Arbitration CAS 2018/A/5583 Joshua Taylor v. World Rugby, award of 24 June 2019

Panel: The Hon. Hugh Fraser (Canada), President; The Hon. Michael Beloff QC (United Kingdom); Mr Alexis Schoeb (Switzerland)

Rugby
Doping (DHCMT)
Athlete subjected to the applicable regulation
Establishment of the source of the prohibited substance
Unintentional breach by the athlete
Degree of fault and sanction

1. **An athlete is subject to the international federation anti-doping rules if when he consumed the prohibited substance, and when his sample was collected he was playing for the club of a university, member of a sport association, itself part of the national federation.**

2. **In order for an athlete to prove how the substance entered his/her body, it is insufficient to establish that the explanation provided is more likely than any other possibilities. Such finding is indeed relevant to but not dispositive of the crucial question, that is to say whether that explanation passes the 50% threshold. In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation.**

3. **It is for the athlete to establish that the anti-doping rule violation (ADRV) was not intentional. Establishment of source does not by itself prove negative intent although it may be a powerful indicator of the presence or absence of intent to be defined. In contradistinction to the provisions which bear on disproof of fault or negligence the provision as to disproof of intention makes no reference to proof of source as a *sine qua non* condition. For the purpose of satisfying this burden of disproof, several CAS cases have held that the athlete must necessarily establish how the substance entered his/her body whereas other CAS cases have held that such establishment, while not always necessary, will normally be so and that the exceptions to that norm will be extremely rare. On any view, the presence or absence of such proof of source is obviously material to the issue of intention.**

4. **It is a *sine qua non* of establishing no or no significant fault that the athlete can establish the source of the prohibited substance in his/her system. Accordingly if the athlete is also able to establish on a balance of probabilities, that his/her fault or negligence, when viewed in the totality of the circumstances was not significant in relationship to any violation found, then his/her sanction would fall between a reprimand and a period of ineligibility of 24 months. A young, inexperienced athlete is not absolved from taking**

any steps whatsoever. If an athlete entertaining the prospect of one day playing professional sport takes no step in discharge of his/her duty to avoid the presence in his/her system of prohibited substances and is consuming supplements without undertaking any form of research, s/he acts in a careless manner and demonstrates a perplexing lack of curiosity. Notwithstanding the mitigating factors, the athlete's level of fault is significant or considerable and places him/her at the highest point of the sanction range after taking into consideration the earlier finding that the ADRV was not intentional.

I. PARTIES

1. Joshua Taylor (the "Appellant") is a rugby union player. He was born on 31 December 1996 in Australia and currently resides in Wales. In April 2016, he was selected to play for the Australian National Team under 20s in World Rugby U20 Championships.

2. World Rugby (the "Respondent") is the world governing body for the sport of rugby. It organizes a number of international rugby competitions, including the World Rugby U20 Championship. It is headquartered in Dublin, Ireland.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 21 May 2016 (the "Collection Date"), the Appellant provided a urine sample in Narrabeen, Australia as part of the World Rugby U20 Championship Out of Competition testing program. The Appellant's A and B samples were transported to the Laboratoire suisse d'Analyse du Dopage in Lausanne, Switzerland (the "Lausanne Laboratory").

5. On 16 June 2016, the test report from the Lausanne Laboratory revealed the presence of 4-chloro-18-nor-17b-hydroxymethyl,17a-methyl-5b-androst-13-en-3a-ol ("M3"), and more specifically, a metabolite of dehydrochlormethyl-testosterone ("DHCMT").

6. M3 is a metabolite of DHCMT, which is:

   a) a prohibited substance, and

b) specifically classified in category S1.1a Exogenous Androgenic Anabolic Steroids on WADA's 2016 List of Prohibited Substances.

7. On 17 June 2016, the Appellant was notified of the Adverse Analytical Finding ("AAF") and provisionally suspended by the Respondent with immediate effect.

8. On 4-5 October 2016, the Appellant's B sample was analyzed. The B sample test report, submitted on 6 October 2016, confirmed the results of the A sample.

B. Involvement in Rugby

9. Between January 2009 and November 2014, the Appellant attended high school at the Southport School in Queensland, Australia. He played school rugby between 2009 and July 2014 but did not play club rugby during that time.

10. In July 2014, the Appellant suffered a severely broken ankle, which required seven pins to be inserted into the ankle. As a result of the broken ankle, the Appellant did not play any rugby between July 2014 and approximately March 2015.

11. Following high school, around March 2015, the Appellant started to play rugby for the Bond University Rugby Club U19 team. In May 2015, the Appellant enrolled as a student at Bond University but he struggled with the school work and dropped out shortly thereafter.

12. In or around September 2015, the Appellant signed a loyalty contract with Queensland Reds Rugby ("Queensland Reds").

13. In April 2016, the Appellant was selected to play for the Australian National Team U20 in the World Rugby U20 Championship.

14. Prior to 21 May 2016 (the date of the Doping Control Test), the Appellant had never been subject to any doping control tests or processes.

15. The Appellant did not receive any anti-doping education while playing for the Bond University Rugby Club. He began playing with them on a casual basis, as he had friends on the team. He was not a student at the University when he started playing for the Bond University Rugby club and maintains that he was not aware that he was subject to anti-doping rules while playing for the Bond University Rugby Club.

16. In or around January 2016, but in any event after the Appellant signed his loyalty contract with the Queensland Reds, he received some anti-doping education in a training session that was given by someone from Australia Rugby.

C. The Use of Deca-Plexx

17. In early November 2014, the Appellant obtained a product called "Deca-Plexx" from a student named […] who was one year ahead of him in high school. The container of Deca-Plexx contained 60 capsules.

18. The Appellant was 17 years old when he started using Deca-Plexx. He states that as a result of his ankle injury he was not playing any rugby at the time.

19. The Appellant asserts that he obtained the Deca-Plexx in order to try to "look good" for an upcoming end of school party at Surfers Paradise Beach. He said that the Surfers Paradise trip is a big social event in the school year, marking the end of High School for the Year 12 group.

20. The Appellant recalled that he was […] since his broken ankle had left him unable to exercise for an extended period of time and he had put on a considerable amount of weight. He also recalled […] being told by […] that the Deca-Plexx would strip fat from his body and quickly give him a leaner look.

21. In May 2015, the Appellant's father left Australia to return to his home country, Wales (the Appellant had lived with his father since 2012, […]. The Appellant moved back to his mother's home […].

22. After ceasing to take Deca-Plexx for a few months, the Appellant started to take it again.

23. Around July or August 2015, the Appellant's mother, Sharon Taylor, noticed the Deca -Plexx container and advised the Appellant against taking it. He told his mother that he had already stopped using Deca-Plexx and on his mother's advice, he threw the container of Deca-Plexx into a trash bin.

24. The Appellant did not register the Deca-Plexx on his Doping Control Form ("DCF") since he had stopped taking Deca-Plexx around 10 months prior to the date of the test.

D. Procedural History

25. On 27 June 2016, the Appellant confirmed that, while he did not dispute the result of the A sample analysis, he did not know the source of the AAF. The Appellant requested confirmation of the concentration level of DHCMT that was detected in his sample and a copy of the documentation package. He also requested a postponement of the opening of the B sample until he had had an opportunity to investigate the source of the prohibited substance.

26. On 20 October 2016, after receiving the results of the B sample analysis, the Appellant informed World Rugby that he still did not know the source of the AAF but wished to proceed to a hearing before the Judicial Committee.

27. On 10 April 2017, a hearing was convened in London, at the conclusion of which the Judicial Committee adjourned and ordered the parties to provide written submissions.

28. On 16 July 2017, the Judicial Committee unanimously concluded that the ADRV was explained by the *"deliberate ingestion by [the Athlete] of a product or products that contained an effective dose of DHCMT and/or other M3 parent compound in the period within a few months of the urine sample collection"*.

29. The Judicial Committee rejected the Appellant's explanation that the M3 metabolite was present in his system as a result of his use of Deca-Plexx in May-July 2015 and held that the Appellant failed to prove that his ADRV was unintentional.

30. The Judicial Committee dismissed the suggestion that the Appellant could avail himself of the no significant fault or negligence provisions in World Rugby Regulation 21 (the "Regulation(s)") and held that the period of ineligibility should be four years commencing on the date of the provisional suspension, *i.e.* 17 June 2016 (the "Four Year Sanction").

31. By a decision dated 7 February 2018 of the World Rugby's Post-Hearing Review Body (the "PHRB Decision"), to which the Appellant had exercised his right of appeal, the PHRB concluded that there were no grounds to interfere with the Judicial Committee's decision. The Four-Year Sanction was accordingly upheld.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 28 February 2018, the Appellant filed his Statement of Appeal with respect to the PHRB Decision in accordance with Article R47 *et seq.* of the Code of sports-related Arbitration (the "Code"). In its Statement of Appeal, the Appellant nominated Mr. Alexis Schoeb, Attorney-at-law in Geneva, Switzerland as an arbitrator.

33. On 13 March 2018, the Respondent nominated the Hon. Michael J. Beloff, M.A. Q.C. as arbitrator.

34. On 18 April 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division confirmed the appointment of the Panel as follows:

President:	Hon. Hugh L. Fraser, Judge, Ottawa, Canada
Arbitrators:	Hon. Michael J. Beloff, M.A. Q.C., London, United Kingdom
	Mr. Alexis Schoeb, Attorney-at-Law, Geneva, Switzerland

35. On 27 June 2018, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.

36. On 21 September 2018, the Respondent, following an agreed-upon extension of time, filed its Answer in accordance with Article R55 of the Code.

37. On 12 February 2019, an Order of Procedure was signed by the parties.

38. On 15 February 2019, a hearing was held at the CAS Court Office. The Panel was assisted at the hearing by Mr. Brent J. Nowicki, Managing Counsel to CAS. The following persons were in attendance:

For the Appellant: Mr. Joshua Taylor, Appellant
Mr. Matthew Taylor, witness
Ms. Sharon Taylor, witness (by telephone)
Mr. Tom Seamer, Counsel for Mr. Taylor
Mr. William Sternheimer, Counsel for Mr. Taylor
Ms. Donna Bartley, Counsel for Mr. Taylor
Professor Kevin Moore, expert witness (by telephone)

For the Respondent: Mr. Benjamin Rutherford, World Rugby Senior Counsel
Mr. Richard Liddell, Counsel for World Rugby
Mr. David Ho, World Rugby Science and Results Manager
Professor David Cowan, expert witness

39. At the outset of the hearing, the parties confirmed that they had no objection to the composition of the Panel. During the hearing, the Panel heard evidence from the witnesses listed above including the two experts, in addition to the detailed submissions of the parties' Counsels.

40. At the conclusion of the hearing, the parties indicated that they were satisfied that their right to be heard had been duly respected and that they had been treated fairly and equally during the arbitration proceedings.

41. On 2 April 2019, the Appellant submitted a letter along with documents in relation to a USADA case (the "Salikhov case") which, according to the Appellant was relevant to the present case. The Appellant also requested additional evidentiary measures.

42. On 9 April 2019, the Respondent submitted its response to the Appellant's letter of 2 April 2019 by which it objected to the late submission and, in any event, contested the relevance of the Salikhov case to the present matter.

43. On 15 April 2019 the parties were advised that while the Panel had the ability to allow proceedings to be re-opened after the conclusion of a hearing and prior to the handing down of the Award, the party wishing to adduce additional evidence would need to establish that exceptional circumstances existed, in accordance with Article R56 of the Code.

44. The Panel also advised the parties that following the Respondent's inquiry to WADA and the response received that WADA has not created a Working Group on the M3 metabolite specifically, it was not necessary to request that WADA be asked to provide the further documentation identified by the Appellant. The Panel also concurred with the Respondent's observation that the facts and circumstances relating to Mr. Salikhov were different to those at issue in this appeal and that the UFC Anti-Doping Policy does not replicate the World Anti-Doping Code or World Rugby's Regulations.

45. As a result, the Panel informed the parties that the proceedings were not reopened in order to refute evidence presented by the Respondent. The Panel found, therefore, that although the Appellant was not aware of the alleged new evidence at the time of the hearing in this matter,

the alleged new evidence is not relevant or conclusive to the determination of the matter at hand, and does not meet the "exceptional circumstances" requirement envisioned in Article R56 of the Code.

46. For these reasons, the Appellant's request for additional evidentiary measures was dismissed.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

47. The Appellant's submissions, in essence, may be summarized as follows:

a) Use of Deca-Plexx

- The Appellant took Deca-Plexx for vanity reasons to get his body in shape after breaking his ankle.
- He felt that the circumstances around the ingestion of the produce were "a bit shady" given the manner in which the Deca-Plexx was provided to him by his high school acquaintance, […], but denies ever reading the label on the container or being aware that there was a reference to "anabolic" on the packaging.
- He did not conduct any research on the Deca-Plexx supplement that he had received as described above.
- He was 17 years old when he first took the Deca-Plexx and was not interested in playing professional rugby at the time. […].
- When he was playing under 19 rugby at Bond University, it was not a high level or high-performance league and players would come and go during the season, with many having full-time jobs.
- He did not receive any anti-doping education until after he signed his loyalty contract with the Queensland Reds in September 2015. […]. It was at this point, having received some anti-doping education, that he became very conscious about taking medication that might imperil his situation with the Queensland Reds, and that his mother even called someone on the team to question whether he was permitted to take a certain medication […].
- He took some health food supplements to improve his performance in a natural way, and conducted some research on the internet on those supplements.

b) The source of M3

- The Appellants asserts that it is entirely possible that the Deca-Plexx which he consumed may have contained an (unlisted) M3 Parent Compound, given that:
  - every other supplement manufactured by Alpha Labs, the manufacturer of Deca-Plexx, contained an M3 Parent Compound;

  - another supplement manufactured by Alpha Labs has been reported to be a potential cause of positive tests for DHCMT […].
- It is also entirely possible that the Deca-Plexx which he consumed contained an unlisted M3 Parent Compound in an amount that would have caused the AAF approximately 10 months later, for any of the following reasons:
  - mislabelling;
  - poor labelling;
  - adulteration of the supplement (whether deliberate or accidental)
  - contamination.
- Since Deca-Plexx can no longer be purchased, and since all Alpha Labs supplements have been discontinued, he cannot verify what levels of M3 Parent Compound the Deca-Plexx might have contained or how exactly the actual formulation differed from the stated formulation.
- The concentrations of the M3 metabolite detected in his sample are consistent with the consumption, 10 months earlier, of various M3 Compounds even at contaminant levels.
- The Schanzer Study Data strongly supports his case on this issue by demonstrating that the M3 metabolite has a long half-life of approximately 50 days.
- Accordingly, he has established on the balance of probability that the Deca-Plexx consumed in 2015 was the source of the M3 metabolite in his sample.
- Moreover, this is a somewhat unusual case; Much is still unknown as to the metabolization and excretion of parent compounds of the M3 metabolite, both generally and in relation to his particular circumstances, […].

c) Regulations

- In any event, the Respondent has not met their burden of establishing that he was subject to the Regulations during the period of his involvement with the Bond University U19 Team.
- Further, if he was not subject to the Regulations (or any other anti-doping rules) during the period in which he consumed the Deca-Plexx as the source of the M3 metabolite, he cannot be held to have committed an ADRV.

d) Respondent's Burden

- The Respondent is required to establish to the Panel's comfortable satisfaction that the M3 metabolite detected in his sample originated from a Prohibited Substance. Unless the Respondent can satisfy the Panel that he ingested a substance either expressly listed on the Prohibited List or that has a *"similar chemical structure or similar biological effect(s)"* to a substance expressly listed on the Prohibited List, he cannot be found to have committed an ADRV.

e) Prejudice

- He has been severely prejudiced by the Respondent's failure to inform him that the presence of the M3 metabolite in his sample could have resulted from the ingestion of various substances other than DHCMT, as well as the failure of both WADA and/or the Respondent properly to investigate the detection window applicable in respect of the M3 metabolite or the identity of the M3 Parent Compounds.
- Had he been properly informed at the outset as to what could have caused the AAF he would have immediately obtained sealed containers of the supplement from Alpha Labs directly or from other suppliers, and had them analyzed for the presence of the M3 Parent Compounds. By the time that he had identified Deca-Plexx as the likely source of his AAF, Alpha Labs was no longer in business.
- The lapse of time between his ingestion of Deca-Plexx and the AAF and the Respondent's misstatement that he had tested positive for DHCMT deprived him of his right to a fair procedure, a fair hearing and a fair result. On that basis, the charges should be dismissed or, alternatively, that no period of ineligibility should be imposed.
- In the alternative, he must be given the benefit of any doubt as to the source of the M3 metabolite detected in his sample.

f) Intention

- […].
- He did not act with any intent within the meaning of Regulation 21.10.2.3. In short, his use of Deca-Plexx was motivated […] not by an intention to cheat or to enhance sports performance.
- He has established on a balance of probability that:
  - did not intent to cheat;
  - did not know that his conduct constituted a Violation; and
  - did not know that there was a significant risk that his conduct might result in a violation of the Regulations.
- Establishing the source of a Prohibited Substance was not a prerequisite of proving an absence of "intent".
- He has been able to identify the source of the AAF but in the event that the Panel does not agree, it is still open to the Panel to find that he has acted without intent on the basis of other available evidence.

g) Degree of Fault

- His case falls under the provisions of Regulation 21.10.5.1.2 in that if he can, as he asserts, establish on a balance of probabilities that the alleged prohibited substance came from a contaminated product and that his fault or negligence was not significant in relationship

to the violation, then his sanction would fall between a reprimand and a period of ineligibility of 24 months.

- In the circumstances, his degree of fault was very minor in light of the following factors:
  - he was just 17 when he used Deca-Plexx for the first time, 18 when he used it for the second time and 19 when he tested positive;
  - he was not an experienced athlete (he had never been paid to play rugby or any other sport and had never played at any level higher than school/youth rugby at the time of the ingestion;
  - he did not know that he was subject to any anti-doping rules;
  - he had not received any anti-doping education;
  - […].
- He was not an experienced, well-resourced international athlete who would justifiably be held to a higher standard with regard to his degree of care.

h) Proportionality

- In the event that the arguments made above are rejected by the Panel, the principle of proportionality should apply alternatively to limit any period of ineligibility imposed on him to no more than 12 months, for the reasons given above.

i) Backdating

- He is entitled to have any period of ineligibility imposed on him backdated to the date of sample collection on the basis of delays in Doping Control.
- The misidentification in the Notice of Charge that his positive test had resulted from the ingestion of DHCMT caused significant delay to the first instance proceedings while he sought to identify the source of DHCMT in his sample.

j) Costs below

- If the Panel were to find that the Deca-Plexx consumed in 2015 was the source of the M3 metabolite found in the sample, then he should not be required to bear any of the Respondent's costs of the review by the PHRB.
- Regulation 21.13.1 requires a player to submit to, and complete the Respondent's review process before that player is entitled to appeal a first instance decision to the CAS.
- He has had and still has very limited resources, having had to turn to CAS for a legal aid award in order to proceed with his appeal. Upholding the order for costs would infringe the principle of proportionality in these circumstances.

48. In his Appeal Brief, the Appellant requested the following relief:

a) Set aside:

(i) the decision of the Judicial Committee;

(ii) both parts of the decision of the PHRB;

(b) Confirm that he has not committed an anti-doping rule violation;

(c) Alternatively, dismiss the charge on the basis of the prejudice to his defense rights;

(d) In the further alternative, find that he acted without fault or negligence and eliminate the period of ineligibility imposed on him;

(e) In the further alternative, find that he acted without significant fault or negligence, such that:

(i) If the Panel ultimately applies Regulation 21.10.5.1.2 ("Contaminated Products"), no period of ineligibility should be imposed;

(ii) If the Panel ultimately applies Regulation 21.10.5.2, a period of ineligibility of maximum 12 months' duration should be imposed.

(f) In the further alternative, apply the principle of proportionality to limit any period of ineligibility imposed on him to a maximum of 12 months;

(g) Backdate any period of ineligibility imposed on him to 21 April 2016, being the date of the Sample collection and give him credit for the periods of provisional suspension and ineligibility served by him;

(h) Order World Rugby

(i) To reimburse the Appellant his legal costs and other expenses pertaining to his appeal proceeding before CAS;

(ii) To bear the costs of the arbitration.

B. The Respondent

49. The Respondent's submissions, in essence, may be summarized as follows:

a) Use of Deca-Plexx

- The Respondent does not challenge the Appellant's evidence that he ingested Deca-Plexx in the period between May and June 2015, and that he had received no anti-doping education from any of his clubs or ASADA prior to or during that period.

b) Source of M3

- There is now a large measure of agreement between the experts who gave evidence in this proceeding, in particular that:
  - The M3 metabolite is formed following the metabolisation of M3 Parent Compounds, which include but are not limited to DHCMT, Halodrol, Methylclostebol and Promagnon;
  - The Deca-Plexx ingested by the Appellant some 10 months before the Collection Date is a plausible explanation for the 25-30 pg/ml of the M3 Metabolite in Mr.

Taylor's sample based on the limited data available and assuming that this batch of Deca-Plexx contained an M3 Parent Compound (which it ought not to have done according to its list of ingredients);

- However, depending upon which (if any) of the said M3 Parent Compounds happened to be in the Deca-Plexx and their amount (i.e. whether a contaminant (1 mg) or an effective dose (25 mg), the likelihood of the Deca-Plexx being the source of the M3 Metabolite increases or decreases means that the Deca-Plexx would not have been the source. The experts are not entirely at one on the latter issue.

- The refinement of Professor Cowan's views as to the likelihood of the Deca-Plexx being the source of the M3 Metabolite reflects new information that came to light after the Judicial Committee's and PHRB's decisions. In particular, the new evidence indicates that the level of the M3 Metabolite in the Appellant's sample was significantly less than had been initially assumed; and that the likely half-life of the M3 Metabolite was longer than Professor Cowan had assumed.

- Nonetheless Professor Cowan concluded in his third report that another potential explanation for the AAF is that the Appellant consumed 20 mg of DHCMT about 40 days before the Collection Date (in accordance with the Schanzer study data). Similarly, Professor Cowan considers that it would follow that another potential explanation for the AAF is that the Appellant took a contaminated supplement for a period of time in 2016 such that the accumulated amount of DHCMT was equivalent to 20 mg of DHCMT approximately 40 days before the Collection Date.

- Albeit Promagnon, Halodrol and Methylclostebol (unlike DHCMT and Clostebol) are not specifically named in the Prohibited List, the Appellant's argument that there was no ADRV is totally without merit.

- Based on Professor Cowan's opinion, any unknown or unlisted substance would contain the same steroid structure as well as the chlorine atom and would therefore fall under category S1 (Anabolic Agents) in the Prohibited List as a substance with a similar chemical structure to DHCMT.

- The expert scientific opinions of Professor Moore and Professor Cowan support the Appellant's case that Deca-Plexx could be a source of the M3 metabolite - only if certain assumptions are true: (i) DHCMT has a half-life of 50 days as per the Schanzer study and (ii) if the concentration of the M3 metabolite in the Appellant's sample based on the information provided by the Lausanne Laboratory amounts to 25-30 pg/ml.

- Deca-Plexx is not the only potential source of the M3 metabolite and could only be considered as the source if the Panel were satisfied both that the Deca Plexx consumed by the Appellant contained a M3 Parent Compound and that the Appellant had not consumed any prohibited substances including Deca-Plexx after July 2015.

- The Respondent rejects both of these propositions and points to the other potential explanations given above.

- […].

- The Panel should conclude that the Appellant has not been able to establish that the source of the M3 metabolite was more likely than not the Deca-Plexx, which he last consumed some 10 months prior to the Collection Date.
- Another equally likely explanation was that the Appellant had deliberately ingested DHCMT and/or one or more of the M3 substances close to the Collection Date; or alternatively that he had taken a supplement closer to the Collection Date with a contaminant level of one or more of the said prohibited M3 Parent Compounds.

c) Regulations

- It is not incumbent on the Respondent to establish that the Appellant was subject to the Regulations at the time of the ingestion of the substance, which resulted in the AAF but only to establish that the Appellant was subject to the Regulations at the Collection Date.
- In any event, the Appellant was subject to the Regulations at the time of the ingestion of the substance as all players of the game of rugby union at every level are bound at all times to comply with the Respondent anti-doping rules set out in the Regulation as a condition of participation in the game at any level in any Rugby Union around the world.
- Furthermore, the Appellant was also bound at all material times by the Anti-Doping Code of the Australian Rugby Union which is a member of the Respondent and as a player with Bond University, a Queensland Rugby Union Premier Grade club which has membership in the Queensland Rugby Union, he would also have been part of the Australian Rugby Union, now known as Rugby Australia.

d) Respondent's Burden

- The Respondent denies that it was under any obligation to establish that the M3 Metabolite can only be formed following the metabolization of a Prohibited Substance parent compound and to inform the Appellant of the possible parent compounds.
- The Respondent notes that when the Appellant admitted the ADRV the burden of proof shifted to him to establish that the doping was unintentional. Once the Appellant reversed from that admission and denied the ADRV, the onus then shifted to the Respondent to establish that the M3 metabolite is a metabolite of a Prohibited Substance, and the Respondent submits that they have met that burden.

e) Prejudice

- If the Appellant did not contact Alpha Labs immediately upon or shortly after receipt of the charge letter to investigate whether the Deca-Plex was the source of the M3 metabolite, this was through no failing on the part of the Respondent but on his own part.
- The Appellant has not satisfied the Panel that he would in fact have sought to obtain the supplements from Alpha Labs before they ceased to exist and that he would have

undertaken testing on any such supplements given the evidence of his financial health and logistical challenges.

- The Appellant's main investigative difficulty was his inability to have his container of Deca-Plexx tested because he had discarded the same.
- The Respondent denies that there have been any failings on its part or that it has caused any prejudice to the Appellant, or alternatively any material prejudice that might justify the charge being dismissed.

f) Intention

- Even if the Appellant was unable to establish the source of the AAF, this does not necessarily prevent the Panel from finding that the ADRV was unintentional, but also submits that it would only be in a very exceptional case that a lack of intention could be shown where the source of a Prohibited Substance in an athlete' system cannot be established.
- If the Panel were to conclude that the Appellant had not established the source of the M3 Metabolite, this is not on the facts one of those very exceptional cases in which the Appellant could discharge the burden of establishing that the ADRV was unintentional.
- If the Panel were to find that the source of the M3 metabolite is more likely explained by the Appellant ingesting an effective dose of DHCMT and/or one of the other M3 Parent Compounds in 2016 and closer to the Collection Date, the Respondent contends that:
  - this conduct was "intentional" in that the Appellant knew that what he was doing was wrong and in breach of the anti-doping rules; or that in taking a substance when he did not know its precise contents, he knew (following his anti-doping education in 2016) that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. Furthermore, the Appellant on his own evidence, knew as of September 2015 […] that he had to be very careful about what he ingested; and
  - […] with respect to his ability to distinguish appropriate from inappropriate conduct, he was able to recognize that the circumstances of his purchase of the Deca-Plexx were, in his words, "a bit shady".

g) Degree of Fault

- It is only if the Panel were to accept the Appellant's account of the source of the M3 metabolite as being the Deca-Plexx ingested in 2015, and find that his conduct was unintentional that there could be any prospect of the Appellant successfully availing himself of the "No Significant Fault or Negligence" provisions. The assessment of fault would therefore depend upon the factual findings made by the Panel as to his awareness of anti-doping matters/risks […].

- The Respondent submits that the Appellant is unable to avail himself of the "No Significant Fault or Negligence" provisions based on the evidence that he failed to take any reasonable steps to research the listed ingredients on the Deca-Plexx label.

h) Proportionality

- The Respondent submits that the principle of proportionality is already embodied in the Regulations, which are based on the 2015 WADA Code, but asserts that if the Panel were to conclude that the Appellant could avail himself of the "No Significant Fault or Negligence" provisions, but his degree of fault justified a 2 year sanction, then the principle of proportionality would not come into play as the Panel would have already assessed the Appellant's degree of fault […].
- It would be a very rare case in which a CAS panel would conclude that the sanction arrived at under the Regulations would fall to be reduced below two years on proportionality grounds and this is not such a case.

i) Backdating

- There is no reason to backdate the start of the Appellant's period of ineligibility to 21 May 2016.

j) Costs Below

- The PHRB Costs Decision was a fair and just decision, and should not be set aside. The Appellant would need, at least, to establish that Deca-Plexx was the source of the AAF and then to be granted a reduction of the 4 year sanction currently imposed in order to overturn the PHRB Costs Decision.

50. In its Answer, the Respondent requested the following relief:

- *The anti-doping rule violation under Regulation 21.2.1 is established;*
- *The period of Ineligibility is four years commencing on 17 June 2016; and*
- *The Appellant bears the costs of the arbitration and reimburses World Rugby its legal costs and other expenses pertaining to this CAS Appeal.*

V. JURISDICTION

51. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

52. The Appellant relies on Regulation 21.13.1 of the Respondent's Handbook which provides as follows:

Decisions subject to Appeal

Decisions made under these Anti-Doping Rules may be appealed as set forth below in Regulation 21.13.2 through Regulation 21.13.7 or otherwise provided in these Anti-Doping Rules, the Code or the International Standards. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, the post-decision review procedure in Regulation 21.13.8 must be exhausted, provided that such review respects the principles set forth in Regulation 21.13.2.2 below (except as provided in Regulation 21.13.1.3).

53. The Respondent does not dispute jurisdiction and confirmed CAS jurisdiction by signing the Order of Procedure and participating fully in this proceeding.

54. Consequently, the Panel determines that it has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

55. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association of sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

56. Pursuant to Regulation 21.13.7.1, *"the time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party"*.

57. The PHRB Decision was issued by email on 7 February 2018. The Appellant filed his appeal on 28 February 2018.

58. No party disputed admissibility of this appeal and the parties both participated fully in this proceeding.

59. Consequently, the Panel determines that this appeal is timely and admissible.

VII. APPLICABLE LAW

60. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or

sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

61. The Panel is required to examine the governing law clause, if any, of the applicable regulations. Bye-law 15 to the Respondent Handbook provides, *inter alia*, that:

These Bye-Laws and any Regulations Relating to the Game, General Regulations or Laws of the Game made pursuant thereto shall in all respects be governed by and construed in accordance with English Law […].

62. The Appellant submits that the provision of World Rugby ADR and/or the WADA Code shall apply in accordance with Swiss law.

63. The Respondent does not contest the application World Rugby ADR and/or the WADA Code but submits that although the applicable procedural law at CAS (*lex arbitri)* is Swiss law, the applicable substantive law is English law given that Bye-Law 15 to the Respondent expressly provides that the Regulations *"shall in all respects be governed by and construed in accordance with English law…"*.

64. The Panel first concurs that World Rugby ADR and the WADA Code shall apply to the present case.

65. Regarding the applicable law, the Panel notes that in accordance with Bye-Law 15 to the World Rugby Handbook, English law is applicable. In the present case, the Panel sees no reason to depart from this express choice of law contained in the applicable regulation.

66. In any case, the Panel considers that this dispute is academic since there is, in its view, no difference material to the present case, if at all, between the Regulations and the WADC 2015.

VIII. MERITS

67. Against the background of the parties' respective submissions, in the Panel's view, the following issues shall be addressed:

A. Was the Appellant subject to the Regulations at whatever was the material time?

B. Was the Appellant in breach of Regulations 21.2.1?

C. What was the source of the M3 metabolite, *i.e.* the prohibited substance?

D. Was the Appellant's breach intentional?

E. If not, what was the Appellant's degree of fault?

F. Should in any event any period of ineligibility otherwise prescribed be reduced by reference to considerations of proportionality?

G. Has the Appellant been caused prejudice by reason of the Respondent's actions, and, if so, what is the legal consequence?

H. Should any period of ineligibility be backdated?

68. The Panel will address each of the foregoing questions in turn.

A. Was the Appellant subject to the Regulations at whatever was the material time?

69. The parties do not contest that the Appellant was subject to the Regulations on 21 May 2016 when his sample was collected.

70. The Appellant, however, argued that he was not subject to the Regulations at the time that he consumed the prohibited substance, *i.e.* from May till August 2015.

71. In the Respondent's view the Appellant was subject to the Regulations at the time of the ingestion of the substance, because all rugby players at every level are bound to comply with World Rugby's anti-doping rules as a condition of participating in the sport. In addition, the Appellant was also bound by the Anti-Doping Code of the Australian Rugby Union which is a member of the Respondents as a player with Bond University Club which is a Queensland Rugby Union Premier Grade club, member of the Queensland Rugby Union which is part of the Australian Rugby Union, now known as Rugby Australia.

72. The Panel finds that the Appellant was subject to World Rugby anti-doping rules (i) from May until August 2015 when he consumed the prohibited substance, and (ii) on 21 May 2016 when his sample was collected. The Panel acknowledges that, at that time, the Appellant was playing for the club of Bond University, member of the Queensland Rugby Union Premier Grade. It is not contested that Queensland Rugby Union Premier Grade is part of Queensland Rugby Union which is part of the Australian Rugby Union. As a player member of the Australian Rugby Union, and in application of the Regulation 21, the Appellant was therefore subject to World Rugby anti-doping rules.

73. While it is unnecessary in the assessment of the breach of Regulation 21.2.1 to determine whether or not he was subject to the Regulations when he consumed the prohibited substance, it is necessary to make such determination as and when issues of fault arise under Regulation 21.10.5.1.2

B. Was the Appellant in breach of Regulations 21.2.1?

74. The Panel's starting point is Regulation 21.2.1, which states as follows:

21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample

21.2.1.1 It is each Player's personal duty to ensure that no Prohibited Substances enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.

Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation under Regulation 21.2.1 (Presence).

75. In this case, the analysis of the Appellant's A and B samples revealed the presence of the M3 metabolite which is a long-term metabolite of the M3 Parent Compound. No criticism was advanced in respect of the doping control process, the chain of custody or the laboratory analysis.

76. The Panel finds that every M3 Parent Compound falls within S.1 of the 2016 WADA Prohibited List applying the text at the conclusion of S.1 of the Prohibited List which provides that *"other substances with a similar chemical structure or similar biological effect(s)"* are to be included within that section. One of the M3 Parent Compounds, DHCMT, is specifically listed within S.1 of the Prohibited List and the Panel accepted Professor Cowan's evidence that other Parent Compounds not listed, whether known or unknown would be embraced by the text, a proposition with which Professor Moore did not take issue.

77. Accordingly, the Panel concludes that the Appellant committed an ADRV.

78. It is common ground between the parties, and the Panel accepts that:

(i) The default period of ineligibility shall be four years where the anti-doping rule violation does not involve a Specified Substance, unless the Player can establish that the anti-doping rule violation was not intentional. (Regulation 21.10.2.1.1)

(ii) If the Player is able to establish that the anti-doping rule violation was unintentional, the period of ineligibility would be two years for a first violation. (Regulation 21.10.2.2)

(iii) If the Player can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years ineligibility depending on the Player's degree of fault (Regulation 21.10.5.1.2).

C. What was the source of the M3 metabolite, i.e. the prohibited substance?

79. In the present case, the Appellant asserts that he has identified the source of the prohibited substance, namely that the AAF was caused by the ingestion of a contaminated supplement (Deca-Plexx).

80. The Appellant bears the burden of proving how the substance entered his body. The standard of proof shall be the balance of probability.

81. The Panel adopts the guidance provided in CAS 2009/A/1926 & 1930 that:

[…] [I]t is the Panel's understanding that, in case it is offered several alternative explanations for the ingestion of the prohibited substance, but it is satisfied that one of them is more likely than not to have occurred, the Player has met the required standard of proof regarding the means of ingestion of the prohibited substance. In that case,

it remains irrelevant that there may also be other possibilities of ingestion, as long as they are considered by the Panel to be less likely to have occurred. In other words, for the Panel to be satisfied that a means of ingestion, is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred.

82. The Panel emphasizes that, in order for an athlete to prove how the substance entered his body, it is insufficient to establish that the explanation provided is more likely than any other possibilities. Such finding is indeed relevant to but not dispositive of the crucial question, that is to say whether that explanation passes the 50% threshold. The Panel also bears in mind in its approach what was stated in CAS 2014/A/3820, where the Panel opined that *"In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation"* and in CAS 2010/A/2230, where the Sole Arbitrator stated that *"To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules"*.

83. The Panel, therefore, accepts that:

(i) The Appellant has not provided the actual container from which he took the Deca-Plexx but it also notes that in 2014, the Appellant was 17 years old, had not yet received anti-doping education and was playing rugby at a club level. It also observes that it may be somewhat unrealistic to expect that an athlete of limited experience and sophistication would retain a container of a supplement he had stopped taking for a year after he had ceased taking it, in the event that it might be needed in later disciplinary proceedings.

(ii) The Appellant has not provided any evidence to indicate that Deca-Plexx was ever contaminated by other Alpha Lab products. However, it is also noted that Alpha Labs ceased its operations in 2015 rendering it for all practical purposes impossible for the Appellant to obtain another container for testing purposes.

(iii) Several explanations for the AAF are possible, e.g. consuming a contaminated product later in 2016 or the consumption of a single dose of 20 mg of DHCMT 40 days before the sample collection date.

84. However, the Panel concludes that the Appellant has provided actual evidence, albeit in large measure circumstantial, that the source of the M3 metabolite in his system was the Deca-Plexx consumed between May and July 2015 (10 months before the test) for the following reasons

(i) The Respondent accepted that the Appellant ingested Deca-Plexx between the period of May 2015 to July 2015.

(ii) The Respondent accepted that the ingestion of an M3 compound in *"contamination quantity"* as suggested by the Appellant could, scientifically, lead to the M3 metabolite ten months later.

(iii) It is uncontested that Alpha Labs was a steroid manufacturer which produced exclusively, three supplements including Deca-Plexx.

(iv) It is uncontested that, unlike Deca-Plexx, the two other products manufactured by Alpha Labs contained an M3 Parent Compound on their labels.

(v) It is also accepted that one of the other two products, Meca Plexx was […] and found to contain an M3 compound.

(vi) Professor Cowan and Professor Moore accepted (1) that the M3 metabolite could still be present in his system after ten months and (2) that he was using a supplement that, in light of the other products produced by the supplement manufacturer was at high risk of contamination with the exact substance in question in this case.

(vii) Both Professor Cowan and Professor Moore agreed that the half-life of the M3 metabolite was consistent with the Appellant's explanation that he discarded the remainder of the Deca-Plexx when he determined not to take it any longer in 2015 and did not take it again. A window of ten months between the taking of a substance and the detection of same is, according to the experts, unusual but not impossible.

(viii) Both Professor Cowan and Professor Moore acknowledged the possibility, raised by the Respondents, that an athlete such as the Appellant might take a prohibited substance in a "one-off" or one time scenario, but expressed doubts that there would be any purpose in so doing.

85. The Panel emphasizes that this is a case which turns on its particular facts as was CAS 2017/A/5296. The conclusion that it reaches in application of well-established principle of law cited above should not accordingly be misused as creating some kind of precedent where inevitably the facts will be different.

D. Was the Appellant's breach intentional?

86. It is for the Appellant to establish that the ADRV was not intentional. As stated above, 21.10.2.3 of the Regulations, adopted from the WADA Code, states that "intentional" is meant to identify those Athletes who cheat. Cheating in this context means that the athlete engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

87. Establishment of source does not by itself prove negative intent although it may be a powerful indicator of the presence or absence of intent to be defined. In contradistinction to the provisions which bear on disproof of fault or negligence the provision as to disproof of intention makes no reference to proof of source as a *sine qua non* condition. For the purpose of satisfying this burden of disproof, several CAS cases have held that the athlete must necessarily establish how the substance entered his/her body (see e.g. CAS 2016/A/4377; CAS 2016/A/4585) whereas other CAS cases have held that such establishment, while not always

necessary, will normally be so and that the exceptions to that norm will be extremely rare (see e.g. see CAS 2016/A/4534 in which the CAS Panel referred to the *"narrowest of corridors"* and CAS 2016/A/4919, in which the CAS Panel held that *"in all but the rarest cases the issue is academic").* On any view, the presence or absence of such proof of source is obviously material to the issue of intention.

88. Against the background of its threshold finding that the Appellant demonstrated on a balance of probability that his ingestion of Deca-Plexx was the source of the ADRV, the Panel has concluded that he has provided sufficient evidence that he did not take it intentionally in the manner defined by the Regulation, *i.e.* that he did not intend to cheat, did not know that his conduct constituted a violation of the anti-doping regulations and did not know that there was a significant risk that his conduct might result in a violation of those regulations for the following reasons based on evidence that was either common ground or the Appellant's own testimony which the Panel has accepted:

(i) He was only 17 when he first used Deca-Plexx in November 2014;

(ii) He had not played rugby at any level higher than school or youth rugby at the time of ingestion;

(iii) Indeed at that time, he was not involved in any sport because he had broken his ankle;

(iv) He had not received any anti-doping education at the time or even on the second occasion that he took it; when playing rugby for Bond University Rugby Club;

(v) His evidence that he had at most, only the most general awareness of the doping scandal engulfing the Australian football teams, Cronulla Sharks and Essendon players, which were concerned with full time professional players subjected to a regime of injections with prohibited substances and would not have raised red flags in relation to his consumption of Deca-Plexx;

(vi) (Critically) his evidence that he took Deca-Plexx to enhance his body image not his sporting performance, […] was entirely convincing.

E. If not, what was the Appellant's degree of fault?

89. It is a *sine qua non* of establishing no or no significant fault that the Appellant can establish the source of the prohibited substance in his system (see the Definitions section in the Regulations). This he has, in the Panel's view, successfully done. Accordingly if the Appellant is also able to establish on a balance of probabilities, that his Fault or Negligence, when viewed in the totality of the circumstances was not significant in relationship to any violation found, then his sanction would fall between a reprimand and a period of ineligibility of 24 months (21.10.5.1.2 Regulations).

90. In assessing the Appellant's degree of fault, the Panel has considered the following relevant facts and circumstances:

(i) The Appellant's young age when he first made the decision to take Deca-Plexx.

(ii) The Appellant's relative lack of experience as an athlete and the level at which he was playing rugby in 2015.

(iii) The Appellant had not received any anti-doping education prior to his ingestion of Deca-Plexx.

(iv) […].

91. However,

(i) The Appellant candidly admitted that he found the circumstances around the acquisition of the Deca-Plexx to be *"shady"* but did not undertake even the most cursory research to determine the relevance of any of the items listed on the label.

(ii) Prior to receiving anti-doping education, the Appellant had a somewhat casual or cavalier attitude towards substances that he ingested,[…], but even after receiving anti-doping education, he continued to use his mother's supplements without paying much attention to the risks of inadvertent doping.

(iii) On the other hand, after receiving some anti-doping education, the Appellant became more conscious of the risk of an anti-doping violation, […].

92. The standard of care required on an athlete is, in the Panel's view accurately summarized in the CAS decision in CAS 2008/A/1489:

The Panel is not suggesting that an athlete must exhaust every conceivable step to determine the safety of a nutritional supplement before qualifying for a "no significant fault or negligence" reduction. To that end, the Panel recognizes Mr. Despres' argument that taking reasonable steps should be sufficient since "one can always do more". The Panel in Knauss followed this logic when it determined that even though Mr. Knauss could have had the nutritional supplement tested for content, or simply decided not to take it altogether, "these failures give rise to ordinary fault or negligence at most, but do not fit the category of "significant" fault or negligence". Similarly, the Panel distinguishes between reasonable steps Mr. Despres should have taken and all the conceivable steps that he could have taken. In light of the risks involved, the Panel finds that Mr. Despres did not show a good faith effort to leave no reasonable stone unturned before he ingested Kaizen HMB.

93. A similar approach to the required standard of care on athlete was taken in CAS 2013/A/3327 & 3335, and CAS 2016/A/4643.

94. Balancing these factors against each other, while the Panel acknowledges that the Appellant was not at the material time, an experienced, well-resourced, international athlete who would have been apprised as to the importance of leaving no reasonable stone unturned, it is unable to accept that his level of fault was low. While there is a greater obligation on the part of the experienced high-level athlete who has received anti-doping education on numerous occasions, to undertake due diligence, that does not absolve the young, inexperienced athlete at the other end of the spectrum from taking any steps whatsoever. The Panel is unable to identify any steps

that the Appellant took in discharge of his duty to avoid the presence in his system of prohibited substances. In the Panel's view, the Appellant acted in a careless manner in consuming supplements without undertaking any form of research and demonstrated a perplexing lack of curiosity for someone who entertained the prospect of one day playing professional rugby.

95. In CAS 2013/A/3327 & 3335, the CAS Panel suggested three categories for sanctions that fell within the 0-24 months range.

"Applying these three categories to the possible sanction range of 0 – 24 months, the Panel arrive at the following sanction ranges:

a. Significant degree of or considerable fault: 16 – 24 months, with a "standard" significant fault leading to a suspension of 20 months.

b. Normal degree of fault: 8 – 16 months, with a "standard" normal degree of fault leading to a suspension of 12 months.

c. Light degree of fault: 0 – 8 months, with a "standard" light degree of fault leading to a suspension of 4 months.

In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.

The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.

The subjective element can then be used to move a particular athlete up or down within that category".

96. Notwithstanding the mitigating factors, the Panel finds that the Appellant's level of fault is significant or considerable and places him at the highest point of the CAS 2013/A/3327 & 3335 range after taking into consideration the earlier finding that the ADRV was not intentional.

97. In these circumstances, again all particular to his case, the Panel finds that a suspension of 24 months is appropriate.

F. Should in any event any period of ineligibility otherwise prescribed be reduced by reference to considerations of proportionality?

98. It has been recognized in CAS cases consistent with the analysis of Jean-Paul Costa, a former President of the European Court of Human Rights, that the principle of proportionality is satisfied by the range of sanctions appropriate to particular ADRVs and does not require any further adjustment to a sanction envisaged which would involve lowering the periods of ineligibility otherwise prescribed (see e.g. CAS 2018/A/5546).

99. The period of suspension which the Panel considers appropriate takes into account the principle of proportionality embodied in the Regulations.

G. Has the Appellant been caused prejudice by reason of the Respondent's actions, and, if so, what is the legal consequence?

100. The Panel does not consider that that Respondent's conduct created prejudice such as would estop the Respondent from pursuing the charge. The Panel agrees that the Lausanne Laboratory finding (*"Presence of Dehydrochlormethyltestosterone metabolite (4-chloro-18-nor-17b-hydroxymethyl, 17a-methyl-5b-androst-13-en-3a-ol)"*) was to an extent misleading in that it failed to indicate that there could be other sources of the M3 metabolite than the DHCMT and holds that the Respondents cannot avoid responsibility by asserting (as they did) that their only regulatory obligation was to pass on to the Appellant the laboratory's conclusion. But even on the premise that there was such a misrepresentation, which could be laid at the Respondents' door, the Appellant would need additionally to prove his reliance upon it.

101. In the Panel's view the Appellant signally failed to adduce any evidence that his delay in investigating the source of the M3 at a time when the Alpha Laboratories were still operating was caused by such misrepresentation as distinct from other factors such as his lack of means or of legal advice. In short, the Appellant is unable to show that he could or would have done anything differently if the initial reference by the Respondent to the substance that led to the ADRV had been more accurate.

H. Should any period of ineligibility be backdated?

102. Regulation 21.10.11 provides as follows:

> *"Commencement of Ineligibility Period*
>
> *Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed".*

103. Regulation 21.10.11.1 provides as follows:

> *"Delays Not Attributable to the Player or other Person*
>
> *Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable) may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified".*

104. In the Panel's view there have been no substantial delays in the hearing process not attributable to the Appellant and accordingly no grounds for backdating the period of ineligibility. As a result, the Panel finds that the Appellant's period of ineligibility should run from 17 June 2016, the date on which he was provisionally suspended.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Joshua Taylor against World Rugby with respect to the decision of World Rugby's Post-Hearing Review Body dated 7 February 2018 is partially upheld.

2. The decision rendered by World Rugby's Post-Hearing Review Body dated 7 February 2018 is amended as follows:

   A period of ineligibility of two (2) years is imposed on Mr. Joshua Taylor as from the date of his provisional suspension (i.e. 17 June 2016).

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.