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 GREG DOUCETTE ASSERTED BY THE CANADIAN CENTRE FOR ETHICS IN SPORT

NO: SDRCC DT 18-0294
(Doping Tribunal)

In the matter of an arbitration between:

Canadian Centre for Ethics in Sport (CCES)

Cycling Canada
(CLAIMANTS)

-AND-

Greg Doucette
(ATHLETE)

-AND-

Government of Canada

World Anti-Doping Agency (WADA)

(OBSERVERS)

ARBITRATION AWARD

ARBITRATOR:	Allan J. Stitt
Appearing:	
For CCES:	Annie Bourgeois Matthew Koop Nick Pilon
Witness:	William Koehler
For the Respondent:	Greg Doucette
Witnesses:	Greg Doucette Allyson Smith

INTRODUCTION

1. The Canadian Centre for Ethics in Sport (the "CCES") alleges that Mr. Greg Doucette (the "Athlete") refused to submit to sample collection without a compelling justification, and therefore committed an anti-doping rule violation, having acted contrary to the requirements of Rule 2.3 of the Canadian Anti-Doping Program (the "*CADP*"). The CCES requests that Mr. Doucette receive a sanction of eight years of ineligibility commencing on October 2, 2018.

THE HEARING AND AWARD

2. An oral hearing was held in Halifax, Nova Scotia on Tuesday, October 2, 2018. I released my decision on Wednesday, October 3, 2018, having decided that the Athlete should receive a sanction of eight years of ineligibility. These are the reasons for that decision.

THE PARTIES

3. The CCES is an independent, non-profit organization that promotes ethical conduct in sport in Canada. The CCES maintains and carries out the *CADP* to National Sport Organizations and their members. The CCES is a signatory to the World Anti-Doping Code (the "*WADC*") and its mandatory International Standards. The CCES has implemented the *WADC* and its mandatory International Standards through the *CADP*, the domestic rules that govern this proceeding. The purpose of the *WADC* and the *CADP* are to provide protection for the rights of athletes to fair competition.

4. The Athlete is 43 years old and has been involved for many years in both bodybuilding and powerlifting. He was a national champion in powerlifting and was a bronze medallist at the World Championships. He decided to take up cycling about one year ago and recently joined Bicycle Nova Scotia ("BNS") so that he could participate in bicycle races recreationally.

5. The Athlete elected to represent himself at the hearing even though he was made aware that *pro bono* legal services were available to him. The CCES was represented by counsel.

THE WITNESSES

6. Mr. William Koehler, a CCES Doping Control Officer (a "DCO"), was the only witness for the CCES.

7. The Athlete and his girlfriend, Ms. Allyson Smith, were the two witnesses for the Athlete.

JURISDICTION

8. The Sport Dispute Resolution Centre of Canada ("SDRCC") was established pursuant to subsection 9(1) of the *Physical Activity and Sport Act* (S.C. 2003, c.2) (the "*Act*").

9. Subsection 4(1) of the *Act* states in part that the Government of Canada's policy regarding sport is founded on the fair, equitable, transparent and timely resolution of disputes in sport. Paragraph 10(1)(a) of the *Act* specifies that the mission of the SDRCC is to provide to the sport community a national alternative dispute resolution service for sport disputes.

10. The CCES manages the *CADP*, which is the set of rules that governs doping control in Canada. The *CADP* applies to all individuals who are members, registrants or participants of a Sport Organization that adopts the *CADP*. The *CADP* also applies to all individuals who participate in any activity organized, held, convened, or sanctioned by the adopting Sport Organization.[1] The CCES stated at the hearing that BNS is a Sport Organization that has adopted the *CADP*, and the Athlete did not dispute this fact.

11. Rule 8.1.2 of the *CADP* states that a rule violation and its consequences are to be determined by a Doping Tribunal pursuant to the rules set out in the *Canadian Sport Dispute Resolution Code (2015)* (the "*Code*"), unless the athlete waives his or her right to a hearing pursuant to Rule 7.10.1 or Rule 7.10.2. An oral hearing was held on October 2, 2018.

12. Rule 8.1.1 of the *CADP*, which grants the SDRCC jurisdiction to hear the matter, specifies that the hearing shall be conducted by a single arbitrator, and that the Doping Tribunal shall be constituted and administered by the SDRCC. To this end, I have been appointed to hear the present matter.

13. This arbitration award is rendered pursuant to section 6.21 of the *Code*.

FACTS

14. Except as indicated, the following facts are not in dispute.

15. The Athlete had a very successful career in both powerlifting and bodybuilding. Between about 2008 and 2009, he participated in 15 anti-doping tests.

[1] Section 4.3 of Part A of the *CADP*.

16. In 14 of the tests, the Athlete did not have a positive finding but in one of those tests, the Athlete did have a positive finding. As a result, on January 13, 2010, the Athlete was suspended for two years for having violated the anti-doping rules. Because of his suspension, the Athlete decided to make liberal use of performance-enhancing drugs ("PEDs"), which were prohibited in tested competitions, and only compete in competitions not subject to testing. He therefore became, in his words, a "professional" athlete. He was open about the fact that he was using PEDs. He became a world champion in professional powerlifting.

17. In 2012, the Athlete was charged with and convicted of importing and selling PEDs. According to the Athlete, he was given a $52,000 fine and served 20 months under house arrest.

18. After a number of years of using PEDs, the athlete decided that he no longer wanted to continue to use PEDs. Unfortunately, because of years of PED use, his body no longer produced enough testosterone and, on the advice of his doctor, the Athlete began to take (and continues to take) weekly testosterone injections. He did not (and does not) hide the fact that he takes these injections. He writes about it online, and talks about it publicly with whoever asks him about it.

19. In 2017, the Athlete began to cycle. He now cycles about five days per week in addition to the training he does beyond his cycling.

20. In May, 2018, the Athlete decided to join BNS and participate in the Tour de Keji cycling competition. In order to compete, he had to register online as a member of BNS and purchase a Union Cycliste Internationale licence.

21. The Athlete is not very computer literate and struggled with the online application. As a result, his girlfriend, Ms. Smith, assisted him by registering him while he was in the next room, available to answer questions when Ms. Smith had questions.

22. As part of the application process, there was an Athlete Declaration. Neither Ms. Smith nor the Athlete read the Athlete Declaration, but the Athlete nevertheless agreed to the online conditions by clicking an acknowledgement. Six of the eleven declarations related to possible drug testing and one stated as follows:

> 6. Should I participate in a cycling race where a drug test is conducted under the UCI Drug Test Regulations and the CCES Regulations, I agree to submit to a drug test.

23. The Athlete participated in the "C" category of the Tour de Keji race on May 26, 2018. He finished 11th of the 19 racers in that category.

24. At the conclusion of the race, Mr. William Koehler, a DCO, approached the Athlete. There is some disagreement about the details of the discussion between the DCO and the Athlete, but the following facts were not disputed. The DCO told the Athlete that the Athlete was selected to provide a sample as part of an anti-doping test; after some discussion the Athlete suggested that the two men move about five to ten feet away at the side of the road, and they moved to the side of the road to continue the discussion; the Athlete told the DCO that he would not provide a sample because he knew that he would test positive for testosterone; the DCO asked the Athlete whether he had a Therapeutic Use Exemption (a "TUE") and the Athlete said that he did not; the DCO then suggested that the Athlete take the test in any event and the Athlete still refused. The Athlete signed the Athlete Refusal Form. It is not clear whether the Athlete signed a physical form or signed a form on a tablet, though little turns on the format. The Athlete asked whether he was allowed to race the next day, and the DCO said that he was not in a position to tell the Athlete whether he could race the next day. The Athlete and DCO talked for about five to ten minutes in total.

25. The Athlete then returned to the athlete tent and the DCO left.

26. A few days after the race, the Athlete received in the mail his race license, stating on it that he may be subject to drug testing. When the Athlete read this, it was the first time that he read that he may be subject to drug testing. The Athlete did not sign the license.

27. On August 8, 2018, the Athlete was notified by the CCES of the potential anti-doping rule violation.

BURDEN

28. The CCES has the burden to prove a violation of the *CADP*.

THE APPLICABLE RULES

29. Rule 2 of the *CADP* states:

> 2 [...] The following constitute anti-doping rule violations: [...]
>
> 2.3 [...] without compelling justification, refusing or failing to submit to *Sample* collection after notification as authorized in the Rules. [...]

30. Rule 5.1.1 of the *CADP* states:

> 5.1.1[...] *Testing* [...] and all related activities conducted by the CCES shall be in conformity with the International Standard for Testing and Investigations.

31. The International Standard for Testing and Investigations (the "ISTI") provides that:

- Sample Collection Personnel shall have official documentation evidencing their authority to collect a Sample from the Athlete;
- DCOs shall also carry complementary identification which includes their name and photograph;
- The DCO shall identify himself to the Athlete using the above mentioned documentation.[2]

32. Rule 10.3.1 of the *CADP* states:

> 10.3.1 For violations of Rule 2.3 [...], the period of *Ineligibility* shall be four years unless, in the case of failing to submit to *Sample* collection, the *Athlete* can establish that the commission of the anti-doping rule violation was not intentional [...], in which case the period of *Ineligibility* shall be two years.

33. Rule 10.7.1 states:

> 10.7.1 For an *Athlete* or other *Person*'s second anti-doping rule violation, the period of *Ineligibility* shall be [...] c) twice the period of *Ineligibility* otherwise applicable. [...]

ARGUMENTS

The CCES

34. The CCES argued that the DCO properly presented himself to the Athlete as required by the ISTI. The Athlete refused to provide a sample and did not have compelling justification for doing so. The Athlete was therefore in violation of Rule 2.3 of the *CADP* and should receive a suspension of eight years in accordance with Rules 10.3.1 and 10.7.1 of the *CADP*.

The Athlete

35. The Athlete argued that the DCO did not properly present himself as required. Further, the Athlete raised a number of arguments in defence of his position that he should not receive a sanction. His other arguments are as follows:

[2] Articles 5.3.3 and 5.4.2 of the ISTI

(A) The Athlete did not know, when he joined BNS and signed up for his race, that he could be selected and asked to provide a sample for a doping test, and it was not reasonable for the Athlete to have known.

(B) The Athlete only learned that he could be tested after the race was completed, when he received his racing license. Further, the Athlete did not sign the license.

(C) The DCO told the Athlete that the Athlete was "randomly" selected and joked with the Athlete before telling the Athlete that the Athlete was required to provide a sample.

(D) The Athlete Refusal Form was altered after it was signed.

36. The Athlete also raised two arguments to persuade me to reduce the length of the suspension otherwise applicable. Those arguments were:

(E) The Athlete did not intend to cheat.

(F) An eight-year ban is too long and is unfair.

ISSUES

37. The issues I must decide in this case are:

a. Was there a violation of Rule 2.3 of the *CADP*?
b. If so, do any of the Athlete's arguments exonerate him?
c. If not, what is the appropriate sanction?

ANALYSIS

a) Was there a breach of Rule 2.3 of the *CADP*?

38. The CCES has the burden of proving a breach of Rule 2.3 of the *CADP*. In order to meet its burden, the CCES must show three things: **1.** that the DCO had documentation evidencing his authority to collect a sample, had documentation including name and photograph, and identified himself to the Athlete using the documentation; **2.** that the Athlete refused to provide a sample; and **3.** that the Athlete had no compelling justification for refusing to take the test.

39. The CCES must first prove that the DCO had the proper documentation (evidencing his authority to collect a sample and documentation with his name and photograph). The DCO testified that he had such documentation when he approached the Athlete. I find that he did have the requisite documentation.

40. The CCES must then show that the DCO identified himself to the Athlete using the documentation. In this case, there was conflicting evidence. The DCO testified that he was wearing his identification around his neck and clearly visible when he approached the Athlete, and that was sufficient to satisfy the requirement to identify himself using the documentation. The Athlete and Ms. Smith both testified that they were not shown any identification and that they did not see any documentation around the DCO's neck.

41. I find that the DCO was wearing the documentation around his neck, as he testified was his normal practice, and that it was visible to the Athlete. There would be no reason for the DCO to hide his documentation and I find it unlikely that he did so. I do believe the Athlete and Ms. Smith when they say that they did not see the documentation, but the Athlete was tired from just finishing the race and Ms. Smith was focused on the Athlete's performance in the race, and they likely did not notice the documentation around the DCO's neck. I therefore find that the DCO identified himself to the Athlete using his documentation.

42. I should make clear that, in my view, merely wearing identification around the DCO's neck and not explicitly referring to it when speaking to the Athlete is not best practice and arguably does not meet the requirement of identification under Section 45.3 of the ISTI. The dispute in the present case is an example of the problem with the fact that the DCO relied on the fact that the Athlete saw the identification around his neck and did not explicitly refer to it. The ISTI specifically states that "The DCO shall identify himself to the Athlete using the above mentioned documentation". Best practice would be for the DCO to point to the documentation as part of the identification process and explicitly offer the Athlete the opportunity to look at the documentation. I do not believe that was done in this case. The DCO is a very experienced sample collector and there should be no excuse for him not properly identifying himself. The fact that the DCO was wearing his credentials does not vitiate the need for him to introduce himself properly and produce identification in accordance with the provisions of the ISTI.

43. That said, I do not believe that the failure of the DCO to specifically point out what he was wearing around his neck and offer the Athlete a chance to look at it was fatal to the CCES' case. The behaviour of the Athlete indicates a likelihood that he believed the DCO had been adequately identified. Nevertheless, I strongly suggest that the CCES incorporate into its training for DCOs that they should explicitly refer to their identification documents when identifying themselves to athletes and offer athletes the opportunity to review the documentation.

44. Next, the CCES must prove that the Athlete refused to provide a sample. There is no dispute about the Athlete's refusal. The Athlete admits that he refused to provide a sample.

45. Finally, the CCES must demonstrate that there was no compelling justification to refuse to take the test. In this case, the Athlete told the DCO that he did not want to take the test because he would fail it if he took it. That is not a compelling justification.

46. The Athlete argued that his compelling justification for refusing to take the test was that he believed that the DCO was not a proper DCO, and was a "creep". He testified that he did not trust that Mr. Koehler was a legitimate DCO and therefore did not want to go with him to give a sample. The Athlete had had experiences in the past where strangers had suggested to him that they were a DCO, but were not. The Athlete testified that he thought Mr. Koehler was talking with him because the Athlete was a "somewhat famous bodybuilder" and was wearing a Superman shirt. The Athlete also noted that there were no race officials with the DCO. The Athlete further argued that he thought that if the DCO were actually a DCO, the DCO would have told the Athlete that he could not race the next day.

47. As stated above, I find that the DCO did have his identification documents around his neck. If an athlete is approached by an individual and asked to provide a sample, and if the athlete is concerned that the person asking is not a DCO and that the person is a "creep", the athlete would not (and should not) engage the person in a five to ten minute conversation; the athlete would not tell the person that he or she takes testosterone and would fail a doping test; the athlete would not ask the person whether the athlete was able to race the next day; the athlete would not talk to the person about TUEs; and the athlete would not sign a form confirming the refusal to provide the sample. Those actions and comments are consistent with an athlete who believes that the person asking for a sample is a legitimate DCO. If an athlete has concerns about the legitimacy of the person asking for a sample, the athlete should ask for detailed identification. If the athlete still has concerns, the athlete should stop the conversation and move away from the suspicious person and should not continue the conversation. Most importantly, the athlete should immediately report the experience to a race official so that the authorities would be able to investigate the suspicious individual. In this case, the Athlete did not ask for further (or any) identification, spoke to the DCO for five to ten minutes, and did not then immediately report the discussion to race officials to allow them to investigate the legitimacy of the request.

48. In terms of the Athlete's argument that there should have been a race official with the DCO when the DCO approached the Athlete, there is no requirement for the DCO to be with a race official. It would have been preferable if the DCO were accompanied (either by the chaperone or by a race official) to provide evidence on any factual issues about the interaction between the Athlete and the DCO, but the fact that the DCO was not accompanied does not render the request to provide a sample invalid.

49. The Athlete also argued that the DCO should have told the Athlete that the Athlete could not race the next day. I do not agree. It is not the job of the DCO to determine the consequence of the Athlete's refusal to provide a sample. It is for an athlete who has refused to provide a sample to inform him or herself of the consequence of doing so.

50. In this case, the Athlete's actions were consistent with the actions of an athlete who believed that the DCO was legitimately requesting a sample for drug testing.

b) Do any of the Athlete's arguments exonerate him?

51. I will deal with the arguments raised by the Athlete in the order set out above.

(A) The Athlete did not know, when he joined BNS and signed up for his race, that he could be selected and asked to provide a sample for a doping test, and it was not reasonable for the Athlete to have known.

52. The Athlete argued that neither the Athlete nor Ms. Smith read the "fine prints" (sic) in the online Athlete Declaration. The Athlete argued that it was reasonable for him to ask his girlfriend to assist him with the registration process because of his computer illiteracy, and most importantly, that the CCES should not be able to rely on an Athlete having read everything in an Athlete Declaration online. The Athlete noted that there was nothing on registration page for the race stating that the athletes could be subject to drug testing. He said that there are numerous examples of situations in today's society where people are asked to "Agree" to online terms and conditions, and he argued that fewer than half the people actually read what it is they are agreeing to. He said that it is not reasonable to expect those filling in forms online to read the details. He said that BNS had an obligation to either put in bold print that athletes entering the races could be drug tested, or perhaps ask the athlete to initial each individual sentence in the Athlete Declaration.

53. I believe the Athlete when he testified that he is computer illiterate and that Ms. Smith filled in the forms for him online. I believe both of them when they testified that they did not read the statements in the Athlete Declaration and I believe the Athlete when he said that he did not know that he could be tested if he participated in the bicycle race. I agree with the Athlete that BNS could have and should have done a much better job on its website of making clear that athletes are subject to the *CADP* and could be tested. But those facts do not exonerate an athlete from refusing to provide a sample to a DCO.

54. An athlete cannot decide not to read an Athlete Declaration, agree to its terms, and then claim ignorance of the content of the Declaration. An athlete making a declaration has an obligation to read and try to understand the obligations that he or she is undertaking and the declarations that he or she is making. Once an athlete agrees to the terms of the Declaration, in person or online, the athlete is deemed to have agreed to the content of the Declaration. If the athlete is unclear, the athlete should contact the sport organization to clarify before signing. In this case, none of the items listed in the declaration was unreasonable or incomprehensible. Also, it was a very short declaration. The Athlete should have taken the time to read it and, once he chose not to, should be treated as though he had read it.

55. An athlete can obviously get assistance from someone else to register online. But it is still the athlete's obligation to make sure he or she knows the content of what the athlete is agreeing to.

56. Most importantly, though, an athlete is not entitled to rely on either the CCES or a sport organization that adopts the *CADP* to inform the athlete that the athlete may be tested. The athlete has a positive obligation to inform himself. In this case, the Athlete was used to sport organizations that informed the Athlete of whether there could be testing for competitions, but the obligation to get this information is on the athlete to discover, not on the sport organization to supply. There is an incredibly high burden on an athlete who is knowingly taking a Prohibited Substance to make all inquiries to determine whether the *CADP* applies to the event or the organization, and whether the athlete is able to join the organization and/or participate in its events. The athlete must, at a minimum, make *written* inquiries as to whether the *CADP* applies, and, if the athlete does not get a response, the athlete must follow up to make sure that the athlete receives a written response. If the athlete still does not receive a response, the athlete should not participate in the event (or join the organization). In this case, the Athlete did mention to a member of the Board of Directors of BNS that he was taking testosterone (and the Board member did not tell the Athlete that he could not join BNS), and the Athlete relied on what he read on the website (though he did not read the Athlete Declaration). That is clearly not sufficient inquiry by an athlete.

(B) The Athlete only learned that he could be tested after the race was completed, when he received his racing license. Further, the Athlete never signed the license.

57. The Athlete received his race license a number of days after the race was concluded, and it was only then that he saw that he could be tested for PEDs. The Athlete never signed that license. He said that the license should have been emailed to him (or otherwise sent to him) prior to the race so that he could have seen that the participants in the race could be subject to anti-doping tests. He said that if an event is subject to drug testing, those holding the event have an obligation to make sure that an athlete is aware of that fact and must make reasonable steps to so inform the athlete.

58. If an athlete who is knowingly taking a Prohibited Substance participates in an event governed by the *CADP*, it is not relevant that the athlete didn't know that the athlete could be sanctioned for participating in the event. As stated above, the Athlete has the obligation to determine what organizations he or she may join and in which events he or she may participate. It is not relevant that the Athlete gained his actual knowledge after the event. Nor is it relevant whether the Athlete signed the racing license. The Athlete had an obligation to find out whether he was allowed to participate in the race without risk of sanction before he registered for it, not when he received his license.

(C) The DCO told the Athlete that he was "randomly" selected and joked with the Athlete before telling the Athlete that he was required to provide a sample.

59. The Athlete testified that the DCO said that the Athlete was randomly selected (when it was clear that the Athlete was not), and the DCO joked with the Athlete prior to telling him that he had been randomly selected. The Athlete noted that there had never been testing of cyclists in a local race in Nova Scotia and that it was not fair to test a person who finished 11th in the C category, and ignore those in the A and B categories. The Athlete also argued that he was targeted and unjustly treated because he had failed a drug test in the past, and because he had been convicted of importing and selling steroids in 2012. He said that the CCES held a grudge and had a vendetta against him because of that.

60. The DCO said that he did not joke with the Athlete and said that he did not recall whether he had told the Athlete that the test was random.

61. Nothing turns on whether the DCO joked with the Athlete before having a discussion about sample collection, so I do not need to decide which version of the facts is the accurate one.

62. In terms of whether the DCO told the Athlete that he had been randomly selected, I find that it is likely that the DCO did so (given how adamant both the Athlete and Ms. Smith were about their recollection of that fact, and how the DCO did not recall whether he had or had not). The Athlete was obviously not randomly selected. I would recommend that the CCES instruct all of its DCOs that it is not appropriate to indicate to an athlete that he or she has been randomly selected unless the DCO knows for certain that the selection was random.

63. That said, the method of selection is not determinative in this case as it did not cause the Athlete to refuse to take the test (and was not reasonable grounds for the Athlete to refuse to take the test).

64. It was not necessary for the Athlete to have been randomly selected. The CCES is permitted to choose from which athletes to obtain samples and the CCES may target athletes to test if the CCES suspects that those athletes are not operating within the rules. The CCES is not required to only select those athletes who have a good result in a competition.

65. The fact that there has been little or no testing in the past is not a justification for refusing to submit a sample.

(D) The Athlete Refusal Form was altered after it was signed.

66. The Athlete argued that the Athlete Refusal Form that the Athlete signed was not the same as the document presented by the CCES in its material and at the hearing. The Athlete said that the document he signed did not have boxes checked and that the document presented at the hearing did have boxes checked. Also, the Athlete noted that the document has a box checked that says the Athlete was shown both the DCO and Chaperone's credentials. Since there was no chaperone present, it did not make sense that the Athlete agreed to that.

67. The DCO admitted at the hearing (while being cross-examined by the Athlete) that he checked the boxes in the Athlete Refusal Form *after* the Athlete had signed the form. I cannot express strongly enough how inappropriate that action was. It is beyond doubt that a DCO should never alter a document after the document is signed by an athlete, and the CCES should never put an altered document before a Tribunal without making clear that the document was altered. The DCO freely admitted to altering the document and did not try to hide it. He did not seem to realize how inappropriate it was.

68. I also have two additional concerns with the DCO's actions (and inaction) with respect to the Athlete Refusal Form.

69. First, the Form itself states that a copy should be given to the athlete, presumably to prevent suggestions that the document has been altered after it is signed, among other reasons. But the Athlete was not given a copy of the form in this case. The DCO did inform the CCES the next day that the Athlete was not given a copy of the form and the DCO suggested that the CCES then give the Athlete a copy, though presumably the altered copy. I do not know whether the DCO simply forgot to give a copy to the Athlete or did not want to give a copy to the Athlete because he planned to alter the form.

70. Second, on the Athlete Refusal Form, the DCO signed the form twice, once for himself as DCO *and* once as the DCO's chaperone. The DCO said that he was taught in his training that it is acceptable and appropriate for a DCO who is approaching an athlete alone to act as both a DCO and as the DCO's chaperone. That cannot be appropriate. A chaperone is, by definition, a person who accompanies another person. One cannot be one's own chaperone and accompany oneself. I make no comment about whether it is necessary to have two people approach an athlete to request a sample (though it would seem that that would be preferable), but it is unquestionably wrong for someone to act as his or her own chaperone. If a chaperone is required, that person must be a different person from the DCO. If a chaperone is not required, it is confusing at the least to have a place on the Athlete Refusal Form for the chaperone to sign, and definitely wrong for the DCO to sign as his or her own chaperone.

71. The crucial issue for me to decide is whether the actions of the DCO (and by implication, the CCES) were so egregious as to taint the entire process and render the Athlete's refusal invalid. This was the most difficult issue for me to determine in this case.

72. The CCES argued that the appropriate remedy resulting from the inappropriate actions of the DCO was for me to disregard the Form. It is certainly true that the CCES cannot rely on the fact that the Athlete signed the document and I have not done so.

73. I have decided that I should not invalidate the entire suspension because of the inappropriate actions of the DCO, though I was tempted to do so, given the seriousness of those actions, in particular of the act of altering a document after it was signed and putting it before the Tribunal.

74. The CCES did not require that the document be signed to prove its case. The Athlete Refusal Form is tainted evidence, but evidence that I can ignore. The Athlete admitted that he refused to provide a sample. That issue is not in dispute in this proceeding. So the only purpose of the Athlete Refusal Form is to prove a fact that was not in dispute. The CCES does not need to rely on the tainted document.

75. That said, now that it has come to the CCES' attention that a DCO has altered a document after it was signed by an athlete, the CCES must ensure that this inappropriate conduct never occurs in the future. The CCES is now on notice that this practice has occurred, and should immediately take all reasonable steps to make sure it does not happen again.

76. The actions by the DCO came close to causing me to conclude that the entire process was tainted. I hope it goes without saying that it is important that this DCO receives further training before collecting any further samples, and that the CCES needs to improve its instructions given to DCOs so that it makes it clear that a DCO must properly identify him or herself with the documentation prior to collecting samples; that a DCO should not tell an athlete that the athlete was randomly selected unless the DCO knows for certain that the athlete was, in fact, randomly selected; that a DCO should never alter a document after the document is signed; that a DCO cannot act as the DCO's own chaperone; and that a DCO must leave a copy of the Athlete Refusal Form with the athlete.

(c) The appropriate sanction.

77. Pursuant to Rule 10.3.1 of the *CADP*, the period of ineligibility is four years for a breach of Rule 2.3 of the *CADP*, unless the Athlete can show that "the commission of the anti-doping rule violation was not intentional". In this case, the violation was the refusal to submit to sample collection. There is no dispute that the Athlete's refusal to submit to the sample collection was intentional, so the period of ineligibility is four years. I should emphasize that for a breach of Rule 2.3 of the *CADP*, it is not relevant what the Athlete says he had in his system (and would have tested positive for) as we have no test results to verify the Athlete's claim because of the Athlete's refusal. So the issue is not whether the Athlete had the intention to cheat (or gain a competitive advantage); the issue is whether the Athlete intended to avoid giving the sample because that is the rule that was breached. It is not in dispute that the Athlete intentionally refused to give the sample.

78. Pursuant to Rule 10.7.1(c) and Rule 10.7.5, the sanction is doubled if the violation is a second violation within a ten-year period. It is not in dispute that this was a second violation within a ten-year period.

79. Therefore, the appropriate sanction is an eight-year period of ineligibility.

80. I will now deal with the arguments raised by the Athlete to support his argument that he should receive a reduced suspension:

(E) The Athlete did not intend to cheat.

81. The Athlete emphasized that he is not a cheater, had no intention of cheating and did not want to cheat by competing in an event that was subject to drug testing. He was adamant that if he had known that the race was subject to drug testing, he would not have entered. He noted that the testosterone that he took did not give him a competitive advantage in cycling. He emphasized that he was not trying to cheat the public or the other riders and was open about the fact that he was taking testosterone.

82. I believe the Athlete that he did not intend to cheat and he was not trying to get a competitive advantage in the race. I do not think he was trying to cheat. But that is not the test that I have to apply in order to determine whether an eight-year suspension is warranted. I have to determine whether he breached Rule 2.3 of the *CADP*. Regardless of the Athlete's intent around cheating, he was still in contravention of Rule 2.3 of the *CADP* by refusing to provide a sample and must be subject to the sanction set out in the *CADP*.

83. The Athlete presented to me a case in which another athlete had tested positive for a Specified Substance (cannabis), and the length of that athlete's suspension was reduced because the arbitrator concluded that the athlete was not taking the Specified Substance to enhance performance. While I agree that the Athlete in this case was not taking testosterone in order to try to enhance his performance in the bicycle race, unfortunately for the Athlete, that does not give me the discretion to reduce the Athlete's suspension in this case. Rule 7 of the *CADP* (allowing the arbitrator the discretion to reduce the length of the suspension in certain situations) does not apply to refusals to submit a sample. If an athlete does not submit a sample, we cannot know what was in the athlete's system and cannot determine whether the substances in the athlete's system would enhance performance. Further, Rule 7 only applies if an athlete tests positive for a "Specified Substance". Testosterone is not a Specified Substance. Accordingly, I do not have the discretion to reduce the suspension to less than eight years.

(F) An eight-year ban is too long and is unfair.

84. The Athlete argued that an eight-year ban would be unfair because the Athlete was just trying to stay fit and healthy, and make new friends in sport.

85. I am constrained by the provisions of the *CADP* and must apply them as they are written. The *CADP* clearly sets out the length of the suspension and does not give me discretion to alter it.

86. My ruling does not, of course, prevent the Athlete from staying fit and healthy and making new friends in sport. The Athlete is merely prohibited for eight years from participating in events where athletes are required to be drug free. I should note that the Athlete was already prohibited from participating in these events while taking testosterone (which he continues to take) before my decision was released. While he is taking testosterone, he may not participate in events where the *CADP* applies. The Athlete may still, however, work out, cycle, run and participate in sports with friends.

COSTS

87. No costs were requested and no costs are awarded.

CONCLUSION

88. As stated above, I find that the Athlete violated Rule 2.3 of the *CADP* and that the resulting sanction is eight years of ineligibility commencing on October 2, 2018 and ending on October 1, 2026.

89. I want to commend Mr. Doucette on the excellent job he did presenting his case, and Ms. Bourgeois for her excellent presentation to me.

Toronto, October 19, 2018

Allan J. Stitt
Arbitrator