

CAS 2019/A/6637 Njisane Phillip v. Panam Sports Organisation (“PASO”)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof Matthew J. **Mitten**, Professor in Milwaukee, WI, USA

Arbitrators: Ms Janie **Soublière**, Lawyer in Beaconsfield, QC, Canada

Judge Martina **Spreitzer-Kropiunik**, Judge in Vienna, Austria

in the arbitration between

Njisane Phillip, Trinidad and Tobago

Represented by Mr J. Tyrone Marcus LLM (Sports Law), Port-of-Spain, Trinidad, W.I.

Appellant

and

Panam Sports Organisation, Col. San Rafael, Mexico D.F.

Represented by Mr Antonio Quintero and Ms Elena Mundaray, de Carrero & Quintero, Caracas, Venezuela

Respondent

I. PARTIES

1. Njisane Phillip (the “Athlete” or “Appellant”), is a 28-year-old, international-level athlete from Trinidad and Tobago. He is a competitor in Track Cycling under the jurisdiction of the Union Cycliste Internationale (“UCI”) and competed in the team and individual sprint cycling events during the 2019 Pan American Games in Lima, Peru.
2. The Panam Sports Organisation (“PASO” or “Respondent”) is a Continental Association of National Olympic Committees recognized as such by the International Olympic Committee. It organizes the most important multi-sports games in the Americas, the Pan American Games. It is a Signatory to the World Anti-Doping Code (“WADC”) as a Major Event Organizer.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings, and evidence. 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. [...].
5. [...].
6. Although the Appellant knew that the use of THC is prohibited in-competition under the WADA Prohibited List, he assumed it would have been excreted by his body before his first cycling competition (the men’s team sprint) during the Pan American Games in Lima, Peru on 29 July 2019 [...].
7. There is no evidence the Appellant ingested THC to enhance his performance out-of-competition in Trinidad or in-competition or out-of-competition in Peru in any of the cycling competitions in which he participated during the Pan American Games.
8. [...].
9. On 1 August 2019, the Trinidad & Tobago cycling team placed first and won the gold medal in the team sprint cycling competition at the Pan American Games. The Appellant was a member of this team and further to being selected for doping control provided a post-race in-competition urine sample coded 6381438.
10. On 3 August 2019, the Appellant placed second and won a silver medal in the individual sprint cycling competition at the Pan American Games. He was not subject to doping control in connection with this competition.
11. After receiving notice of the Appellant’s AAF, the Respondent conducted its

preliminary review pursuant to Article 7 of the 2019 Panam Sports Anti-Doping Rules (“PASO ADR”). After concluding, pursuant to Article 7.2.4 of the PASO ADR, that no departure from any International Standard had occurred that could have caused the AAF and that no TUE had been or would have been granted to the Appellant, the Respondent proceeded with its results management of sample 6381438.

12. On 8 August 2019, the Appellant was notified by the Ad Hoc Medical Commission for the Pan American Games that the analysis of his A sample 6381438 by the World Anti-Doping Agency (“WADA”) accredited INRS laboratory in Montreal, Canada (the “Montreal laboratory”) revealed an AAF for THC, with a reported estimated concentration level of 193ng/mL. THC is listed on the WADA Prohibited List as a Class S8 Cannabinoids, which is a Specified Substance, the use of which is prohibited in-competition (but is not prohibited out-competition).
13. According to the WADA Technical Document TD2019DL v. 2 which applies to the quantitative determination of a threshold substance such as THC, a concentration level of 150 ng/ml is the minimum reporting threshold limit for the reporting an in-competition AAF for THC. However, a laboratory will not report an AAF for THC unless the estimated concentration of THC detected in the athlete’s sample exceeds the Decision Limit of 180 ng/ml of THC. In technical terms, the TD2019DL states that *the measurement of a threshold substance in a sample shall be reported as an AAF when the value or concentration exceeds with an appropriate level of confidence the Decision Limit for that substance as defined by WADA*, which for THC is 180ng/mL. Accordingly, because the estimated concentration of THC in the Appellant’s sample was 193ng/mL, it was reported as an AAF.
14. In its 8 August 2019 communication, the Respondent notified the Appellant of his anti-doping rule violation (“ADRV”) (specifically, “*a violation of Article 2.1 [of the PASO ADR]: The presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s Sample*”), his right to promptly request the laboratory’s analysis of his B sample, and that, if he requested analysis of his B sample, he would have the opportunity to be personally present or to have a representative attend on his behalf. He was also given the opportunity to admit his ADRV and “*accept the consequences imposed by the World Anti-Doping Code.*”
15. In response, in an 8 August 2019 email to the Respondent, the Appellant stated: “*I recognize the existence of the infraction and accept the consequences imposed by the World Anti-Doping Code. I do not request to conduct the testing of sample B.*”
16. Thereafter, an exchange of correspondence ensued between the Appellant, his counsel, and the Respondent’s Disciplinary Commission for the Pan American Games (“Disciplinary Commission”) pursuant to which the Appellant requested a hearing before the Disciplinary Commission to determine the consequences for his ADRV, and the originally scheduled hearing date of 10 August 2019 was adjourned until 16 August 2019 at the Appellant’s request, to ensure that “*[the Appellant] has a full opportunity to present any defense he may wish to bring forward.*”
17. On 13 August 2019, the Appellant inquired of the Disciplinary Commission regarding the scope of its jurisdiction to impose consequences for his ADRV. Acknowledging its jurisdiction “*to impose consequences that impact directly on the 2019 Games period,*”

including “*the return of medals and the disqualification of results,*” the Appellant noted that “*if a consequence were to extend beyond the Games, for example, the imposition of a period of ineligibility, then it is the UCI that must impose such a sanction.*” Because the matter would be referred to the UCI to determine his appropriate period of ineligibility, the Appellant suggested that determination of all consequences for his ADRV be determined by the UCI rather than having two separate hearings. The Appellant also requested the laboratory document package for his AAF and the Doping Review Panel’s written deliberations and identification of its members.

18. On 14 August 2019, the Disciplinary Commission’s chairman responded as follows: “*results management in respect of the Pan American Games falls squarely under the jurisdiction of Panam Sports*” which “*includes any applicable consequences under Articles 9, 10.1 and 10.2.1 of the Panam Sports ADR.*” He explained that results management “*’beyond the event (the Pan American Games) itself’ is something to be dealt with by [the UCI]*” and that the Disciplinary Commission “*has no role to play in that.*” He agreed to order and send the Appellant the requested laboratory document package and stated that “*The Doping Review Panel was presided over by the Chairman of Medical Commission of Panam Sports and I do not believe that there are any written deliberations.*”
19. At the 16 August 2019 Disciplinary Commission hearing, notwithstanding that on 8 August 2019 he had waived his right to have his B sample analysed, the Appellant requested analysis of the B sample. “*In the interests of fairness and as a special consideration to the athlete*” the Disciplinary Commission granted his request and adjourned the hearing pending the Montreal laboratory’s analysis of the Appellant’s B sample.
20. On 29 August 2019, the Montreal laboratory’s analysis of the Appellant’s B sample 6381438 confirmed the result of the A sample 6381438 analysis thereby establishing the commission of an ADRV pursuant to Article 2.1.2 PASO ADR.

B. Proceedings before the Ad Hoc Disciplinary Commission for the Pan American Games

21. On 10 September 2019, the Respondent’s Disciplinary Commission for the Pan American Games notified Appellant that the Montreal laboratory’s analysis of his B sample confirmed the result of the presence of THC in his A sample. The Respondent granted him the right to provide written submissions and to request a hearing regarding his ADRV and its potential consequences.
22. In response, on 10 September 2019, the Appellant requested a hearing before the Disciplinary Commission.
23. The hearing was originally scheduled for 3 October 2019, then by agreement of the Parties was rescheduled to 4 November 2019.
24. In his written submissions for the 4 November 2019 hearing the Appellant did not challenge the Montreal laboratory’s analysis of his A and B samples confirming the presence of THC in his system, but contended that he did not use this substance to

improve his athletic performance and that its use occurred in a non-sports environment. Specifically, the Appellant submitted that he:

“5.1 Accepts the commission of the Anti-Doping Rule Violation, namely, the presence of Carboxy-THC, a metabolite of cannabis, in his system in connection with the race on August 1, 2019.

5.2. Accepts that the consequence of the commission of this ADRV is the loss of the men’s team sprint gold medal for him and his teammates which they won on August 1, 2019.

5.3 Asserts that he is entitled to keep the silver medal that he won in the individual sprint race on August 3, 2019.”

25. On 4 November 2019, the Disciplinary Commission held a hearing by videoconference in which Appellant was represented by his counsel.

26. On 15 November 2019, the Disciplinary Commission issued its Decision No. 15 (“Disciplinary Commission Decision”), which found that Appellant’s A and B sample tested positive for THC and that his attorney *“acknowledged the athlete’s use of the prohibited substance four days before the athlete’s arrival in the Pan American Village, at a social event in his country not related to sport competition.”*

27. The Disciplinary Commission Decision states: *“In consequence of the above [facts], [Mr. Phillip’s] attorney asked for the possibility that only the result of the competition in which the sample was taken be annulled and that the result of the other competition in which the athlete participated remain unchanged.”*

28. The Disciplinary Commission Decision states:

“Furthermore, regarding the consequences of the AAF of the sample taken on August 1, 2019 the Disciplinary Commission considered the August 3, 2019 competition result on the basis of fairness, according to the provisions of article 10.3 of the Panam Sports Anti-doping Rules. In the opinion of the Disciplinary Commission, there are no facts requiring the fairness principle in said article to be applied to this case.”

29. After it *“considered all of the arguments presented by [Mr. Phillip’s] attorney, as well as the applicable rules and the case’s facts and that “articles 9, 10.3, and 11.4.1 of the [PASO ADR] apply to this case”*, the Disciplinary Commission decided:

“1. To determine that athlete Njisane Phillip did commit during the Lima 2019 Pan American Games an anti-doping rule violation contrary to Article 2.1 of Panam Sports Anti-Doping Rules on account of the presence in a sample provided by him of Tetrahydrocannabinol, a substance that belongs to group S8, Cannabinoids.

2. To disqualify the results obtained by the athlete during the Lima 2019 Pan American Games and order the forfeiture and return of the gold medal won in

the team sprint event and the silver medal won in the individual sprint event, both in the sport of cycling.

3. To disqualify the result obtained by the Trinidad & Tobago team in the team sprint event of the sport of cycling held on August 1, 2019 during the Lima 2019 Pan American Games and order the forfeiture and return by all of the team members of the gold medals won in this event[.]

4. To send the complete file of the case to the International Cycling Union for its use as it deems appropriate.

5. To notify the corresponding parties according to the Panam Sports Anti-Doping Rules and the World Anti-Doping Code.”

30. On 15 November 2019, the Appellant received a copy of the Disciplinary Commission Decision via email sent by the Panam Sports Office.
31. On 16 November 2019, the Appellant’s counsel emailed the Respondent to acknowledge receipt of the Disciplinary Commission Decision and stated: “*May I please receive confirmation from the Disciplinary Commission that since an appeal process may be invoked in this matter, the only disclosure that it will make about this decision, pursuant to the 2019 Panam Sports Anti-Doping Rules and the WADA Code, would be to the local NADO, the UCI, and WADA?*”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 28 November 2019, the Appellant filed his Statement of Appeal against the Respondent with the Court of Arbitration for Sport (‘CAS’) with respect to the Disciplinary Commission Decision in accordance with Article R47 and *sequ.* of the Code of Sports-related Arbitration (“CAS Code”). In his Statement of Appeal, the Appellant made an Application for Stay of the Execution of the Disciplinary Commission’s Decision “*pending the outcome of the substantive appeal*” pursuant to Article R37 of the CAS Code. The Appellant requested the following relief with respect to his appeal:

“11. The Cyclist appeals against the Decision of the Commission to order the return of both the gold and silver medals won by the Cyclist during the 2019 Pan Am Games. Notwithstanding the Cyclist’s earlier willingness during the disciplinary hearing to cede the gold medal won in the men’s team sprint event, new developments in the anti-doping world arising after the conclusion of the hearing have led to a reversal of the Cyclist’s earlier position regarding that medal.

12. The Cyclist maintains, as he did during the disciplinary hearing, that, in the interest of fairness, the Commission should not have ordered the return of the silver medal won in the individual sprint.

13. In light of the foregoing, the Cyclist respectfully asks that the CAS Panel rule as follows:

13.1 that the Cyclist's appeal against the Decision be deemed admissible;

13.2 that the execution of the Decision be stayed pending the outcome of this appeal;

13.3 that the Decision be set aside in full;

13.4 that the gold and silver medals won by the Cyclist be ordered to remain with him;

13.5 that the Respondent be ordered to pay the Cyclist the costs that he has incurred in lodging the appeal[.]”

33. On 11 December 2019, the Appellant requested an extension of time to file his Appeal Brief until on or before 6 January 2020.

34. On 16 December 2019, the CAS Court Office initiated an appeals arbitration procedure under the reference *CAS 2019/A/6637 Njisane Philip v. Panam Sports Organisation (PASO)*. In its letter, the CAS Court Office invited the Respondent, *inter alia*, to declare whether it agrees with the Appellant's request for an extension of time to file his Appeal Brief and set a 10-day deadline to the Respondent to provide its observations on the Appellant's Application for Stay on the Execution of the Disciplinary Commission's Decision.

35. On 18 December 2019, the Appellant's Counsel stated, in relevant part, as follows:

“I write to the Court of Arbitration for Sport (CAS) today to seek its intervention in what appears to be a serious breach of the reporting and confidentiality provisions of the 2015 World Anti-Doping Code and the 2019 Pan Am Sports Anti-Doping Rules. Earlier today, I received an email which contained correspondence issued by Pan Am Sports, the Respondent in the matter CAS 2019/A/6637 for which I represent the Appellant, Mr. Njisane Phillip.

I have enclosed for your review, a letter with an accompanying document which reveals the identity of my client and which erroneously states that this matter is closed. I am unaware as to whether or not the Respondent has received the appeal documents that the CAS has forwarded to them, but their premature disclosure not only breaches the confidentiality that accompanies matters such as this, but it also is an affront to our application for a stay of execution. No notice was given to my client before this disclosure was made to potentially more than forty National Olympic Committees.” (emphasis original)

36. On 20 December 2019, the Respondent's Secretary General/CEO, Ivar Sisniega, responded in relevant part:

“1. Panam Sports does consent to the extension requested by the Appellant in his Statement of Appeal until January 6th, 2020, to file his Appeal Brief.

(. . .)

4) *With regard to the Appellant's request for a stay of the execution of the Disciplinary Commission's decision, we cannot agree to this request based on the following:*

a. There is no or quite insufficient evidence that irreparable harm would be caused to the Appellant;

b. The lex mitior principle has no application in this case. The final decision of the Disciplinary Commission has already been made, and this case has been and will be considered by the CAS arbitration panel on the basis of the 2015 Code, not the 2021 Code whatever its provisions may be;

c. On the hearing before the Disciplinary Commission the Appellant did not contest the analyses of the A and B Samples and the presence of a banned substance in those Samples which necessarily lead to the finding that an anti-doping violation occurred contrary to article 2.1 of the Panam Sports Anti-doping rules."

37. On 23 December 2019, the CAS Court Office granted the Appellant's request to extend the time to file his Appeal Brief until 6 January 2020 and informed the Parties: *"in view of the Respondent's position on the Appellant's Request for Stay of the Decision, it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide this issue in accordance with Article R37 of the CAS Code."*

38. On 27 December 2019, in a letter to the CAS, Appellant's counsel denounces *"what appears to be a brazen and cavalier breach of due process by the Respondent in the current arbitral proceedings"*:

*"By press release dated **December 26, 2019** the Respondent purported to communicate to an unknown number of recipients that the Trinidad and Tobago cycling team had been stripped of its gold medal and that the individual silver medal won by my client had also been taken away. The release goes on to discuss a re-allocation of medals further to the purported disciplinary sanctions. An updated medal table is enclosed herein which reflects same.*

...

*The Respondent's conduct . . . is not only premature but, regrettably, also seems high-handed and further represents a gross disrespect of the legal process and the dictates of the Court of Arbitration for Sport. By way of reminder, the CAS in its letter of **23 December 2019** stated that: 'in view of the Respondent's position on the Appellant's Request for Stay of the Decision, it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide this issue in accordance with Article R37 of the CAS Code.*

...

*It is my submission, at this juncture, that, even in advance of filing the final submissions in support of my Appeal Brief, the Respondent's conduct has the potential to **nullify the entire process**. I will address these concerns more*

substantially in my Appeal Brief.

It is my hope that the CAS can use its authority to compel the Respondent to desist from any such further breaches and to allow the arbitral process to run its proper course.”

39. On 30 December 2019, the CAS Court Office forwarded the Appellant’s 27 December 2019 letter to the Respondent.

40. On 2 January 2020, the Appellant’s counsel emailed the CAS Court Office and referenced his attached 2 January 2020 Press Release stating, *inter alia*, that:

“This case has been, and continues to be, the subject of an appeal before the Court of Arbitration for Sport and is therefore an active legal matter. Pan Am Sports’ premature disclosure has created increasing negative speculation regarding the integrity of the local cycling programme. This speculation has taken a toll on each member of the team, the team’s coach, the Trinidad and Tobago Cycling Federation and the local sporting industry as a whole.

*In light of this persistent negative narrative, I am compelled to inform the national community that the prohibited substance in question, according to the **World Anti-doping Code**, is described as one which is ‘more likely to have been consumed by an Athlete for a purpose other than enhancement of sport performance.’ In any words, no member of the team tested positive for an anabolic steroid, masking agent, or any other substance that may suggest an intention to cheat or gain an unfair competitive advantage of his competitors.*

...

The current legal procedures must run its course and no further comment will be made until the process so permits”.

41. On 6 January 2020, in a letter to the Parties, the CAS Court Office acknowledged the receipt and enclosed the Appellant’s 2 January 2020 email and enclosure as well as informed them that “*such correspondence will be transmitted to the Panel, once constituted*”.

42. On 6 January 2020, which was within the agreed extension of time, the Appellant filed his Appeal Brief.

43. On 9 January 2020, the Trinidad and Tobago Cycling Federation (“TTCF”) requested permission to intervene “*as a party bound by the arbitration agreement*” and stated it “*is a non-profit organization which operates as the national governing body of all cyclists in Trinidad and Tobago*” and “*is empowered to support and protect the interests of cyclists within their organization both competitively and recreationally per Article 4.1 of its Constitution*”.

44. To support its intervention request, the TTCF cites Arbitration CAS 2015/A/3874, in which the President of the CAS Appeals Division granted a national federation’s request to intervene in the case, and asserts the following interests:

“11. In the appeal before the Court of Arbitration it is not simply the taking away of a medal from an individual athlete. The effect of the decision challenged has the result of diminishing the accolades of medals earned by the TTCF athletes at the cycling event. This is where the TTCF has an interest.

12. Moreover, the decision has the potential to adversely affect not just the Appellant athlete, but the reputation of the other athletes and the reputation of the TTCF and cycling in Trinidad and Tobago generally.

13. This consequently is not an insular decision but a decision with national and international adverse consequences. (. . .)

17. Above all the TTCF may present a perspective other than that represented relative to that of the Appellant athlete [and] will be able to render some assistance to the appeal body in reaching a fair decision.

20. The TTCF therefore, under the auspices of its Constitution, wishes to defend and represent the interests of its cycling team who suffered both the disqualification of their results and the confiscation of their team won gold medals as it is the interest of the Federation to protect and seek the best interests of their cyclists”.

45. On 13 January 2020, the CAS Court Office acknowledged receipt of the Appeal Brief and informed the Respondent that it should submit its Answer within twenty (20) days of receipt of this letter by courier.
46. By letter of the same date, the CAS Court Office requested that the Parties file their respective positions to the TTCF’s request for intervention by 20 January 2020.
47. On 20 January 2020, the Respondent notified the CAS Court Office of its appointment of Mr Antonio Quintero and Ms Elena Mundaray, de Carrero & Quintero, Caracas, Venezuela as its legal counsel.
48. On 20 January 2020, the Appellant responded that he has no objection to the TTCF’s intervention request.
49. On 20 January 2020, the Respondent objected to the TTCF’s intervention on the grounds the TTCF *“is not impartial on this matter because it is their athlete, “would act as Attorneys for the athletes”, and “wants to appear before CAS as an independent party to defend the athlete and provide new arguments [which would] delay the case”*. The Respondent also noted that the TTCF is *“not part of the arbitration agreement for the appeal because [it was] not part of the disciplinary procedure”*.
50. On 30 January 2020, the Respondent requested that the time for filing its Answer *“be extended by 21 days, from the time we had to file the answer that is the 5 of February 2020”*.
51. On 31 January 2020, the Appellant stated he *“has no objection to the requested extension for the filing of [Respondent’s] Answer”*, which the CAS Court Office granted in a 3 February 2020 letter to the Parties.

52. On 6 February 2020, the CAS Court Office informed the Parties that the Panel appointed to decide on the present proceedings was constituted as follows:

President: Prof. Matthew J. Mitten, Professor in Milwaukee, WI, USA

Arbitrators: Ms Janie Soublière, Lawyer in Beaconsfield, QC, Canada
Judge Martina Spreitzer-Kropiunik, Judge in Vienna, Austria

53. On 19 February 2020, the CAS Court Office informed the Appellant, the Respondent and the TTCF that the Panel dismissed the TTCF's 9 January 2020 intervention request and invited the TTCF to submit an *amicus curiae* brief in this matter under Art 41.4. of the CAS Code. It informed the Parties that the reasons thereof would be explained in the final Award.

54. The Panel denied the TTCF's intervention request for the following reasons:

a) R41.4 of the CAS Code (*Joint Provisions on Joinder and Intervention*) provides:

“A third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing. (...) After consideration of submissions by all parties concerned, the Panel shall determine the status of the third party and its rights in the procedure. After consideration of submissions by all parties concerned, the Panel may allow the filing of amicus curiae briefs, on such terms and conditions as it may fix”.

b) In CAS 2015/A/4259, the Panel determined that the clear and express language of R41.4 provides that *“there are two conditions foreseen to accept a request for intervention. First, there must be an arbitration proceeding pending and secondly, the party requesting the intervention must be either bound by the arbitration agreement or the other parties must agree in writing to its request for intervention”.*

c) *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, (Despina Mavromati & Matthieu Reeb, Wolters Kluwer 2015), explains:

“[S]atisfaction of one of R41.4's two conditions is required to permit intervention in a CAS arbitration proceeding because ‘both conditions are linked to the contractual nature of arbitration, which relies on the consent of the parties and gives the power to arbitrators to rule on a specific case (pp. 285-86);

[T]he extension of an arbitration agreement to third parties entails that all parties intended to subject themselves to the same arbitration (p. 289);

The arbitration agreement should not be extended to the non-signatories and the participation of third parties to the arbitration should only be possible for parties who explicitly agree on this or are bound by an arbitration agreement. (p. 286)”

d) Regarding the second prong of the R41.4 CAS Code basis for intervention, which requires written agreement to it by the intervenor and all other Parties, this requirement is not met because the Respondent has objected to the TTCF's

intervention request.

- e) Regarding the first prong of the R41.4 CAS Code basis for intervention, the TTCF has not explained the basis of its assertion that it is “*a party bound by the arbitration agreement*” providing the basis of the Panel’s jurisdiction in this case. In relevant part, Article 12.2.2 (“*Persons Entitled to Appeal*”) of the PASO ADR states that the “*following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) Panam Sports; (c) the relevant International Federation; (d) the National Anti-doping Organization of the Person’s country of residence (. . .); and (f) WADA*”. Pursuant to Article 12.2.2 of the PASO ADR, the Appellant has the express right to appeal the Disciplinary Commission Decision invalidating both his results in the Panam Games team and individual sprint cycling competitions in this arbitration proceeding. However, this article does not expressly list an athlete’s National Federation (or even his National Olympic Committee) as a ‘Person’ entitled to appeal a disciplinary sanction for a member athlete’s ADRV. Nor does Article 13.2.3 of the WADC, which is substantially identical to Article 12.2.2 PASO ADR list a National Federation as a party with the right to appeal a disciplinary consequence for an athlete’s ADRV to the CAS.
- f) Although the PASO ADR broadly defines “*Person*” as a “*natural Person or an organization or other entity*”, Article 12.2.2 of the PASO ADR explicitly requires that the “*Person*” “*must be the subject of the decision being appealed*”, which is the Appellant (not the TTCF). The TTCF does not assert or provide any documentation that the Appellant or any of the other individual athletes who competed for the Trinidad & Tobago team in the team sprint cycling competition for the Panam Games on 1 August 1 2019 authorized either it or its legal counsel to represent them in this CAS arbitration proceeding. As the National Federation for the sport of cycling in Trinidad and Tobago, the TTCF has a legitimate interest in the potential adverse effects of the Disciplinary Commission Decision (e.g. “*diminishing the accolades of medals earned by the TTCF athletes at the cycling event*”; “*reputation of the other athletes and the reputation of the TTCF and cycling in Trinidad and Tobago generally*”), but it does not provide a valid basis under R41.4 of the CAS Code for permitting the TTCF to intervene as a party in this case.
- g) CAS 2015/A/3874, which simply states that the President of the CAS Appeals Arbitration Division permitted a national soccer federation to intervene in a dispute arising out of UEFA disciplinary sanctions imposed on the intervenor and another national soccer federation for racist and discriminatory chants by fans during a game between their national teams, is factually distinguishable. This award, in which the Panel resolves the merits of the underlying dispute, does not consider why the national soccer federation was permitted to intervene in that case or provide any analysis or reasoning that supports the TTCF’s request to intervene in this proceeding. Nor does the TTCF explain how or why this CAS award supports its intervention request pursuant to Article R41.4 of the CAS Code.
- h) Based on the express language of Article R41.4 of the CAS Code and CAS jurisprudence interpreting its intervention requirements, and because Article 12.2.2 of the PASO ADR does not expressly list a National Federation as a party entitled

to appeal a disciplinary sanction imposed on an athlete for his ADRV, the Panel denies the TTCF's request to intervene as a party in this arbitration proceeding.

- i) Because the TTCF has a legitimate interest in the potential adverse effects of the Disciplinary Commission Decision, the Panel will permit the TTCF to file an *amicus brief* in this arbitration proceeding under Article R41.4 of the CAS Code.
55. On 26 February 2020, which was within the agreed extension of time, the Respondent filed its Answer.
56. On 5 March 2020, the CAS Court Office requested that the Appellant inform it "*whether or not he maintains his Request for a Stay no later than 9 March 2020.*"
57. On 6 March 2020, the Appellant confirmed his Request for a Stay of the Disciplinary Commission's 15 November 2019 Decision.
58. On 6 March 2020, the TTCF submitted its Brief for *Amicus Curiae* in support of the Appellant's Case.
59. On 26 March 2020, the Panel issued a reasoned Order denying the Appellant's Request for a Stay of the Disciplinary Commission's 15 November 2019 Decision because "*the Appellant has not demonstrated that a stay of the Disciplinary Commission's invalidation of his cycling race results during the 2019 Pan Am Games pending final resolution of this arbitration proceeding is required to prevent irreparable harm to his reputation or financial interests*".
60. On 2 April 2020, the CAS Court Office, on behalf of the President of the Panel, sent an Order of Procedure to the Parties, which was signed and returned by the Appellant on 6 April 2020 and by the Respondent on 7 April 2020.
61. On 9 April 2020, the Panel held a Hearing by videoconference, which was organized by CAS Counsel Ms. Andrea Sherpa-Zimmermann from Lausanne, Switzerland, that lasted approximately three hours. Mr. Phillip and Ms. Hadeed participated from Ft. Lauderdale (USA) along with his counsel Mr. Marcus, who was in Port au Prince (Trinidad and Tobago). On behalf of the Respondent, Mr. Sisniega participated from Mexico City (Mexico) along with its counsel Mr. Quintero and Ms. Mundaray from Caracas (Venezuela). The Panel members conducted the Hearing from their respective locations: Prof. Mitten (Chicago, USA); Ms. Soublière (Beaconsfield, Canada); and Judge Spreitzer-Kropiunik (Vienna, Austria). At the beginning of the Hearing, the Parties' counsels confirmed the Panel's jurisdiction and that this appeal is admissible. Mr. Phillip and Ms. Hadeed testified during the Hearing. Before the Hearing was closed, each of the Parties and their respective counsel acknowledged receiving a full and fair opportunity to be heard.

IV. SUBMISSIONS OF THE PARTIES AND AMICUS CURIAE

A. The Appellant

62. The Appellant's submissions are summarized as follows with other relevant facts or submissions referred to where relevant in our reasons

a) The composition of the Doping Review Panel

- Article 7 of the PASO ADR deals with Results Management and Article 7.1.1.1. in outlines the preliminary review process to be conducted by a Doping Review Panel.
- The Appellant claims that Mr Mike Fennel, as Chairman of the Pan Am Sports Disciplinary Commission, did not disclose the names of the members of the Doping Review Panel, although he was legally required to do so and the Appellant specifically asked for such names in a letter dated 13 August 2019.
- The Appellant further refers to another letter dated 14 August 2019, in which Mr Fennel states succinctly that the Chairman of the Medical Commission would “*preside over*” of the Doping Review Panel in contradiction to Article 7.1.1.1 of the PASO ADR, according to which the chair of the Medical Commission only appoints the members of the Doping Review Panel, but does not preside over it.
- The Appellant questions the role of the Chairman of Medical Commission on the Doping Review Panel, and whether or not a conflict of interest arose, whether a Doping Review Panel was even appointed and who composed it.

b) The structure and contents of the Disciplinary Commission Decision

- The Appellant submits that the Respondent's Disciplinary Commission Decision lacks the basic elements of an acceptable reasoned decision that should be produced by a Major Event Organization and refers to the template provided by WADA in its 2014 Results Management, Hearing and Decisions Guidelines (“RM Guidelines 2014”).
- The objective decision is only a bare skeleton, contains only a few factual elements, makes a cursory reference to the PASO ADR and provides no reasons for the consequences imposed on the athlete.
- The Disciplinary Commission Decision should have justified the disqualification of his individual sprint cycling competition result vis a vis the “*unless fairness requires otherwise*” exception in Article 10.3 of the PASO ADR the Appellant relied upon in his defence.

c) Art 10.3 PASO ADR “*unless fairness requires otherwise*”

- The Appellant proposes what he considers to be a correct application of Article 10.3 of the PASO ADR insofar as the individual silver medal is concerned which would justify not disqualifying his results because fairness required otherwise:
 - o There was no positive test with the individual sprint on August 3, 2019,

- The ADRV involves THC, a Specified Substance, which, according to the 2015 WADC is “*more likely to have been consumed ... for a purpose other than the enhancement of sport performance*”,
- That cannabinoids are only prohibited in-competition (citing UCI v Luca Paolini Case ADT 02.2015) and are a threshold substance with a Decision Limit of 180 ng/mL, meaning that the estimated concentration detected in the Appellant’s sample (193ng/mL) was barely above the Decision Limit.

d) Proportionality

- In the circumstances of this case a proportional sanction would be a reprimand and a supervised period of rehabilitation in the Appellant’s country of residence.

e) The breach of confidentiality and reporting provisions

- By letter dated 17 December 2019, the Respondent appears to have circulated to its member National Olympic Committees a document providing updates on doping controls that took place during the 2019 Panam Games.
- Two documents were publicly disclosed, the circular itself and an accompanying table showing the names of the athletes, the countries that they represented, the substance found in their system and the legal status of the matter.
- That document incorrectly stated that the Appellant’s matter was closed given that his appeal before this Panel was pending.
- This procedure contradicts Art. 13.1.6 of the PASO ADR, which provides, among others that:

“ Panam Sports shall ensure, that information concerning Adverse Analytical Findings, Atypical Findings, and other asserted anti-doping rule violations remains confidential until such information is Publicly Disclosed in accordance with article 13.3.1 and shall include provisions in any contract entered into between Panam Sports and any of his employees (...), contractors, agents and consultants, for the protection of such confidential information as well as for the investigation and disciplinary of improper and/or unauthorised disclosure of such confidential information.”

- The Appellant submits that no such notice was ever given to him.
- Around 26 December 2019, the Respondent issued a media release, in which it updated the Lima 2019 medal table and reported the Appellant’s disqualifications resulting from his ADRV.

- This media release is dated 3 days after the CAS had communicated to both Parties on 23 December 2019 that the President of the Appeals Arbitration Division or her deputy would rule on the question as to whether there would be a stay of the Decision.
- The Appellant submits that this public disclosure must be strongly condemned and that appropriate consequences as contemplated under Article 3.3 of the RM Guidelines should be imposed on the Respondent:

“The Results Management face is confidential. ADOs are encouraged to strictly limit access to, and disclosure off, information collected or processed during this phase solely on a need-to-know basis. Premature breaches of confidentiality could have serious consequences and result in significant legal claims being made by the Person(s) affected (...).”
- A similar provision can be found at Article 3.2 of the WADAs International Standards for the Protection of Privacy and Personal Information (ISPPPI) which states, *that Personal Information includes, but is not limited to, information that relates, inter alia, to an athlete’s name and anti-doping test results (...).*
- The Respondent’s public reporting of its decision to disqualify both of the Appellant’s results prior the final appellate decision being rendered is a breach which warrants grave consequences.
- Specifically, Appellant submits that the Respondent’s breach of the confidentiality requirements of Article 13 of the PASO ADR and the ISPPPI by publicly disclosing his ADRV and its consequences, after his appeal arbitration was filed with the CAS, justifies *“nullification of the entire doping procedure in the present case”*. And that such nullification *“is a fair and reasonable consequence for the Respondent’s blatant disregard of the relevant anti-doping regulations and its contempt for the directives of the CAS”*.

f) The Appellant’s Request for relief

The Appellant requests:

“11. The Cyclist appeals against the Decision of the Commission to order the return of both the gold and the silver medals won by the Cyclist during the 2019 Pan Am Games. Notwithstanding the Cyclist’s earlier willingness during the disciplinary hearing to cede the gold medal won by in the men’s team sprint event, new developments in the anti-doping world arising after the conclusion of the hearing have led to a reversal of the Cyclist’s earlier position regarding that medal.

12. The Cyclist maintains, as he did during the disciplinary hearing, that, in the interest of fairness, the Commission should not have ordered the return of the silver medal won in the individual sprint.

13. In light of the foregoing, the Cyclist respectfully asks that the CAS Panel rule as follows:

13.1 that the Cyclist's appeal against the Decision be deemed admissible;

13.2 that the execution of the Decision be stayed pending the outcome of this appeal;

13.3 that the Decision be set aside in full;

13.4. that the gold and silver medals won by the Cyclist be ordered to remain with him;

13.5 that the Respondent be ordered to pay the Cyclist the costs that he has incurred in lodging this appeal.”

B. The Respondent

63. The Respondent's submissions are summarized as follows with other relevant facts or submissions referred to where relevant in our reasons:

a) The composition of the Doping Review Panel

- The Doping Review Panel is not a part of the disciplinary procedure and it was designated. There is no evidence whatsoever that the Doping Review Panel did not conduct the review referred to in article 7.3 of the PASO ADR.
- Although the Appellant in his letter of 13 August 2019, requested to know who were the persons that comprised the Doping Review Panel, and was later provided their names, he has made no argument explaining how this affected his rights.

b) The structure and contents of the Disciplinary Commission Decision

- The structure and composition of the decision is valid in all respects and it meets all requirements.
- The Disciplinary Commission is not under any obligation to mirror the 2014 RM Guidelines 2014 as they are not mandatory, as confirmed in the Introduction and Scope section of the document.
- With respect to the review of the fairness exception, the Appellant does not show how the limitation would represent an excessive restriction of his personal freedom under Article 27 of the Swiss Civil Code. He is by no means exposed to the arbitrary whim of PASO since he had the opportunity to claim all the available remedies.

c) Art 10.3 PASO ADR “*unless fairness requires otherwise*”

- The Appellant's ADRV occurred in connection with an In-Competition test in an individual sport during a team competition. Thus, it must be concluded

that the Athlete shall be disqualified, removing all the results obtained and with consequent forfeiture of the gold medal.

- Concerning for the Appellant's participation in the individual sprint competition, he incorrectly claims that the *lex mitior* doctrine should apply to his disqualification because, according to him, fairness requires otherwise. However, the 2015 WADC applies to this matter and not the 2021 WADC, which will only be effective 1 January 2021.
- In any case, the application of *lex mitior* could not eliminate the Appellant's disqualification or the forfeiture of medals, points and prizes because Articles 9 and 11 remain substantially unchanged in the 2021 WADC.
- The Appellant does not argue his fault or negligence or his lack of significant fault or negligence.
- An athlete holds the evidentiary burden of establishing the source of the prohibited substance in his body, not the anti-doping organization.
- According to the Appellant's own witness statement, he used a vape pen which contained nicotine and THC on 27 July 2019. The Respondent argues that the Appellant's contention that he consumed the THC 5 days before the sample collection while still returning an AAF with an estimated concentration of THC of 193 ng/mL is not plausible.

d) Proportionality

- The Respondent rejects the suggestion that a proportional sanction would be a reprimand and a supervised period of rehabilitation in the Appellant's country of residence.
- Pursuant to the PASO ADR, the Respondent's Disciplinary Commission has established limits to its jurisdiction and can only decide on the consequences of the ADRV applicable during the Panam Games event period. All other consequences that extend beyond the Panam Games (e.g. period of ineligibility for other events) shall be referred to and decided by the Appellant's International Federation.
- If an ADRV is established, pursuant to Articles 9, 10 and 11 of the PASO ADR, "*the sanctions are the disqualification of the event including forfeiture of any medals and prizes, there is no possibility. Therefore, the sanction is proportionally (sic) to the facts established during the disciplinary procedure.*"

e) The breach of confidentiality and reporting provisions

- According to Article 13.2.1. of the PASO ADR, the Respondent was entitled to publicly disclose that an ADRV had been asserted against an athlete. Therefore, there was no breach of confidentiality.

- Should the Panel decide that the Respondent committed a breach of confidentiality, such breach can neither be remedied under the PASO ADR or the WADC nor render the whole case null and void.

f) The Respondent's Request for relief:

“The Respondent requests for this Panel:

- To dismiss the Appeal.*
- To order the Appellant to pay the arbitration costs, as well as a contribution towards the PASO's legal fees and other expenses incurred in connection with these proceedings, in accordance with CAS Code Article R64.5. “*

C. The Amicus Curiae filed by the TTCF

64. The *Amicus Curiae's* submissions are summarized as follows:

- The TTCF's men's sprint cycling team that participated in the Panam Games consisted of four athletes, only one of whom had an AAF.
- The Appellant's recreational use of THC, which is only prohibited in-competition, occurred outside the sporting context. He did not use the THC to enhance his athletic performance during the Panam Games and has established that he has no significant fault for the ADRV.
- The circumstances under which the Appellant committed his ADRV requires reconsideration of the disqualification of his individual race results and subsequent forfeiture of the gold medal won by the Trinidad and Tobago cycling team in the team sprint competition.
- The Panel should consider that the foregoing consequences of the Appellant's ADRV have the *“potential to adversely affect not just the Appellant athlete, but the reputation of other athletes and the reputation of the TTCF and cycling in Trinidad and Tobago generally”*.
- Specifically, the TTCF submits that here there was no evidence that the Appellant used the THC to enhance his performance or that it positively impacted his performance; that fairness requires that a lesser penalty, if any, be imposed; and that the Panel ought to consider the broader considerations of the national interest and the other non-defaulting athletes when reaching its decision.

V. JURISDICTION

65. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the

parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.”

66. Article 12 of the PASO ADR provides in relevant part as follows:

“Article 12.1 Decisions Subject to Appeal

Decisions made under these Anti-doping Rules may be appealed as set forth below in Article 12.2 through 12.6 . . . Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.

Article 12.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Recognition of Decisions and Jurisdiction

A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation . . . may be appealed exclusively as provided in this Article 12.

Article 12.2.1 In cases arising from the Event, the decision may be appealed exclusively to CAS.

Article 12.2.2 Persons Entitled to Appeal

The following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed...”

67. The Appellant, an athlete, is appealing the Disciplinary Commission’s Decision disqualifying his competition results (i.e., consequences) for his anti-doping rule violation during the 2019 Pan Am Games, thereby satisfying the requirements of Article 12 of the PASO ADR. In its Answer, the Respondent acknowledges that the CAS has jurisdiction regarding the Appellant’s appeal of the Disciplinary Commission’s Decision.

68. In the Order of Procedure as well as at the beginning of the Hearing, both the Appellant and the Respondent confirmed the Panel’s jurisdiction.

69. Therefore, the Panel holds that it has jurisdiction to adjudicate the merits of this appeal.

VI. ADMISSIBILITY

70. In relevant part, Article R49 of the CAS Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or 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.”

71. Article 12.6 ('Time for Filing Appeals') of the PASO ADR provides that "*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 . . .*"
72. The Appellant was notified of the Disciplinary Commission Decision on 15 November 2019. As undisputed by the Respondent and confirmed both in the Order of Procedure and at the beginning of the Hearing, the Appellant filed his appeal with CAS against the Disciplinary Commission Decision on 28 November 2019, within the prescribed 21-day deadline.
73. Therefore, this appeal is admissible.

VII. APPLICABLE LAW

74. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

75. Pursuant to Article R58 of the CAS Code, the Panel will resolve the Parties' dispute in accordance with the PASO ADR, and subsidiarily Mexican law, because the Respondent is domiciled in Mexico.

VIII. MERITS

76. In relevant part, Article R57 of the CAS Code provides:

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. . ."

77. Pursuant to Article R57 of the CAS Code, the Panel has the authority to provide *de novo* review of the following issues raised by this appeal because "*the mission of the CAS is that of an appeal body and not that of a review body.*" CAS 2012/A/2924, at 47. "*Where, as is the case with Article R57 of the Code, rules or legislation confer on an appellate body full power to review the facts and the law, no deference to the tribunal below is required.*" CAS 2011/A/2518, at ¶14.

78. In CAS 2017/A/5155, at ¶45, the CAS Panel explained:

"[T]he whole purpose of Article 57 of the CAS Code giving a CAS panel power to review a case brought before it on a de novo basis means that procedural complaints ventilated on a party's behalf such as the fact to have been denied the opportunity to defend one's self has no purchase. In 98/208 a CAS panel said at para 10 "the virtue of an appeal system which allows for a full re-hearing before an appellate body is that issues of the

fairness or otherwise before the tribunal of first instance fade to the periphery”. The de novo hearing itself cures such procedural defects.”

A. Alleged Procedural Defects in Respondent’s Results Management, Disciplinary Process, and Public Reporting Regarding Appellant’s ADRV

79. The Appellant submits that the Respondent’s failure to comply with its own and other rules and regulations for the results management, disciplinary process, and public reporting in connection with his ADRV, which he characterizes as a “*slipshod approach to compliance with applicable rules and regulations*”, requires invalidation of the Disciplinary Commission Decision, which imposed disciplinary sanctions for the consequences of his ADRV.
80. Specifically, the Appellant contends that the Respondent’s breach of applicable procedural rules and regulations regarding the following aspects of its results management, disciplinary process and public reporting regarding his ADRV are so egregious that the Panel should invalidate the Disciplinary Commission Decision in its entirety and restore his cycling competition results in the 2019 Panam Games and medals won: a) composition of its Doping Review Panel; b) structure and contents of the Disciplinary Commission Decision; and c) breach of confidentiality by public reporting of its decision to disqualify the Appellant’s competition results before final resolution of this appeal procedure.

a) Composition of Doping Review Panel

81. The Appellant submits that Respondent violated Article 7.1.1.1 of the PASO ADR by failing to identify the members of the Doping Review Panel after his request that it do so; creating a conflict of interest by having the Chair of the Medical Commission preside over the Doping Review Panel; and not having the Doping Review Panel to issue a written or reasoned decision.
82. The Respondent submits that the Doping Review Panel is not part of its ADRV disciplinary procedure, that the Chair of the Medical Commission appointed its members but did not preside over it, that it properly performed its function, and that any failure to inform the Appellant of the identify of members does not invalidate its review of the Appellant’s AAF.
83. The purpose of Article 7 of the PASO ADR (and its counterpart Article 7 of the WADC) is to set out a Doping Review Panel’s responsibility in the preliminary phase of the results management process: to determine if there were any departures from any international standard that could have invalidated the procedures; to determine if there are TUEs on file that have been granted or will be granted; and then to proceed with the initial notification of the AAF to the Appellant with an explanation of his rights attached thereto (which the Appellant does not contend failed to occur or was deficient in any respect).
84. According to Article 7.1.1 of the PASO ADR, the Doping Review Panel is composed of a chair and two members, who are appointed by the Chair of the Medical Commission. This provision outlines the requirements of the panel’s preliminary review of an ADRV.

85. The Panel finds the chair and two members of the Doping Review Panel (all of whom are physicians who are not alleged to have any conflict of interest) were appointed by the Chair of the Medical Commission in accordance with Article 7.1.1 of the PASO ADR. It also finds that there is no conflict of interest even if the Chair of the Medical Commission effectively presides over this preliminary review panel. By virtue of his title and field of expertise, the President of the Medical Commission is likely well qualified and the appropriate person to do so.
86. The Panel finds no evidence that the Doping Review Panel did anything other than to conduct an appropriate review of the Appellant's AAF. The Panel notes that there was no granted TUE for the Appellant on file and that a TUE would not be granted retroactively for the use of THC. The Appellant does not allege that there were any departures from any International Standard that could cast doubt on the validity of his AAF, and the Panel does not find any evidence that one occurred. The Panel concludes that the Doping Review Panel properly determined that the Appellant should be notified of his AAF and that this matter should proceed further pursuant to Article 7.2.4 of the PASO ADR.
87. The Panel rejects the Appellant's contention that the Doping Review Panel was required to issue a written and reasoned decision as part of its review of his AAF pursuant to Article 7.2 of the PASO ADR. Neither the PASO ADR, the WADC, any International Standard, nor the "RM 2014 Guidelines" have this requirement. Moreover, the Appellant does not dispute the validity of his AAF.
88. In summary, the Panel finds no breach of the applicable procedural rules and regulations with regards to the Respondent's Doping Review Panel and that any failure to inform the Appellant of the identify of its members does not invalidate its review of the Appellant's AAF.

b) Structure and Contents of Disciplinary Commission Decision

89. The Appellant argues that the Disciplinary Commission Decision lacks the basic elements of an acceptable reasoned decision, as should be expected from a Major Event Organisation, and relies wholly on the RM 2014 Guidelines in support of its allegation. Specifically, he argues that to comply with the RM 2014 Guidelines requirements, the Disciplinary Commission Decision should have justified the disqualification of his individual sprint cycling competition result despite the "*unless fairness requires otherwise*" exception in Article 10.3 of the PASO ADR. In other words, it should have provided more ample reasons than simply "*there are no facts requiring the fairness principle in said article to be applied in this case*" as to why fairness did not require this competition result to be disqualified.
90. The Panel agrees with the Respondent's assertion that strict compliance with the RM Guidelines is not mandatory for Anti-Doping Organisation ('ADOs'), which is confirmed by the Introduction and Scope section of the RM Guidelines:

"These Guidelines are not mandatory but are intended to provide clarity and additional guidance to ADOs as to the most efficient, effective and responsible way of discharging their responsibilities in terms of Results Management."

91. Although the Introduction and Scope section of the RM Guidelines also recommend that ADRV disciplinary panels “*issue fully reasoned and comprehensive decisions... to promote harmonization in the administration of potential anti-doping rule violations*”, it was not mandatory for the Disciplinary Commission to fulfill all of the RM 2014 Guidelines’ recommendations.
92. The Panel finds that the Disciplinary Commission Decision provided all the essential elements of a reasoned decision as outlined at Article 5.2.2 of the RM 2014 Guidelines (including Jurisdiction and applicable rules, Factual background, ADRV-Rule(s) violated, Sanction). The Panel also finds that the Disciplinary Commission considered the Appellant’s arguments that it should apply the fairness exception in Article 10.3 of the PASO ADR although it did not explicitly state why fairness did not require his results to be upheld despite his ADRV. The factual circumstances of the Appellant’s ADRV and listing of his counsel’s rejected arguments provide the Disciplinary Commission’s implicit reasons for disqualifying his individual sprint cycling competition result. Nevertheless, even if the Disciplinary Commission Decision was so procedurally defective that it fundamentally breached the Appellant’s natural justice rights (which the Panel determines were not violated), Article R57 of the CAS Code ensures that any procedural effects can be cured by this appeal arbitration proceeding. Pursuant to Article R57 of the CAS Code, the Panel is empowered to exercise *de novo* review with “*full power to review the facts and the law*” with the authority to “*issue a new decision which replaces the decision challenged*”. See CAS 2017/A/5155, at ¶45 (“*the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the proceedings before the authority of the first instance fade to the periphery*”); *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, M. Reeb & D. Mavromati, p. 514, par 30, citation 56.
93. The Panel finds that no material procedural defects occurred in connection with the structure or contents of the Disciplinary Commission Decision (or the composition of the Doping Review Panel) and recognizes that any procedural defects in either internal process alleged by the Appellant regarding his ADRV will be effectively remedied by its *de novo* review in accordance with Article R57 of the CAS Code.

c. Breach of Confidentiality by Premature Public Disclosure of ADRV and Disqualification of Competition Results

94. The Appellant argues that the Respondent violated the confidentiality requirements of Article 13 of the PASO ADR and the ISPPPI by publicly disclosing his ADRV and disqualification of his results in the two sprint cycling competitions in which he participated as well as the reallocation of the medals in those competitions after his appeal arbitration was filed with the CAS on 28 November 2019 and pending before the Panel:
- On 17 December 2019, the Respondent circulated to all its National Olympic Committees a document titled “*Lima 2019 Pan American Games Positive Anti-Doping Control Results*”, which reported the Appellant’s ADRV and disqualification of his results in the cycling team sprint and individual sprint

events. This document reported the “*Status*” of Appellant’s ADRV and its consequences as “*closed*”.

- On 26 December 2019, the Respondent issued a press release stating that the Panam Sports Executive Committee “*officially approved the decisions of the Disciplinary Commission and the respective disqualifications of the athletes involved, and this has generated the changes we are reporting today. With this, we close the medal table of our Games*”.

95. By prematurely circulating these documents and publicly reporting the information therein, the Appellant argues that the Respondent breached its own rules protecting his confidential personal information and that such an egregious disregard of its rules and the CAS appeal process should invalidate the entire doping control and results management processes, including the Disciplinary Commission Decision. The Appellant submits that the confidentiality of the results management process is paramount relying on Annex M of the RM 2014 Guidelines, which illustrates that the results management process only ends with the issuance of a final appellate decision (or waiver of the right to appeal), and that pursuant to Article 3.3 of the RM 2014 Guidelines, premature breaches of confidentiality should have serious consequences, including his requested relief in this arbitration proceeding.
96. The Respondent asserts that it did not violate Article 13 of the PASO ADR by improperly disclosing confidential personal information regarding the Appellant’s ADRV and its consequences and that even if it did, the Disciplinary Commission Decision cannot be nullified on these grounds.
97. The Panel accepts the Appellant’s submission that the Respondent breached his right to confidentiality by publicly reporting his protected personal information before this appeal proceeding was finally resolved. However, not all the Appellant’s contentions are supported by the text of Article 13 of the PASO ADR.
98. The Appellant’s interpretation of Article 13.1 of the PASO ADR is that it prohibits the Respondent from publicly disclosing his disqualification to others before he had been given notice that such disclosure was imminent.
99. This is neither how Article 13.1 of the PASO ADR is drafted nor how this Panel interprets it. Article 13.1 of the PASO ADR deals with asserted anti-doping rule violation, as opposed to decisions or the disposition of matters, which are dealt with at Articles 13.2 and 13.3 of the PASO ADR.
100. The notice of an asserted ADRV is one of the many phases of the results management process outlined in Article 7 of the PASO ADR. It occurs when an ADO asserts the commission of an anti-doping rule violation as a result of *inter alia* an athlete admitting an ADRV or waiving their B sample analysis or as a result of the B sample analysis confirming the A sample finding. The notice of an asserted anti-doping rule violation is the charge which then leads, or not, to a hearing and the next steps in the results management and disciplinary processes.
101. Pursuant to Article 13.1 of the PASO ADR, the notice of an asserted ADRV shall occur by delivering notice to the Athlete, the Athlete’s National Anti-Doping Organisation,

International Federation and WADA. Here, the “*notice*” of an asserted ADRV violation was delivered to the Athlete in August 2019 pursuant to Article 7 of the PASO ADR both upon his admission of the ADRV and the results of the B sample analysis confirming the AAF. Notice of the asserted ADRV was also sent simultaneously to all other relevant organisations in accordance with Article 13.1.2 of the PASO ADR. After which, the Respondent could publicly disclose the same because notice had been provided to the Athlete and all other relevant entities pursuant to Articles 13.1.2 and 13.1.6 and 13.3.1 of the PASO ADR which read:

“The identity of any Athlete or other person who is asserted by the Panam Sports to have committed an anti-doping rule violation may be Publicly Disclosed by PanAm Sports only after notice has been provided to the Athlete or other Person in accordance with Article 7 and simultaneously to WADA and the National Anti-Doping Organisation and international Federation of the Athlete or other person in accordance with Article 13.1.2”.

102. The Respondent provided the Appellant notice of the asserted ADRV pursuant to Articles 7 and 13.1 of the PASO ADR and on the evidence, although it was authorized to do so, neither publicly disclosed such assertion prior to notifying him of the asserted ADRV nor after doing so. Therefore, the Panel finds there are no procedural defects or breaches of confidentiality committed by the Respondent in contravention to Article 13.1 of the PASO ADR.
103. On the other hand, the Panel finds the Appellant’s submissions and arguments with regards to the Respondent’s premature public disclosure in contravention to Article 13.3.2 of the PASO ADR to be convincing. For the following reasons, the Panel concludes that the Respondent breached Article 13.3.2 of the PASO ADR by publicly reporting its decision to disqualify the Appellant’s team and individual sprint cycling results and consequent medals reallocation prior to the final appellate decision being issued in this matter.
104. Based on the express and unequivocal language of Article 13.3.2 of the PASO ADR, the Respondent could only publicly report its decision and the disposition of the matter in a 20- day period **after** this final appellate decision has been rendered:

*“No later than twenty **days after it has been determined in a final appellate decision** under Article 12.2.1, or such appeal has been waived, or a hearing in accordance with Article 8 has been waived, or the assertion of the anti-doping rule violation has not been timely challenged, Panam Sports must Publicly Report the disposition of the matter, including the sport, the anti-doping rule violated, the name of the athlete (...).”* (emphasis added).

105. On 17 December 2019, the Appellant had already filed with the CAS his appeal to the Respondent’s Disciplinary Commission Decision of 17 November 2019. The Respondent was fully aware of such appeal. No appellate decision had yet been rendered. Moreover, there was a possibility that these CAS proceedings might be stayed to a later date by the President of the Appeals Division. Therefore, it was not open to the Respondent to report publicly the disposition of the matter at that time as an appellate decision was certainly pending.

106. In addition, on 16 November 2019, the day after the Disciplinary Commission Decision was issued, Counsel for the Appellant wrote the Respondent indicating that an appeal was likely and that he was not consenting to disclosure of the Disciplinary Commission Decision to other parties other than those outlined in Article 13.3.1 of the PASO ADR (“*the local NADO, UCI and WADA*”).
107. The Respondent should not have publicly reported the disposition of this matter before this Panel’s reasoned award resolving Appellant’s appeal was rendered. While it will be open for the Respondent to report this decision publicly after a decision in this appeal has been issued, the Respondent breached Article 13.3.2 of the PASO ADR by publicly reporting the Appellant and his Team’s disqualification on 17 December 2019.
108. The Panel concludes that the Respondent’s foregoing public disclosures also breached the ISPPPI, which provides:
- “The purpose of the International Standard for the Protection of Privacy and Personal Information is to ensure that Anti-Doping Organizations apply appropriate, sufficient and effective privacy protections to the Personal Information they Process when conducting anti-doping programs, in recognition of the fact that Personal Information gathered in the anti-doping context can impinge upon and implicate the privacy rights of Persons involved in and associated with organized sport”.* (Part one ISPPPI).
109. Of specific relevance is Article 6.1 of the ISPPPI:
- 6.1 Anti-Doping Organizations shall only Process Personal Information:
- *on valid legal grounds, which can include compliance with legal obligations, performance of a public interest task, where necessary for reasons of substantial public interest, fulfillment of a contract or to protect the vital interests of the Participant and other Persons; or*
 - *where permitted, with a Participant’s or other Person’s consent, which shall be informed, freely given, specific and unambiguous, subject to the exceptions in Article 6.2.b, 6.3 and 6.4 of this International Standard.*
110. The Respondent failed to respect the principles of the ISPPPI, Article 14.3.2 of the WADC (the equivalent to Article 13.3.2 PASO Rules) and, on the evidence, did not obtain the Appellant’s consent before making such publication pursuant to Article 6.1 of the ISPPPI, even if the Appellant had expressly indicated to the Respondent on 16 November 2019 that it would only consent to disclosure of his disqualification to the local National Anti-Doping Organisation, UCI and WADA pending resolution of the Appeal.
111. In summary, the Panel finds that the Respondent breached both the ISPPPI and PASO ADR by publicly reporting the Appellant’s confidential personal information to the general public before its final appellate disposition of this matter.
112. As a consequence of the Respondent’s breach of its own rules, the Appellant submits that his entire case, from the sample collection to the results management of his ADRV

including the Disciplinary Commission Decision, should be declared null and void. While the Panel agrees in principle with the admonition in CAS 94/129 that “*the rule-makers and rule appliers must begin with being strict with themselves*”, the relief that the Appellant requests is neither prescribed nor within its jurisdiction and authority to grant.

113. Neither the PASO Rules, nor the ISPPPI, nor the CAS jurisprudence tendered to the Panel outline possible consequences to any such breaches of confidentiality. As a result, the remedy the Appellant seeks for this breach cannot be granted by the Panel.
114. Indeed, both the PASO Rules and ISPPPI offer little if anything in terms of applicable consequences that could remedy a breach of Article 13.3.2 of the PASO ADR or any breach of the ISPPPI respectively. Certainly, none along the lines of the ones proposed by the Appellant.
115. Other than the *CAS 2014/A/3598* award discussed below, the CAS precedent relied upon by the Appellant does not support the granting of its requested relief because the awards cited mostly present fundamental departures to doping control procedures or to the right to analyse or be present for the analysis the B sample, (e.g. *CAS 2002/A/385*; *CAS 2008/A/1607*; *CAS 2010/A/2161*), and not to premature public disclosure of the disposition of a matter whilst still in the results management process.
116. The right to restrictions to public disclosure and reporting in the course of results management procedures is not “*one of the few rights an athlete has in the course of the sample collection and test procedures*”, as stated in *CAS 2002/A/385*, ¶ 24 & 27, relied upon by the Appellant. The sample collection and test procedures are separate from the results management process.
117. In this case, the Appellant does not dispute the findings of the Respondent’s preliminary review under Article 7.1 of the PASO ADR, to the effect that there were no departures to any International Standard during the sample collection or analysis procedures which could reasonably have caused the AAF, and has admitted his anti-doping rule violation. He also does not argue that his any of his rights were breached in the course of the sample collection, test or analytical procedures. Therefore, logic dictates that the remedy for the Respondent’s confidentiality breach cannot be the invalidation of the undisputed test process or sample collection procedure or analytical result which led to the Appellant’s admitted anti-doping rule violation.
118. While the actions of the Respondent in prematurely reporting the Athlete’s disqualification for his admitted anti-doping rule violation were erroneous, they cannot be remedied by invalidating the entire anti-doping rule violation.
119. The Panel recognizes that its resolution of the Appellant’s appeal is the same as that of the Disciplinary Commission Decision (i.e., invalidation of his 2019 Panam Games results in the team and individual sprint cycling competitions), which the Respondent prematurely publicly reported. While this does not absolve the Respondent of responsibility for the breach of its confidentiality obligations, it certainly diminishes the harm that could have been potentially caused to the Appellant if his CAS appeal had been successful. If the Appellant nevertheless has suffered any harm caused by

Respondent's wrongful conduct, he may be able to seek damages in a judicial proceeding.

120. Although it has no jurisdiction or authority to nullify or void the prescribed consequences of his ADRV under Articles 9 and 11.4.1 of the PASO ADR (e.g., invalidation of his competition results in the 2019 Panam Games and loss of medals), is there any other relief the Panel can provide to remedy the Respondent's premature public disclosure of his confidential personal information?
121. As discussed above, none of the applicable PASO ADR, WADC, or ISPPPI rules and regulations expressly create or establish any remedies for a CAS Panel to impose as relief for any harm caused to an athlete whose confidential personal information was prematurely disclosed to the public by an ADRV results management authority.
122. CAS jurisprudence consistently has recognized that CAS arbitrators are not legislators. For example, CAS 2009/A/1910 states:

“CAS Panels interpret the various provisions in a manner which seeks to discern the intention of the rule maker, not to frustrate it. However, CAS cannot rewrite but can only interpret rules set forth by sports authorities in the light of general principles of law.”

123. Therefore, it is not appropriate for the Panel to create a new remedy that did not previously exist for the Respondent's breach of the ISPPPI or its own PASO ADR confidentiality provisions because neither of them expressly nor even implicitly provide for any such consequences. In this regard, the Panel both recognizes and agrees with a well-established principle of CAS jurisprudence: *“The Panel underlines that its duty is to impose a sanction in accordance with the applicable antidoping code and not to rewrite the rules”*. CAS 2018/A/5581. (emphasis added).
124. Although the Appellant did not request any relief pursuant to this provision in this proceeding, Article 11.5 of the ISPPPI appears to suggest that such a breach of confidentiality potentially could be remedied in a CAS arbitration proceeding:

*“11.5 Without prejudice to any other rights a Participant or Person may have under applicable laws, a Participant or Person shall be entitled to initiate a complaint with an Anti-Doping Organization where he or she has a reasonable, good-faith belief that an Anti-Doping Organization is not complying with this International Standard and each Anti-Doping Organization shall have a documented procedure in place for dealing with such complaints in a fair and impartial manner. In the event that the complaint cannot be satisfactorily resolved, **the Participant or Person may notify WADA and/or submit a complaint to CAS**, which will determine whether a violation occurred. Where the International Standard is not being adhered to, the relevant Anti-Doping Organization will be required to rectify the breach. Nothing in the standard prevents a Participant or Person from lodging a complaint with any competent authority responsible for the protection of privacy and personal data, and Anti-Doping Organizations shall cooperate with such authorities when investigating the complaint.”* (emphasis added).

125. While a notification from the Appellant to WADA may effectively result in a possible Corrective Action Report or non-compliance action directed by WADA to the Respondent, the filing of a “*complaint*” to CAS would result in a CAS Panel entering uncharted territory by attempting to resolve such a hypothetical complaint without clear jurisdiction and guidance. For example, it is unclear what type of “*complaint*” allegations might be submitted to the CAS; whether the CAS would have jurisdiction to resolve the allegations of the “*complaint*”; and what permissible scope of relief the CAS would be authorized to grant to remedy the harm caused by the proven allegations of a “*complaint*”. None of these issues are addressed in the current ISPPPI.
126. A similar concern was expressed by the CAS Panel in *CAS 2014/A/3598*:
- “The Panel notes that neither the UCI ADR, nor the WADA Code, nor the USADA Protocol provide for a specific penalty for a violation of the confidentiality provisions. As such, should the Panel grant Mr. Bruyneel relief, any relief granted is a matter of arbitral discretion to be exercised in the circumstances of the present case.”*
127. Considering the ISPPPI was not yet in effect at the time of the *CAS 2014/A/3598* award and that it was subsequently drafted and adopted - still without providing for any specific consequences for a breach of its provisions - the ongoing need to fill this omission is directed to the drafters of the ISPPPI. Greater particulars are necessary to assist CAS Panels better navigate the growing number of breaches of privacy and personal information related “*complaints*” that are likely be directed at the CAS in the imminent future as a result of recently enacted privacy regulations protecting athletes or other persons’ personal information.
128. The Panel echoes the findings of *CAS 2016/A/4903*, award of 16 April 2018, at ¶ 105 & 108, in which the Panel called upon FIFA to “*duly consider the findings of its award*” and held:
- “(…), considering the implications of such decision, the Panel finds that the matter should be dealt with first by FIFA, which is expected to duly consider the findings of this award. FIFA will then be able to determine whether to amend the regulations, or to adopt a different interpretation of the rule through circular letters, or otherwise, which is of course its prerogative”.*
129. Accordingly, considering the remedies that will foreseeably be sought out by athletes and other persons pursuant to Article 11.5 ISPPPI and for the benefit of future CAS Panels, this Panel invites and expects the legislators of the ISPPPI to duly consider the findings of this award and, as is their prerogative, determine to extent to which an amendment of Article 11.5 ISPPPI is necessary, notably with regards to its jurisdictional applicability, scope of relief before CAS and remedies resulting therefrom, in order to bring greater clarity to this provision.
130. In the interim, in an effort to fill the lacuna in the ISPPPI and by applying the same principles the Appellant relies upon in citing the *CAS 2014/A/3598* award, the Panel will grant limited relief for the Respondent’s violation of the Appellant’s right to confidentiality in exercising its discretion of allocating the costs of this proceeding between the Parties.

B. Disqualification of 1 August 2019 Individual and Team Sprint Cycling Results

131. As a disciplinary sanction for the Appellant's in-competition ADRV (i.e. AAF for THC), the Disciplinary Commission Decision disqualified his individual and the Trinidad & Tobago cycling team's results (first place and gold medal) in the 1 August 2019 team sprint cycling competition at the Panam Games pursuant to Articles 9 and 11 of the PASO ADR and 2015 WADC.

132. Article 9 of the PASO ADR **Automatic Disqualification of Individual Results**, which is identical to WADC Article 9, provides:

“An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes”.

133. In relevant part, Article 11.4. of the PASO ADR **Consequences for teams (outside of Team Sports)** provides:

“11.4.1. An anti-doping rule violation committed by a member of a team (outside of Team Sports) in connection with an In-Competition test automatically leads to Disqualification of the result obtained by the team in that Competition, with all resulting consequences for the team and its members, including forfeiture of any medals, points and prizes”.

134. The relevant Appendix 1 Definitions in the PASO ADR are as follows:

“Competition: A single race, match, game or singular sport contest. (. . .)

Individual Sport: Any sport that is not a Team Sport.

In-competition: For purposes of these Anti-Doping Rules, ‘In-Competition’ means the period commencing twelve hours before a Competition in which the Athlete is scheduled to participate through the end of such Competition and Sample collection process related to such Competition.

Team Sport: A sports in which the substitution of players is permitted during a Competition.”

135. In relevant part, the Comment to WADC Article 9 provides:

“(. . .) In sports which are not Team Sports but where awards are given to teams, action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation.”

136. In relevant part, WADC Article 11 **Consequences To Teams** provides:

*“11.2 **Consequences for Team Sports** If more than two members of a team in a team Sport are found to have committed an anti-doping rule violation during an event Period, the ruling body of the event shall impose an appropriate sanction*

on the team (e.g., loss of points, disqualification from a Competition or event, or other sanction) in addition to any Consequences imposed upon the individual athletes committing the anti-doping rule violation.

11.3 *Event Ruling Body may Establish Stricter Consequences for Team Sports* The ruling body for an event may elect to establish rules for the event which impose Consequences for team Sports stricter than those in Article 11.2 for purposes of the event.”

137. The Comment to WADC Article 11.3 provides:

“For example, the International Olympic Committee could establish rules which would require Disqualification of a team from the Olympic Games based on a lesser number of anti-doping rule violations during the period of the Games.”

138. The Appellant acknowledges that he committed an in-competition ADRV in an *Individual Sport* and does not dispute that it *“automatically leads to Disqualification of the result obtained in that Competition”* (i.e., mandatory disqualification of his individual race results in the 1 August 2019 team sprint cycling competition) pursuant to Article 9 of the PASO ADR. Nevertheless, in his Appeal Brief, the Appellant contends:

- the Respondent’s breach of the confidentiality requirements of Article 13 of the PASO ADR and the ISPPPI by publicly disclosing his ADRV and disqualification of his results in the two sprint cycling competitions in which he participated as well as the reallocation of the medals in those competitions after his appeal arbitration was filed with the CAS and before its final resolution justifies nullification of the Disciplinary Commission Decision disqualifying his individual race results in the 1 August 2019 team sprint cycling competition;

- as an alternative sanction to disqualification of his results in this competition, *“a proportionate sanction in the circumstances of this case would be a reprimand and a supervised period of rehabilitation in the Appellant’s country of residence”*; and

- the *lex mitior* principle supports the imposition of the foregoing alternative sanctions for his ADRV (i.e., an AAF for THC in his system) because cannabis will be characterized by the 2021 WADC as a substance of abuse (defined by Article 4.2.3 as *“Prohibited Substances which are frequently abused in society outside of the context of sport”*), thereby evidencing that the *“goal is rehabilitation not punishment”* for the use of prohibited recreational drugs.

139. In its *Amicus Brief*, the TTCF does not dispute the Respondent’s authority to enact or implement Article 11.4.1 of the PASO ADR pursuant to WADC Article 11.3 or that this provision is inconsistent with any rules of the UCI.

140. The TTCF also does not dispute that the Appellant committed an in-competition ADRV pursuant to Article 11.4.1 of the PASO ADR, which *“automatically leads to Disqualification of the result obtained by the team in that Competition”* (i.e., mandatory disqualification of the Trinidad & Tobago cycling team’s race results in the 1 August

2019 team sprint cycling competition, which is not defined as a “*team sport*” in the PASO ADR).

141. However, the TTCF submits that the Trinidad & Tobago cycling team’s race results should not be disqualified for the following reasons:

- “*there is no evidence that [the Appellant] utilized the drug to enhance performance or that it positively impacted his performance*”;
- “*fairness requires that a lesser penalty, if any be imposed*”; and
- “*the panel ought to consider the broader implications of the national interest and the other [three] non-defaulting athletes*” who competed in the team sprint cycling competition for Trinidad & Tobago.

142. The Respondent contends as follows:

- the Disciplinary Commission Decision validly disqualified the Appellant’s individual and the Trinidad & Tobago team’s team sprint cycling competition at the Panam Games pursuant to the mandatory sanction requirements of Articles 9 and 11 of the PASO ADR and 2015 WADC;
- “*There is nothing in the PASO ADR, nor in the [WADC] nor in the [ISPPPI] nor in the Jurisprudence of CAS stating that because of a breach of confidentiality this will lead to the nullification*” of an ADRV disciplinary process and imposition of required sanctions;
- the Disciplinary Commission Decision’s sanctions, which were imposed in accordance with the requirements of the WADC, are necessarily proportional; and
- because the 2021 WADC will not become effective until 1 January 2021, the principle of *lex mitior* is inapplicable.

143. The Panel relies on CAS 2017/A/4927, ¶71 which states:

“Article 9 of the IOC ADR leaves no room for any form of discretion to verify whether a finding of an anti-doping rule violation should not trigger the 'Automatic Disqualification of Individual Results.’”

144. Accordingly, the Panel determines that the Disciplinary Commission Decision appropriately disqualified the Appellant’s individual results and the Trinidad & Tobago cycling team’s results in the 1 August 2019 team sprint cycling competition, which are mandatory consequences for his in-competition ADRV under Articles 9 and 11.4.1 of the PASO ADR and 2015 WADC. See Article 10.3 of the PASO ADR and WADC Article 10.8 (recognizing “*automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9*”).

145. For the reasons in the foregoing section of this Award, the Panel rejects the Appellant’s contention that the Respondent’s breach of the confidentiality requirements of Article

13 of the PASO ADR and the ISPPPI justifies nullification of both his test results and the Disciplinary Commission Decision disqualifying his individual race results in the 1 August 2019 team sprint cycling competition.

146. The Panel also rejects the Appellant's contention that this is not a "*proportionate sanction in the circumstances of this case*" for his ADRV (i.e., an AAF for THC, a recreational drug that he allegedly did not use to enhance and did not enhance his performance in this cycling competition, the use of which is prohibited only in-competition) because the 2015 WADC "*has been found repeatedly to be proportional in its approach to sanctions*" for an ADRV. See CAS 2018/A/5739 at ¶3.
147. For the same reasons, the Panel cannot accept the TTCF's submission that "*fairness requires that a lesser penalty, if any be imposed*".
148. The Panel must uphold the mandatory disqualification of the Appellant's individual and the Trinidad and Tobago cycling team's competition results as a consequence of the Appellant's ADRV pursuant to Articles 9 and 11.4.1 of the PASO ADR. It is precluded from effectively re-writing the language of these articles by considering the Appellant's intended use of THC or whether it enhanced his performance; or by imposing a "*lesser*" alternative sanction; or by adopting and applying a general "*fairness*" requirement; or by considering the ancillary negative effects that disqualification of team competition results for an athlete's ADRV will have on the interests of a National Federation or other athletes who are members of the team.
149. In CAS 95/141, a seminal case in the CAS doping jurisprudence, the Panel explained that mandatory disqualification of competition results as a consequence of an athlete's in-competition ADRV is necessary to maintain the integrity of athletic competition:
- "The system of strict liability of the athlete must prevail when sporting fairness is at stake. This means that, once a banned substance is discovered in the urine or blood of an athlete, he must automatically be disqualified from the competition in question (. . .) It would indeed be shocking to include in a ranking an athlete who had not competed using the same means as his opponents, for whatever reasons"*.
150. During the hearing, the Appellant acknowledged that he cannot rely on the *lex mitior* principle because the 2021 WADC currently is not in effect, while asking that the Panel "*consider its spirit*" in considering his request for an alternative sanction other than disqualification of his individual race results in the 1 August 2019 team sprint cycling competition. For the previously expressed reasons as well as because Article 9 of the 2021 WADC is identical to its 2015 WADC counterpart and does not provide any exception for substances of abuse to mandatory disqualification of competition results, the Panel declines to do so.
151. Therefore, the Panel upholds the disqualification of the Appellant's individual results and the Trinidad & Tobago cycling team's results in the 1 August 2019 Panam Games team sprint cycling competition.

C. Disqualification of 3 August 2019 Individual Sprint Cycling Result

152. As a disciplinary sanction for the Appellant's 1 August 2019 in-competition ADRV, the Disciplinary Commission Decision disqualified his individual results (second place and silver medal) in the 3 August 2019 individual sprint cycling competition at the Panam Games pursuant to PASO ADR and 2015 WADC Article 10 "*Sanctions on Individuals*".

153. Article 10.1 of the PASO ADR, which is identical to WADC Article 10.1, provides:

"10.1 Disqualification of Results in the Event during which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an event may, upon the decision of the ruling body of the event, lead to disqualification of all of the athlete's individual results obtained in that event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

Factors to be included in considering whether to disqualify other results in an event might include, for example, the seriousness of the athlete's anti-doping rule violation and whether the athlete tested negative in the other Competitions.

10.1.1 *If the athlete establishes that he or she bears no fault or negligence for the violation, the athlete's individual results in the other Competitions shall not be disqualified, unless the athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the athlete's anti-doping rule violation.*

154. Article 10.3 of the PASO ADR, which is identical to WADC Article 10.8, provides:

"Article 10.3 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation
In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of- Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."

155. The relevant Appendix 1 Definitions in the PASO ADR are as follows:

"Event: *A series of individual Competitions conducted together under one ruling body (e.g., the Pan American Games, the Pan American Junior Games)."*

156. In support of his contention that the Disciplinary Commission Decision improperly disqualified his individual results in the 3 August 2019 individual sprint cycling competition, the Appellant reiterates the same three arguments asserted regarding the

disqualification of his individual results in the 1 August 2019 team sprint cycling competition.

157. For the reasons previously expressed, the Panel rejects each of those three arguments.
158. The Appellant also argues that “*fairness requires that [he] be allowed to keep his silver medal [and competition results] based on Articles 10.1 and 10.3 of the PASO ADR; application of the *lex mitior* principle “because the 2021[WADC] read, as a whole, in relation to recreational drugs is more beneficial to the athlete”*”; and the following circumstances:
- “*the presence of THC in [his] urine sample on August 1, 2019 had no performance-enhancing effect*”;
 - THC is a “*specified substance*” that is “*more likely to have been consumed by an Athlete for a purpose other than the enhancement of sport performance*” according to the Comment to Article 4.2.2 of the 2015 WADC;
 - “*the quantity of THC found in the Appellant’s sample was a mere 13 ng/mL above the Decision Limit of 180 ng/mL*”;
 - “*by the time of the individual sprint event on August 3, 2019, no evidence has been presented that the Appellant participated with a performance-enhancing substance*”.
159. The Respondent contends that fairness does not require that the Appellant’s competition results in the 3 August 2019 individual sprint cycling competition not be disqualified for the following reasons:
- he committed a “serious” ADRV because his AAF for THC was 43 ng/mL above the maximum permitted in-competition threshold amount of 150 ng/mL THC;
 - he was not subject to doping control in connection with the 3 August 2019 individual sprint cycling competition; and
 - he did not prove that he bears “*No Fault or Negligence*” for his ADRV, which requires that he establish how the THC entered his system and it is unlikely that its source was his admitted use of THC on 27 July 2019 given the high concentration of THC in his system five days thereafter on 1 August 2019.
160. Reading Articles 10.1 and 10.3 of the PASO ADR together and considering the specific circumstances of this case, the Panel upholds the Disciplinary Commission Decision to disqualify the Appellant’s competition results in the 3 August 2019 individual sprint cycling competition and determination that “*there are no facts requiring the fairness principle in [Article 10.3] to be applied to this case*”.
161. The Panel finds that the Appellant’s 1 August 2019 ADRV occurred during the 2019 Panam Games and that the 3 August 2019 individual sprint cycling competition was part of this “*Event*”, as defined by the PASO ADR; therefore, Article 10.1 of the PASO

ADR is applicable and must be considered in determining whether the Appellant's competition results in the 3 August 2019 individual sprint cycling competition should be disqualified.

162. Article 10.1 of the PASO ADR and WADC suggests two factors to be considered in determining whether an Athlete's results should be disqualified: "*seriousness of the athlete's anti-doping rule violation*" and "*whether the athlete tested negative in the other Competitions*". The Panel finds that neither of these factors weigh in the Appellant's favour. [...]. The "*seriousness*" of his ADRV is also evidenced by the fairly elevated concentration level of THC still in his system (193 ng/mL) five days after he allegedly used it (i.e., usage of a significant amount of THC and/or of a high potency close to his initial date of competition). Regarding the second factor, the Appellant did not test negative for any prohibited substances in connection with this competition because he was not subject to a second doping control during the Panam Games.
163. In addition, the Panel finds that the Appellant fails to establish he has No Fault or Negligence for his 1 August 2019 ADRV pursuant to Article 10.1.1 PASO ADR because of his admitted intentional and voluntary use of THC.
164. In considering whether to disqualify event results other than those in the competition in which the ADRV occurred, the Panel concludes that the Appellant has not satisfied any of the exceptions included in Articles 10.1 or Article 10.1.1 of the PASO ADR. Therefore, the Appellant's ADRV committed in connection with the team cycling competition on 1 August 2019 must also lead to the disqualification of his results in the 3 August 2019 individual spring cycling competition
165. Regarding Article 10.3 of the PASO ADR, the Panel notes that it presumptively requires the mandatory disqualification of an athlete's competition results from the date his positive sample was collected until the beginning of his provisional suspension or imposition of a period of ineligibility for his ADRV, which is subject to a "*fairness requires otherwise*" exception.
166. During the hearing, the Appellant's counsel acknowledged there is no CAS jurisprudence applying the "*fairness requires otherwise*" exception to any case with the same or substantially similar facts as those in this case.
167. The Panel's review of Markus Manninen & Brent J. Nowicki, "*Unless Fairness Requires Otherwise*": *A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses*, CAS Bulletin 2017/2 provides useful guidance in applying this exception and concludes that decisions on disqualification should be made through the lens of fairness, having regard to the various factors applicable to each case.
168. Relevant CAS jurisprudence cited therein provides the following guiding principles:
 - "*To negate the rule (i.e. establish that fairness requires otherwise such that the results should be maintained), the party seeking to dislodge this rule (i.e. the athlete) should carry the burden to prove otherwise on the balance of probabilities*". See CAS 2016/O/4481, at ¶. 195

- “[W]hen assessing the principle of fairness [,] [n]o one particular factor is determinative on the issue. Instead, Panels consider an overall evaluation of the evidence in support of fairness”. See, e.g., CAS 2015/A/4006, at ¶. 102 and CAS 2015/A/4007, at ¶121.
- Factors to be considered by Panels include *inter alia* the Athlete’s Degree of Fault (see, e.g., CAS 2005/A/951 , at 9.8-9.9. ; (Un)affected Sporting Results e.g., “results obtained between the ADRV and the conclusion of his/her ban and/or period of provisional suspension were not affected by the prior administration of the prohibited substance” (see, e.g., CAS 2011/A/2671, at ¶84.) ; and Significant Consequences of the Disqualification of the Results, e.g., “[s]ignificant negative financial or competitive consequences resulting from the disqualification of results”. (see, e.g., CAS 2008/A/1744at ¶. 76-78

169. Applying the foregoing guiding principles, the Panel concludes that the Appellant has not proven by a balance of probability that “*fairness*” “*require[s]*” that his results in the 3 August 2019 individual sprint cycling competition not be disqualified and that his second-place finish and silver medal be restored. His degree of fault is not insignificant because his ADRV was admitted, intentional, voluntary, and fell below his expected duty of caution when considering he used substances known to contain THC five days before the Panam Games; there is no evidence that he competed in the 3 August 2019 individual sprint cycling competition with a concentration of THC in his system below the Decision Limit; and there is no evidence that he would experience any significant negative financial or competitive consequences resulting from the disqualification of his results in this competition for an ADRV prior to it.

IX. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Njisane Phillip on 28 November 2019 against the decision rendered by the Panam Sports Disciplinary Commission on 15 November 2019 is dismissed.
2. The Award is pronounced without costs, except for the Court Office fee of CHF 1000 (one thousand Swiss Francs) paid by the Appellant, which is retained by the CAS.
3. (...).
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 8 July 2020

THE COURT OF ARBITRATION FOR SPORT

Matthew J. Mitten
President of the Panel

Janie Soublière
Arbitrator

Martina Spreitzer-Kropiunik
Arbitrator