

## ANADO Legal Note 10

### The Difficulties in Enforcing a Life Ban on a Coach (And other lessons learned from the case of Cecil Russell)

#### Introduction

A recent decision of the Sport Dispute Resolution Centre of Canada illustrates a number of difficult issues for Anti-Doping Organizations, including the need for a capacity to conduct an investigation and enforcing a period of ineligibility from sport. The decision also suggests criteria relevant to deciding an appropriate length of period of ineligibility under *World Anti-Doping Code*-complaint rules when a range of sanctions is available.

On August 10, 2009, Adjudicator Graeme Mew rejected an application by Canadian swimming coach Cecil Russell for reinstatement from a life ban from sport (<http://www.cces.ca/pdfs/CCES-CASE-CCESvRussellDecision2009-E.pdf>). Although for unusual and historical reasons the case unfolded under pre-*Code* national anti-doping rules (dating back to 1993) that provided for reinstatement, many of the decision's principles and details are highly relevant today.

Those wanting to gain a full appreciation of the considerable, the complex and the alarming facts of the case should read the full decision cited above, and the four previous anti-doping decisions concerning Mr. Russell:

- Russell 1 October 27, 1997:  
<http://www.cces.ca/pdfs/CCES-CASE-Russell1Decision-E.pdf>
- Russell 2 October 19, 1998:  
<http://www.cces.ca/pdfs/CCES-CASE-Russell2Decision-E.pdf>
- Russell 3 March 14, 2000:  
<http://www.cces.ca/pdfs/CCES-CASE-Russell3Decision-E.pdf>
- Russell 4 October 29, 2005:  
<http://www.cces.ca/pdfs/CCES-CASE-Russell4Decision-E.pdf>

#### The Coach's History

Briefly: Mr. Russell was banned from Canadian sport for life in the 1997 because of a criminal conviction trafficking anabolic steroids. In 1998, under the then-applicable 1993 Canadian national anti-doping rules, he applied for early reinstatement for exceptional circumstances. His application was refused, but with the possibility of a

future application. He tried again in 1999 and was again refused. In 2004 he tried a third time and in late 2005 his application for reinstatement was granted (the 1993 rules continuing to apply to his case despite the introduction the year before of the *Code-compliant Canadian Anti-Doping Program* which had no provision for reinstatement, early or otherwise).

Among the criteria relevant to his application under the 1993 rules was his good character, prior and post infraction conduct, remorse and prospects for rehabilitation.

However, weeks after the reinstatement decision, media reports revealed that between 1999 and 2004 Mr. Russell had not only ignored his life ban (by coaching outside of Canada), but had also been convicted in the United States for an international conspiracy to possess and traffic ecstasy, a prohibited substance. He was arrested in Spain and spent over 2 years in jail awaiting trial. He was then extradited to the United States where he spent a further 18 months in jail awaiting trial. Ultimately he pleaded guilty to one charge with the agreed sentence being the time already served in custody. Only a small portion of this story was disclosed to the adjudicator who heard his 2004 application for reinstatement (the same Graeme Mew who made the most recent decision), and it was disclosed with the egregious assertion that Mr. Russell had never been convicted of a criminal charge.

It also emerged through media reports that in the mid-1990s, Mr. Russell had helped dispose of the body of a murdered individual. Apparently as a result of his cooperation with prosecutors, Mr. Russell did not face criminal charges as a result of his involvement with the death and the disposal of the body. But while being cross-examined as a witness for the prosecution, it emerged that at the time Mr. Russell was facing other Canadian criminal charges of threatening death, assault and sexual assault, and that he has asked the accused to lie to provide him with an alibi in response to those charges. None of this was disclosed in any of the reinstatement hearings.

Based on the media reports, the Canadian Centre for Ethics in Sport (CCES) conducted its own investigation to gather enough evidence for a court order that the 2004-2005 reinstatement proceedings be reopened so that Adjudicator Mew could consider this additional evidence, not to mention the fact that Mr. Russell had not disclosed it himself. The court application was successful (<http://www.canlii.org/en/on/onsc/doc/2007/2007canlii20978/2007canlii20978.html>).

### Points to Consider

This legal saga raises a number of points for Anti-Doping Organizations to consider:

- Ensuring that you have the capacity to pursue investigations that may take many months and be very expensive in order to gather evidence of behaviour that may

constitute an anti-doping rule violation or be relevant to the consequences for a violation. The very public way Mr. Russell's full criminal history was revealed placed additional pressure on the CCES to pursue the matter to a successful conclusion; as they say, failure was not an option.

- Using every available means to enforce a period of ineligibility. The facts described in the August 2009 decision revoking Mr. Russell's reinstatement makes it clear to that he continued to coach for a decade despite the Canadian lifetime ban. He coached outside of Canada. He coached young swimmers in Canada after he was released from U.S. jail in 2004, but "from the stands," or through a local swim club ostensibly operated by his wife, and not under the formal authority of the national sport governing body. That body, Swimming Canada, found itself ill-equipped to deal with such subterfuges. Even with the publicity of Mr. Russell's history, many in the swimming community did not fully appreciate Mr. Russell's history. He demonstrated considerable support during the last reinstatement hearing from young athletes, their parents and even other coaches.

One possible tool to deal with such situations is an "anti-contamination" rule. Associating with an individual serving a period of ineligibility is not an anti-doping rule violation (although I think it should be). However, according to the *Code*, Anti-Doping Organizations may have their own rules that would, for example, prevent an athlete from continuing to be coached by an individual under suspension or continuing to be treated by a doctor under suspension:

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

...

*[COMMENT TO ARTICLE 2: THE CODE DOES NOT MAKE IT AN ANTI-DOPING RULE VIOLATION FOR AN ATHLETE OR OTHER PERSON TO WORK OR ASSOCIATE WITH ATHLETE SUPPORT PERSONNEL WHO ARE SERVING A PERIOD OF INELIGIBILITY. **HOWEVER, A SPORT ORGANIZATION MAY ADOPT ITS OWN RULES WHICH PROHIBIT SUCH CONDUCT.**]*

(emphasis added)

Another possibility is a rule to deny membership in a sport organization to someone who has committed an act that would have been an anti-doping rule violation has they been subject to anti-doping rules at the time. Such a rule could be framed, for example, to prevent an individual with a criminal conviction for importing or trafficking a prohibited substance from subsequently joining a sport organization, at least not without a "cooling off" period equivalent to the period of suspension for the relevant anti-doping rule violation. This is also suggested by the *Code*:

## 7.6 RETIREMENT FROM SPORT.

IF AN *ATHLETE* OR OTHER *PERSON* RETIRES WHILE A RESULTS MANAGEMENT PROCESS IS UNDERWAY, THE *ANTI-DOPING ORGANIZATION* CONDUCTING THE RESULTS MANAGEMENT PROCESS RETAINS JURISDICTION TO COMPLETE ITS RESULTS MANAGEMENT PROCESS. IF AN *ATHLETE* OR OTHER *PERSON* RETIRES BEFORE ANY RESULTS MANAGEMENT PROCESS HAS BEGUN, THE *ANTI-DOPING ORGANIZATION* WHICH WOULD HAVE HAD RESULTS MANAGEMENT JURISDICTION OVER THE *ATHLETE* OR OTHER *PERSON* AT THE TIME THE *ATHLETE* OR OTHER *PERSON* COMMITTED AN ANTI-DOPING RULE VIOLATION, HAS JURISDICTION TO CONDUCT RESULTS MANAGEMENT.

*[COMMENT TO ARTICLE 7.6: CONDUCT BY AN ATHLETE OR OTHER PERSON BEFORE THE ATHLETE OR OTHER PERSON WAS SUBJECT TO THE JURISDICTION OF ANY ANTI-DOPING ORGANIZATION WOULD NOT CONSTITUTE AN ANTI-DOPING RULE VIOLATION BUT COULD BE A LEGITIMATE BASIS FOR DENYING THE ATHLETE OR OTHER PERSON MEMBERSHIP IN A SPORTS ORGANIZATION.]* (emphasis added)

- Arguing relevant factors when there is a choice of sanction. Code-compliant anti-doping rules include a number of provisions requiring a sanction to be determined within a range, for example for trafficking or administration (*Code* Article 10.3.2) or to determine if a reduction of a period of ineligibility is warranted when there has been an admission of a violation in the absence of other evidence (*Code* Article 10.5.4). However, the Code offers little practical guidance on what circumstances to take into account in finding an appropriate sanction within a range. Many of the criteria for early reinstatement set out in the old 1993 Canadian anti-doping rules are very relevant for such determinations: age, experience in sport, remorse, circumstances that may have contributed to the individual's decision-making, prior and post infraction conduct, favourable prospects for rehabilitation, cooperation with investigative bodies and the length of ineligibility served to date. Anti-doping Organizations should have consistent positions on what criteria are relevant, and argue for them vigorously before anti-doping tribunals.

### Conclusion

This sort of case presents enormous challenges. But they must be faced. Anti-doping is not just about catching dirty, stupid or ill-informed athletes. It must be about removing the rotten influences that may encourage doping, particular when it concerns a sport like swimming where so many participants and even top competitors are still children.

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