

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^o. SDRCC DT 17-0255

Doping Tribunal

Between:

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

Claimants

– and –

DAVID DROUIN

Athlete

– and –

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

Observers

Tribunal: Patrice Brunet (sole arbitrator)

Hearing dates: May 15 and 26, 2017

Appearances

For the CCES: Annie Bourgeois and Raphaël Buruiana

For the Athlete: Michaël-T. Nguyen

DECISION WITH REASONS

I. INTRODUCTION

1. David Drouin (“the Athlete”) is a continental-level cyclist who participates in professional races.
2. On December 4, 2016, the Athlete was selected for an anti-doping control at his home in Saint-Prosper, Quebec.
3. On January 26, 2017, the Athlete received a notification of Adverse Analytical Finding (“AAF”) pursuant to section 7.3.1 of the anti-doping rules under the 2015 Canadian Anti-Doping Program (the “CADP”). This notice stated that the sample taken at his home showed he had committed an anti-doping violation and that the Canadian Centre for Ethics in Sport (the “CCES”) imposed a mandatory provisional sanction on him.
4. The CCES certifies that the analysis of the sample provided by the Athlete revealed the presence of SARM RAD140.
5. SARM RAD140, classified as an anabolic agent, is a prohibited substance according to the World Anti-Doping Agency (“WADA”) *2016 Prohibited List*.
6. The Athlete does not dispute that his sample revealed the presence of SARM RAD140. He admitted the violation on March 14, 2017.
7. He is however challenging the four (4) year sanction imposed by the CCES. He submits that the anti-doping violation was not intentional.
8. Consequently, the Athlete is requesting a reduction of the ineligibility period to two (2) years.

II. THE PARTIES

9. Rule 8.2.3 of the CADP provides the following:

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. The 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 organization governing the sport of cycling in Canada. It has overall authority to provide rules of conduct in the promotion and development of the sport, 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. David Drouin is a road cyclist since the age of 12.
13. He is a continental-level cyclist who races professionally since 2014.

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 member of the Silber Pro Cycling team. He had signed a one-year contract just after finishing training with the team. He had been a member of the Norco team before beginning with that team. He has been a road cyclist since the age of 12.
17. The Athlete claims that he takes only dietary supplements. In addition, he always checks what he buys at the grocery store and pays close attention to all the ingredients.
18. Following the results of the analysis of the A sample, the B sample was opened on January 17, 2017, in the presence of the Athlete’s parents and younger brother, at the laboratory of the Institut national de la recherche scientifique (INRS). The sample revealed the presence of SARM RAD140, thereby confirming the analysis of the A sample.
19. On January 26, 2017, the Athlete received a notification of Adverse Analytical Finding. This notification stated that the sample taken at his home showed he had committed an anti-doping violation during an out of competition test at his home on December 4, 2016.
20. The certificate of analysis of the A and B samples showed the presence of SARM RAD140 in the sample analyzed.

IV. THE PROCEEDINGS

A. Preliminary Stages

21. On January 26, 2017, the CCES issued a notification of an anti-doping violation in compliance with CAPD Rule 7.3.1. At paragraphs 1 and 2 of the notification, the CCES states the following facts:

[...] The Canadian Centre for Ethics in Sports (CCES) asserts that Mr. David Drouin, 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 December 4, 2016, in Saint-Prospier, 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 December 16, 2016. [...]

22. On February 9, 2017, 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.
23. The panel constituting the Doping Tribunal, having been duly designated and constituted on March 17, 2017, in accordance with Rule 8.1.1 of the CADP, convened a preliminary meeting with the Parties, by telephone, on March 23, 2017, in order to resolve outstanding procedural matters and set a calendar for the arbitration.

B. The Hearing

24. As agreed by the Parties, the hearing took place at the SDRCC offices in Montreal on May 15 and 26, 2017.

C. Short Decision

25. On May 31, 2017, I issued a written short decision in which I concluded 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.

[...]

14. However, the Athlete did not meet this first criterion. I do not accept the ingestion theory submitted by the Athlete. The Athlete's explanation did not convince me on a balance of probabilities that the substance entered his body as a result of a contamination from the spout of a bicycle bottle.

15. Consequently, David Drouin has committed an anti-doping violation pursuant to Rule 2.1 of the CADP. Since I could not conduct an analysis of the Athlete's intent, I did not have to weigh the criteria to consider the period of ineligibility of four (4) years pursuant to Rule 10.2.1 of the CADP.

16. CONSEQUENTLY, David Drouin is suspended for a period of four (4) years, effective retroactively from January 26, 2017, ending at midnight on January 25, 2021.

V. JURISDICTION

26. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19, 2003¹.

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

27. 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.

28. In 2004, the SDRCC assumed responsibility for doping disputes in Canada.

29. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.

VI. SUBMISSIONS

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

Testimony of the Athlete's mother, Claire Giroux

31. Claire Giroux lives in Saint-Prospier and works in a pizzeria.

32. Ms. Giroux has always supported the Athlete as an elite cyclist. She would travel in the province of Quebec to attend his races. She did not however attend his races in the United States or Europe.

33. She always paid for the Athlete's food and training.

34. She admitted not having any knowledge about anti-doping matters. She did however explain that the Athlete had briefly spoken to her about anti-doping over the last years.

35. Ms. Giroux testified to the fact that she knew that the Athlete always paid attention to the list of ingredients. She also knew that he took supplements but no other substances.

36. Ms. Giroux confirmed during her testimony that it was in January 2017 that the Athlete, who was at a training camp in Mexico, told her on the telephone that he had tested positive at an anti-doping control.

37. She mentioned that her second son, Jean-Philippe Drouin, did some cycling and she knows that he also takes supplements, but nothing else (until he told her that he had

taken RAD140).

38. When she learned that Jean-Philippe had taken prohibited substances, she explained having been surprised, but above all not being happy about that.
39. In her opinion, the Athlete never took prohibited substances.
40. Ms. Giroux testified that she was always very close to the Athlete. She always asked about the results of his races, helped him financially and attended his competitions.
41. She admitted being very proud of her son and of the fact that he was a member of the Silber Pro Cycling team.
42. She stated that she was present in December 2016 during the anti-doping control in the family home. She did not however remember the content of the conversation she had with the Athlete during this test.
43. Ms. Giroux explained that Jean-Philippe admitted to her having purchased RAD140 *to try it out*. She did not remember if this discussion occurred before or after the analysis of the B sample.
44. She also confirmed that it was the Athlete who had the idea of having the dietary supplements tested at the laboratory.
45. She testified to the fact that she did not see the Athlete fill his water bottles. She did however mention that he would frequently leave his bicycle bottles in the refrigerator.

Testimony of the Athlete's brother, Jean-Philippe Drouin

46. Jean-Philippe Drouin is a carpenter. He used to be what may be described as a competitive amateur athlete. He no longer competes, but goes regularly to the training facility where he is a member.
47. He explained that he had participated in several biathlons and road cycling competitions when he was a teenager. He did not however undergo any anti-doping tests.

48. When questioned about SARM RAD140, Mr. Drouin explained that as far as he was concerned, this was strictly a muscle-building product. He mentioned that he first heard about it on Facebook.
49. He admitted that he had never taken any doping products before purchasing RAD140 on the Internet. He completed the transaction on the *Peptides for Life* website.
50. He also explained that he had never been educated about anti-doping. He had already heard about doping products at his gym and according to him, everyone who goes to his gym takes them.
51. During his testimony, he discussed his comment posted on Facebook on September 30, 2010, (exhibit R-10) regarding Contador. This message referred to the sentence of the cyclist Alberto Contador, who had failed an anti-doping test. In the comments which followed, one of his friends replied that Jean-Philippe Drouin was taking doping products. In his testimony, he mentioned that he had not appreciated this comment, as he does not want to be associated with persons who take doping products.
52. Jean-Philippe Drouin did admit that he thought SARM RAD140 could be a product of interest for him. He admitted however, that the results were not conclusive for him.
53. He acknowledged in his testimony at the hearing having ordered three doping products (RAD140, MK677 and SR9009) on Internet in November 2016. He did not know that these products were prohibited.
54. During his testimony, Jean-Philippe Drouin explained that he had taken RAD140 for the first time on the morning of December 3, 2016, by putting a drop on his tongue as a dose.
55. He also mentioned having taken doses every day, except when he went to Mexico on holidays in mid-December 2016. When he returned from Mexico, he continued taking doses once again until the end of January.
56. He admitted to being indifferent to the fact that his brother had tested positive at an anti-doping control.

57. Jean-Philippe Drouin considered that the Athlete's water bottle, which he had also used, caused the contamination.
58. He mentioned that he was not aware that he had anti-doping responsibilities regarding his brother. In addition, he never took any anti-doping training.
59. The relationship between Jean-Philippe and David is quite peripheral. Jean-Philippe does not see his brother much because of his work and his own training. He sees him in competition only when the Athlete's races are held near his home.
60. His knowledge about SARMs is limited to what he managed to glean on Internet. These substances are held out to be miracle products, which among other things, allow increasing muscle mass. His Internet research did not show any side effects in connection with this substance.
61. According to Jean-Philippe Drouin, amateur sportsmen may take doping products quite legally. It is however unacceptable for professionals to take them.
62. He also mentioned knowing that doping products were strictly sold for research purposes. According to him, companies mention this only to protect themselves from lawsuits.
63. Jean-Philippe Drouin confirmed that he took proteins, vitamin D3, as well as Omega-3. He also admitted having purchased SARM RAD140, MK677 and SR9009 on the Internet, as confirmed by the invoice filed in support of the file.
64. He explained that he had drunk water from a bottle that was in the refrigerator. According to him, all of family members share the bottles which are inside the home refrigerator.
65. Jean-Philippe exchanged messages with his brother when the latter was in Mexico, but he did not consider it useful at that time to admit to him that he was on a RAD140 protocol. When the Athlete returned to Canada from Mexico, Jean-Philippe mentioned that he had a conversation with him regarding RAD140. On the other hand, he does not remember the rest of the discussion.

66. He did not want to attend when the Athlete's supplements were analyzed at the laboratory, as this did not interest him. In addition, he mentioned that he was not aware of the fact that his brother was facing a four (4) year period of ineligibility. He learned this only during the hearing.

The Athlete's testimony

67. The Athlete's defence is based on the contamination theory: his brother Jean-Philippe, who had taken SARM RAD140, had apparently drunk from the spout of his own water bottle which was inside the family refrigerator. Of course, the Athlete did not know that his brother had purchased or taken RAD140 and he had no reason to believe that his bottles could become contaminated by leaving them unsupervised in his home.

68. The Athlete finished secondary 5 in high school and he continued his education by taking distance CEGEP courses in humanities.

69. He explained that he never had any trainers or fitness coaches throughout his career.

70. He explained that he was warned about the risks of doping when he was part of the Canadian team, but he had never been tested for doping during his races.

71. On the morning of Saturday, December 3, the Athlete ate at a restaurant with his parents and then trained at home in the afternoon from 1:30 p.m. He then took one of the two bottles of water which was in the refrigerator to bring it to the basement where his stationary trainer bike was located. Before going to the restaurant that morning, he had filled 2 water bottles and put them in the refrigerator so they would be cold for his training.

72. When he signed his one-year contract with the Silber Pro Cycling team in January 2017, the team loaned him a bicycle, but he did not receive any salary or medical support. The team pays for his travel, registration fees for races and incidental expenses related to competitions.

73. He also explained that his contract included a renewal option after one year, and this renewal did not depend on results. He is currently progressing at level 2 as a cyclist

and his objective is to reach level 3 (*World Tour*).

74. During his testimony, the Athlete explained the facts surrounding his anti-doping control of December 4. During this anti-doping control, he told the agents that he was taking supplements, such as powdered protein. He claimed that he had never purchased supplements on the Internet.
75. When Andy Wilson from Cycling Canada advised him that he had failed the test, he called his parents as well as the owner of the Silber Pro Cycling team when he was still in Mexico.
76. The Athlete admitted that he was going through hard times over the last 5 months. He is in fact no longer motivated to train.
77. He mentioned that he had a discussion with his brother Jean-Philippe on January 11, while he was in Mexico and his brother was in Quebec. His brother admitted during this discussion that that he had purchased doping products on the Internet.
78. The Athlete then watched documentaries on the Internet about the contamination of supplements. This in fact was one of the reasons for which he had his two dietary supplements tested by the CCES, believing that they were contaminated. The result was negative.
79. He admitted already having taken anti-doping training in October 2016 on the CCES website.
80. The Athlete testified that he made a complete disclosure of the supplements he was taking. He takes BCAA (amino acids), Amino Punch that he alternates with BCAA, Pro Circuit and carnitine, which he understands transforms fatty acids into energy. He also takes protein supplements since the age of 18.
81. He mentioned that he was glad to submit to an anti-doping control as this confirmed to him that he was now at a superior level as an athlete.
82. When the Athlete learned about his positive result, Silber Pro Cycling told him that

he would be suspended until the result of the B Sample was known.

83. It was his brother, as well as Silber Pro Cycling, who gave him the idea of having his supplements tested. In fact, his team paid part of the fees required (\$1,000) to have his supplements tested.
84. The Athlete considers that he failed the anti-doping control because of the contamination of his water bottle by his brother.

Testimony of the CCES expert, Professor Christiane Ayotte

85. Professor Ayotte holds a doctorate in organic chemistry from the Université de Montréal, which was awarded in 1983. She acquired a specialty in analytic organic chemistry, more specifically in mass spectrometry.
86. The Athlete's attorney admitted her status as an expert in doping. Professor Ayotte's report was not contested, and the Tribunal recognized her qualifications as an expert.
87. In her testimony, she explained that SARMs are new products, a chemical composite which is currently the subject of pre-clinical studies. SARMs are used to replace anabolic agents and reduce the risk of sickness, such as prostate cancer for example.
88. SARMs that are sold are not approved by the Federal Drug Administration (FDA) or by Health Canada. According to her, persons who distribute them do not care to whom they sell them.
89. In spite of the claims made by retailers which sell and distribute them on the Internet, Professor Ayotte considers that there is not enough clinical data to determine the effectiveness of MK677, RAD140 and of SR9009.
90. The toxicity levels of the recommended doses for humans have not yet been the subject of conclusive studies. Doses may vary from 0.3 mg to 50 mg. These products may be very dangerous to human health, as there is insufficient data establishing the doses that may be taken.

91. SARMs were added to the list of substances prohibited in sports because they were shown to have a mechanism of action and possibly positive physiological effects.
92. The effects sought by taking a SARM generally consist in increasing muscle mass, re-establishing hormonal balance and helping an athlete recover.
93. According to her, SARMs are used in all sports, including cycling and triathlon.
94. SARMs are taken to avoid the side effects of anabolic agents. These side-effects unbalance good and bad cholesterol levels, affect the heart and cause outbreaks of acne.
95. According to Professor Ayotte, the *Miller*² article is the only scientific article up to now which discusses RAD140.
96. Professor Ayotte also explained that RAD140 and SR9009 are SARMs, while MK667 is rather a growth hormone secretagogue.
97. In her opinion, it is easy to obtain RAD140 in Canada. There is no restriction to purchase it on the market. It is not available in pharmacies, as it is not considered to be fit for human consumption.
98. Professor Ayotte specified that regarding doping, there is either a threshold specified for a substance or it is totally prohibited in any concentration. Because RAD140 is prohibited in any concentration, only an approximate concentration estimate is made during anti-doping tests.
99. The table below shows a SARM RAD140 concentration of 12.3 ng/mL found in the Athlete's A sample.

² Chris P. **Miller** et al., *Design, Synthesis, and Preclinical Characterization of the Selective Androgen Receptor Modulator (SARM) RAD140*, ACS Medicinal Chemistry Letters, December 2, 2010.

[Available only in French]

Estimation de concentration pour les confirmations de P14

Produit: RAD-140
Échantillon: 16-26697A

RAD-140			16-26697A		
vol extrait (mL)	Surface Produit	Surface ISTD	vol extrait (mL)	Surface Produit	Surface ISTD
2	159939	1452683	2	390092	1440997
vol final (µL)	Ratio surfaces Produit / IS		vol final (µL)	Ratio surfaces Produit / IS	
250	0.1		250	0.3	
[Produit] ng/mL	[Produit] ng/µL		[Produit] ng/mL	[Produit] ng/µL	
5.0	0.0		12.3	0.1	

Données saisies par MD
Approuvé par SA

Date: 14/12/2016
Date: 14.12.2016

*all OK
16-12-16*

100. The table below shows a SARM RAD140 concentration in the Athlete's B sample of 15.1 ng/mL, which satisfies me that this confirms the results of both samples.

[Available only in French]

Estimation de concentration pour les confirmations de P14

Produit: RAD-140
Échantillon: 16-26697B

RAD-140			16-26697B		
vol extrait (mL)	Surface Produit	Surface ISTD	vol extrait (mL)	Surface Produit	Surface ISTD
2	103780	1247725	2	261477	1042038
vol final (µL)	Ratio surfaces Produit / IS		vol final (µL)	Ratio surfaces Produit / IS	
250	0.1		250	0.3	
[Produit] ng/mL	[Produit] ng/µL		[Produit] ng/mL	[Produit] ng/µL	
5.0	0.0		15.1	0.1	

Données saisies par EM
Approuvé par RF

Date: 18/12/2017
Date: 18/12/2017

101. Professor Ayotte is of the opinion that the Athlete's ingestion theory cannot explain the positive result of the analysis of the A and B samples, especially in these significant concentrations.
102. She specified that a cyclist may be greatly interested by SARM RAD140 as it may improve performance and has very few side-effects.
103. When questioned about the Athlete's theory involving his brother Jean-Philippe, who apparently took three prohibited substances (RAD140, MK677 and SR9009) and who apparently subsequently drank from the Athlete's bottle, Professor Ayotte considers this very unlikely. According to her, this theory is not consistent with the results of the analysis because the Athlete tested positive only for RAD140. There was no trace of MK677 and SR9009, which Jean-Philippe had also taken. In addition, the order in which these 3 substances had been taken would have diluted the RAD140 even more on the spout of the bottle, as it was taken first. The quantity of RAD140 which potentially remained on the spout of the bottle, and was subsequently physically ingested, was minimal in her opinion.
104. The Athlete's case is the first one in the Montreal laboratory involving RAD140.
105. On the other hand, two other cases were detected elsewhere in the world. In both cases, the concentration measured was approximately 0.2 ng/mL in the case of a powerlifting athlete and of 5 ng/mL in a case of roller-hockey, which was reported by the Salt Lake City laboratory in 2016.
106. According to Professor Ayotte, athletes who take SARMS are those who are generally in the elite category. It is very tempting at that level to take a product that is potentially undetectable to progress to a higher category. In her opinion, the Athlete is in a category in which he is at risk, as there is tangible motivation to attain a superior level.

The Athlete's Submissions

107. The Athlete's counsel submitted that the four (4) year suspension proposed by the CCES be reduced to two (2) years pursuant to Rules 10.2.1.1, 10.2.2 and 10.2.3 of the CADP.
108. First, in the analysis of the contradictions regarding the point at which the bottles were placed in the refrigerator, he submitted that the family's level of education should be taken into consideration.
109. He claimed that the normal contamination rates have no scientific basis. Because there is no study on excretion rates, there can be no conclusion about what is normal or not. On this point, he considers that the scientific evidence of the CCES is weak.
110. The Athlete submits that he showed on a balance of probabilities how the substance entered his body, with his contaminated bottle's spout theory.
111. He also submitted that he did not intend on cheating at the time of the anti-doping violation. Referring to the two part analysis in the *Farrier*³ decision, the Athlete submitted that he did not behave in a negligent or reckless manner that could have caused the violation and that he obviously did not choose to ignore the risk.
112. In addition, he claims that his behaviour did not aggravate the risk, as he could not be aware of his brother's negligent behaviour.
113. He also submitted that RAD140 was colourless and odourless. Accordingly, he could not doubt that he had ingested this product when he drank from his bicycle bottle.
114. Referring to the decision in *Cilic*⁴, the Athlete explained that the Tribunal must analyze two factors: the Athlete's objective and subjective behaviour.
115. Objectively, the Athlete feels that he was diligent and not negligent, considering that it was his brother who took the prohibited substance and that the contamination

³ *CCES v. Farrier*, SDRCC DT 15-0233

⁴ *Cilic v. International Tennis Federation*, CAS 2013/A/3327

occurred at home without his knowledge.

116. Subjectively, the Athlete submitted into evidence his young age and inexperience. In addition, he claimed that he did not know that there was a risk of being contaminated.
117. In addition, the Athlete submitted that he gave a complete statement at the anti-doping control. He had no idea that his brother took prohibited substances. It is also quite improbable that he had the money to purchase doping products on the Internet, as he works only on a part-time basis and has a low income.
118. On a balance of probabilities, he claims that he was contaminated by his brother's RAD140.
119. Lastly, he submitted that he does not have a high level of education, he has little experience and he is left to himself considering that he has no coaching support.
120. For these reasons, he is asking the Tribunal to reduce his suspension to two (2) years pursuant to Rule 10.2.2 of the CADP.

Submissions by the CCES

121. According to the CCES, a 4-year period of ineligibility is appropriate in the circumstances and the Athlete cannot obtain a reduction of this sanction.
122. The CCES submits that the Athlete must show the following in order to obtain a reduction of this mandatory period of ineligibility:
 - 1) *the way in which the prohibited substance entered his body; and*
 - 2) *that he did not intentionally commit an anti-doping rule violation.*
123. The CCES is of the view that the Athlete did not show on a balance of probabilities how the SARM RAD140 ended up in his body. The CCES considers that the Athlete's factual evidence is not determinative and there are too many discrepancies.
124. The CCES submits that it is practically impossible for the Tribunal to analyze the

Athlete's intentions if he does not show the way in which the substance entered his body with convincing factual evidence.

125. In addition, the CCES submits that the Athlete and his two witnesses are neither honest nor credible, as their testimonies were contradictory on several important points.
126. In fact, the Athlete's mother testified that she was very involved in her son's life as a cyclist. Yet during the events concerning the anti-doping test, she remained very vague about important details which are nevertheless relatively recent.
127. As far as the Athlete's brother Jean-Philippe is concerned, several contradictions and inconsistencies were noted in his testimony regarding the number of doses taken. The CCES questions his credibility. According to the CCES, it is certainly not a coincidence if the RAD140, which is prohibited substance, the effects of which are similar to that of steroids and which has a reputation of being impossible to detect, interested him at a turning point in his brother's career. In fact, it was admitted and recognized that the Athlete not only wanted to perform well with his new Silber Pro team, but his subsequent goal was to progress to a higher level.
128. The CCES also submitted that according to Professor Ayotte, RAD140 is a new substance. According to the theory presented by Jean-Philippe, it would not be normal for the laboratory to only have detected RAD140, as he testified to the fact that he had also taken MK677 and SR9009 before drinking from his water bottle. The only other possibility is that of voluntary ingestion by the Athlete to obtain doping effects.
129. According to the CCES, the Athlete did not discharge his burden of proof. His theory does not hold water. In addition, the Athlete was aware of the consequences, considering that he had already taken anti-doping training, and according to his own testimony, he knew that he could be subject to anti-doping tests once he attained his performance level.
130. Lastly, the CCES submits that the Athlete's theory is not supported by a scientific conclusion.

VII. APPLICABLE RULES

Canadian Anti-Doping Program (CADP)

131. The CADP is largely based on the WADA Code.
132. 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.
133. An *Athlete* is defined in Appendix I of the CADP as someone who competes in sport at the international level or at the national level. The Athlete is an individual who fits this description, therefore, he is bound by the CADP. There were no objections to this effect.
134. The following provisions of the 2015 CADP rules are particularly relevant to the present proceedings. It should be noted that these provisions are repeated, almost word for word, in 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 the CCES can establish that the anti-doping rule violation was intentional.

10.2.2 If Rule 10.2.1 does not apply, the period of Ineligibility shall be two years.

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.

[...]

World Anti-Doping Code and Other WADA Documents

135. Rules 2.1 and 10.2. of the CADP are largely based on articles 2.1 and 10.2 of

WADA's World Anti-Doping Code.

136. The WADA Code is also complemented by the International Standards, which include WADA's Prohibited List.

137. SARM RAD140 is on WADA's 2016 Prohibited List.

The Canadian Sport Dispute Resolution Code (SDRCC Code)

138. Article 7.11 of the SDRCC's Code applies in this case, as it refers to procedure in doping matters.

139. Article 7.11 provides the following:

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

140. There was a discussion at the hearing about a study from the scientific literature regarding doping and RAD140.

141. I accordingly consider it important to put into context the content of the specific scientific study that was discussed in this matter.

142. This is the *Miller*⁵ study, which concerns the effects of RAD140, a *selective androgen receptor modulator* (SARM). The purpose of this study, which was published in 2010, was to describe RAD140 and to characterize the effects of this anabolic agent. A synthesis and the results of a pre-clinical study were shown in this study.
143. According to the expert from the CCES, Professor Ayotte, this study shows a synthetic approach to prepare SARM. She added that it was with this study that the authors determined that RAD140 actually was a SARM. RAD140 is now included in the World Anti-Doping Code's Prohibited List for its effects on the improvement or recovery of muscle tissue and in hormonal re-balancing.

IX. RELEVANT JURISPRUDENCE

144. The Parties submitted several authorities to support their arguments. For the sake of brevity, I will focus on jurisprudence which appears to me to be most relevant in this case.
145. There are currently two lines of reasoning in jurisprudence regarding the requirement of showing how a prohibited substance entered an athlete's body before analyzing his/her intention, including a minority line of authority.
146. In the two (2) minority decisions, *Grosman*⁶ and *Hristov*⁷, the Tribunal ruled that an athlete is not required to show how a prohibited substance entered his body before analyzing the second criterion, that is, the extent of the athlete's fault under rules 10.2.1.1 and 10.2.3 of the CADP. In these decisions, the athletes had the opportunity to obtain a reduction of their period of ineligibility, as they did not have to convince the arbitrator that they had not intended on taking a prohibited substance.
147. On the contrary, the majority of the case law is to the effect that when an athlete is

⁵ Cited above.

⁶ *CCES v. Grosman*, SDRCC 16-0246

⁷ *IDP DHP International Powerlifting Federation v. Hristov*, 2016

unable to show how a prohibited substance entered his body, the Tribunal cannot analyze his degree of fault. There is accordingly no possibility of reducing the athlete's period of ineligibility.

148. According to the CCES, there is no doubt in jurisprudence and the minority decisions should not be followed by the Tribunal in the present context. An athlete must accordingly prove how the substance entered his body, as otherwise the Tribunal cannot analyze the athlete's intention.

CCES v. Youssef Youssef, SDRCC DT 15-0225

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

150. At page 44, the Tribunal wrote the following:

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

151. In this case, it was determined that the athlete was unable to establish on a balance of probabilities, the precise source of the high concentration of testosterone which had been found in his body. The period of ineligibility was accordingly confirmed.

CCES v. Findlay, SDRCC DT 16-0242

152. In this case, the Tribunal suspended the athlete for a period of four (4) years.
153. An analysis of the sample revealed the presence of clenbuterol, an anabolic agent on the World Anti-Doping Agency (WADA) 2016 Prohibited List.
154. The Tribunal wrote the following at paragraphs 76 and 77:

76. At this point in my analysis, the question which arises, and which has recently

divided the jurisprudence, is whether I can inquire into and determine the intention of the Athlete whose conduct I am examining without first having been satisfied as to how the Prohibited Substance had entered her body.

77. *It appears to me that, logically, I cannot fathom nor rule on the intention of an athlete without having initially been provided with evidence as to how she had ingested the product which, she says, contained the Clenbuterol. With respect for the contrary view, I fail to see how I can determine whether or not an athlete intended to cheat if I do not know how the substance entered her body.*

155. In this case, the athlete was unable to discharge her burden of proof by establishing that her violation was not intentional.

UKAD v. Buttifant, SR/NADP/508/2016

156. In this decision, the English Doping Appeal Tribunal dismissed an appeal from the UK Anti-Doping organization. The athlete had been suspended for a period of two (2) years.

157. The Doping Appeal Tribunal wrote the following at paragraph 27:

27. Article 10.2.3 does allow a tribunal to consider all relevant evidence in assessing whether the violation was intentional, but the most important factor will be the explanation or explanations advanced by the athlete. There must be an objective evidential basis for any explanation for the violation which is put forward. [...]

158. In this decision, the Tribunal made distinctions regarding the obligation of proving or not proving the ingestion of a prohibited substance to obtain a reduction in the specified period of ineligibility. According to this decision, an athlete could then prove that the violation was not intentional, without having to prove on a balance of probabilities, how the substance entered his body.

159. This decision from England is similar to the minority jurisprudence in Canada, in the

Grosman and Hristov decisions.

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

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

161. Testosterone was detected in the athlete's positive sample.

162. The Tribunal wrote the following at paragraphs 36 and 37:

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.*

163. The athlete was unable to prove that he did not intend to commit an anti-doping violation.

Oleksandr Rybka v. Union of European Football Association (UEFA), CAS 2012/A/2759

164. In this case, the Tribunal suspended the athlete for a period of two (2) years because he was unable to prove the way in which he had ingested the prohibited substance.

165. The athlete had tested positive because the water he had drunk was sabotaged. His wife had given him the bottle.

166. The Tribunal wrote the following at paragraph 56:

56. *The Panel should only add that it is not a consequence of its conclusion that no sportsman can safely take a drink when offered to him by his wife in the family home. The prudent sportsman would have reminded his wife or partner of the obligations attended upon participation in modern professional sport.*
167. This decision means that every athlete must remind the persons close to him that he cannot ingest prohibited substances. An athlete must be extremely careful and take the precautions required to avoid ingesting prohibited substances.

X. DISCUSSION

168. First, Professor Ayotte, who testified as an expert, gave conclusive evidence to the Tribunal and nothing in her testimony permits the Tribunal to set aside the conclusions of the analyses. Accordingly, I do not question either her report or her conclusions.
169. The testimony of the Athlete's mother, Claire Giroux, was precise at times but too vague at other times. She was evasive about family conversations regarding subjects that must have been highly emotional: her son David was progressing in cycling for approximately the past ten (10) years, she was following and financing every step of his career, he is now facing a four (4) year suspension for doping with a product that his brother brought into the family home. She nevertheless did not show any especially strong emotion, except *anger*, during discussions with her son Jean-Philippe. These reactions are not in my opinion consistent with reality, but rather with a story made up afterwards, to try to justify the ingestion of prohibited substances by David.
170. That said, I do not think Ms. Giroux knew that David was taking prohibited substances when he was doing it. On the other hand, all of the testimonies lead me to believe that once a positive test was made, family discussions were held to invent the story about contamination which was presented to me. The credibility of Ms. Giroux's testimony, who had a natural bias in favour of her son David, which completely explains her participation in inventing this story, had to be considered

from this point of view.

171. As far as the testimony of the Athlete's brother, Jean-Philippe Drouin, is concerned, his attitude towards the Tribunal was anything but open and transparent. He was constantly wary and indifferent, according to his own words, about the consequences that the charges against his brother could have on his career. His status as an elite athlete when he was younger and his current status as a construction worker who goes to the gym from time to time is not at all consistent with the sudden decision to purchase experimental doping products on the Internet for several hundreds of dollars, while the vendor site describes these products as being [TRANSLATION] *for research only and not for human consumption*. This decision to purchase was made concurrently with his brother's signature of the contract with the Silber Pro team, during the down season (fall) suitable for taking doping products having the effect of steroids to increase muscle mass and performance, together with the lack of in-competition anti-doping controls. If David wanted to purchase and take doping products without them being associated with his name, he would have done so with the help of his brother Jean-Philippe, and this in my opinion is precisely what he did.
172. Lastly, I do not consider as normal the fact that Jean-Philippe did not have a greater interest in his brother's career, considering that they live in the same home and that Jean-Philippe was also a competitive cyclist when he was younger. A suspension of four (4) years may potentially ruin his brother's career and his indifference is not consistent with the normal reaction of a person who *accidentally* contaminated his brother.
173. As far as the Athlete's testimony is concerned, I dismiss his defence based on a contamination theory. It is not realistic. First, the sequence in which three (3) doses of prohibited substances were taken to then contaminate the spout of a bicycle bottle is not realistic when this theory is compared against the quantities found in the certificates of analysis, showing concentrations consistent with the consumption of prohibited substances for doping purposes. The fact that there are no clinical studies

regarding the excretion rate or that the concentrations were only estimates does not convince me that the scientific evidence must be dismissed. This is not a substance with a prohibited threshold, but it is prohibited in any concentration. The concentration found in the sample was not minimal. The theory submitted by the CCES of the voluntary consumption of a prohibited substance is the most probable and it satisfies me.

174. I also noted some contradictions in the facts between the written submissions and the testimonies of the Drouin family at the hearing, which lead me to question the credibility of their testimonies.
175. After having heard all of the testimonies at the hearing, the testimony of Professor Ayotte convinced me of the validity of the results. I have no reason to question the validity of the tests or their relevancy.
176. In addition, I take note of the minority line of reasoning in jurisprudence, which seems to be developing and was raised by the Athlete's counsel. Even if I wanted to analyze this case from the point of view of the minority reasoning in jurisprudence, which allows for an analysis of the degree of fault without adducing precise evidence of ingestion, the fact remains that the Athlete presented a precise theory of ingestion. On the other hand, because I decided to dismiss this theory due to of a lack of credibility and plausibility, there remains a total absence of evidence of the method of ingestion. In such a case I cannot accordingly proceed to analyze the degree of fault.
177. To obtain a reduction in the period of ineligibility pursuant to Rule 10.2.2 of the CADP, the Athlete must meet the two following criteria:
 - (1) Establish how the SARM RAD140 entered his body; and
 - (2) Establish that he did not intentionally commit an anti-doping rule violation.

178. In order to allow for an analysis to be conducted to the effect that a violation of the anti-doping rules was not intentional, the Athlete must first establish how the prohibited substance entered his body.
179. The analysis cannot be continued if the first step is not successfully completed. An analysis of the second criterion is conditional to the first one being satisfied.
180. The Athlete did not succeed in satisfying this first criterion. I do not accept the ingestion theory submitted by the Athlete. The Athlete's explanation did not convince me on a balance of probabilities that the substance entered his body because of a contamination from the spout of a bicycle bottle.
181. I accordingly reach the conclusion that David Drouin committed an anti-doping rule violation pursuant to Rule 2.1 of the CADP. Because I was unable to analyze the Athlete's intention, I was not required to analyze the criteria to consider the four (4) year ineligibility period under Rule 10.2.1 of the CADP. I am accordingly bound by the interpretation of the CADP which imposes a suspension of four (4) years.

XI. DECISION

182. David Drouin committed an anti-doping rule violation under Rule 2.1 of the CADP.
183. There is no possibility of reducing the period of ineligibility under Rule 10.2.2 of the CADP because the Athlete was unable to establish in what way the substance entered his body.
184. Consequently, David Drouin is declared ineligible for a period of four (4) years, effective retroactively from January 26, 2017, and ending at midnight on January 25, 2021.

Signed in Montreal, on June 15, 2017

Patrice Brunet, arbitrator