

IMPORTANT NOTE: *This version is a translation of the original French version.*

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

N° SDRCC DT 16-0250

Doping Tribunal

Between:

**CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)
CYCLING CANADA (CC)**

Claimants

- and -

GÉRARD LOUIS ROBERT

Athlete

- and -

**THE GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)**

Observers

Tribunal: Patrice Brunet (sole Arbitrator)

Hearing dates: March 1st and 2nd, 2017

Appearances

For the CCES: Annie Bourgeois and Raphaël Buruiana

For the Athlete: Gérard Louis Robert

DECISION WITH REASONS

I. INTRODUCTION

1. Gérard Louis Robert (the “Athlete”) is a 68 year-old cyclist as of the hearing date.
2. On August 27, 2016, the Athlete who was 67 at the time, was selected for random anti-doping tests during the Quebec Track Championships in Bromont, Quebec.
3. On November 4, 2016, the Athlete was notified of an adverse analytical finding (“AAF”) under Rule 7.3.1 of the 2015 Canadian Anti-Doping Program (the “CADP”). The notification stated that he had committed an anti-doping violation based on the sample provided during the championships.
4. The Canadian Centre for Ethics in Sport (the “CCES”) certifies that the analysis of the sample provided by the Athlete revealed an exogenous testosterone level exceeding 25.
5. Classified as an anabolic agent, exogenous testosterone is a prohibited substance under the *2016 Prohibited List* of the World Anti-Doping Agency (the “WADA”). Testosterone is an endogenous substance that is prohibited when administered exogenously.
6. The Athlete had already accepted a voluntary provisional suspension on October 11, 2016.
7. The Athlete challenges the CCES’ statement that he committed an anti-doping rule violation. He claims he doesn’t know how the prohibited substance was found in his test results.
8. He is also challenging the four (4) year sanction proposed by the CCES.

II. THE PARTIES

9. Under Rule 8.2.3 of the CADP:

The parties before the Doping Tribunal are the Athlete or other Person the CCES asserts to have committed an anti-doping rule violation, the CCES and the relevant Sport Organization. The Athlete or other Person's International Federation, WADA and the Government of Canada may attend the hearing as observers if they elect to do so. [...]

A. CCES and Cycling Canada

10. Based in Ottawa, the CCES is the national anti-doping organization responsible for adopting and enforcing anti-doping rules and regulations in Canada. It is responsible for sample collection and results management from anti-doping controls across Canada. In this respect, the CCES manages the CADP.
11. Cycling Canada is the sport organization governing cycling in Canada. It has overall authority to provide leadership in promotion and development as well as govern all aspects of cycling in Canada, and to select and prepare Canadian teams for international competitions. It is also a member of the Union Cycliste Internationale (the "UCI").

B. The Athlete

12. Gérard Louis Robert is a member of Cycling Canada and was 68 years old as of the hearing date.
13. The Athlete holds 107 titles, including 24 as world champion, 21 as Canadian champion and 24 as French Champion.

C. The Observers

14. Based in Montreal, the World Anti-Doping Agency (the “WADA”) is the international organization responsible for managing the World Anti-Doping Program which includes the World Anti-Doping Code. WADA did not attend the hearing.
15. The Government of Canada did not attend the hearing either as observer.

III. THE FACTS

16. At the time of the doping control, the Athlete was a 67 year-old track cyclist. He started cycling at a young age and was a professional cyclist in France until the age of 19.
17. However, a heart condition forced him to put his career on hold. He later resumed his competitive cycling activities at age 50.
18. The Athlete claims that he ceased taking medication when he became no longer affected by a heart condition. He only takes natural health products such as vitamins, zinc and omega-3.
19. The Athlete claims to have suffered from gastroenteritis a few days prior to the championships of August 27, 2016, when the CCES conducted the doping control.
20. Further to the A sample findings, the B sample was analyzed in the Athlete’s absence, per his request, on October 11, 2016 at the laboratory of the Institut national de la recherche scientifique (INRS). This sample confirmed a T/E ratio exceeding 25 for exogenous testosterone, thereby confirming the findings from the A sample.
21. On November 4, 2016, the Athlete was notified of an adverse analytical finding.

The notification stated that he had committed an anti-doping violation during the championships of August 27, 2016.

22. The certificate of analysis of the A sample states the following in the comment section:

[Translation]

Testosterone: T/E ratio exceeding 25. Results from IRMS testing indicate testosterone and metabolites of exogenous origin.

24. According to the CCES, the Athlete was not subject to a Therapeutic Use Exemption (a “TUE”) for exogenous testosterone.

IV. THE PROCEEDINGS

A. Preliminary Stages

25. On November 4, 2016, the CCES issued a notification of an anti-doping rule violation in compliance with CADP Rule 7.3.1. At paragraphs 1 and 2 of the notification, the CCES states the following facts:

[...] The Canadian Centre for Ethics in Sport (CCES) asserts that Mr. Gérard Louis Robert, an athlete affiliated with Cycling Canada, has committed an anti-doping rule violation.

The sample giving rise to the adverse analytical finding was collected out of competition on August 27, 2016 in Bromont, QC, in accordance with the Doping Control Rules of the CADP. The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory on September 23, 2016. [...]

26. On November 10, 2016, during an administrative conference call held by the SDRCC, the Parties agreed that a resolution facilitation session would take place following the receipt of laboratory reports, as recorded in the Notes of the Administrative Conference Call.

27. The Panel constituting the Doping Tribunal, having been duly designated and constituted on December 15, 2016 in accordance with Rule 8.1.1 of the CADP, convened a preliminary meeting with the Parties, by telephone, on January 9, 2017, in order to resolve outstanding procedural matters and set a calendar of proceedings.
28. Because the Athlete did not have legal representation at the preliminary meeting, I indicated that I could explain the procedure to him but not offer legal assistance. I also recommended that the Athlete familiarize himself with the Canadian Sport Dispute Resolution Code (the “Code”) and the CADP. I also indicated that he could refer to existing doping case law both in Canada and worldwide in order to prepare his defence.

B. The Hearing

29. As agreed between the Parties during the preliminary meeting of January 9, 2017, the hearing took place at the SDRCC offices in Montreal on March 1st and 2nd, 2017.

C. Short Decision

30. On March 7, 2017, I issued a written short decision concluding the following:

[Translation]

[...]

12. In order to determine that the anti-doping rule violation was not intentional, the Athlete must first establish how the prohibited substance entered his body.

13. However, the Athlete did not meet this first condition. He offered no explanation as to the source of the testosterone.

[...]

15. *Since the Athlete could not establish how the exogenous testosterone entered his body, I could not analyze the second criteria involving the conduct and intent of the Athlete under Rules 10.2.1.1 and 10.2.3. of the CADP.*

16. *Consequently, Gérard Louis Robert has committed an anti-doping violation under Rule 2.1 of the CADP. Since I could not determine the Athlete's intent, it was not possible to weigh the criteria giving rise to a reduced sentence on the four (4) year ineligibility period under Rule 10.2.1. of the CADP.*

17. *CONSEQUENTLY, Gérard Louis Robert is declared ineligible for a period of four (4) years, effective retroactively to October 11, 2016 until midnight on October 10, 2020.*

V. JURISDICTION

31. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19, 2003¹.
32. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sport community, among others, a national alternative dispute resolution service for sport disputes.
33. In 2004, the SDRCC assumed responsibility for doping disputes in Canada.
34. All Parties have agreed to acknowledge the SDRCC's jurisdiction in the present matter.

¹ The *Physical Activity and Sport Act*, S.C. 2003, c.2

VI. SUBMISSIONS

35. This section summarizes the oral and written submissions of the Parties, including expert testimonies. Although this is not a detailed record, I carefully examined all submissions presented by the Parties.

Testimony of the Athlete's expert, Dr. Steven Robbins

36. Dr. Steven Robbins is a family doctor specializing in geriatrics and sports medicine. He has known the Athlete for several years.
37. When questioned on his doping competencies or experience, Dr. Robbins referred the Tribunal to his personal website. He did not file his resume as an exhibit.
38. He stated that he authored over thirty (30) geriatric articles on the effects of aging, but did not produce copies as exhibits.
39. He also admitted to prescribing testosterone to his elderly patients as a regular part of his practice. He also explained that he conducted research involving testosterone approximately 15 years ago.
40. However, Dr. Robbins never conducted any research specific to exogenous testosterone. He never had speaking engagements on the subject of doping or received funding for doping research projects.
41. Dr. Robbins testified that he had authored an article published in November 2014 in the *New England Journal* regarding the variability of testosterone levels in the elderly. However, he could not produce a copy of the article during the hearing. Consequently, the Tribunal could not be apprised of its content.
42. He stated having treated a dozen athletes over the last ten (10) years and mentioned that some cyclists acknowledged taking testosterone but had never been caught in a doping test.
43. During his testimony, he confirmed that the Athlete never had symptoms of

hypogonadism.

44. During the hearing, Dr. Robbins emailed a copy of an article entitled “*Evaluation of Testosterone/Epitestosterone Ratio Influential Factors as Determined in Doping Analysis*”². Despite having been produced late, it was filed as exhibit during the hearing, without objection from the CCES.
45. According to Dr. Robbins, this article proves the variability of the T/E ratio, which may be a consequence of aging. He also stated that the T/E ratio increases at puberty. However, he did not refer to a specific segment of the article that cast a doubt on the analytical findings of the Athlete in question.
46. He further stated that, based on his observations, athletes experience a decrease in testosterone when training.
47. Furthermore, Dr. Robbins confirmed that the Athlete contracted gastroenteritis prior to the championships in Bromont, but could not confirm the form of gastroenteritis involved.
48. When questioned on this subject, Dr. Robbins said he examined the Athlete during regular check-ups once or twice per year, and sometimes when the Athlete fell ill.
49. He also stated that urine-based laboratory tests are not 100% accurate in detecting and measuring exogenous testosterone. According to him, using a blood sample would be more appropriate.
50. Dr. Robbins referred to his email of February 10, 2017 in which he described the significant variation in T/E ratios between individual subjects. When questioned on this subject, he could not offer additional details to support this claim.
51. Prior to the hearing, Dr. Robbins had enquired on a few occasions with the CCES about the probability level of the tests, as well as atypical cases (“*outliers*”) and

² D.H. van de Kerkhof, D. de Boer, J.H.H. Thijssen, and R.A.A. Maes, *Evaluation of Testosterone/Epitestosterone Ratio Influential Factors as Determined in Doping Analysis*, Journal of Analytical Toxicology, Vol. 24, March 2000.

comparison groups.

Testimony of the Athlete

52. In his defence, the Athlete basically contended that he did not ingest a doping substance and that he has no idea how the exogenous testosterone entered his body.
53. According to the Athlete, he has several years of experience as a track cyclist, a sport which he practiced professionally in France until the age of 19. He then put his career on hold due to a heart condition, but resumed his competitive activities at the age of 50 after his health issues were resolved.
54. As a health-conscious individual, he submits that he would not start ingesting doping substances at age 68.
55. He stated that he was able to resume his sporting activities when he was cured by Dr. Robbins 16 years ago. His training is no longer restricted by health issues and he can participate in championships.
56. He noted that he has not taken any medication since being cured and that he trains six (6) times weekly.
57. He is a sprinter and holds the title of world sprinting champion for his age group. Since resuming his competitive activities 16 years ago, he has won approximately 350 national and international races.
58. Prior to retiring at age 60, he worked as a designer/illustrator. Today, he enjoys a frugal way of life.
59. He has been receiving a yearly sponsorship of approximately \$20,000 from ASEA since 2012 to cover his travel and cycling event expenses.
60. He is also a speaker for ASEA giving 2 or 3 conferences per year, without compensation.
61. Other unpaid activities include speaking engagements on well-being. He also receives

very low compensation from the Montreal Peak Centre to position cyclists, and gives cycling courses to young hopefuls at the Bromont cycling stadium.

62. According to the Athlete, his mission is to show people, young and old, that it is never too late to reach their goals, regardless of age.
63. He believes himself to be an exceptional athlete with excellent genes.
64. During his testimony, he mentioned having undergone 4 or 5 doping controls during his career, including the one conducted in Bromont in August 2016. This is the first time that he has tested positive during a doping control.
65. He testified that he takes no medication, except for an occasional Aspirin. He does not smoke or drink alcohol. He takes vitamin D, zinc, omega-3, protein as well as a product manufactured by ASEA that helps the body recover. Because he buys these products in Canada, he believes they do not fall under the prohibited list.
66. The Athlete is positive the ingested products are not contaminated and, for this reason, did not have them tested. ASEA's product is tested in the United States. In addition, this same product is used by both the Canadian cycling team and the US Olympic swimming team. For these reasons, he felt the product did not warrant further investigation.

Testimony of Pierre Hutsebaut (witness for the Athlete)

67. Pierre Hutsebaut is General Manager of the Montreal Peak Centre and has been involved in the Quebec cycling community since the 1980s.
68. He stated that significant changes become very apparent in athletes who take doping products. According to him, they demonstrate attitude problems and physical changes when taking doping products, among other things.
69. He did not notice any such symptoms in the Athlete. According to him, the Athlete progressively improved, as would an athlete who trains regularly to improve his performance. He saw nothing abnormal or suspicious where the Athlete is concerned.

70. Mr. Hutsebaut confirmed being quite astonished when the Athlete tested positive, although he does not claim to be an expert on the matter.
71. He indicated that he has witnessed doping controls across the globe and that INRS lab results have always been above reproach. He does not question the results at all.
72. He also stated that he knows of some elderly people who take testosterone but that they focus on certain championships (such as the Gran Fondo) where there is no doping control.
73. During his cross-examination, Mr. Hutsebaut explained that he sometimes acts as technical delegate during Youth Olympic Games and that he works with the UCI approximately once per month for some of their events.
74. He stated that he supervises the Athlete's annual planning but not his dietary plan. He has known the Athlete since 1970 and they see each other about twice (2) a week at the Peak Centre. They do not otherwise socialize.
75. The Tribunal found Mr. Hutsebaut to be a credible witness and thanks him for taking part in the hearing.

Testimony of the CCES expert, Professor Christiane Ayotte

76. Pr. Ayotte earned her Ph.D. in organic chemistry from Université de Montréal in 1983. She completed post-doctoral studies in mass spectrometry.
77. She has published several articles on exogenous testosterone and how to identify it, a subject on which she is extremely well versed. She conducted several tests and studies on the detection methods of exogenous testosterone.
78. In 1990, her laboratory began using detection methods based on *Isotope-ratio mass spectrometry* ("IRMS"), which ultimately led to the development of reliable analytical methods to detect exogenous testosterone in 1997. She delivered several presentations on the subject.

79. According to her, doping control is a rapidly-evolving field that must be as precise as possible, given that doping cases are covered by the media and often end up in courts.
80. She acknowledges that Dr. Robbins is not as knowledgeable of doping matters, given that he is a general practitioner who works in a clinical setting rather than a laboratory.
81. In 2013, she helped draft the IRMS analysis document demonstrating the stability of IRMS tests and their ability to deliver highly accurate results.
82. Pr. Ayotte explained that exogenous testosterone is a prohibited substance, because it is classified as an anabolic steroid that promotes protein retention. This substance is prohibited since 1970. Its use began with bodybuilders and spread to other sports for its ability to increase muscle mass and strength. It also promotes hormonal balance and faster recovery.
83. She stated that this substance is readily available (sold over the counter in Cuba and the Dominican Republic, for example) and can be administered by injection, orally or transdermal gels/patches. It is present in all forms of sport (boxing, bodybuilding, cycling, etc.).
84. IRMS is used to detect testosterone and to establish its exogenous origin.
85. Pr. Ayotte noted that free testosterone is measured in circulating blood in a clinical setting. However, urine is used for laboratory testing. In her opinion, urine is ideal to detect testosterone given that the bladder ultimately collects everything that has entered the body. Urine analysis reveals both past and present results, while blood yields only present results.
86. Blood, instead of urine, was never considered for exogenous testosterone analysis in the doping control community.
87. Pr. Ayotte indicated that the usual procedure was followed in this case: further to adverse analytical findings from the sample, the laboratory consulted the Athlete's biological passport and confirmed its findings using IRMS.

88. In this case, the Athlete's biological passport showed a T/E ratio between 3 and 4. The urine sample submitted for analysis showed a baseline T/E ratio of 28, i.e. 7 times higher.
89. According to her, this number is extremely abnormal, making it impossible for the testosterone to be of endogenous origin. IRMS confirmed without a doubt the presence of exogenous testosterone in the Athlete.
90. To her knowledge, there have only been two high T/E instances worldwide: the first showing a ratio of 18 and the second a ratio of 20.
91. She further explained that, when manufactured in laboratory, exogenous testosterone must be synthesized using a base material (usually soy) to produce a chemical reaction.
92. Endogenous testosterone however is derived from the body's own "cholesterol supply" from our diet. This includes vegetable and animal protein intake which are associated with a mixed isotopic signature. This signature varies depending on the region where the food was ingested. The isotopic signature is detailed below.
93. Exogenous testosterone (i.e. illegally ingested substance) has a unique carbon signature due to its soy base (exclusively plant-based), a conclusive indication that it was not *produced* in the Athlete body. The IRMS enables to reach this conclusion, and confirm that doping took place, notwithstanding the T/E ratio which is used solely for screening purposes.
94. The ERC values in the table below, from page 5 of Dr. Ayotte's³ report, show the Athlete's endogenous values. In this case, the endogenous isotopic signature was - 22.5 in the A sample.

³ P. Ayotte's report to the CCES dated February 6, 2017.

Steroid	A-Sample (T/E:28)		B-Sample (T/E:28)	
	$\delta^{13}\text{C}$ values (%)	$\Delta\delta^{13}\text{C}$ (vs. pgdiol)	$\delta^{13}\text{C}$ values (%)	$\Delta\delta^{13}\text{C}$ (vs. pgdiol)
Testosterone	-30.3	-7.8	-30.0	-8.1
5 α -Adiol	-31.6	-9.1	-31.4	-9.5
5 β -Adiol	-29.3	-6.8	-29.1	-7.2
Androsterone	-29.2	-6.7	-28.8	-7.0
Etiocholanolone	-29.3	-6.8	-29.1	-7.2
Pregnanediol (ERC)	-22.5	-	-21.9	-

95. The isotopic signature in North America is usually -20. In Europe, it varies between -22 and -24, while in Cuba it drops to -16 and can reach as high as -26 in Latvia.
96. Although ERC values may vary significantly, the laboratory accounts for the geographic location of an athlete. Additionally, the ERC value is always assessed in relation to the 5 other steroidal values listed in the table, including the differential value. This value must be equivalent to the ERC value, up to a maximum of 3. In this case, the differential value is more than twice the maximum for each steroidal value.
97. The Athlete was in Europe shortly before the August 27, 2016 championships. According to Pr. Ayotte, this explains why the isotopic value significantly increased to -22.5.
98. Further to these procedures, the laboratory reported the Athlete's adverse finding to the CCES.
99. Pr. Ayotte also noted that the B sample and the A sample yielded virtually identical results.
100. Pr. Ayotte further dismissed the Athlete's age as potentially influencing the T/E ratio and reiterated that IRMS clearly demonstrated the isotopic signature of exogenous testosterone.
101. According to her, an individual's T/E ratio does not vary significantly. Variations can reach 30%, but rarely higher where endogenous testosterone is concerned. In this case, there is a 600% increase which is extraordinary.
102. In her conclusion, Pr. Ayotte stated that the Athlete was provided with all the data and

parameters at the beginning of the process. For this reason, the file was complete and no further information needed to be conveyed, despite the request by the Athlete's expert witness.

Written testimony of the CCES's expert, Dr. Curtis Oleschuk

103. Dr. Oleschuk's statement was filed as an exhibit, and his expert status was not challenged.
104. Dr. Oleschuk is a member of the CCES' Therapeutic Use Exemption Committee (TUEC) since August 2016. He is a clinical biochemist who has acquired solid expertise with testosterone.
105. According to him, an individual's T/E ratio remains generally stable, even with aging. In addition, gastroenteritis or fatigue cannot significantly impact the T/E ratio.
106. He confirmed Pr. Ayotte's testimony and more specifically corroborated that a 30% variation may occur, while an increase of 600% is highly abnormal.

Submissions of the Athlete

107. The Athlete is requesting the cancellation of the four (4) year ineligibility period proposed by the CCES.
108. He claims that he did not commit an anti-doping rule violation and stated that he is very careful with his diet as well as his vitamins and supplement intake. He does not understand how the prohibited substance entered his body since he never took doping substances.
109. He believes his age may have impacted his T/E ratio.
110. His whole life revolves around the trust people place in him. He is an inspiration to many people. In light of this fact, he fears the negative impact of this case on his reputation and the social media fallout.
111. For this reason, he asked the Tribunal to consider a publication ban protecting the

confidentiality of this case should the Tribunal rule against him.

Submissions of the CCES

112. According to the CCES, a four (4) year period of ineligibility is appropriate in this instance and the Athlete cannot benefit from a reduced sanction.
113. Referring to the affidavit, dated February 1, 2017, of Mr. Kevin Bean, Senior Manager, CADP, the CCES submits that it has discharged itself of the burden of proof required under Rules 2.1.2 and 2.1.3 of the CADP in order to demonstrate an anti-doping rule violation under Rule 2.1.1 of the CADP. The affidavit was not challenged and evidence presented is not disputed.
114. Consequently, the CCES submits that the burden of proof is shifted to the Athlete who must demonstrate:
 - 1) *How the prohibited substance entered his body; and*
 - 2) *That he did not intend to ingest a prohibited substance.*
115. The CCES submits that the Athlete failed to prove, beyond the balance of probabilities, how the exogenous testosterone entered his body. In fact, he offered no evidence in this respect.
116. Consequently, the CCES submits that the Tribunal cannot assess the Athlete's intent in order to consider a reduced sanction.
117. The CCES also submits that the Athlete did not present a valid hypothesis to justify the adverse findings. In fact, it is not sufficient for the Athlete to claim that he cannot explain how the substance entered his body, given that he is responsible for anything that enters it, as provided under the concept of strict liability pursuant to Rule 2.1.1. of the CADP.
118. The CCES submits that the Tribunal does not need to make a determination on intent for the purpose of considering a reduced sanction because the Athlete failed to meet

the precondition of proving how the prohibited substance entered his body.

119. However, should the Tribunal be of the view that, even if the Athlete cannot demonstrate how the prohibited substance entered his body (as suggested in minority case law), it can determine whether the anti-doping rule violation (ADRV) was intentional, the CCES submits that evidence on the record clearly demonstrates that the Athlete's claims are not credible and, as such, the ADRV was intentional which warrants a four (4) year mandatory ineligibility period.
120. The CCES also questions the probative value and credibility of Dr. Robbins's testimony, given that he has not published study results on doping or given any doping conferences. Therefore, his testimony was not appropriate to the area of expertise required in this instance, as opposed to that of Pr. Ayotte.
121. In addition, the CCES emphasized the absence of facts confirming or supporting Dr. Robbins's claims pertaining to the variability of the T/E ratio.
122. The CCES maintains that IRMS is the only valid method to detect exogenous testosterone and that urine samples must be analyzed, not blood samples.
123. The CCES also believes that there is no evidence indicating that the Athlete could be an atypical case, or outlier, particularly given the normal values contained in his biological passport.
124. Where Mr. Hutsebaut's testimony is concerned, the CCES submits that his testimony is of little value because the point of establishing the personality or behaviour of the Athlete is moot in the present case since the Athlete offers no explanation as to how the prohibited substance entered his body.
125. The CCES argues the Athlete most probably underestimated the risk for the August 27, 2016 championships. They believe he saw little chance of being subject to a doping control given he had been tested only 4 or 5 times over the course of his 15-year career and that it was not an international championship.
126. Finally, the CCES argues that the Athlete was in fact motivated to perform in order to

maintain the \$20,000/year ASEA sponsorship as well as the equipment and conference sponsorships. These amount to sizeable extra income that helps compensate for his training/competitive expenses. According to the CCES, this offer results in sufficient motivation to take prohibited substances in order to remain at his peak.

VII. APPLICABLE RULES

Canadian Anti-Doping Program (CADP)

127. The CADP is largely based on WADA's World Anti-Doping Code.
128. Under Rule 1.3 of the CADP, Athletes and other Persons accept the CADP as a condition of participating in sport and shall be bound by the rules contained in the World Anti-Doping Code and the CADP.
129. An athlete is defined in the CADP definitions (Appendix I) as someone who competes in sport at the international level or the national level. Mr. Robert fits this description and thereby is subject to the CADP. This fact was not challenged.
130. The following provisions of the 2015 CADP anti-doping rules are particularly relevant to the present proceedings. It should be noted that these provisions replicate, almost word for word, WADA's World Anti-Doping Code:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 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 or its Metabolites or Markers 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 an anti-doping rule violation under Rule 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

[...]

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 or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and CCES can establish that the anti-doping rule violation was intentional.

[...]

10.2.3 As used in Rules 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

[...]

14.3 Public Disclosure

[...]

14.3.2 No later than twenty (20) days after it has been determined in a final appellate decision under Rule 13.2.1 or 13.2.2, or such appeal has been waived, or a hearing in accordance with Rule 8 has been waived, or the assertion of an anti-doping rule violation has not been timely challenged, CCES must Publicly Report the disposition of the matter, including, at a minimum, the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved (if any) and the Consequences imposed. CCES must also Publicly Report within twenty (20) days the results of final appeal decisions concerning anti-doping rule violations, including the information described above.

[...]

World Anti-Doping Code and other WADA documents

131. Rules 2.1 and 10.2 of the CADP are largely based on Rules 2.1 and 10.2 of WADA's World Anti-Doping Code.
132. WADA's Code is also complemented by the International Standards, which also includes WADA's *Prohibited List*.
133. WADA's Prohibited List includes the following provisions regarding testosterone:

S1. ANABOLIC AGENTS

Anabolic agents are prohibited.

B. Endogenous AAS when administered exogenously: Testosterone

Canadian Sport Dispute Resolution Code (SDRCC Code)

134. Article 7.11 of the SDRCC Code applies in this instance as it pertains to doping procedures.

135. Article 7.11 states:

7.11 Burdens and Standards of Proof

Pursuant to Rule 3.1 of the Anti-Doping Program, in Doping Disputes, the CCES shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the CCES has established an anti-doping rule violation to the comfortable satisfaction of the Doping Dispute Panel, bearing in mind the seriousness of the allegation which 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. When the rules of the Anti-Doping Program place the burden of proof upon the Party alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

VIII. RELEVANT SCIENTIFIC LITERATURE

136. During the hearing, certain doping and testosterone-related studies in the scientific literature were discussed.

137. Consequently, I find it important to put in context a specific scientific study that was discussed in this case.

138. I will also briefly describe its interpretation by the expert witnesses.

139. Published in 2000, the *Van de Kerkhof*⁴ study examined factors that influence the testosterone ratio with respect to doping analysis. This study sought to analyze various factors that could influence T/E ratios. To determine the validity of the T/E ratio, the authors summarized the various findings for both endogenous and exogenous testosterone based on factors such as age and physical development of the tested individual. The study suggested that IRMS is the ideal solution to obtain

⁴ *Supra*, note 2.

the most precise results.

140. The authors specify the following, at page 106 of the study:

The influence of exercise on the T/E ratio is still unclear.

[...]

It was concluded that the T/E ratio decreased significantly during training and competition.

141. According to the Athlete's expert, Dr. Robbins, this study demonstrates:

- a. the variability of the T/E ratio which would be associated with a person's age; and
- b. an increase in the T/E ratio at puberty.

142. Conversely, Pr. Ayotte is of the view that, despite the findings of this study establishing a certain variability, this article dates back 17 years. Since then, improved screening methods now produce more accurate and reliable data, including the use of IRMS, a method that is mentioned in this article.

143. Putting the article into perspective, she added that it was drafted for the purposes of supporting the defence of an Athlete who tested positive to exogenous testosterone. Therefore, it is a review article rather than a laboratory-executed study.

IX. RELEVANT JURISPRUDENCE

144. The CCES submitted several authorities to support their arguments. For the sake of brevity, I will focus on existing jurisprudence that is most relevant to this case.

145. No existing jurisprudence from the SDRCC or the Court of Arbitration for Sport ("CAS") was submitted or referenced by the Athlete.

146. There are two trends in case law, one of which is quite uncommon, regarding the requirement to demonstrate how a prohibited substance entered the body of an athlete as a condition to determine intent.
147. In two (2) minority cases, *Grosman*⁵ and *Hristov*⁶, the panels determined that the athlete is not required to demonstrate how the prohibited substance entered his body as a condition to assess the second criteria, i.e. the athlete's intention, under Rules 10.2.1.1 and 10.2.3 of the CADP. Consequently, athletes were given the opportunity to defend their intent in order to obtain a reduced sanction on the grounds that it was not necessary to demonstrate how the prohibited substance entered their body.
148. Conversely, the vast majority of rulings establish that the Tribunal cannot make a determination on intent when the athlete cannot demonstrate how the prohibited substance entered his body. On these grounds, an athlete's period of ineligibility cannot be reduced.
149. The CCES is of the view that the minority rulings should be dismissed by the Tribunal because it would make it easier for the Athlete to obtain a reduced sanction, in violation of the CADP which requires an admission of ingestion of the prohibited substance.

CCES v. Youssef Youssef, SDRCC DT 15-0225

150. In this decision, the Tribunal suspended the athlete for a period of four (4) years. The prohibited substance was also testosterone.

151. On page 39, the Tribunal indicates:

[...]The Arbitrator further accepts as correct the proposition which emerges

⁵ *CCES v. Grosman, SDRCC 16-0246*

⁶ *IPF DHP International Powerlifting Federation v. Hristov, 2016*

from those decisions, which is that it is incumbent upon the athlete to prove the means of ingestion of a prohibited substance to prove the athlete's lack of intent.

152. In this case, the athlete could not establish, on the balance of probabilities, the exact source of the high testosterone levels in his system. Accordingly, the ineligibility period recommended by the CCES was confirmed.

CCES v. Alicia Brown, SDRCC DAT 15-0006

153. In this case, the Doping Appeal Tribunal overruled the initial decision of the Doping Tribunal and suspended the athlete for a period of two (2) years.

154. The prohibited substance involved was Hydrochlorothiazide (“HCTZ”).

155. Per this decision, the Tribunal ruled on the first threshold for the definition of “no significant fault or negligence” (Appendix 1 of the CADP), i.e. how did the prohibited substance enter the body of the athlete:

118. CCES argues that the test requires the Athlete to establish a single theory of ingestion whereas the Athlete submits that the test can be met by raising multiple possible explanations.

119. For the reasons which follow, the Tribunal agrees with CCES.

[...]

122. In order to be entitled to a reduction of sanction, an athlete, under these Rules, must prove the following three cumulative requirements:

(i) how the Specified Substance entered his or her body;

(ii) that such Specified Substance was not intended to enhance the athlete’s sport performance or mask the Use of a performance-enhancing substance; and

(iii) his or her degree of fault.

123. It is evident that, in order for an athlete to meet the latter two requirements, he or she must establish a single source of ingestion of the Specified Substance. Otherwise, the adjudicator would never be able to assess accurately the athlete's degree of fault.

(underline added)

156. Based on the principle established in the *Brown* case, the burden of proof rests on the Athlete to demonstrate how the specified substance entered her body.

WADA v. Caribbean Regional Anti-Doping Organization (RADO) & Alanzo Greaves, CAS 2016/A/4662

157. In this decision, the Tribunal suspended the athlete for a period of four (4) years.

158. The athlete's sample tested positive for testosterone.

159. At paragraphs 36 and 37 of this decision, the Tribunal states:

36. The Athlete bears the burden of establishing that the violation was not intentional within the above meaning, and it naturally follows that the athlete must also establish how the substance entered her body. The Athlete is required to prove her allegations on the "balance of probability", a standard long established in CAS jurisprudence.

37. To establish the origin of the prohibited substance, it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at a relevant time. Rather, an athlete must adduce actual evidence to demonstrate that a particular supplement, medication or other product ingested by him or her contained the substance in question, as a preliminary to seeking to prove that it was unintentional, or without fault or negligence.

160. In this case, the athlete could not prove that he did not intend to commit an anti-doping rule violation.

161. In this decision, the Tribunal suspended the athlete for a period of four (4) years.
162. Findings from the sample revealed the presence of boldenone, an anabolic steroid listed under the 2015 WADA Prohibited List.
163. At paragraph 28 of this decision, WADA submits:

28. [...] The Athlete cannot protest her innocence and suggest that the prohibited substance must have entered her body through a contaminated product. Instead, she must adduce specific evidence that she ingested a product which contained the substance in question. [...]

164. In this case, the athlete did not challenge the presence of the substance in her body, however she did not convince the Tribunal that she did not intend to commit an anti-doping rule violation. Ultimately, the athlete did not reverse the burden of proof.

X. DISCUSSION

165. Firstly, Dr. Robbins lacks doping experience despite his respectable clinical experience, while Pr. Ayotte's experience helped explain the finer points of testing and the *van de Kerkhof* study.
166. Pr. Ayotte offered an expert testimony which proved conclusive to the Tribunal and her statements did not cast doubt on the analytical findings.
167. Further to the testimony of the Athlete's expert, Dr. Robbins, I believe he expressed opinions that fell outside his area of expertise. His knowledge of doping detection methods was not sufficient to be considered expert testimony, specifically where testosterone is concerned. Dr. Robbins has clinical expertise, not doping expertise,

which is key to weighing the evidence in a doping case.

168. Also, I am not of Dr. Robbins opinion with respect to the *van de Kerkhof* study because the Athlete's T/E ratio at the August 27, 2016 championships was significantly higher than that of his biological passport. This study does not provide conclusive evidence demonstrating that an older athlete, recovering from gastroenteritis, in training or competition, will see his T/E ratio increase significantly.
169. With respect to Dr. Oleschuk's statement regarding T/E variability, I believe his testimony was credible and therefore I do not question his expert opinion.
170. As for the Athlete, he claims to be unaware of the method of ingestion in his testimony. Based on the majority of case law, with which I agree, the method of ingestion must be explained as a condition of considering a lesser sanction. Since he failed to do so, I have no other alternative but to maintain the ineligibility period, even if I sympathize with Mr. Robert, his personal circumstances and how a doping sentence may impact him.
171. Although I can appreciate the Athlete's numerous achievements during his career and his involvement with young cyclists, I am compelled to dismiss his claims.
172. When hearing a defence based on the impact of a doping sentence on a person's life while the balance of probabilities warrants a doping sanction, the sports arbitrator must dismiss the argument based on personal consequences, contrary to what can be brought before a criminal court. *Lex sportiva* principles differ from criminal law due to ethical and fairness concerns because, when a doped athlete wins, he takes the place of all other athletes who crossed the finish line after him. In this respect, CADP sanctions are meaningful and must be enforced, regardless of personal and financial impacts to the Athlete. *Dura lex, sed lex*.
173. Upon hearing all testimonies during the hearing, I believe Pr. Ayotte's testimony was rooted in deep knowledge of doping. I found no grounds to question the validity of

the findings and use of IRMS, nor the reliability of urine for screening purposes.

174. In addition, I concur with the CCES on the matter of majority case law. The *Grosman* and *Hristov* reflect a very rare trend in case law. I believe an athlete must first demonstrate how a prohibited substance entered his body as a condition for the Tribunal to consider intent.
175. To obtain a reduced sanction under Rule 10.2.1.1 of the CADP, the Athlete must fulfil two criteria:
- (1) demonstrate how the testosterone entered his body; and
 - (2) establish he did not intend to commit an anti-doping rule violation.
176. Absence of intent to an anti-doping rule violation can be submitted for determination insofar as the Athlete first establishes how the prohibited substance entered his body. Testosterone is a prohibited substance under the WADA Prohibited List.
177. However, the Athlete did not meet this first condition. He offered no explanation as to the source of the testosterone.
178. If the first criterion is not met successfully, no further analysis is required. Assessment of the second criterion is conditional to meeting the first criterion.
179. Since the Athlete could not establish how the exogenous testosterone entered his body, I cannot analyze the second criterion involving the conduct and intent of the Athlete under Rules 10.2.1.1 and 10.2.3. of the CADP.
180. Consequently, Gérard Louis Robert has committed an anti-doping rule violation under Rule 2.1 of the CADP. Since I could not determine the Athlete's intent, it was not possible to weigh the criterion giving rise to a reduced sentence on the four (4) year ineligibility period under Rule 10.2.1. of the CADP. As a result, I am bound by the interpretation of the CADP which imposes a 4-year ineligibility period.

181. With respect to the publication ban, I must dismiss the Athlete's request, in compliance with Rule 14.3.2 of the CADP which states that the CCES must publicly report the decision.
182. In addition, I believe that Dr. Robbins cannot dispute that the CCES did not provide the requested additional information because his request was too vague and imprecise. I believe the CCES provided the Athlete with all the information required to challenge the scientific validity of the findings, had he chosen this line of defence.

XI. DECISION

183. Gérard Louis Robert has committed an anti-doping rule violation pursuant to Rule 2.1 of the CADP.
184. It is not possible to reduce the ineligibility period under Rule 10.2.1.1 of the CADP for lack of a formal explanation as to how testosterone entered the Athlete's body.
185. Consequently, Gérard Louis Robert is declared ineligible for a period of four (4) years, effective retroactively from October 11, 2016 until midnight on October 10, 2020.
186. I retain jurisdiction with respect of any dispute which may arise concerning the interpretation or implementation of this decision.

Signed in Montreal on March 22, 2017

Patrice Brunet, arbitrator