

An open letter from Jeff Adams to the Canadian Sport Community in reply to the request for comments by the CCES on drug testing athletes with disabilities.

August 1, 2007

To all concerned,

I'm writing to you as stakeholders in the Canadian sport community, in an attempt to provide a balanced body of information should you decide to provide the CCES with the advice it has requested.

A request for opinions from the Canadian Sport Community was recently circulated by the CCES on the issue of athletes with physical disabilities who must catheterize in order to provide a urine sample for anti-doping tests. This request was triggered by an anti-doping violation for a non-performance enhancing substance that the CCES alleged against me that resulted in a 2 year suspension – the maximum sanction available – thereby making no distinction between the athlete who cheats and the athlete who doesn't cheat.

The memorandum as circulated is a refreshing and long overdue effort by the CCES to begin to understand the issues and to attempt to take steps to appropriately accommodate athletes with disabilities that are required by the CADP to submit to urine drug testing.

I'm encouraged by the CCES' acknowledgement of the possibility that the system as it exists is insufficient, and may require change in order to make it fair and equitable. I'm also encouraged that the CCES has already changed its policy in practice, by making catheters available at the recent Athletics national championships and in out-of-competition tests targeted at athletes with disabilities.

Had this accommodation been made available to me, I would never have been met with an Adverse Analytical Finding by reason of a contaminated catheter.

It therefore saddens me that the CCES didn't take these necessary steps a year ago when I raised the issues to them during the "initial review" phase, prior to the official prosecution of my case.

In a case where even the prosecution agreed that there was no cheating, and no attempt to enhance performance, this could have been a unique opportunity to effect positive change and improve on the anti-doping system in a manner that was respectful to the rights and needs of athletes with disabilities but without allowing any cheating to slip through the cracks - what an incredible missed opportunity to do the right thing.

Instead, I've been punished in exactly the same way that someone who intentionally cheated and attempted to enhance their performance –this is just not how we do things as Canadians. It's profoundly unfair, and it offends the most basic principles of fair play, decency, proportionality and justice to punish a cheater and a non-cheater in the identical manner.

It's like punishing someone for jaywalking in the same way as someone who commits an armed robbery - only in the most draconian of societies would this be tolerated.

Our system of justice just doesn't work on such a premise. If this decision is not reversed by CAS and/or the courts, the consequence will be that the CADP will operate in a manner that is inconsistent with principles of fundamental justice and the *Canadian Charter of Rights and Freedoms*. For the CCES to promote itself as the steward and guardian of ethics in sport for our country, conducting itself in a manner so contrary to the principles of fundamental justice is deeply troubling.

Apart from the issue of penalty, the CCES has mischaracterized many of the issues in the memorandum that they circulated, and entirely omitted other important issues. I'd like to present the situation from the point of view of an athlete with a disability.

The first step in understanding this issue is to frame it in the appropriate context. The CCES has been designated by the Government of Canada to be the custodians of the Canadian Anti-Doping Program, and to carry out government policy as it relates to anti-doping.

In accepting this designation and responsibility from the Government, the CCES accepted being charged with the overarching responsibility of ensuring that the doping control protocols are contamination-free for all athletes, those with disabilities and able-bodied alike. They're the experts, and they've assumed the mantle of responsibility for the entire doping control process from the time an athlete enters the doping control room to the time they leave. In return, the CCES is funded by the taxpayers of Canada – without which funding the CCES would not exist.

This overarching responsibility for urine collection is outlined in the CADP specifically at rule 6.60, and throughout section 6 of the CADP.

Any quasi-governmental organization that conducts itself or takes positions in a manner inconsistent with the *Canadian Charter of Rights and Freedoms* cannot expect to continue to be funded by the taxpayers of Canada, because to do so represents a repudiation of the very values that define us as a nation and as Canadians.

The rules as they're written are quite good. The real issue here is that I believe that the CCES has taken positions in order to circumnavigate their own rules and the WADA guidelines on Urine Sample Collection, which the CADP at 1.1 of the General Principles section says that it implements.

The CADP requires the CCES to ensure that the collection of urine for drug analysis is not compromised by contamination. This is precisely why the sample collection vessels are provided to athletes in sealed, tamper evident wrapping.

To put disabled athletes on the same level playing field as able-bodied athletes, the CCES is required by law to provide us with catheters in sealed, tamper evident wrapping.

Alternatively, the CCES is required to warn and educate athletes to bring our catheters in sealed, tamper evident wrapping (which it does not do).

In any event since using a clean catheter to protect the integrity of the drug test is “a must” to use the words of Professor Christiane Ayotte, the CCES cannot allow the use of a previously used catheter.

Catheterizing is an **invasive medical procedure**, which brings not only a heightened need for consent from the person being tested, but an elevated responsibility on the part of the CCES, because of the requirement by the CADP which gives **responsibility to the DCO** to ensure that the urine collection is conducted in a manner consistent with principles of **“internationally recognized standard precautions in healthcare settings”**. (CADP 6C.1 and 6C.3)

Providing catheters wouldn't be an onerous undertaking. The CCES used to do it, but discontinued the practice. Catheters have been provided at events like the Paralympic Games in Salt Lake City and Torino.

Joseph DePencier himself chaired an Independent Observer group that submitted a report to WADA following the Salt Lake City Paralympics, writing: "Similarly, athletes requiring a sterile catheter ought to have the right to choose one."

In the rare cases where there's a genuine concern, or an athlete is insistent on using their own equipment, modifications can be made by the DCO to allow the Athlete to use their own catheter without breaking any anti-doping rules. This ability to make an exception would disallow any athlete from ever evading a test by claiming that the ones provided are not the correct kind.

It's important to note also that catheterization **is a prohibited method** as per the WADA Code prohibited methods section, which means that the use of a catheter by any athlete should trigger the requirement of a Therapeutic Use Exemption, and without a TUE any athlete who uses a catheter technically **could be found guilty of an anti-doping infraction**, just as for any other prohibited substance or method used without first securing a TUE **regardless of medical necessity**.

An abbreviated TUE form could easily be developed that would capture information about the kind of catheter required, which would build a database in very short order to determine what kinds to have on hand at competitions, and would allow DCO's to equip themselves with the correct kind when performing on-demand targeted testing.

While it's true that requiring a TUE, or otherwise gathering information about the types of catheters required encroaches on privacy (as does all drug testing), it's absolutely no more of an invasion of privacy than any other TUE required for any other medically necessary substance or method.

The demand for TUEs has been in place for many years, without any alarms being raised by the CCES over “privacy issues”.

The entire process of providing a urine sample in front of strangers by performing an invasive medical procedure like catheterizing is an enormous invasion of privacy – surely asking someone what kind of catheter they’re going to use doesn’t come close to the invasion of privacy of watching them insert and use it.

If the more serious invasion of privacy can be justified, then the lesser invasion cannot be held to be a barrier to equality. Using false “privacy” concerns as a pretext to deny athletes with disabilities equality, is both offensive and illegal.

There are a number of elements to this case that we have not vetted to the public or to the sport community because of the pending appeal. Given that the CCES has taken the initiative, and chosen to involve the broad community in this debate, I think it’s necessary to put the pertinent issues on the table.

As stated above, the CCES has been mandated by the Government of Canada to implement the Government’s policy on anti-doping and **must do so in a manner that is Charter compliant.**

The consequences of an AAF for the athlete are devastating and therefore the CCES is held to a correspondingly high standard both because of its responsibilities in administering Canada’s anti-doping program and because of its expertise. Consequently, there is a threshold or standard below which the CCES cannot go otherwise its responsibilities and expertise would be rendered irrelevant. While not a stringent or difficult threshold, it is one of vital importance and that is the responsibility of ensuring that the entire urine sample collection process for drug analysis is free from contamination.

The integrity of Canada’s anti-doping program is dependent on this minimal standard. Notwithstanding that this basic standard was breached in my case, rather than doing the right thing, the CCES chose to obtain a conviction at all costs. If that meant calling black, white – so be it.

The failure to hold the CCES to this minimal standard brings the CADP into disrepute. It also allows the CCES to abdicate some of its responsibilities and place a unique burden on unsuspecting athletes with disabilities. Basic Canadian values are truncated.

Please take the time to consider the following pages in formulating your opinion and your advice, and please contact either myself or my lawyer, Tim Danson if you have any further questions. We now have an opportunity to effect positive, meaningful and constructive change.

I ask you and your organization to encourage the CCES to support my application to have the decision of the Arbitrator stayed pending appeal – and by supporting the stay application, to take a position that supports basic human rights and fairness.

At minimum a message needs to be sent that the Arbitrator’s decision on sanction must be immediately stayed to address the grossly unjust result of treating cheaters and non-cheaters in the same way.

The cheater deserves to be punished. The athlete who takes performance enhancing drugs to gain a competitive advantage deeply offends us all.

However, as stated above, everyone acknowledges that the competition for which I tested positive had nothing to do with cheating or performance enhancement. Like all of my athletic achievements, my result was obtained through athletic excellence and hard work.

A sanction that does not distinguish between these two completely different value structures is perverse and contrary to law.

In November, under the new WADA code, it will be possible to resolve my case with a sanction of a reprimand and a warning, in the same way as cannabis is dealt with currently.

The Canadian Sport Community supports this change to the WADA code, and the CCES recommended it to WADA on their behalf. Incredibly, the CCES asked for the maximum sanction against me even though by their own admission my case had nothing to do with cheating or performance enhancement.

Athletics Canada acknowledged that my case had nothing to do with cheating or performance enhancement, accepted that the ingestion of the substance was involuntary, and also acknowledged and accepted the scientific evidence that the substance could not have still been in my body at the time of the competition and that my catheter was the cause of the AAF, yet requested a one year sanction.

The hypocrisy is stark - this case was certainly not a “constructive approach”, and I have been made into “collateral damage”.

Please don't allow this to continue to happen, but most of all please don't let the system continue to discriminate against athletes with disabilities – it's quite simply unethical.

We would be very appreciative of any opportunity to present our side of the debate to your organization.

A handwritten signature in black ink, appearing to read "Jeff Adams". The signature is stylized and cursive.

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Did the CCES break its own rules?

The Canadian Anti-Doping Code (CADP) rule 6C.5 states:

"The DCO shall ensure that the *Athlete* is offered a choice of appropriate equipment for collecting the *Sample*. If the nature of an *Athlete's* disability requires that he/she must use additional or other equipment as provided for in Annex 6B: Modifications for Athletes with Disabilities, the *DCO* shall inspect that equipment to ensure that it will not affect the identity or integrity of the *Sample*."

The glossary of the CADP defines *Sample Collection Equipment* as:

"Containers or apparatus used to directly collect or hold the *Athlete's Sample* at any time during the *Sample* collection process."

In her testimony, the CCES expert witness, Dr. Christianne Ayotte said that a clean catheter is "a must", and the CCES acknowledged that they neither offered me a choice of catheters, nor did they inspect the one that I brought and used.

If a catheter falls within the definition of "apparatus used to directly collect or hold the *Athlete's Sample* at any time", or within the definition of "additional or other equipment as provided for in Annex 6B", then rule 6C.5 is triggered, and the DCO **must at the very least** inspect the equipment. If a catheter is open and has been previously used, then **it always affects the integrity of the sample**, in the same way as any piece of equipment that was open and had been previously used would.

The unchallenged and uncontradicted evidence at the arbitration was that it is a common practice for athletes with disabilities of all levels of achievement to use open and previously used catheters to provide urine samples, not realizing or understanding that the possibility of contamination exists, and that a common protocol for cleaning and re-using catheters is to clean the outside, but not the inside.

This protocol is fine for everyday situations, but is unacceptable for drug testing. Again, the athletes have been using this everyday protocol in drug testing situations **without understanding the implications**, and **without being educated in any way** by the anti-doping authorities on the stricter protocol necessary to ensure a contamination free sample collection process.

This is a very similar situation to the issue of contaminated supplements and the use of cannabis – the CCES goes to great lengths to educate athletes about the dangers of contaminated supplements as well as warning athletes about clearance times following the intentional use of cannabis **in order to help athletes not test positive**. The CCES refuses however to educate athletes with disabilities in a similar way about the issues surrounding the use of a catheter.

More disturbing is that although the CCES acknowledged through their expert witness that they knew that the use of a clean catheter to avoid contamination was “a must”, they still made the deliberate and calculated decision not to warn or otherwise educate self-catheterizing athletes to avoid the danger.

The Court of Arbitration for Sport (CAS) will be asked to determine whether or not this practice constitutes bad faith and a form of entrapment, and one that is offensive to basic human and *Charter* equality rights since it is uniquely burdensome on those with physical disabilities. Taking advantage of and exploiting a person’s disability, thereby treating athletes with disabilities differently than able-bodied athletes for the uniquely invasive purpose of drug testing would be considered objectionable and repugnant to most fair-minded people.

In their factum, the CCES stated that not providing catheters was “deliberate and defensible”. In fact, in testimony, Joseph DePencier said that even if a DCO knew that a catheter was contaminated, that they wouldn’t stop an athlete from using it.

The exact question and answer were:

Question by Tim Danson:

“If a DCO sees an athlete using a catheter and is concerned that it could be potentially contaminated, do they not have an obligation to note that and/or attempt to prevent the athlete from using the catheter?”

Answer by Joseph DePencier:

“Well, again, I don’t think a doping control authority is going to prevent someone from using a catheter that’s contaminated with a prohibited substance because we’re in the business of discovering the use or presence of prohibited substances.”

It is unsettling to know that the perspective of the anti-doping authorities is such that they would intentionally allow an athlete to use a contaminated catheter because that’s the “business they’re in”.

In fact, it’s not the “business they’re in”. The mission of the CCES is to “foster ethical sport for all Canadians” which is carried out through “research, promotion, education, **detection** and deterrence”. If they were giving out medals for the order of what the CCES is supposed to do to satisfy its mandate, detection wouldn’t even make it onto the podium, and to ignore and deny any obligation to fulfill four out of the five elements in this case is shameful.

Apart from being contrary to the CCES’s responsibility to educate and warn athletes about potential contamination, and to deter anti-doping violations when possible, this practice of intentionally allowing the use of contaminated catheters has the effect of triggering anti-doping infractions by athletes with disabilities that would not happen to their able-bodied peers.

Able-bodied athletes don’t have to provide any of the equipment used during sample collection, and don’t therefore have the element of an intervening piece of contaminated equipment in the sample collection process.

The practice results in the possibility of in-competition samples provided by athletes with disabilities being contaminated after the competition with urine containing substances that are not prohibited out-of-competition (as in my case), an utterly absurd result.

In the context of an in-competition urine test, and understanding that there are some substances that are prohibited all the time, and others that are only prohibited in-competition, a previously used catheter will always affect the integrity of the sample, by allowing drops of residual urine that were produced out-of-competition into the in-competition sample.

Whether or not that triggers an AAF is irrelevant – the integrity of the sample is always compromised, and to knowingly allow any piece of contaminated equipment to be used undermines the integrity of the entire doping control process, bringing the CADP and the Canadian sport system into disrepute.

Put simply, what was in my sample was not in my system at the time of the test; it was in my catheter.

I tested positive because urine that would not have triggered an AAF if I was tested when the substance was in my system got into the sample I provided after the competition.

Both the CADP rules and the WADA urine testing guidelines deal with modifications for athletes with disabilities, but the CCES took the position that because catheters do not fall within the glossary definition of *Sample Collection Equipment*, or “additional or other equipment” that the rules in Annex 6B of the CADP were not triggered, and that they are not obligated to implement the WADA guidelines as they are not mandatory elements.

I will address both of those issues separately below.

CADP Rules – Providing/inspecting catheters

The CADP has an entire section dedicated to modifications for athletes with disabilities – Annex 6B, and an overarching rule that gives broad discretion and instructs that the *Objective* of the Annex is:

“To ensure that the special needs of *Athletes* of athletes with disabilities are provided for as much as possible in relation to the provision of a *Sample*.” (CADP 6B.1)

Without this mandatory language to accommodate athletes “**as much as possible**”, the CADP would be unconstitutional and contrary to human rights legislation.

Rules 6B.2 and 6B.3 say:

6B.2 The scope of determining whether modifications need to be considered starts with identification of situations where *Sample* collection involves *Athletes* with disabilities and ends with the necessary modifications to *Sample* collection procedures and equipment as possible for these *Athletes*.

6B.3 The CCES has responsibility for ensuring, when possible, that the DCO has any information and *Sample Collection Equipment* necessary to conduct a *Sample Collection Session* with an *Athlete* with a disability. The DCO has responsibility for the *Sample* collection.

The CADP also has specific rules that deal with *Sample Collection Equipment*, and “other or additional equipment” that athletes with disabilities require.

Rules 6C.2 to 6C.5 of the CADP say:

6C.2 The collection of a urine *Sample* begins with ensuring the *Athlete* is informed of the *Sample* collection requirements and ends with discarding any residual urine remaining at the end of the *Athlete’s Sample Collection Session*.

6C.3 The DCO has the responsibility for ensuring that each *Sample* is properly collected, identified and sealed. The DCO/*Chaperone* has the responsibility for directly witnessing the passing of the urine *Sample*.

6C.4 The DCO shall ensure that the *Athlete* is informed of the requirements of the *Sample* collection, including any modifications as provided for in Annex 6B: Modifications for Athletes with Disabilities.

6C.5 The DCO shall ensure that the *Athlete* is offered a choice of appropriate equipment for collecting the *Sample*. If the nature of an *Athlete’s* disability requires that he/she must use additional or other equipment as provided for in Annex 6B: Modifications for Athletes with Disabilities, the DCO shall inspect that equipment to ensure that it will not affect the identity or integrity of the *Sample*.

As mentioned previously, the Glossary of the CADP defines *Sample Collection Equipment* as:

“Containers or apparatus used to directly collect or hold the *Athlete’s* *Sample* at any time during the *Sample* collection process.”

In the arbitration, the CCES denied that catheters are "apparatus" and would therefore not satisfy the definition of *Sample Collection Equipment*. During cross-examination, Joseph DePencier and Anne Brown of the CCES further denied the alternative that catheters fall within the definition of "additional or other equipment" clause of rule 6C.5.

They both took the untenable and legally impermissible position that catheters are "devices", not "apparatus" and because of this, they had no responsibilities to follow the direction (or the spirit) of rule 6C.5 of the CADP, and to accommodate my disability “**as much as possible**”, a position that would never be tolerated in a court of law.

Such superficial tricks, obfuscation and legal gymnastics would offend a court’s view of fairness and common sense.

The only thing such maneuvers accomplish is to discredit the integrity of the CADP. It begs the question: why, and to what end?

WADA Guidelines

In their submissions, notwithstanding the CADP statement that it implements the mandatory and other portions of the WADA Program, the CCES submitted that they're not "obligated" to apply the Models of Best Practice, because it's a voluntary element, and that the guidelines regarding ensuring that catheters are clean and new simply is not a "priority".

We are either being misled or tricked or both. The CCES commits itself to best practices unless you have a disability, where there is no commitment to best practices. This is strictly prohibitive under the *Charter* and human rights legislation.

I consented to drug testing with the clear understanding that those with the responsibility for drug testing did so with integrity, respect for basic human and *Charter* rights, and a commitment to best practices.

The CADP at 1.1 says that:

"The Canadian Anti-Doping Program implements the mandatory and other portions of the World Anti-Doping Program, including the World Anti-Doping Code, the mandatory International Standards and the Models of Best Practice."

The WADA guidelines for urine collection (at 6.7.1) say:

"Athletes may use their own catheter to provide a sample (this catheter should be produced in tamper-evident wrapping), or use one provided at the Doping Control Station, if available."

In testimony, Joseph DePencier replied to a series of questions put to him by Tim Danson on the topic of whether the CCES implements the WADA Guideline on Urine Collection as it claims to in rule 1.1 of the CADP:

Question by Tim Danson:

(Reading from the CADP at rule 1.1)

"The Canadian Anti-Doping Program implements the mandatory" -- and this is what I want to emphasize with you, "-- and other portions of the World Anti-Doping Program, including the World Anti-Doping Code, the Mandatory International Standards --" and I want to emphasize this, "-- and the models of best practice. The

Canadian Anti-Doping Program recognizes the role of World Anti-Doping Agency (WADA) in setting global standards and coordinating Anti-Doping worldwide." So the Canadian Anti-Doping Program has clearly committed itself to best practices; correct?

Answer by Joseph DePencier:

Mm-hmm.

Q. That's a yes?

A. Yes, it is.

Q. And so can you give me one reason why the Canadian Centre for Ethics in Sport does not follow or comply with section or rule or Article 6.7.1 of the WADA guidelines for urine sample collection?

A. WADA currently has approximately eight or nine, maybe even ten, different guidelines or models of best practice out there for the consideration of signatories, stakeholders and for implementation in whole or in part, and we -- our program is taking those on board one by one. The most recent one we're working on is the therapeutic use exemption guidelines and bringing them into our program in their detail. Prior to, we did the whereabouts and mistest [sic] guidelines and we have got quite a few. These are -- this is -- we can't -- it's not possible for any program to take all of the WADA guidelines on board all at once or even as they come out because it requires the consultation and the rule change to bring them into a program, and we've seen in these documents the different -- the many different ways that sport organizations or national programs find to adopt WADA's programs. So we'll certainly -- we will, in turn, examine all of WADA's guidelines and decide what we should or need to bring into our program to improve its quality, and we're constantly trying to improve our program.

Q. But my question is -- and maybe if that's your best answer, that's your best answer, maybe your only answer, but my question -- because at the end of the day -- and you're a lawyer and you're aware of the kind of legal arguments that are going to be important for Mr. McLaren to consider, and it can be based on the evidence that he hears at this proceeding, is that the only reason -- the reason you just gave, is that the only reason that you can put forward in these proceedings why the CCES does not follow the best practice statement of WADA that catheters should be in sealed, tamper-evident wrapping.....

A. Again, our priorities are, perhaps, different. We have not had problems with catheters. Athletes have always brought their own. That hasn't been an issue. It's never been identified to us that this is something we ought to do. The Canadian

Paralympic Committee has not advised us, athletes have not advised us. So in part, I suppose, it is just a matter of our priorities of bringing other of the WADA guidelines into our program first.

Q. All right. So that's your best answer, it's not yet a priority?

A. We have been working on other matters.

Q. I understand. No, but I want to make this -- really, it's not a trick question. I mean, the fact that my -- I may be a little animated with my voice shouldn't be a trick or anything like that. I just want this to be very, very clear, because I know the kinds of legal arguments that are going to be made, so I want this square on the table. The bottom line is is that it has not yet been a priority for you? Maybe sometime down the road it will be a priority, but right now, it has not been a priority and that's why you haven't followed the best practices of WADA when it comes to catheters notwithstanding that you are committed to best practices?

A. Yeah, we haven't examined that portion of that guideline to decide whether it's something we need to bring on board.

Q. So when we read the commitment to best practices in the Canadian Anti-Doping Program, and you agreed with me that this WADA guideline on catheters is part of best practices, you're committed to best practices but you're not committed to best practices when it comes to people with disabilities?

A. No, I think that's entirely unfair.

Q. Why? You're still not -- even after everything that you know about this case of Mr. Adams, still not prepared to make this a priority, are you?

A. No, as I said, what we're doing is we're taking on and reviewing and adopting these models of best practices and guidelines as our capacity permits us to do.

Later in testimony:

Q. Are you now suggesting that if you have any say on this, that the WADA best practices guidelines [on Urine Collection] should not be implemented in Canada?

A. Well, I think as I indicated before, we haven't fully addressed our mind to it. Of course, this case and whatever Mr. McLaren's decision will be will certainly assist us in that regard.

Is the CCES changing its story?

The CCES has flip-flopped on whether they have been providing catheters or not. This is critical, because the conviction turned on whether or not I assumed unique responsibilities by exercising my “choice” of using my own catheter in the face of the option to choose to use one provided by the DCO, “upon request”.

The problem is that since discontinuing the practice in the early 90’s, the CCES has not been giving the DCO’s catheters to provide, so there is no real choice given to any athlete who has to use a catheter. The CCES has not educated or warned athletes about the risk of catheter contamination and therefore the need to always use a new catheter in a sealed, tamper evident wrapping for drug testing.

From the Arbitrator's decision at paragraph 166:

"...Annex 6B of the CADP Rules is intended to ensure that disabled athletes have no greater burden for securing the integrity of doping control test results than other athletes and is consistent with the human rights legislation of Ontario. Athletes who use a catheter have the choice to use their own or request one from the DCO. In choosing to use their own catheter they take on responsibilities that those who choose to rely upon the DCO do not. It is the athlete's choice that dictates the different consequences arising from the exercise of that choice...."

Apart from seriously misstating the law, the Arbitrator’s decision turned on me “choosing” to use my own catheter, and the consequences that arose from the “exercise of that choice”. Ignoring whether or not the decision was correct in law, it was based on an egregious error of fact.

There is no such choice. Until after the decision of my case, the DCO’s did not carry catheters, which means that they could not provide them upon request.

Notwithstanding that fact, the CADP puts the onus on the DCO. It says that the DCO **shall** offer a choice of equipment, not that the Athlete **may** request equipment.

It also says that if an athlete provides their own “additional or other equipment”, that the DCO **shall** inspect it. This means that even if it is ultimately decided that it is the responsibility of the athletes to bring their own catheters, that the DCO **still has a positive duty to inspect it**, and that once the Chaperone or the DCO realizes that an athlete is about to use a catheter, whether that knowledge comes about by the athlete telling them that they require one, or by the athlete taking one out and getting ready to use it, that the process should be paused until the equipment is inspected to ensure that it is in a sealed and tamper evident wrapping so that it will not compromise the integrity of the sample collection process.

It’s really that simple – as simple as following the CADP rules as they’re written at 6C.5.

The CCES took the position in the arbitration that a catheter would have been given to me if I had just let them know that I needed one, and that all I had to do was request it – and that there was no way for them to know that I needed one without me telling them, an absurd proposition.

Once I pulled down my pants and started to use my own catheter by inserting it into my body under the scrutiny of the Chaperone – who in my case was also a certified DCO – there's no way that they didn't know that I required one, particularly since the CCES has been testing me for over 18 years, and the DCO in charge has tested me many times herself.

This is just another example of not even pretending to be fair and to obtain a conviction at all costs. This is worse than willful blindness.

Notwithstanding the positive duty of the DCO to offer the equipment, this position is completely dishonest because it ignores reality - even if I had asked for one, they didn't have any to give me, and at 8am on a Sunday morning, when my test was done, there was no possibility of going to get one for me.

They didn't offer me the choice, they didn't have any at the doping control station, and they didn't inspect the equipment I provided and used.

The stories below detail how the CCES changed its story over three days in the media following the Arbitrators decision - they went from saying that they always provided catheters upon request (June 13th), to saying that they used to provide them but their stock of catheters got old and brittle (June 15th), to saying that they're going to reconsider their policy and start to equip the DCO's with catheters, but only after consulting with the athletes to find out what kind they need (June 16th).

June 13 - Toronto Sun

During drug testing, athletes who use catheters have the option of asking the doping control officer for a new one.

"Certainly if an athlete requested a sterile catheter we would provide it," said Paul Melia, president and CEO of the Canadian Centre for Ethics and Sport.

"It's our experience with athletes with disabilities that they prefer to use their own catheter for personal hygiene and comfort reasons, so we've accommodated them in that way. It seems odd to turn around and try to use that against the system when something like this happens."

<http://www.torontosun.com/Sports/OtherSports/2007/06/13/4256326-sun.html>

June 15 - Globe and Mail

"We used to have them [sterile catheters] on hand, but they were never requested," Melia said. "The ones we had got so old they were brittle. Standard practice became that athletes preferred to use their own."

<http://www.globesports.com/servlet/story/RTGAM.20070615.wspt-adams-cocaine-15/GSStory/GlobeSportsOther/home>

June 16 - Globe and Mail

The Canadian Centre for Ethics in Sport will consider equipping doping-control officers with sterile catheters in the wake of a controversial cocaine infraction by wheelchair racer Jeff Adams.

"We have to examine that and review what array of catheters would be on hand. We'd have to consult the [disabled] athletic community to find out what's acceptable," said Paul Melia, chief executive officer of the CCES.

<http://www.theglobeandmail.com/servlet/story/LAC.20070616.ADAMS16/TPStory/Sports>

So how have they been providing them "upon request" if their stock is old and brittle, the DCO's don't carry them, and they don't know what kind people use?

Is the CCES being forthright in this case, or have they taken positions counter to the Canadian Sport Community?

These following excerpts are from the CCES position paper submitted to WADA on behalf of the Canadian Sport Community in reference to the proposed changes to the doping regime that will come into effect in less than six months:

- "The Canadian Sport Community believes that the criteria for the Prohibited List need to place more emphasis on performance enhancement as the central qualification..." "The Code would be more coherent and consistent if Article 4.3.1 were amended so that any doping substance or method that does not actually or potentially enhance performance is only placed on the Prohibited List after separate, transparent and inclusive health risk and ethical review processes."
- "...since in the majority of cases cannabis is used not for performance enhancement but for social/recreational purposes, the Canadian Sport Community believes that policing cannabis use is not the role of an anti-doping organization."
- "the Code's current treatment of cannabis implicates athletes who have no intention of cheating but are nevertheless incorporated, through a social habit, into the strict and punishment focused anti-doping regime. This is not a constructive approach and exposes athletes to "collateral damage" out of all proportion to sport penalties for social use of cannabis (such as loss of employment and educational opportunities, and international travel issues or restrictions". <http://www.cces.ca/pdfs/CCES-PUB-WorldCodeSubmission-E.pdf>

Thank you for taking the time to read this document, and if you have any other questions, please contact me or Tim.

I repeat, we have an opportunity to effect positive, meaningful and constructive change so that the Canadian Anti-Doping Program operates in a manner consistent with fundamental Canadian values of fairness and equality.