

**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)**

**NO. : SDRCC DT 23-0367  
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN  
SPORTS (CCES)**

**CYCLING CANADA CYCLISME**

**AND**

**TAREK DAHAB  
(Athlete)**

**AND**

**GOVERNMENT OF CANADA**

**WORLD ANTI-DOPING AGENCY (WADA)  
(Observers)**

**Presiding:**

Patrice Brunet (Arbitrator)

**Appearing:**

Athlete: Tarek Dahab

Representing the Athlete: Marc-Olivier Brouillette (counsel)

Representing CCES: Annie Bourgeois (counsel), Ms. Mylène Lee et Ms. Elizabeth Carson

Representing CCC: Mr. Kris Westwood

WADA and the Government of Canada did not participate in the hearing.

## DECISION WITH REASONS

### I. BACKGROUND

1. Tarek Dahab ("the Athlete") is a cyclist aged 50 at the time of the hearing. He has been a paracyclist since the end of 2022.
2. On November 13, 2023, the Athlete underwent an out-of-competition sample collection session in Beloeil, Quebec, Canada. This resulted in an Adverse Analytical Finding for Testosterone and its metabolites in the Athlete's urine sample.
3. On December 20, 2023, the CCES sent Cycling Canada Cyclisme ("Cycling Canada") a formal Notice of Charge under the Canadian Anti-Doping Program ("CADP"), alleging that the Athlete had committed an Anti-Doping Rule Violation ("ADRV").
4. The Athlete admitted having self-administered Testosterone, a prohibited substance according to the *2023 Prohibited List* ("Prohibited List") of the World Anti-Doping Agency ("WADA").
5. However, the Athlete is challenging the sanction of a four (4) year suspension proposed by the CCES on the grounds that the ADRV committed was not intentional and that there was no fault or negligence on his part in taking Testosterone.
4. The Athlete requests that any sanction by way of a suspension against him be eliminated and he argues that there are exceptional circumstances in his case justifying such a measure.

## II. THE PARTIES

7. CADP Rule 8.2.3 stipulates that:

*8.2.3 The parties before the Doping Panel 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. The CCES shall keep the Athlete or other Person's International Federation, WADA and the Government of Canada advised of the status of the proceedings. In any event, the CCES shall keep WADA fully apprised of all pending cases and the result of all hearings.*

### A. The CCES and Cycling Canada

8. Headquartered 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 collecting samples and managing the results of doping controls on a national level. In this regard, the CCES administers the CADP.

9. Cycling Canada is the governing body for the sport of cycling in Canada. It has the authority to set the rules of conduct for the promotion and development of the sport, and to select and prepare Canadian teams for international competition. It is also a member of the Union Cycliste Internationale ("UCI").

### B. The Athlete

10. Tarek Dahab is a para-cyclist who was 50 years old at the time of the hearing.

11. The Athlete has been practicing paracycling since the end of 2022. On October 12, 2023, the Athlete was admitted to Cycling Canada's National Athlete Pool ("NAP").

### **C. The Observers**

12. Headquartered in Montréal, WADA is the international organization responsible for administering the World Anti-Doping Program, which includes the World Anti-Doping Code ("WADA Code"). WADA did not participate in the hearing.
13. The Government of Canada also did not participate in the hearing as an observer.

### **III. THE FACTS**

14. At the outset, I would like to point out that this concerns a para-cyclist who is part of civilian society and who joined the elite sports community at a late age. Although he is subject to the CADP, the fact remains that certain personal details relating to his physical and personal conditions have been provided in confidential submissions. While some of these details were necessary to fully understand the context, I made the editorial choice to not include all the details in this decision focusing on those that were relevant within the context of doping, knowing my decision will find itself in the public domain following its publication. I made this choice to preserve the confidentiality of the Athlete's medical record and to limit the collateral impact of my decision on the pursuit of his civilian activities.
15. The Athlete is a para-cyclist who, at the time of the doping control, was 50 years old.
16. Prior to his paracycling debut, the Athlete had a successful career as a police officer with the Service de Police de la Ville de Montréal ("SPVM") for 22 years.
17. On April 14, 2017, while riding his bicycle on a bike path, the Athlete was struck by a vehicle. This collision caused him several significant injuries.

18. Due to the significant injuries resulting from this accident, the Athlete went on disability leave and was eventually forced to retire from the SPVM on March 17, 2020.
19. Following his accident, the Athlete was under the care of a neurologist due to severe migraines. In the years following his accident, the Athlete's quality of life declined significantly.
20. On July 16, 2021, having found no solution to the pain and physical damage that he endured since his accident, the Athlete consulted a urologist. The urologist ordered that blood tests be completed, particularly to determine his Testosterone level.
21. On August 20, 2021, the Athlete began a Testosterone regimen. In the months that followed, he was monitored on a regular basis by his urologist to determine the efficacy of the prescribed treatment. The treatment proved to greatly improve the Athlete's quality of life.
22. At the end of 2022, the Athlete began his paracycling activities and joined the *Vélo 2000* team. He then notified the *Fédération québécoise des sports cyclistes* ("FQSC") and Cycling Canada of his use of Testosterone, which he stated was for therapeutic purposes.
23. On February 23, 2023, the Athlete submitted a first application for a Therapeutic Use Exemption ("TUE") for Testosterone to the CCES (application dated February 20, 2023).
24. On March 29, 2023, the Athlete sent a medical form completed by his urologist to the CCES. On the same day, Ms. Charlène Tchouen, CCES Education & Athlete Services Coordinator, acknowledged receipt of the Athlete's TUE application and confirmed that the Athlete had notified the CCES that he was now a member of the FQSC in paracycling and would be competing in the Canadian Para Championships. The CCES then confirmed that the TUE application was considered complete and was transferred to their Therapeutic Use Exemption Committee ("TUEC") for evaluation.

25. On April 18, 2023, the CCES advised the Athlete that his TUE application was deemed incomplete by the TUEC and requested additional information, including anamnestic data and a certain diagnosis.
26. On May 1, 2023, the Athlete sent a report from his urologist to the CCES, which included replies to the April 18, 2023 request for additional information. In this report, the urologist mentioned the Athlete's Testosterone levels and diagnosis. On May 2, 2023, the CCES acknowledged receipt of this report and confirmed that this information would be forwarded to the TUEC.
27. On June 14, 2023, the CCES issued a first letter rejecting the Athlete's TUE application on the grounds that the information contained therein did not meet WADA's mandatory criteria for the use of Testosterone. The CCES TUEC then recommended that the Athlete undergo a thorough evaluation by a specialist of his Testosterone regimen and requested that he provide additional clinical documentation relating to the organic cause of his diagnosis. The TUEC stated that the opinion of an independent endocrinologist would be helpful. Finally, the CCES informed the Athlete of his right to appeal this decision.
28. On June 28, 2023, the urologist referred the Athlete to an endocrinologist, following the latter's request for the documentation required to obtain a TUE. Between June 28, 2023 and July 20, 2023, the Athlete and the CCES exchanged a number of communications regarding the documentation and information required for the Athlete to obtain a TUE.
29. On July 20, 2023, the Athlete notified the CCES of his intention to participate in the World Cycling Championships in Glasgow, Scotland, scheduled to begin on July 29, 2023. He also confirmed that he had forwarded the TUE refusal letter to his family doctor.
30. On August 3, 2023, the CCES acknowledged receipt of the Athlete's second TUE application. As this application was considered complete, it was forwarded to the TUEC for evaluation.

31. On August 15, 2023, the Athlete received a letter rejecting his second TUE application (decision dated August 9, 2023), which mentioned that the information provided by the Athlete proved to be inadequate and did not meet WADA's mandatory criteria for the use of Testosterone. The TUEC indicated that the information provided did not clearly demonstrate an organic cause for his diagnosis, and that the opinion of an independent endocrinologist would be useful given the Athlete's very high Testosterone levels. The TUEC also notified the Athlete of his right to appeal this decision.
32. On September 28, 2023, given the TUEC's reasons for the refusal, the Athlete took further steps and consulted an endocrinologist. Following this medical appointment, the Athlete forwarded the new medical report issued by the endocrinologist to Ms. Tchouen at the CCES (unaware that she no longer held this position). When notified of Ms. Tchouen's departure, the Athlete sent this information to Ms. Ariane Lachance-Scantland, her replacement.
33. On October 11, 2023, the Athlete was advised to submit a new TUE application to the CCES.
34. On October 12, 2023, the Athlete was notified that he was now a member of the NAP. Consequently, he was then required to complete the "*True Sport Clean*" course, which he did on October 13, 2023.
35. On October 20, 2023, the Athlete submitted a third TUE application to the CCES, which referred to his urologist's report and those of the endocrinologist (previously forwarded to the CCES). In this application, he notified the CCES of his intention to participate in the Parapan American Games scheduled for November 2023.
36. On October 23, 2023, the Athlete provided a blood sample for analysis, pursuant to the endocrinologist's request. On November 6, 2023, the Athlete sent the CCES the results of this blood test, together with new consultation notes from the endocrinologist dated September 28, 2023, and November 3, 2023. Upon receipt of this information, his TUE application was deemed complete and was forwarded to the TUEC on November 13, 2023.

37. On November 8, 2023, the Athlete discontinued his Testosterone treatment prescribed by his urologist, following communication received from the CCES dated November 2, 2023.
38. On November 13, 2023, the Athlete underwent an out-of-competition sample collection session in Beloeil, which resulted in an Adverse Analytical Finding of the urine sample for Testosterone and its metabolites, which is the subject of this case.
39. On November 14, 2023, the TUEC issued a letter rejecting the Athlete's third TUE application. The TUEC letter explained that the reasons for the refusal were based on the single test result showing low Testosterone levels that had been submitted, and the minimal clinical documentation provided. The TUEC noted that the documentation submitted did not provide a clear explanation of the diagnosis.
40. The Athlete submitted this letter of refusal to Mr. Geordie Moss, Cycling Canada's High Performance Services Manager. Mr. Moss contacted the CCES for further information, given the lack of clarity in the information provided to the Athlete.
41. In response to Mr. Moss' e-mail, the CCES informed the Athlete and Cycling Canada on November 15, 2023 of the consequences related to an Adverse Analytical Finding of the sample taken on November 13, 2023 and the risks of receiving an ADRV if the Athlete continued to administer Testosterone.
42. On December 20, 2023, Cycling Canada received a Notice of Charge under the CADP, which alleged that the Athlete had committed an ADRV pursuant to CADP Rules 2.1 and 2.2. The CCES stated that the sample taken on November 13, 2023, had given rise to an Adverse Analytical Finding showing the presence of Testosterone and its metabolites in the Athlete's body. The CCES therefore imposed a provisional suspension on the Athlete, barring him from participating in any competition or activity until a decision on the merits was rendered by the SDRCC Doping Tribunal ("Tribunal").



#### IV. THE PROCEEDINGS

##### The preliminary stages

43. On December 20, 2023, pursuant to Rule 7.2 of the CADP, the CCES issued a notice for an anti-doping violation alleging that the Athlete had committed an ADRV for the presence and use of a prohibited substance as defined in Rules 2.1 and 2.2 of the CADP, namely Testosterone and its metabolites. Consequently, the CCES imposed a provisional suspension on the Athlete in accordance with Rule 7.4.1 of the CADP.

44. In paragraphs 1 and 2 of this Notice, the CCES sets out the following facts:

*This letter is a formal Notice of Charge under the Canadian Anti-Doping Program (CADP). The Canadian Centre for Ethics in Sport (CCES) asserts that Tarek Dahab (“the Athlete”), a Canadian athlete affiliated with Cycling Canada, has committed an anti-doping rule violation (ADRV) pursuant to CADP Rules 2.1 (Presence) and 2.2 (Use or Attempted Use).*

*The sample giving rise to the Adverse Analytical Finding (AAF) was collected Out-of-Competition on November 13, 2023, in Beloeil, Quebec, in accordance with the CADP. The AAF was reported to the CCES by the INRS Centre Armand-Frappier Santé Biotechnologie, a World Anti-Doping Agency (WADA) accredited laboratory, on December 7, 2023. A copy of the certificate of Analysis is enclosed, indicating the presence of Testosterone and metabolites (S1.1 – Anabolic Agents – Anabolic Androgenic Steroids, classified as a non-specified Prohibited Substance on the World Anti-Doping Agency’s (WADA) 2023 Prohibited List.*

45. On December 20, 2023, the Athlete sent a request for an anti-doping hearing to the SDRCC pursuant to section 7.3 of the *Canadian Sport Dispute Resolution Code* ("SDRCC Code") and Rule 8.1.2 of the CADP. The Athlete requested that a warning be

imposed as a sanction. He also raised the urgent nature of the case, requesting a resolution no later than January 5, 2024, along with a request to eliminate the provisional suspension.

46. On December 26, 2023, the CCES sent its answer form in which it asked the SDRCC to confirm the alleged ADRV pursuant to Rules 2.1 and 2.2 of the CADP and to impose the proposed sanction of a four (4) year suspension in accordance with Rule 10.2.1.1 of the CADP.

47. The panel constituting the Tribunal, having been duly appointed and established on December 27, 2023, in accordance with CADP Rule 8.1.1, convened a preliminary meeting with the Parties by telephone on December 28, 2023, in order to settle certain administrative matters and establish a timetable for the proceedings. The Athlete then indicated that the urgency of the matter had changed.

48. The Parties agreed to provide a schedule of written submissions to the Tribunal and to proceed directly on the merits, thereby withdrawing the request to challenge the provisional suspension. The Parties also agreed to take part in a resolution facilitation session on January 12, 2024. However, on January 11, 2024, the Parties informed the Tribunal of their wish to cancel this session.

### **The Hearing**

49. As agreed by the Parties during the preliminary call on December 28, 2023, the hearing was held by videoconference on January 23, 2024, after full submissions had been sent.

50. The Athlete testified at this hearing and was examined by the representatives of both Parties. No other witnesses testified at the hearing. The representatives of both Parties also provided oral submissions.

## V. SHORT DECISION

51. On January 26, 2024, I rendered my written short decision pursuant to subsection 7.9(a) of the SDRCC Code and CADP Rule 8.3.1. In this decision, my conclusions, for the most part, were the following:

[Translation]

*Considering the written and oral submissions and evidence submitted by the Parties, as well as the testimony of the Athlete, I find that the Athlete has committed an Anti-Doping Rule Violation ("ADRV") under CADP Rule 2.1.2. This is admitted by the Athlete in his testimony at the hearing and in his written submissions.*

*My analysis rather focused on the absence and/or degree of fault and responsibility of the Athlete to determine whether a sanction would be administered and, if so, its duration.*

*In view of the applicable case law and rules, I am compelled to confirm a four (4) year suspension under CADP Rule 10.2.1.1, since Testosterone is a non-specified substance and the Athlete was unable to demonstrate that the ADRV was not intentional under CADP Rule 10.2.3.*

*In light of the Athlete's allegations, I also find that the Athlete has failed to establish the absence of fault or negligence on his part in a particular case, within the meaning of Rule 10.5 and Appendix 1 of the CADP. Furthermore, I find that there are no exceptional circumstances justifying the elimination of the four (4) year suspension imposed on the Athlete. [...]*

*Consequently, the Athlete is suspended for a four (4) year period.*

## **VI. JURISDICTION**

52. The SDRCC was created under federal Bill C-12 adopted on March 19, 2003<sup>1</sup>.
53. Under the *Physical Activity and Sport Act*<sup>2</sup>, the SDRCC has the exclusive jurisdiction to provide the sport community with a pan-Canadian alternative dispute resolution service for sport disputes.
54. In 2004, the SDRCC took on the responsibility of handling doping disputes in Canada.
55. All Parties recognize the jurisdiction of the SDRCC in this matter.

## **VII. POSITION OF THE ATHLETE**

56. The Athlete requests that the period of Ineligibility be eliminated based on the absence of fault and negligence on his part, pursuant to Rule 10.5 and Appendix 1 of the CADP. The Athlete alleges that the facts and evidence, considered as a whole, represent exceptional circumstances that justify the application of CADP Rule 10.5, that is, the elimination of any sanction against him.
57. The Athlete claims that he has acted with caution and diligence since the beginning of his involvement in paracycling, taking all necessary precautionary measures to comply with the CADP.
58. He argued that, from the beginning of his involvement within the FQSC, he has always been transparent with the various parties involved (coaches, program managers and medical support staff) regarding his use of Testosterone for therapeutic purposes. The Athlete stressed that, as a neophyte in the world of paracycling, he relied on the advice of the various parties who did not inform him that he had to discontinue the use of Testosterone to compete in provincial, national and international sporting events.

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<sup>1</sup> *Physical Activity and Sport Act, S.C. 2003, c.2.*

<sup>2</sup> Section 10 of the *Physical Activity and Sport Act, S.C. 2003, c.2.*

59. Furthermore, the Athlete alleged that these parties, who were aware of the situation, even allowed him to continue competing and failed to point out to him that he was committing a CADP violation if he continued to use Testosterone. Thus, the Athlete claims that he was unaware that he was in any way committing an ADRV.
60. The Athlete also alleged that the CCES failed to act in his best interest and was negligent in processing his TUE applications, notably causing undue delays in the process and therefore violating his ability to obtain a TUE. The Athlete claims that had the CCES diligently processed his TUE applications, provided clear, specific instructions and requests, he would have been able to provide the documentation required to obtain a TUE.
61. Therefore, the actions of the CCES deprived the Athlete of the opportunity to obtain a TUE and consequently to comply with the CADP. The Athlete thus claims that it was due to the omissions and delays caused by the negligence of the CCES that the ADRV occurred, that is, before he was even able to provide the documentation required by the TUEC, which he would have done had he been properly informed.
62. The Athlete argued that his transparency towards the CCES, the FQSC and Cycling Canada by keeping them informed of his Testosterone use and by inquiring about the consequences of a doping control, was consistent with the definition of No Fault or Negligence within the meaning of the CADP and thus justified the elimination of any sanction against him.
63. The Athlete alleged subsidiarily that the documentation he submitted to the CCES demonstrates that he should have been granted a TUE, which would not have resulted in the ADRV charge.
64. In short, the Athlete claims that he always acted in a vigilant, prudent and diligent manner and that the documentation submitted to the CCES justified granting him a TUE. Accordingly, the Athlete claims that there was no fault or negligence on his part, which justifies the application of CADP Rule 10.5 and the elimination of the sanction against him.

65. In this regard, the Athlete requests the elimination of the period of Ineligibility and requests that a TUE be granted. Alternatively, he requests that the sanction be suspended to allow him to submit to the CCES all the documentation required for a definitive ruling granting a TUE, in which case the sanction would be permanently eliminated.

### **VIII. POSITION OF THE CCES**

66. The CCES alleges that the Athlete's ADRV was intentional, as defined in CADP Rule 10.2.1, and that a four (4) year suspension is the appropriate sanction.

67. The CCES alleges that the Athlete committed an ADRV under CADP Rules 2.1 and 2.2 due to the presence of Testosterone and its metabolites found in an out-of-competition sample collected from the Athlete on November 13, 2023.

68. The CCES stated that the appropriate sanction for this violation is a four (4) year suspension, pursuant to CADP Rule 10.2.1.1, since Testosterone is a prohibited substance, classified as a non-specified substance under Section S1.1 of the *Prohibited List*, and is not a threshold substance. The CADP violation therefore does not depend on the quantity found in the athlete's urine.

69. The CCES argued that, since Testosterone is a non-specified substance under CADP Rule 4.2.2 and this is the Athlete's first ADRV, a period of Ineligibility of four (4) years must necessarily be imposed in accordance with CADP Rule 10.2.1.1.

70. The CCES argued that a period of Ineligibility reduced to two (2) years is not justified as the Athlete has failed to demonstrate, on a balance of probabilities, that he did not intentionally commit an ADRV as defined in CADP Rule 10.2.3. The CCES stated that the Athlete has failed to establish that:

- a. he has not voluntarily or knowingly taken Testosterone; and

- b. that he did not engage in conduct involving a significant risk of committing an ADRV and did not manifestly disregard that risk.
71. The CCES argued that the Athlete's actions were intentional: he voluntarily self-administered Testosterone, which in itself does not meet the requirements for a reduced sanction under CADP Rule 10.2.3. The CCES pointed out that the manner in which Testosterone entered the Athlete's body is not in dispute, since he admitted taking the substance, as medically prescribed, even though he had not been granted a TUE.
72. Subsidiarily, the CCES stated that even if this Tribunal must find that the evidence in the file does not demonstrate voluntary Testosterone intake by the Athlete under CADP Rule 10.2.3, the Athlete nevertheless engaged in conduct involving a substantial risk that he would commit an ADRV and manifestly disregarded that risk. Thus, the ADRV must be considered intentional within the meaning of the CADP.
73. The CCES pointed out that the fact that the Athlete filed a TUE application with the CCES confirms that he was aware that the use of Testosterone was normally prohibited and that authorization from the TUEC was required for its use, even for therapeutic purposes. The CCES also mentioned that the Athlete successfully completed the "*True Sport Clean*" course in October 2023 and that, based on the information provided as part of this training, he knew or should have known the risks inherent in taking Testosterone. Furthermore, the CCES indicated that on October 19, 2023, it advised the Athlete of the risks associated with his continued participation in sport in the absence of a TUE, and on November 2, 2023, that an Adverse Analytical Finding could lead to a provisional suspension.
74. As such, the CCES stated that the Athlete could not have been unaware that taking Testosterone entailed a significant risk that he would commit an ADRV or that he manifestly disregarded this risk.
75. Furthermore, the CCES alleged that the Athlete is not entitled to a reduction of his suspension period under CADP Rule 10.6.2, since he committed a significant fault.

Considering that this reason was not raised by the Athlete, the CCES did not present any further arguments to this effect, either in its written submissions or at the hearing.

76. In response to the Athlete's argument that there was no fault or negligence on his part under CADP Rule 10.5 and requesting the elimination of his suspension, the CCES pointed out that this provision requires the Athlete to successfully demonstrate that he did not know, did not suspect and/or could not reasonably have known or suspected, even with the exercise of the utmost vigilance, that he had administered a prohibited substance. The CCES stated that the Athlete has not provided any evidence to demonstrate his absence of fault or negligence.
77. Additionally, the CCES submitted that the threshold for elimination is very high, and that it will only be met if the Athlete demonstrates the existence of exceptional circumstances, which is not the case. In support of its argument, the CCES pointed out that the comments relating to CADP Rule 10.5 indicate that even the fact that an athlete has been administered a prohibited substance by his or her physician without having been informed does not constitute "exceptional circumstances." Considering this, the CCES highlighted that the Athlete was acting with full knowledge of the facts in taking Testosterone, and, therefore, this cannot represent an exceptional circumstance.
78. Moreover, the CCES alleged that the Athlete has not provided any evidence to support a finding of No Fault or Negligence on his part, arguing instead that the CCES was negligent and failed to act in his best interest. The CCES indicated that the applicable burden of proof pursuant to CADP Rule 10.5 rests with the Athlete, who must demonstrate, with supporting evidence, his absence of fault or negligence, which he was unable to show.
79. The CCES argued that the Athlete's assertion that he was transparent throughout the process, that he was not advised by the various parties involved that he should stop taking Testosterone, or that the CCES did not provide him with sufficiently clear instructions, does not shift the burden of responsibility onto third parties. The CCES challenges the Athlete's allegation that he was not advised by the CCES to stop taking Testosterone.



80. The CCES also pointed out that the Athlete's claims that he should have been granted a TUE are irrelevant and that these issues fall outside the Tribunal's jurisdiction. Indeed, the challenge to a TUEC decision is a separate proceeding of which the Athlete did not avail himself in a timely manner.

## **IX. APPLICABLE RULES**

### Canadian Anti-Doping Program (CADP)

81. The CADP is largely based on the WADA Code.

82. Under CADP Rule 1.3, athletes and other persons understand that compliance with the CADP is a condition of their participation in sport and agree to be bound by the rules set forth in the WADA Code and the CADP<sup>3</sup>.

83. An Athlete is defined in Appendix 1 of the CADP as any *"Any Person who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each National Anti-Doping Organization)."* Mr. Tahab fits this description and is therefore subject to the CADP. No objections have been raised by the Athlete in this regard.

84. The following provisions of the 2021 CADP anti-doping rules are of relevance to the present dispute. It should be noted that these provisions are reiterated, almost word for word, in the WADA Code:

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

*2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its*

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<sup>3</sup> See also CADP Part A, Section 4.0.

*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 A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*

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

[...]

## ***2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method***

*2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method.*

*2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*

[...]

## ***10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method***

*The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Rule 10.5, 10.6 or 10.7:*

*10.2.1 The period of Ineligibility, subject to Rule 10.2.4, shall be four (4) years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

[...]

*10.2.3 As used in Rule 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they 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. An anti-doping rule violation resulting from an Adverse*

*Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

[...]

*14.3.2 No later than twenty (20) days after it has been determined in an 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 otherwise been timely challenged, or the matter has been resolved under Rule 10.8, or a new period of Ineligibility, or reprimand, has been imposed under Rule 10.14.3, the CCES must Publicly Disclose the disposition of the anti-doping matter including the sport, the antidoping 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. The CCES must also Publicly Disclose within twenty (20) days the results of appellate decisions concerning antidoping rule violations, including the information described above.*

#### World Anti-Doping Code and other WADA documents

85. CADP Rules 2.1, 2.2 and 10.2 are largely based on WADA Code Articles 2.1, 2.2 and 10.2.
86. The WADA Code is also supplemented by "International Standards", which include the WADA *Prohibited List*.

87. The *Prohibited List*<sup>4</sup> includes the following provision relating to Testosterone:

*Anabolic agents are prohibited.*

*SI ANABOLIC ANDROGENIC STEROIDS (AAS)*

*When administered exogenously, including but not limited to:*

[...]

- *testosterone*

#### Canadian Sport Dispute Resolution Code (SDRCC Code)

88. The SDRCC doping procedure is set out in Section 7.7 of the SDRCC Code, which reads as follows:

##### ***7.7 Burdens and Standards of Proof***

*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 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 probabilities but less than proof beyond a reasonable doubt. Where the rules of the CADP 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 except as provided in Rules 3.2.2 and 3.2.3 of the CADP, the standard of proof shall be by a balance of probabilities [CADP Rule 3.1].*

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<sup>4</sup> WADA Prohibited List 2023, the version applicable at the time of out-of-competition sample collection on November 13, 2023 in the case herein.

## **X. PRELIMINARY REMARKS**

89. Firstly, I'd like to make it clear that the Athlete's use of Testosterone has been admitted by him. There is therefore no issue as to the presence of this prohibited substance in the Athlete's body and the way it was administered, since the Athlete acknowledged that he took Testosterone in accordance with his doctor's prescription. The issues at the heart of this dispute are rather the intentional nature of the ADRV committed by the Athlete and his behaviour, to determine whether he demonstrated the absence of fault and negligence justifying the elimination of his sanction.

90. I also wish to reiterate that this case is indeed not the appropriate recourse to address the merits (or otherwise) of the TUEC's decisions to dismiss the Athlete's TUE applications. It is also not for me to assess the Athlete's TUE application to determine whether he should have received such authorization.

91. The CCES has appeal procedures to grant TUE's. If the Athlete wishes to challenge the validity of the TUEC's decision on his TUE application, he must do so using the appropriate procedure. For this reason, I will not deal with this issue any further.

92. Finally, the Athlete is not seeking a reduction of his suspension period pursuant to CADP Rule 10.6, nor did he present any arguments to that effect, either in his written submissions or at the hearing. Considering that this issue is not at stake in this case, I will not deal with it further and will focus my assessment on the remedy sought by the Athlete, that is, the elimination of his sanction.

## **XI. DISCUSSION**

93. Firstly, I would like to reiterate that the facts surrounding this case are based on transparency and good faith on the part of the Athlete. During the hearing, the Athlete testified clearly, credibly and with integrity. I have no reason to question the veracity and credibility of his allegations.

94. It is clear to me that he did everything in his power to disclose, openly and on an ongoing basis, the reasons why he was self-administering a prohibited substance, for which he had a valid prescription that was not questioned.

95. In view of the Athlete's personal difficulties described in his testimony and the consequences that a doping conviction would have for him, I recognize that the circumstances surrounding this case lead one to express compassion. However, the rules of sport require a complex analysis and the Athlete has unfortunately not met the requirements for exemption. Therefore, I have no other alternative but to confirm the period of suspension applicable under the CADP, notwithstanding the sympathy I may have for the Athlete and the situation in which he finds himself.

*i) Anti-Doping Rule Violations (ADRV)*

96. It is the responsibility of the CCES to establish that the Athlete has committed an ADRV, within the meaning of the regulations and Section 7.7 of the SDRCC Code.

97. This point is not in dispute since the Athlete admitted having administered Testosterone, a prohibited substance, in accordance with his doctor's valid prescription.

98. The presence of this prohibited substance in the sample he provided on November 13, 2023, and the use he made of it are therefore not in question. The presence and use of this prohibited substance under CADP Rules 2.1 and 2.2 are therefore not the subject of this dispute.

99. When the Athlete provided the sample on November 13, 2023, which revealed the presence of Testosterone, he had not previously obtained a valid TUE for use of this substance. This could have allowed me to rule out that an ADRV had been committed under CADP Rule 4.4.1. Despite the Athlete's efforts to obtain a TUE, the fact that he self-administered Testosterone that was present in his body at the time of the test, and in the absence of such authorization, forces me to conclude that the Athlete committed an ADRV, regardless of his efforts to obtain a TUE.

100. Accordingly, as stated in the comments to CADP Rule 2.1, the question as to whether an ADRV was committed within the meaning of this provision is a matter of strict liability. The presence of a prohibited substance in the Athlete's body alone justifies an ADRV finding, regardless of the Athlete's efforts to obtain a TUE. The analysis of the Athlete's fault can only be taken into consideration to determine the applicable sanction.

*[Comment to Rule 2.1.1: An anti-doping rule violation is committed under this Rule without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Rule 10. This principle has consistently been upheld by CAS.]*

101. Considering these facts, I am therefore satisfied that it has been established that the Athlete committed an ADRV under CADP Rules 2.1 and 2.2. Consequently, I am now to determine the applicable sanction.

**ii) *Applicable suspension period***

102. CADP Rule 10.2.1.1 stipulates that the applicable period of Ineligibility for a violation of CADP Rules 2.1 and 2.2 shall be four (4) years where the ADRV involved a non-specified substance and the Athlete was unable to establish that the violation was unintentional:

*10.2.1 The period of Ineligibility, subject to Rule 10.2.4, shall be four (4) years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

103. Rule 10.2.3 clarifies the concept of intention within the meaning of the CADP. The term "intentional" is meant to identify those Athletes (or other Persons) who have engaged in conduct which they knew:



- a. constituted an anti-doping rule violation; or
- b. 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.

104. Considering these provisions, it appears clear to me that once an ADRV has been established pursuant to CADP Rules 2.1, 2.2 and 10.2.1.1, it is up to the Athlete to demonstrate that this ADRV was not intentional, in which case the applicable period of Ineligibility would be two (2) years under CADP Rule 10.2.2.

105. The Athlete acknowledged that he self-administered Testosterone, a non-specified substance in accordance with the *WADA Prohibited List*. The Athlete alleges, however, that this ADRV was not intentional, that he did not intend to violate anti-doping rules, as he demonstrated a consistent effort to obtain a TUE and to notify various parties of his Testosterone use. Testosterone was administered as prescribed, following a medical diagnosis, and was not intended to enhance the Athlete's performance in sport.

106. Both in his written and oral submissions, as well as in his testimony at the hearing, the Athlete alleged that his ADRV was not intentional: he did not self-administer Testosterone with the intention of obtaining a benefit, and the purpose of taking this substance was simply to palliate the limitations caused by his accident.

107. The Athlete stated that he has always made consistent efforts to comply with the applicable anti-doping rules and that he has been transparent throughout the process. He maintained that if the other parties had informed him that taking Testosterone without a TUE could result in his suspension, he would have immediately stopped self-administering the substance.

108. I cannot agree with this contention. While I acknowledge the Athlete's transparent and sustained efforts to keep the FQSC, Cycling Canada and the CCES informed of his use of Testosterone for medical reasons, these efforts in and of themselves cannot allow an

Athlete to circumvent the CADP obligations, which include a process for obtaining a TUE. To use a police analogy that the Athlete might understand, a citizen who chooses to drive his vehicle at night, without operating headlights, to a garage for repairs could hardly avoid a ticket, even if he has notified the police station beforehand of his intentions. He would be jeopardizing the safety of other motorists, just as the Athlete has jeopardized fair play with other competitors by using a prohibited substance without a TUE.

109. The CCES stated that an Athlete's intent to benefit from taking Testosterone is not a relevant factor in this dispute in determining the intentional nature of the ADRV committed: rather, it is a matter for the TUEC to address when assessing the Athlete's TUE application. On this point, I agree with them.

110. The CCES reiterated that the only question is whether the Athlete intentionally took Testosterone and, if so, whether he knew that there was a risk that this would result in an ADRV. The evidence shows that the Athlete knew that taking Testosterone constituted an ADRV or was likely to constitute an ADRV, as the first steps to obtain a TUE were taken well before the test that produced the ADRV. Furthermore, the evidence shows that the Athlete received several warnings, but continued to self-administer Testosterone.

111. As I mentioned earlier, I do not doubt the honesty and good faith of the Athlete who has made numerous efforts to obtain a TUE and who has attempted to normalize his situation by discontinuing the self-administration of Testosterone on November 8, 2023. The Athlete's good faith and lack of intent to mislead and to cheat are not in question. However, I must defer to the applicable anti-doping rules, in particular the regulatory concept of intent. The term "intentional" is clear under CADP Rule 10.2.3.

112. Contrary to the Athlete's allegations, I am not of the opinion that the notion of intention pursuant to the CADP does not require wrongful, deceptive, or bad faith behaviour, that is, taking a substance to gain an advantage. Indeed, in my analysis of the intentional nature of an ADRV, it must be limited to determining whether the Athlete knew 1) that taking Testosterone constituted an anti-doping rule violation, or 2) that there was a

substantial risk that taking Testosterone could result in an anti-doping rule violation and manifestly disregarded that risk. The answer to these two questions is clear.

113. The TUE applications submitted by the Athlete demonstrate that he recognized the need to obtain authorization to compete while self-administering Testosterone. The fact that third parties allowed the Athlete to compete in the absence of a TUE is irrelevant to me, since it is ultimately the Athlete's responsibility to ensure that no prohibited substances are present in his body.
114. On the other hand, I must wonder how proactive the FQSC and Cycling Canada were in providing the Athlete with the proper support in these circumstances. These are federations that oversee a sport that is unfortunately all too often identified with doping issues. In this context, one would expect a very high level of vigilance and excellent knowledge of the issues and procedures related to doping in sport. Therefore, when an Athlete has demonstrated total transparency regarding his Testosterone use, it seems highly questionable to me that the Athlete would still have been invited to take part in high-level competitions, in the absence of a TUE and having admitted to using Testosterone.
115. Nevertheless, the Athlete is an adult and, as a former police officer, is deemed to read and understand the legislation and regulations applicable to his sport. He could therefore not have been unaware that such risks might exist, given the "*True Sport Clean*" training he had undergone, and the communications exchanged with the CCES during the TUE application process.
116. I reiterate that it is always the Athlete's responsibility to ensure that he take all necessary measures to ensure that a prohibited substance is not present in his body, and therefore to obtain a valid TUE at the appropriate time. Allegations of negligent actions on the part of the CCES and the failure of various parties to notify the Athlete that he should discontinue the use of Testosterone cannot have the effect of relieving the Athlete of his obligations under the CADP and shifting the burden of responsibility onto third parties.

117. Consequently, the Athlete has been unable to establish that his ADRV involving a non-specified substance was unintentional under CADP Rule 10.2.3. Therefore, the applicable suspension period is four (4) years.

**iii) *Elimination of the suspension period is unjustified.***

118. Upfront, I wish to reiterate that the Athlete is only requesting the elimination of the sanction imposed upon him under CADP Rule 10.5 and not its reduction under CADP Rule 10.6. Therefore, I will limit my analysis to the existence or not of a reason which would justify the elimination of the sanction imposed upon the Athlete.

119. In his written and oral submissions, the Athlete alleged that there are exceptional circumstances justifying his absence of fault or negligence and, consequently, the elimination of any sanction against him. Specifically, the Athlete claims that, by taking Testosterone, he never intended to cheat or gain any performance advantage. The Athlete stated that he was transparent with all those involved, who never warned him and let him compete, even though they were fully aware that he was taking Testosterone and that a TUE had not yet been granted. The Athlete argued that he relied on the various parties involved, that he acted in good faith and that, had he been properly advised, he would have immediately stopped using Testosterone. Furthermore, the Athlete pointed out that he was a beginner in this field and that he relied on the various parties who misled him.

120. He argued that his case justifies exceptional circumstances being considered to justify the elimination of any sanction, to the extent that there is no other SDRCC or CAS decision with a factual framework like his own.

121. The CCES recognizes that an Athlete may indeed request the elimination of his sanction under CADP Rule 10.5 in the absence of fault or negligence on his part. However, the CCES stated that this criterion requires this Athlete to have demonstrated a lack of knowledge of the administration of a prohibited substance, which is not the case in this matter.

122. Considering the written and oral submissions and evidence provided by the Parties, I find that the elimination of the Athlete's period of Ineligibility is not justified within the meaning of CADP Rule 10.5, as there are no exceptional circumstances involved.

123. Indeed, the notion of No Fault or Negligence is defined in CADP Appendix 1:

*No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.*

124. This notion requires the Athlete to demonstrate that, even with the utmost vigilance, he did not know, did not suspect or could not reasonably have known or suspected that he had been administered a prohibited substance. These elements are not present here. The Athlete admitted that he was self-administering Testosterone and that he knew that this substance required a TUE, as it is normally prohibited. The defense of good faith and transparency, although commendable, is not admissible according to the CADP.

125. The Athlete has the strict obligation to ensure that no prohibited substances are present in his body, regardless of whether third parties authorize the Athlete to participate in sporting events. The Athlete described himself as a beginner in this field of high-level sport, but this is not sufficient justification. The requirements of the CADP are strict, and the obligations imposed on athletes under anti-doping regulations are therefore demanding. Fairness to the sporting community, as well as to other competitors competing against the Athlete on the field of play, depends on it. I must also emphasize that the reputation of sport in society at large also depends on it.

126. It was therefore the Athlete's responsibility to ensure that, in the absence of a TUE, Testosterone did not enter his body, regardless of whether third parties had allowed him to compete. As I explained earlier, the alleged negligent actions of third parties cannot have the effect of relieving the Athlete of his obligations.
127. Nor do I question the validity of the medical prescription in favor of the Athlete, nor the extent of the suffering and difficulties he has faced since his accident justifying his use of Testosterone, for which I have a great deal of empathy. As I have explained, this issue is not relevant to my analysis.
128. Having failed to obtain a valid TUE that he knew was required or having failed to stop self-administering Testosterone in the absence of such authorization, the Athlete did not exercise the utmost vigilance and did not take all necessary measures to ensure that Testosterone did not enter his system or that he did not commit an ADRV, under CADP Rule 10.5. In fact, the Athlete knew he was taking a prohibited substance for which a TUE was required.
129. Consequently, the Athlete failed to demonstrate the absence of fault or negligence on his part, as he did not take all the precautions required to ensure that Testosterone would not be found in his system or that its administration would not constitute an ADRV, considering that no TUE for this substance had been granted to him beforehand. I therefore find no exceptional circumstances justifying the elimination of the suspension within the meaning of CADP Rule 10.5.

## **XII. DECISION**

130. Tarek Dahab committed an Anti-Doping Rule Violation under CADP Rules 2.1 and 2.2.
131. The applicable suspension period is four (4) years.

132. There is no possibility of reducing the period of Ineligibility to two (2) years under CADP Rule 10.2.1.1 since the Athlete has not established that his violation was not intentional within the meaning of CADP Rule 10.2.3.
133. The Athlete has also failed to demonstrate the absence of fault or negligence on his part in a particular case, pursuant to CADP Rule 10.5 and Annex I. Therefore, I find that there are no exceptional circumstances justifying the elimination of the period of ineligibility imposed upon the Athlete.
134. Consequently, Tarek Dahab is suspended for a period of four (4) years from December 20, 2023, to December 20, 2027.
135. As provided in CADP paragraph 13.2, this decision may be appealed by written notice of appeal to all Parties heard by the Doping Panel and to the Appeals Tribunal within thirty (30) days of notification of the Doping Panel's decision.

Signed in Montréal on February 12, 2024

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Patrice Brunet, Arbitrator