



**I Tested Positive?  
*How to Respond to a Possible Anti-Doping Rule Violation***

**January 2021**

***Help AthletesCAN build a stronger future for tomorrow's athletes!***

---

## Introduction

On January 1, 2021, a new Canadian Anti-Doping Program (CADP) came into force. The Canadian Centre for Ethics in Sport (CCES) – an independent not-for-profit organization - administers the CADP. The CADP describes how the World Anti-Doping Code (“the Code”) is implemented in Canada.

An Anti-Doping Rule Violation (ADRV) and the appropriate consequence may not be determined and imposed without a hearing by the Doping Tribunal, unless you agree to the outcome proposed by the CCES (see CADP Rule 10.8 – *Results Management and Case Resolution Agreements*), waive your right to a hearing, or do not respond to the assertion letter within the required timeline (CADP Rule 8.4.1-8.4.3). Accordingly, the focus of this guide is to assist you in preparing for and taking part in the anti-doping hearing. The contents of this guide are presented in roughly the order that events will actually occur. Each part deals with a separate topic or issue and sub-headings are presented as specific questions with the answers provided.

Throughout the guide, links are provided to relevant portions of the CADP and to other resources that may be of assistance.

See Appendix A for a flow chart which outlines the chronological order of the entire anti-doping process from notification to completion.

See Appendix B for the download links to the documents that will be referenced throughout the guide.

See Appendix C for a list of defined terms in this document. All words in italics are specifically defined terms in the CADP. The reader is strongly encouraged to consult Appendix C or the CADP’s Glossary to review the precise meaning of the defined terms.

---

## PART I: An Anti-Doping Rule Violation is Alleged

---

### Your Right to Representation

It should be noted that this guide is meant to provide an overview of the anti-doping process. The guide should not be seen to replace any actual legal advice. If an ADRV has been alleged against you, consider the following options:

- a) **Contact Sport Solution.** The Program Managers can help you get a handle on your situation and provide the guidance you need to make well-informed decisions.
- b) **Retain an experienced lawyer.** The hearing process can be fairly complex, but a professional advisor can help present evidence and frame arguments in a logical and persuasive manner. A number of lawyers offer their services free of charge (*pro bono*), and a directory can be found on the Sport Dispute Resolution Centre of Canada (SDRCC) website.
- c) **Understand what anti-doping rule(s)** the CCES is claiming have been violated. Read those sections of the CADP carefully. If one section refers to another – which is common – understand how those sections relate to each other.

---

### **Initial Review Stage**

The most common ADRV is the presence of a *Prohibited Substance* in a *Sample*. Prior to the assertion of a presence violation, the CCES will undertake a number of steps with an *Adverse Analytical Finding* – this is known as the initial review stage. When the CCES receives a report from the lab that your *Sample* has tested positive, it will review your file to determine if an applicable *Therapeutic Use Exemption (TUE)* has been granted or may be granted retroactively (note that a retroactive *TUE* may not automatically cover the date on which your sample was collected). If you are a *Student-Athlete*, the CCES will determine whether a medical review will be granted for the detected substance based on CADP Rule 4.5. The CCES also reviews whether there has been any apparent departure from the CADP Rules on the part of the laboratory or during the *Sample* collection that may have caused the *Adverse Analytical Finding*.

### **Therapeutic Use Exemptions (TUEs) and Medical Review Rules:**

There are two distinct processes in place for *Athletes* to obtain permission to use otherwise prohibited substances. *TUE* rules are found at CADP 4.4, and medical review rules are found at CADP 4.5 and 4.6.

Please note, *Student-Athletes* do not require a *TUE* unless they are included in the CCES National Athlete Pool (NAP). However, all *Student-Athletes* may be required to undergo a medical review if an *Adverse Analytical Finding* is reported by the CCES. See CADP Rule 4.5 for further *Student-Athlete* procedures.

*International and National-Level Athletes* must obtain a *TUE* prior to use of the *Prohibited Substance* or method and inform the CCES if a *TUE* has been granted permitting the use of the substance detected in the positive test. If a *TUE* has been granted, this will eliminate the ADRV for that substance. If a *TUE* has not been obtained, certain rules can allow for a retroactive approval of a *TUE* in the case of “medical emergencies” or “exceptional circumstances” relating to insufficient time. See Article 4.3 of the *International Standard for Therapeutic Use Exemptions*.

For Non-International/National-Level *Athletes*, the CCES must permit that *Athlete* to apply for a retroactive *TUE* for any *Prohibited Substance* or *Prohibited Method* that he/she is using for therapeutic reasons (CADP Rule 4.4.3).

If the CCES determines that there is no applicable *TUE*, medical review, or departure from the CADP Rules, they will then notify you and your *National Federation* of the positive test and its consequences, at which point you will have an opportunity to provide more information per WADA’s *International Standard for Results Management* (see Rule 5.1.2 in that document). This includes the opportunity to request the “B” *Sample*, attend the “B” *Sample* opening and analysis, or provide a written explanation to the CCES regarding the positive finding. It should be noted that you must be careful about your statements made to the CCES at this point, as nothing in this context is covered by a without prejudice agreement – meaning anything you say at this point could be used against you in a hearing.

### **Requesting the “B” Sample analysis:**

You have the right to promptly request that your “B” *Sample* be analyzed. You also have the right to witness the opening of that “B” *Sample* in person, with or through a representative. Although extremely rare, if the result of the “B” *Sample* does not confirm

---

the result of the “A” Sample, an ADRV will not be pursued against you. If you do not request a “B” *Sample* analysis promptly, it will be deemed waived.

### **An Anti-Doping Rule Violation is Asserted**

After the initial review stage, if the CCES wishes to continue with an ADRV assertion against you, they must provide you, your *National Federation*, International Federation, *WADA*, and the Government of Canada with a formal notice claiming that an ADRV has occurred (CADP Rule 7.6). Most commonly, the CCES will advise you of the *Adverse Analytical Finding* through your sport governing body.

There are several other ADRVs outlined in Rule 2 of the CADP that *Athletes* should familiarize themselves with.

### **How Am I Notified?**

You will receive formal notification from the CCES. For *Athletes*, this is usually a notification of an *Adverse Analytical Finding* arising from a *Sample* collection. Receipt of the formal notification sets in motion a chain of events that can have serious consequences at the hearing. Do not ignore this formal notification from the CCES. If you fail to respond by the specific deadline, you are considered to have admitted to the violation, waived your right to a hearing, and accepted the consequences. The notification will indicate what substance was found in your *Sample*, what CADP Rule you are alleged to have violated, the proposed sanction, whether a mandatory provisional suspension was imposed, and any deadline for you to take steps in addressing the situation.

### **Who Is Now Involved?**

The parties are you, the CCES, and the relevant *National Federation*. Your International Federation, the Government of Canada, and *WADA* are also entitled to observe the Doping Tribunal’s proceedings. The Doping Tribunal will also receive a copy of the notification and will promptly send you information on how to exercise your rights, if you choose to do so.

### **What Initial Decisions Are Required?**

Upon receiving the formal written notification of an assertion from the CCES, some decisions must be made immediately.

- 1) **Making admissions or statements:** Consider carefully what admissions or statements, if any, you make to the CCES or any other parties. Admissions and statements given voluntarily may be used against you at the hearing. At this stage, an ADRV is not generally known to the public so you will not need to worry about statements made to the media.
- 2) **Request a Resolution Facilitation session from the SDRCC.** The Resolution Facilitation services of the Doping Tribunal allow you to take part in a confidential meeting with representatives of the CCES, in the presence of a neutral Resolution Facilitator from the SDRCC. The information shared during that meeting is without prejudice, which means that the CCES cannot use information that you shared during that meeting against you at an eventual hearing. If one of Sport Solution’s Program Managers or a lawyer can attend that meeting with you, it is even better. Resolution Facilitation is available immediately after the administrative meeting and before any decision is required from you.

- 
- 3) **Admitting the violation:** You may choose to admit the violation asserted by the CCES. This means that you are not challenging the fact that the substance was in your *Sample*. Admitting the violation also opens the door to a number of other options:
- a. **Entering into a Results Management Agreement:** If an ADRV has been asserted against you that carries with it an *Ineligibility* period of four (4) or more years, you have the option to enter into a “*Results Management Agreement*” with the CCES (CADP Rule 10.8.1). This means that if you admit the violation and accept the proposed *Ineligibility* period within twenty (20) days of receiving notice, the CCES will reduce your period of *Ineligibility* by one (1) year. The case will be resolved without the need for a hearing, but the CCES will offer no further reductions to a sanction.
  - b. **Requesting a hearing on the sanction:** Even after admitting the violation, you can still request a hearing before the Doping Tribunal to decide on the sanction, if you believe that you deserve a more lenient sanction than what has been proposed by the CCES.
  - c. **Being offered a Case Resolution Agreement:** If you admit to an asserted ADRV and agree to the consequences, the CCES and WADA – at their discretion – can offer you a “Case Resolution Agreement” (CADP Rule 10.8.2). In this situation, the consequences of the admitted ADRV are mutually agreed upon (following discussion and negotiation) by the *Athlete*, CCES, and WADA. This means your *Ineligibility* date can start as early as the collection of your *Sample*, or the date in which your last ADRV occurred. At a minimum, you will still have to serve one-half of the *Ineligibility* period. The length of the agreed upon sanction depends on a number of factors including the seriousness of your violation, your level of *Fault*, and how prompt your admission was. Case Resolution Agreements are entirely at the discretion of the CCES and WADA, and cannot be reviewed by a Doping Tribunal or other hearing body.
  - d. **Waiving your right to a hearing:** At the same time or after admitting the violation, you may also waive your right to a hearing, and accept the suspension proposed (CADP Rule 8.4.1). This is a perfectly acceptable position if that is what you are prepared to do. Waiving your right to a hearing and accepting the CCES’s assertion of a violation will start the proposed period of *Ineligibility* immediately and take into account any time that has already been served as part of a *Provisional Suspension*.
- 4) **Accepting a Voluntary Provisional Suspension:** If a mandatory Provisional Suspension was not imposed by an *Anti-Doping Organization* with *Results Management* authority, such as the CCES, you can still voluntarily accept a *Provisional Suspension*. A *Provisional Suspension* means that the *Athlete* or other person is barred temporarily from participating in any *Competition* or activity prior to the final decision of a hearing. You will receive a credit for the period of *Provisional Suspension* against any period of *Ineligibility* that may be subsequently imposed or agreed upon (CADP Rule 10.13.2). For a voluntary *Provisional Suspension* to take effect, you must accept the suspension in writing and refrain from any activities relating to sport – including training with teammates and

---

competing at or participating in any *Competitions* (CADP Rule 10.14.1). In order to exercise this option, it must be done either a) within ten (10) days from the report or waiver of the *B Sample*; b) within ten (10) days from the notice of any other ADRV; or c) prior to your first *Competition* after receiving notice (CADP Rule 7.4.4). Note that accepting a voluntary *Provisional Suspension* is not an admission of the violation.

- 5) **Requesting a hearing to contest the violation assertion AND the proposed sanction:** Gather and retain, in an organized fashion, all documentation relevant to the alleged violation. This includes the formal notice, ongoing investigation reports and responses, the laboratory documentation packages, letters, e-mails, medical records, prescriptions, and permissions. Although the CCES has the burden to prove that an ADRV occurred, at the hearing you may wish to establish certain facts. Relevant and reliable evidence is required to do this, and you must take responsibility for the collection and organization of this material.

---

## PART II: Were the Rules of the CADP Respected?

---

The CADP adopts and applies WADA's *International Standard for Testing and Investigations*, and *International Standard for Laboratories*. The CADP provides some protections to *Athletes* in the event that any of the doping control rules or laboratory procedures were breached, which could possibly have caused the ADRV. It is important for you to know your rights in case this has happened.

Should you decide to challenge the claim by the CCES that an anti-doping rule was violated, you must carefully develop a strategy to explain your positive result or to dispute the actual test results. In developing this strategy, it is essential to address two related issues:

- 1) Were all the steps and procedures required by the *Doping Control Rules* followed?
- 2) If not, were these deviations from the steps and procedures in the *Doping Control Rules* the cause of the positive result?

The CCES most commonly uses the WADA-accredited laboratory in Laval, Quebec. The CADP contains an important presumption (CADP Rule 3.2.2), which states that WADA-accredited laboratories are presumed to have conducted the *Sample* analysis and the chain of custody procedures in accordance with the Laboratory Rules. This presumption means that, without evidence proving otherwise, the laboratory analysis and the chain of custody procedures are deemed to have been carried out fairly and properly. These issues do not have to be proven by the CCES in every case.

### What Rules Apply?

The *Doping Control Rules* in the CADP are based on the WADA *International Standards for Testing and Investigations*. These standards impose general obligations on the CCES and requires that they follow certain steps and procedures. *Athletes* may claim that a positive test result was caused by the CCES's failure to follow this protocol, but it must be noted that this is rare and difficult to prove.

### **Was I Properly Notified of Having Been Selected for *Sample Collection*?**

The procedures regarding the proper notification of testing for *Athletes* are contained in Rule 5 of the *International Standard for Testing and Investigations*. The CCES's general obligations to implement a fair system of notification, reporting, and confidentiality are contained in Rule 14 of the CADP.

### **Was *Sample Collection* Properly Conducted?**

The procedures and obligations of the CCES regarding *Testing*, *Sample Collection*, and *Investigations* are contained in CADP Rules 5 and 6.2. *Blood Samples* must also be done consistently with the procedures outlined in the *Athlete Biological Passport Operating Guidelines*, and the *blood Sample Collection Guidelines*.

The CCES's obligations regarding *Sample Collection* incorporate the *International Standard for Testing and Investigations*, the *Athlete Biological Passport Operating Guidelines*, and *Guidelines for Blood Sample Collection*.

### **Was Security, Transport, and Storage proper?**

The procedures governing security, transport, and storage of the *Sample* once it has been collected must conform to the *International Standards for Laboratories* (the "Laboratory Rules").

### **Will Departures from the CADP Rules Eliminate the Violation?**

In all instances, if you are able to identify deviations from the procedures described in the Doping Control Rules, serious consideration must be given as to whether or not the deviation caused the ADRV. Note that deviations (whether large or small) from the Doping Control Rules that did not cause the *Adverse Analytical Finding* will not eliminate the positive test or the doping infraction.

You can challenge an *Adverse Analytical Finding* if you can show that there was a departure from the Laboratory Rules or custodial procedures governing *Samples* collected by or on behalf of the CCES (CADP Rules 3.2.1 to 3.2.5). Such a departure must have reasonably caused the *Adverse Analytical Finding*. You may challenge an *Adverse Analytical Finding* on the basis that a departure impacted the validity or identity of the *Sample*. If you are successful in showing that a departure could reasonably have caused the *Adverse Analytical Finding*, the CCES has the burden of establishing that the departure did not cause the *Adverse Analytical Finding* (CADP Rules 3.2.1 to 3.2.3).

---

## **PART III: Anti-Doping Sanctions**

---

In preparation for a hearing, it is important to understand the sanctions that can arise from an ADRV. A sanction is imposed once it has been determined that an ADRV has occurred, either when the *Athlete* admits to a violation and waives their right to a hearing, or by the independent arbitrator after a Doping Tribunal hearing.

Most commonly, the CCES will propose a period of *Ineligibility* to participation in sport for an ADRV. This ranges from participation as a competitor to acting as a volunteer, and includes

---

competing in any competition, at any level, or in any sport that is governed or organized by a sport organization that has adopted the CADP.

### **What Will My Sanction Be?**

The Doping Tribunal will establish your sanction in the following manner:

- 1) Determine which basic sanction will be applied to your case (CADP Rules 10.2 to 10.4), and in doing so consider the issue of *Intent*;
- 2) Determine how the Degree of *Fault* will affect the basic sanction (CADP Rules 10.4 to 10.6). This will apply if the *Athlete* or other person can establish *No Fault or Negligence* or *No Significant Fault or Negligence* (see Part IV of this guide);
- 3) Determine whether there is a basis for eliminating, suspending, or reducing the sanction (CADP Rules 10.6 and 10.7). Recall that *Substantial Assistance* and a *Results Management Agreement* may serve this purpose. This will be based off what the parties can establish at the hearing; and
- 4) Decide on the commencement of the period of *Ineligibility* (CADP Rule 10.13). Recall that delays not attributable to the *Athlete* or other person, and credits for *Provisional Suspensions* can all serve to backdate the commencement of the *Ineligibility* period.

It is also important to note that under CADP Rule 10.4, if the CCES finds that there are *Aggravating Circumstances*, an *Ineligibility* period of up to two (2) years may be added onto the standard sanction. Examples of *Aggravating Circumstances* can include possessing multiple prohibited substances, repeat offences, deceptive and destructive behaviour, and more (see Appendix I of the CADP for a detailed list).

### **Substances of Abuse, Specified Substances, and Contaminated Substances**

*Substances of Abuse* are *Prohibited Substances* specifically identified because they are frequently abused in society outside of the sport context. Please refer to WADA's *Prohibited List* in Appendix B for the updated list of *Substances of Abuse*. The general rule regarding sanctions for a *Substance of Abuse* (notwithstanding the other provisions listed in CADP Rule 10.2), is that if you can establish that the *Substance of Abuse's* ingestion or *Use* occurred *Out-of-Competition* and was unrelated to your sport performance, the period of *Ineligibility* will be three (3) months (CADP Rule 10.2.4.1). Further, this period may be reduced to one (1) month upon completion of a CCES-approved *Substance of Abuse* treatment program.

Where the ADRV involves a *Specified Substance* – which is any *Prohibited Substance* identified as a *Specified Substance* on the *Prohibited List* – the period of eligibility will be at a maximum a two (2) year *Ineligibility* period, and at a minimum a reprimand. The *Athlete* must establish *No Significant Fault or Negligence* (see below), and the sanction will depend on the *Athlete's* degree of *Fault* (CADP Rule 10.6.1.1). The same reduction is available where the *Prohibited Substance* was not a *Substance of Abuse*, and the *Athlete* can establish both *No Significant Fault or Negligence*, as well as that the *Prohibited Substance* came from a *Contaminated Product* – i.e., a product where the *Prohibited Substance* was not disclosed on the label (CADP Rule 10.6.1.2).



## PART IV: Preparing for the Hearing – Factors to Consider

---

Should you decide to challenge the claim by the CCES that a violation has occurred, you must make some strategic decisions before the hearing. The Doping Tribunal shall commence the hearing process no later than forty-five (45) days from the date of the CCES's notification asserting an ADRV, with some exceptions outlined in CADP Rule 8.2.1. You may contest the fact of the alleged violation, the duration of the sanction proposed by the CCES, or both. It is no longer possible to admit the fact of the violation and proceed to a hearing only to contest the length of the sanction. In general, an *Athlete* who decides to contest the fact of the violation may wish to also attempt to reduce the proposed sanction. This can be done if a *Substance of Abuse* (CADP Rule 10.2.4.1), a *Specified Substance* (CADP Rule 10.6.1.1), or a *Contaminated Product* (CADP Rule 10.6.1.2) is involved – refer to Part III of this guide.

If you so choose, you can request that your hearing before the Doping Tribunal be made accessible to the public (Rule 8.2.2.3). This will consist of a publicly accessible audio link to the hearing.

### **Strict Liability**

The principle of strict liability is included within the CADP (Rule 2.1.1). This means that the mere presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in your *Sample* will constitute an ADRV. A doping violation will be asserted regardless of your intent, *Fault*, negligence, or carelessness in connection with that substance. You are personally responsible for the presence of all substances detected in your *Sample*.

### **Possible Sanction Reductions**

There are three opportunities to potentially reduce a sanction, should you decide to have a hearing. These sanction reductions do not eliminate the ADRV, but, in limited situations they permit that the applicable period of *Ineligibility* may be eliminated or reduced. These circumstances are intentionally designed to be quite narrow. You have the burden of convincing the Doping Tribunal that you are entitled to rely on one or more of them.

Once again, it should be stressed that these defences are a difficult burden to meet.

- 1) *No Fault or Negligence* (CADP Rule 10.5): You must demonstrate to the Doping Tribunal that you bear *No Fault or Negligence* for the violation. The test which must be satisfied is: (i) you did not know or suspect, and could not reasonably have known or suspected, even with the exercise of the utmost caution, that you had used or been administered the Prohibited Substance; and (ii) If the violation involved presence, you must prove how the substance entered your body. This is a very difficult test to meet. It is not enough to claim that the positive test was inadvertent or that you have no knowledge regarding how the substance entered your system. If you satisfy this test, your period of *Ineligibility* or suspension will be entirely eliminated.

---

Examples of where *No Fault or Negligence* will not apply:

- a) A positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (*Athletes* are responsible for what they ingest and have been warned against the possibility of supplement contamination);
  - b) The *Administration* of a prohibited substance by the *Athlete's* personal physician or trainer without disclosure to the *Athlete* (*Athletes* are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and
  - c) Sabotage of the *Athlete's* food or drink by a spouse, coach, or other person within the *Athlete's* circle of associates (*Athletes* are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink).
- 2) *No Significant Fault or Negligence* (CADP Rule 10.6): If you have committed an ADRV under CADP Rules 2.1, 2.2, or 2.6, the sanction can be reduced through CADP Rules 10.6.1.1 or 10.6.1.2, if you can demonstrate that you bear *No Significant Fault or Negligence* for the ADRV. The minimum is a reprimand and no period of *Ineligibility*; the maximum is a period of *Ineligibility* of two years. The result depends on your degree of *Fault*. Given all the available evidence (i.e., "the totality of circumstances"), you must establish that your *Fault* or negligence – and also considering the criteria for *No Fault or Negligence* – was not significant in relation to the violation that occurred. If it is a presence violation, you must also establish how the Prohibited Substance entered your system. The period of *Ineligibility* or suspension may be reduced by up to 50%.

Note that for Cannabinoids, you may establish *No Significant Fault or Negligence* by clearly demonstrating that the context of the use was unrelated to sport performance.

You need not be totally blameless for this Rule to apply. You must demonstrate that although your *Fault* or negligence may have contributed somewhat to the positive test result, your conduct or carelessness was not "significant" when compared to all of the other circumstances that did contribute to the ADRV. You will not succeed if you merely suggest how other circumstances might have contributed to the violation. You must demonstrate that your *Fault* or negligence was not a significant causal factor in the ADRV as compared to other specific circumstances that occurred.

Examples of where *No Significant Fault or Negligence* may apply:

Reduction may be appropriate if the *Athlete* clearly establishes that the cause of the positive test was contamination in a common multivitamin purchased from a source with no connection to *Prohibited Substances*, and the *Athlete* exercised care in not taking other nutritional supplements.

- 3) *Substantial Assistance* in Discovering or Establishing Code Violations (CADP Rule 10.7.1): Under this Rule, a part of the period of *Ineligibility* imposed on you may be reduced by the CCES if you are able to provide *Substantial Assistance* to the CCES that helps confirm an ADRV committed by another person. This rule also applies for information provided to criminal authorities or professional disciplinary bodies that support the existence of a criminal offence or the breach of a professional rule by another person. For

---

the purpose of this rule, it is possible to enter into a *Without Prejudice Agreement*, whereby the CCES will not use against you any information you provide (CADP Rule 10.7.1.1).

The period of *Ineligibility* that may be subtracted will be based on the seriousness of the ADRV that you or the other person committed, and the significance of the *Substantial Assistance* you provided. However, the sanction can be reduced by no more than three quarters ( $\frac{3}{4}$ ), and if that period is a lifetime, you must still serve at least eight (8) years of that period.

It is important to recall that you have the burden of proof in establishing the facts when making your claim in support of a reduced sanction. This may involve costs, such as any supplement testing which you claim to have been contaminated (the lot and batch number will be needed to acquire an unopened *Sample*) and expert testimony in your hearing. It should be noted that although it is rare, if the Doping Tribunal deems your conduct to be unreasonable or in bad faith during a hearing, they can order that you pay a portion of the other party's fees (CADP Rule 8.2.4.8).

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

The "burden of proof" is a legal term which defines who has the obligation/duty to prove certain matters at a hearing. A closely related consideration is the required "standard of proof." The question of satisfying the "standard of proof" goes to the degree of certainty required by the Doping Tribunal. The two most common standards are "beyond a reasonable doubt" – meaning a very high degree of certainty; and a "balance of probabilities" – meaning more likely than not.

At the hearing, the CCES has the burden of proof to establish the ADRV, whereas you are not required to prove your innocence. The standard of proof the CCES must meet is the "comfortable satisfaction" of the Doping Tribunal that the asserted ADRV occurred. This standard of proof is greater than a mere balance of probability, but less than proof beyond a reasonable doubt (CADP Rule 3.1).

The CADP states certain situations where you have an obligation to prove a matter or to rebut a presumption. Examples include the obligation to demonstrate the existence of "exceptional circumstances" (CADP Rule 10.3.1), or to rebut the presumption that CADP Rules were not broken (CADP Rule 3.1). In any such case, you may meet this obligation by providing evidence of a fact, or an event, that will be evaluated on the lower "balance of probabilities." However, this does not mean that merely raising theories or suggesting alternative possibilities will suffice. In all instances where you bear the burden of proof, the Doping Tribunal must still be satisfied that what you propose "is more likely than not" to be true.

The critical point to keep in mind is that successfully proving the existence of a departure from accepted procedures and practices does not automatically invalidate the positive test results. Any such departure from the CADP Rules must have caused the positive test result to invalidate the ADRV.

## PART V: The Hearing Process

---

### **Procedure**

Detailed procedures regarding the conduct of the hearing are set out in the SDRCC Code as well as in the CADP in Rules 8.1 to 8.2. The Doping Tribunal consists of a single arbitrator – an independent professional trained in dispute resolution and in doping rules – who will be selected from among a roster of qualified individuals by the SDRCC with input from both the *Athlete* and the CCES. The Doping Tribunal will convene a preliminary meeting with all parties by teleconference to settle procedural matters. No later than five (5) days after the hearing, the arbitrator will issue a written decision which indicates whether there has been an ADRV and the appropriate consequences. Most often the Doping Tribunal hearings are conducted orally, either in person or virtually through a video or conference call.

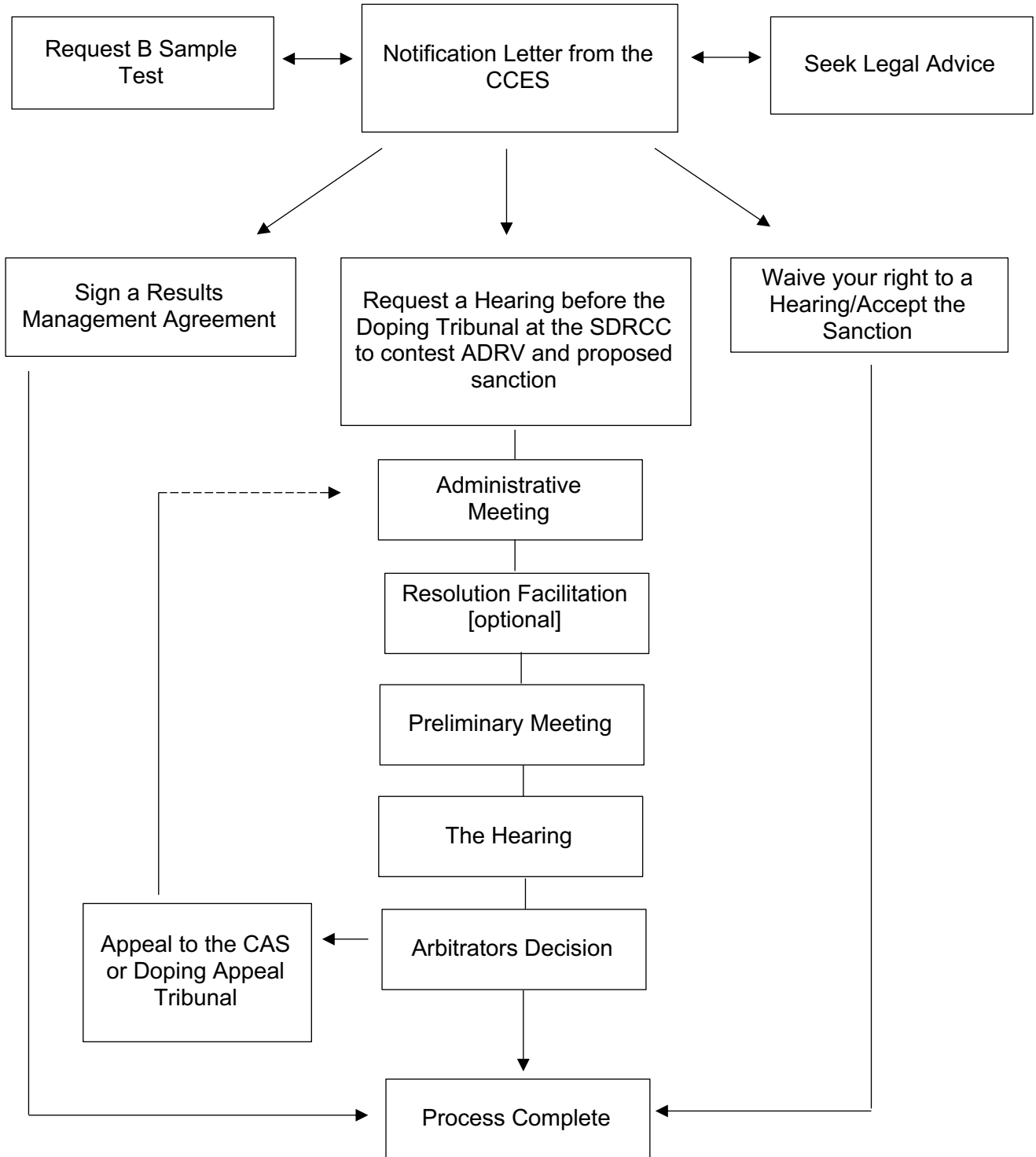
The parties to the hearing will typically be you, the CCES, and your *Sport Organization*. WADA, the Government of Canada, and your International Federation also have the right to observe the hearing. As well, the Tribunal has the discretion to appoint a doping expert if necessary (CADP Rule 8.2.2.2). The arbitrator will inform the parties in which order they will present evidence at the hearing. Typically, the CCES will proceed first, as it bears the overall burden of demonstrating that an ADRV has taken place. Everything you are required to prove, or rebut, requires evidence.

For a detailed overview and guide to all aspects of the hearing process, please refer to the SDRCC's "Guide to Hearings" link listed in Appendix B.

### **Commencement of the *Ineligibility* Period**

Pursuant to CADP Rule 10.13, the period of *Ineligibility* or suspension normally commences on the date of the hearing decision or the date that you have accepted a period of *Ineligibility*. As mentioned above, there are exceptions to this rule (See Part III).

APPENDIX A



## APPENDIX B

The following documents are referenced throughout this Guide. For more information, download:

Document	Weblink
2021 Canadian Anti-Doping Program	<a href="https://cces.ca/canadian-anti-doping-program">https://cces.ca/canadian-anti-doping-program</a>
2021 World Anti-Doping Code	<a href="https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code">https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code</a>
2021 International Standard for Testing and Investigations	<a href="https://www.wada-ama.org/en/resources/world-anti-doping-program/international-standard-for-testing-and-investigations-isti">https://www.wada-ama.org/en/resources/world-anti-doping-program/international-standard-for-testing-and-investigations-isti</a>
2021 International Standards for Results Management	<a href="https://www.wada-ama.org/en/resources/the-code/international-standard-for-results-management-ismr">https://www.wada-ama.org/en/resources/the-code/international-standard-for-results-management-ismr</a>
2021 International Standard for Laboratories	<a href="https://www.wada-ama.org/en/resources/laboratories/international-standard-for-laboratories-islh">https://www.wada-ama.org/en/resources/laboratories/international-standard-for-laboratories-islh</a>
2019 Athlete Biological Passport Operating Guidelines	<a href="https://www.wada-ama.org/en/resources/athlete-biological-passport/athlete-biological-passport-abp-operating-guidelines">https://www.wada-ama.org/en/resources/athlete-biological-passport/athlete-biological-passport-abp-operating-guidelines</a>
2016 Blood Sample Collection Guidelines	<a href="https://www.wada-ama.org/en/resources/world-anti-doping-program/guidelines-blood-sample-collection">https://www.wada-ama.org/en/resources/world-anti-doping-program/guidelines-blood-sample-collection</a>
2021 World Anti-Doping Agency (WADA) Prohibited List	<a href="https://www.wada-ama.org/en/content/what-is-prohibited?gclid=CjwKCAiAr6-ABhAfEiwADO4sfdTPkPgzpOodcbza6my5U8d_kyuUjHVSZYIVbjcB B33h7h3uom6-jBoC3aoQAvD_BwE">https://www.wada-ama.org/en/content/what-is-prohibited?gclid=CjwKCAiAr6-ABhAfEiwADO4sfdTPkPgzpOodcbza6my5U8d_kyuUjHVSZYIVbjcB B33h7h3uom6-jBoC3aoQAvD_BwE</a>
2021 Sport Dispute Resolution Code	<a href="http://www.crdsd-sdrcc.ca/eng/dispute-resolution-code">http://www.crdsd-sdrcc.ca/eng/dispute-resolution-code</a>
Guide to SDRCC Proceedings	<a href="http://www.crdsd-sdrcc.ca/eng/guide-to-proceedings">http://www.crdsd-sdrcc.ca/eng/guide-to-proceedings</a>

**Note: Many of these documents are continually updated, please ensure you are looking at the most recent version.**

---

## APPENDIX C

### Relevant CADP Definitions

This is an incomplete list of defined terms in the 2021 CADP. Always consult with the CADP if you are unsure about a term's meaning.

***Adverse Analytical Finding:*** A report from a WADA-accredited laboratory or other WADA-approved laboratory that, consistent with the International Standard for Laboratories, establishes in a Sample the presence of a Prohibited Substance or its Metabolites or Markers or evidence of the Use of a Prohibited Method.

***Aggravating Circumstances:*** Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the antidoping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.

***Anti-Doping Organization:*** WADA or a Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct Testing at their Events, International Federations, and National Anti-Doping Organizations.

***Athlete:*** 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). An Anti-Doping Organization has discretion to apply anti-doping rules to an Athlete who is neither an International-Level Athlete nor a National-Level Athlete, and thus to bring them within the definition of "Athlete". In relation to Athletes who are neither International-Level nor National-Level Athletes, an Anti-Doping Organization may elect to: conduct limited Testing or no Testing at all; analyze Samples for less than the full menu of Prohibited Substances; require limited or no whereabouts information; or not require advance TUEs. However, if a Rule 2.1, 2.3 or 2.5 anti-doping rule violation is committed by any Athlete over whom an Anti-Doping Organization has elected to exercise its authority to test and who competes below the international or national level, then the Consequences set forth in the Code must be applied. For purposes of Rule 2.8 and Rule 2.9 and for purposes of anti-doping information and Education, any Person who participates in sport under the authority of any Signatory, government, or other sports organization accepting the Code is an Athlete

***Consequences of Anti-Doping Rule Violations*** ("Consequences"): An Athlete's or other Person's violation of an anti-doping rule may result in one or more of the following:

- a) Disqualification means the Athlete's results in a particular Competition or Event are invalidated, with all resulting Consequences including forfeiture of any medals, points and prizes;
- b) Ineligibility means the Athlete or other Person is barred on account of an anti-doping rule violation for a specified period of time from participating in any Competition or other activity or funding as provided in Rule 10.14;
- c) Provisional Suspension means the Athlete or other Person is barred temporarily from participating in any Competition or activity prior to the final decision at a hearing conducted under Rule 8;
- d) Financial Consequences means a financial sanction imposed for an anti-doping rule violation or to recover costs associated with an anti-doping rule violation; and
- e) Public Disclosure means the dissemination or distribution of information to the general public or Persons beyond those Persons entitled to earlier notification in accordance with Rule 14.

**Fault:** Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Rule 10.6.1 or 10.6.2.

**In-Competition:** The period commencing at 11:59 p.m. on the day before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition. Provided, however, WADA may approve, for a particular sport, an alternative definition if an International Federation provides a compelling justification that a different definition is necessary for its sport; upon such approval by WADA, the alternative definition shall be followed by all Major Event Organizations for that particular sport.

**National Anti-Doping Organization:** The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of Samples, manage test results and conduct Results Management at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's National Olympic Committee or its designee. In Canada, the National Anti-Doping Organization is the CCES.

**National Event:** A sport Event or Competition involving International- or National-Level Athletes that is not an International Event.

**National Federation:** A national or regional entity in Canada which is a member of or is recognized by an International Federation as the entity governing the International Federation's sport in that nation or region in Canada.



**National-Level Athlete:** Athletes who compete in sport at the national level, as defined by each National Anti-Doping Organization, consistent with the International Standard for Testing and Investigations. In Canada, National-Level Athletes are defined as set out in Rule 1.4.

**National Olympic Committee:** The organization recognized by the International Olympic Committee. The term National Olympic Committee shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical National Olympic Committee responsibilities in the anti-doping area. In Canada, the National Olympic Committee is the Canadian Olympic Committee.

**Negligence:** See No Fault or Negligence, or No Significant Fault or Negligence below.

**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.

**No Significant Fault or Negligence:** The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. 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.

**Possession:** The actual, physical Possession, or the constructive Possession (which shall be found only if the Person has exclusive control or intends to exercise control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists); provided, however, that if the Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive Possession shall only be found if the Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on Possession if, prior to receiving notification of any kind that the Person has committed an anti-doping rule violation, the Person has taken concrete action demonstrating that the Person never intended to have Possession and has renounced Possession by explicitly declaring it to an Anti-Doping Organization. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a Prohibited Substance or Prohibited Method constitutes Possession by the Person who makes the purchase.

**Regional Anti-Doping Organization:** A regional entity designated by member countries to coordinate and manage delegated areas of their national anti-doping programs, which may include the adoption and implementation of anti-doping rules, the planning and collection of Samples, the management of results, the review of TUEs, the conduct of hearings, and the conduct of Educational programs at a regional level.

---

**Registered Testing Pool:** The pool of highest-priority Athletes established separately at the international level by International Federations and at the national level by National Anti-Doping Organizations, who are subject to focused In-Competition and Out-of-Competition Testing as part of that International Federation's or National Anti-Doping Organization's test distribution plan and therefore are required to provide whereabouts information as provided in Article 5.5 of the Code and the International Standard for Testing and Investigations. In Canada, the CCES' Registered Testing Pool is defined as set out in Rule 5.5 of these Anti-Doping Rules.

**Results Management:** The process encompassing the timeframe between notification as per Article 5 of the International Standard for Results Management, or in certain cases (e.g., Atypical Finding, Athlete Biological Passport, whereabouts failure), such pre-notification steps expressly provided for in Article 5 of the International Standard for Results Management, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal (if an appeal was lodged).

**Strict Liability:** The rule which provides that under Rule 2.1 and Rule 2.2, it is not necessary that intent, Fault, Negligence, or knowing Use on the Athlete's part be demonstrated by the Anti-Doping Organization in order to establish an anti-doping rule violation. Student-Athlete: Only for the purpose of the therapeutic Use of Prohibited Substances or Prohibited Methods, an individual who is an Athlete and a student competing in U SPORTS and/or Canadian Collegiate Athletic Association (CCAA) sport activities and who is not in the National Athlete Pool (NAP) for any sport.

**Substance of Abuse:** For purposes of applying Rule 10, Substances of Abuse shall include those Prohibited Substances which are specifically identified as Substances of Abuse on the Prohibited List because they are frequently abused in society outside of the context of sport.

**Testing Pool:** The tier below the Registered Testing Pool which includes Athletes from whom some whereabouts information is required in order to locate and Test the Athlete Out-of-Competition.

**Therapeutic Use Exemption (TUE):** A Therapeutic Use Exemption allows an Athlete with a medical condition to Use a Prohibited Substance or Prohibited Method, but only if the conditions set out in Rule 4.4 and the International Standard for Therapeutic Use Exemptions are met.

**Without Prejudice Agreement:** For purposes of Rules 10.7.1.1 and 10.8.2, a written agreement between an Anti-Doping Organization and an Athlete or other Person that allows the Athlete or other Person to provide information to the Anti-Doping Organization in a defined time-limited setting with the understanding that, if an agreement for Substantial Assistance or a Case Resolution Agreement is not finalized, the information provided by the Athlete or other Person in this particular setting may not be used by the Anti-Doping Organization against the Athlete or other Person in any Results Management proceeding under the Code, and that the information provided by the Anti-Doping Organization in this particular setting may not be used by the Athlete or other Person against the Anti-Doping Organization in any Results Management proceeding under the Code. Such an agreement shall not preclude the Anti-Doping Organization, Athlete or other Person from using any information or evidence gathered from any source other than during the specific time-limited setting described in the agreement.



### **About This Article**

This article is written by Sport Solution Clinic Program Managers on behalf of AthletesCAN. The Program Managers would like to thank the CCES and the SDRCC for their generous help in the completion of this guide. This article may not be reprinted or republished without the express written consent of AthletesCAN.

### **Article Disclaimer**

This information is intended as general legal information only and should not form the basis of legal advice or opinion. AthletesCAN makes no warranty as to the accuracy or reliability of the information published here and accepts no responsibility for any consequences arising from a reader's reliance upon this information. Readers seeking legal advice should consult with a lawyer.