

## Quick facts from the open letter to the Canadian Sport Community about the provision of catheters

August 1, 2007

- The CCES recently revived a policy that they discontinued in the early 1990's of providing sterile catheters to athletes with disabilities who require them to provide urine samples. In doing so, they acknowledged that their policy on catheters has been inadequate since they deliberately discontinued providing them.
- The debate has been turned into whether or not the CCES should provide catheters, or whether it should be up to the athlete to provide their own. This is an important issue, but ignores whether the use of catheters, necessary for some athletes with disabilities to provide urine samples should fall under the consideration of existing rules of the CADP.

Rule 6C.5 of the CADP says that: "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*."

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 the equipment provided by the athlete**. In my case, the CCES acknowledged that they neither offered me a catheter, nor did they inspect the one that I brought and used.

It's really that simple – as simple as requiring the CCES to follow the CADP rules as they're written. Allowing an open and previously used catheter to be used **is the same as allowing any other open and previously used piece of equipment to be used**.

- Had the CCES provided me with a catheter or if they had inspected the one that I provided, I would not have tested positive. The substance that I tested positive for is **not prohibited out-of-competition, and was not present in my system at the time of the in-competition test**. It was only present in a piece of contaminated equipment that I was required to provide with no oversight or education by the CCES – the CCES has refused to warn athletes about the dangers of using non-sterile catheters that might be contaminated with residual urine.

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.

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.”*

- In a case where even the prosecution agreed that there was no cheating, and no attempt to enhance performance, I was punished in exactly the same way that someone who intentionally cheated and attempted to enhance their performance would be. That’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.

A sanction that does not distinguish between these two completely different value structures is **perverse and contrary to law, and to the principles of the *Canadian Charter of Rights and Freedoms*.**

- 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; **any quasi-governmental organization that conducts itself or takes positions that are inconsistent with the *Canadian Charter of Rights and Freedoms* cannot expect to continue to be funded by the taxpayers of Canada.**
- In their written submissions to the Arbitrator, the CCES took the position that not providing catheters to athletes with disabilities was “deliberate and defensible”. This is at odds with an Independent Observer group that submitted a report to WADA following the Salt Lake City Paralympics in 2002, writing: "Similarly, athletes requiring a sterile catheter ought to have the right to choose one."

**The independent observer group was chaired by the Director of the CCES, Joseph DePencier.**

- The CCES changed its story about whether they provide catheters 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>

- Catheterization **is a prohibited method** according to the WADA Code prohibited methods section, which means that without a Therapeutic Use Exemption, any athlete who uses a catheter without first securing a TUE technically **could be found guilty of an anti-doping infraction**.
- 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 and other specified substances are 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 – the people who are charged with making sure that the rules are followed, and that athletes are not allowed to cheat in order to “win at all costs” have done exactly that in order to secure this conviction “at all costs”.

A handwritten signature in black ink, appearing to be 'J. S. /' with a horizontal line through the middle of the letters.