



CCES v. Waselenchuk



Introduction

- Claimant:** Kane Waselenchuk
- Respondent:** Canadian Centre for Ethics in Sport (CCES), Racquetball Canada, Government of Canada
- Invited Parties or Observers:** World Anti-Doping Agency, International Racquetball Federation
- Type of Dispute:** Doping
- Arbitrator:** Ross C. Dumoulin
- Date of Decision:** March 23rd, 2007

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Dispute Summary

Kane Waselenchuk signed an official waiver admitting to the use of prohibited substances prior to the 2006 Canadian Racquetball National Championships.

Through the waiver, he also agreed to the proposed sanctions as recommended by the Canadian Centre for Ethics in Sport (CCES).

He would later argue, however, that he had been misinformed about the consequences of signing the waiver.

He appealed to the Sport Dispute Resolution Centre of Canada (SDRCC) to dismiss the waiver and to order a new hearing to determine whether an anti-doping violation had occurred.





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Background Facts

On May 27th, 2006, Mr. Kane Waselenchuk was selected for doping control at the Canadian Racquetball National Championships in Edmonton, Alberta.

A Canadian citizen, Mr. Waselenchuk lived in the United States. He joined USA Racquetball in order to play on the International Racquetball Tour (IRT).

As a requirement to compete at the National Championships, he had paid a membership fee to Racquetball Canada (RC).

Prior to the event, Mr. Waselenchuk advised RC that, if selected for doping control, he would likely test positive for cannabis.

On June 16th, the CCES reported that the athlete's sample indicated the use of cannabis and cocaine, both of which were listed on the World Anti-Doping Agency's (WADA) list of prohibited substances.

A copy of the report was sent to Mr. Waselenchuk.



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Background Facts (continued)

Less than a week later, the athlete sent an email to the CCES to acknowledge the use of cannabis, but to reject any suggestion that he had used cocaine.

On June 26th, the CCES recommended to Racquetball Canada that Mr. Waselenchuk should face a penalty of two years of ineligibility from sport and permanent ineligibility from direct financial support from the Government of Canada. There was no mention of the athlete's right to retain legal counsel, nor did it suggest that the proposed sanction would affect his ability to compete as a professional outside Canada.

The Notification went on to state that the athlete had three options: proceed to a Doping Tribunal hearing, waive his right to a hearing and accept the sanction, or provide further information to the CCES.



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Background Facts (continued)

In the days that followed, Mr. Waselenchuk spoke with a CCES representative on a number of occasions and was advised that decisions rendered under the Canadian Anti-Doping Program (CADP) would be recognized by other anti-doping organizations (e.g. US Anti-Doping Agency) or sport organizations (e.g. International Racquetball Federation).

CCES explained to him that the proposed two-year suspension from sport would apply outside Canada and that the IRF would prevent him from competing at any sanctioned events.

He was provided with contact information for a number of relevant organizations and was encouraged to visit the SDRCC web site to consult the list of legal advisors working in the field of sport law.

Mr. Waselenchuk contacted the IRT Commissioner and was advised that the sanction would not affect his professional status. The same advice was provided by the President of Racquetball Canada.



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Background Facts (continued)

On July 6th, Mr. Waselenchuk signed a Waiver of Hearing Form, acknowledging the anti-doping rule violation and accepting the proposed sanction.

Three days later, he was advised by the IRT Commissioner that there had been a mistake and that the anti-doping violation would affect his ability to compete on the professional tour.

Mr. Waselenchuk subsequently challenged the validity of the waiver, arguing that he had been misinformed about the consequences of signing it.

On January 11th, 2007, the Sport Dispute Resolution Centre (SDRCC) issued a preliminary ruling. Jurisdictional arbitrator Bernard A. Roy confirmed the Centre's jurisdiction to appoint a Doping Tribunal to determine whether the waiver signed by Mr. Waselenchuk was indeed valid.



Athlete's Position



Mr. Waselenchuk's case was based on the following arguments:

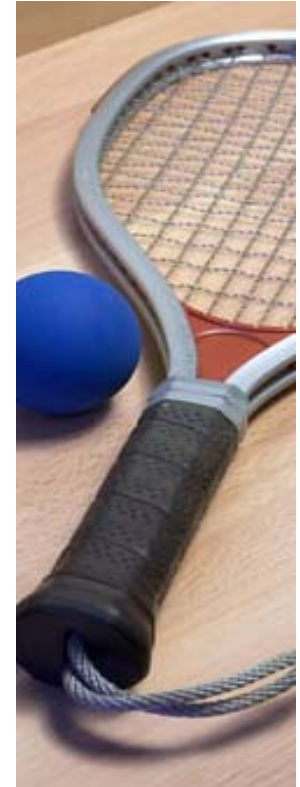
- The CCES lacked jurisdiction because International Racquetball Federation (IRF) rules required that the matter be referred to the athlete's National Federation for a hearing -- in this case, USA Racquetball; and,
- The Waiver was invalid for two reasons: 1) he was never formally advised of his right to retain and instruct a lawyer; and 2) he signed it based on misinformation from a credible source (the IRT Commissioner).

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CCES' Position

The CCES's case was based on the following arguments:

- The rules of the Canadian Anti-Doping Program (CADP) and the World Anti-Doping Code (WADC) confirmed that it had proper jurisdiction in this case;
- All members of Racquetball Canada and participants in the National Championships were bound by the terms and conditions of the CADP;
- By participating in the event, Mr. Waselenchuk came under the authority of the CCES and the CADP;
- The CCES was under no obligation to advise the athlete of his right to legal counsel before signing the Waiver, but nevertheless directed to the athlete to sources which provided such instruction; and,
- The Waiver was properly executed and was a valid document.





Arbitrator's Analysis

In his ruling, arbitrator Ross C. Dumoulin cited both the World Anti-Doping Code and the Canadian Anti-Doping Program to confirm that CCES had proper jurisdiction to oversee doping control and to follow up on the results.



With regards to the issue of legal counsel, the arbitrator noted that CCES made it abundantly clear to the athlete that such support was available to him through several sources including the SDRCC and The Sport Solution.

Mr. Dumoulin also concluded that the athlete had been fairly and properly advised by CCES of the potential consequences of signing the Waiver; namely, that the IRF would recognize the sanction.



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Ruling

Although it was unfortunate that the athlete was provided misinformation by a representative of the IRT, Mr. Dumoulin noted that the procedure followed by CCES, including the assistance provided directly to Mr. Waselenchuk in several telephone conversations, was fair and just to the athlete.

Further, he ruled that the waiver could not be set aside, either for reasons of misinformation given to the athlete, or the absence of legal counsel prior to signing.

Ultimately, in Mr. Dumoulin's view, the Waiver signed by Mr. Waselenchuk was a true and valid one. He therefore denied the athlete's request for a new hearing before a Doping Tribunal.

Lessons Learned

1. Procedural fairness dictates that every person must be notified of his or her right to legal counsel before signing a waiver form. Following the Arbitrator's recommendations, the CCES has amended its documentation to make this more explicit.
2. Like all citizens, athletes have an obligation to know the laws and rules that govern them. It remains the athlete's responsibility to find reliable sources and obtain accurate information.

