as he conceded at the hearing, was well aware that he was responsible for all substances in his system. It defies common sense that anyone, let alone an athlete of his age with some anti-doping education, would exhibit such a manifest disregard for the potential risks of such conduct.
72. Even without anti-doping education, in my view, a practical and well-informed person would have asked a number of basic questions, including why a non-medically trained person whom they knew only slightly, was able to obtain and administer a substance that no other medical professional had recommended, what exactly the substance was, why it was injected into his shoulder rather than the affected area and what substance(s) the pill contained. A reasonable person would have made attempts to verify the composition of both the pill and the substance to be injected. The only question Mr. Raposo would have one believe he asked Liam was "how [the substance] worked."
73. Mr. Raposo asserted through his counsel that he had "no access to resources such as coaches, staff members or medical professionals." While Mr. Raposo may not have had ready access to sport medical staff at York University, he was a resident of one of Canada's largest cities, with access to many other medical professionals including pharmacists, chiropractors, therapists and doctors as well as a 24-hour medical hotline, any one of which he could have consulted for information and advice. He consulted no on-line resources.
74. I accept the opinion of Dr. Ayotte, a qualified expert in this process and the available scientific evidence, that either Mr. Raposo used the prohibited substance more than once or that he used them later than he testified to. Mr. Raposo did not challenge the validity or reliability of the evidence indicating the presence of both Tamoxifen and Boldenone in amounts significantly higher than scientific studies show would be present two months following ingestion, and had no other explanation for the presence of the substances.
75. I also note that Tamoxifen is well-known as an agent that is used to reduce the physical side effects athletes experience from the use of anabolic agents such as those found in Mr. Raposo's system.
76. Consequently, I am not persuaded that Mr. Raposo has discharged the burden of establishing how the prohibited substances entered his body. In all of the circumstances, it is my view that Mr. Raposo did intend to cheat. He had medical advice to rest his elbow, he wanted to cure his elbow injury before the football year started, and despite all the resources he had at his disposal, he attempted a "quick fix" to heal the injury regardless of consequences.
77. Having failed to discharge that burden, Mr. Raposo cannot avail himself of the benefits of the CADP No Significant Fault or Negligence provisions.

## DECISION

78. Rule 10.11.3 provides that where a provisional suspension is imposed and respected by the athlete, the athlete shall receive credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.
79. Lane Raposo is declared ineligible for a period of four years, commencing October 21, 2017, which the parties agreed was the date of his last competition or participation in a sports activity prior to notification of the ADRV.
80. Rule 8.2.4 h) of the CADP provides that I may award costs to any party payable as it directs. Neither party made a request for costs and none will be ordered.

DATED at Vancouver, British Columbia this 4th day of June, 2018



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C. L. Roberts  
Arbitrator