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## Proposals for WADA Governance to Ensure Independence<sup>1</sup>

### Summary

- This paper summarises what independence means in principle and in practice for WADA, and makes proposals for enhancing it. It argues that WADA needs to be independent from any force, vested interest or stakeholder seeking to influence decisions in favour of anything other else than clean sport.
- There are at least twelve reasons why WADA independence is essential:
  - Recent events: The IAAF bribery scandal and the Russian state-sponsored doping scandal have demonstrated that anti-doping processes and decisions are subject to efforts by third parties to exercise undue influence and attempt to corrupt the system
  - A restart or reset is needed: There is a need to move past concerns that past decisions by WADA, particularly in relation to the Russian doping scandal investigation, were unduly influenced by sport or improper considerations
  - Sport cannot both promote and police itself and therefore should not be involved in anti-doping operations, this is the “fox in the henhouse” problem
  - To ensure that future WADA decisions are based solely on its mission to further clean sport
  - To protect clean athletes (and support personnel)
  - To protect whistleblowers
  - To protect sport from concerns that certain athletes or nations are favored in anti-doping processes
  - To prevent conflicts of interest/compromises and interference with WADA investigations and decision-making
  - Dedicated expertise (in a complicated field)
  - Optimised anti-doping coordination/regulation across all Signatories
  - To increase public confidence and enhance WADA’s ability to be a credible public advocate for clean sport
  - To justify the continuing contribution of the governments of the world to WADA
- The paper discusses factors that limit WADA independence, but need not compromise it:
  - Reliance on funding
  - Need for accountability
  - Observance of national laws
  - Compliance with global norms (including external oversight)
  - Cooperation with stakeholders

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- The paper suggests that WADA operational independence requires at least these twelve elements:
  - Complete separation of sport from WADA’s governing boards
  - Independent governance and executive functions (not beholden to any stakeholder)
  - Robust conflict of interest policies applicable to governance, executive and staff positions
  - External oversight, including transparent and accountable processes and independent auditing of investigations and outcomes after cases are concluded to ensure appropriate standards are being maintained while preventing external oversight processes from controlling or influencing ongoing cases and investigations
  - Financial independence and written guidelines regarding funding (funding cannot be allowed to influence decision-making in investigations, cases and public positions taken by WADA and *quid pro quo* offers must be specifically prohibited)
  - Legislative and policy interdependence (freedom/authority to write and to implement the World Anti-Doping Programme subject to stakeholder review and, for the Code, approval)
  - Operational independence (freedom to conduct anti-doping testing and investigations as circumstances require without the need for advance external approval or oversight)
  - Compliance authority (i.e., the ability of WADA to implement and enforce its decisions)
  - Legislative or policy independence (but with sports, governments and other stakeholders having regular input into the anti-doping rules applicable to sport)
  - Judicial dependence (WADA’s results management decisions in particular anti-doping or Code compliance cases should be subject to appeal by affected parties to an independent judicial body)
  - Freedom to determine interdependencies (nationally and internationally)
  - Representation of independent national anti-doping agencies, anti-doping experts and former athletes in its governing bodies
  
- The paper concludes with specific proposals for changes to WADA governance to ensure its independence.

## 1. What does it Mean for WADA to be “Independent?”

Basic dictionary definitions of the adjective “independent” make reference to control, thought and decision-making, politics, finances, religion, mathematics and relations with other entities. For example:

- 1 Free from outside control; not subject to another’s authority: an independent nuclear deterrent, the study is totally independent of central government
  - 1.1 (Of a country) self-governing: India became independent in 1947
  - 1.2 Not belonging to or supported by a political party: the independent candidate
  - 1.3 (Of broadcasting, a school, etc.) not supported by public funds: an independent girls’ school, independent television
  - 1.4 (Independent) historical Congregational.
  
- 2 Not depending on another for livelihood or subsistence: I wanted to remain independent in old age

- 2.1 (Of income or resources) making it unnecessary to earn one's living: a woman of independent means
- 3 Capable of thinking or acting for oneself: advice for independent travelers
- 3.1 Not influenced by others; impartial: a thorough and independent investigation of the case
- 4 Not connected with another or with each other; separate: treating each factory as an independent unit of production, the legislature and the judicature are independent of one another
- 4.1 Not depending on something else for strength or effectiveness; free-standing: an independent electric shower
- 4.2 Mathematics (Of one of a set of axioms, equations, or quantities) incapable of being expressed in terms of, or derived or deduced from, the others.<sup>2</sup>
- 1: not dependent: as
  - a (1) : not subject to control by others: self-governing (2) : not affiliated with a larger controlling unit <an independent bookstore>
  - b (1) : not requiring or relying on something else: not contingent <an independent conclusion> (2) : not looking to others for one's opinions or for guidance in conduct (3) : not bound by or committed to a political party
  - c (1) : not requiring or relying on others (as for care or livelihood) <independent of her parents> (2) : being enough to free one from the necessity of working for a living <a person of independent means><sup>3</sup>

To be "independent" indicates foremost freedom from the control, guidance or influence of others; in other words, autonomy.

## 2. Why is WADA Independence Needed?

- There are at least twelve reasons why WADA independence is essential:
  - Recent events: The IAAF bribery scandal and the Russian state-sponsored doping scandal have demonstrated that anti-doping processes and decisions are subject to efforts by third parties to exercise undue influence and attempt to corrupt the system
  - A restart or reset is needed: There is a need to move past concerns that past decisions by WADA, particularly in relation to the Russian doping scandal investigation, were unduly influenced by sport or improper considerations
  - Sport cannot both promote and police itself and therefore should not be involved in anti-doping operations, this is the "fox in the henhouse" problem
  - To ensure that future WADA decisions are based solely on its mission to further clean sport

<sup>2</sup> <http://www.oxforddictionaries.com/definition/independent>

<sup>3</sup> <http://www.merriam-webster.com/dictionary/independent>

- To protect clean athletes (and support personnel)
- To protect whistleblowers
- To protect sport from concerns that certain athletes or nations are favored in anti-doping processes
- To prevent conflicts of interest/compromises and interference with WADA investigations and decision-making
- Dedicated expertise (in a complicated field)
- Optimised anti-doping coordination/regulation across all Signatories
- To increase public confidence and enhance WADA's ability to be a credible public advocate for clean sport
- To justify the continuing contribution of the governments of the world to WADA

### **Recent Events / The Need for a Restart**

Current efforts at anti-doping reform are not occurring in a vacuum. The sporting world, sports fans, athletes, the media, the general public and governments have all witnessed a breakdown in sport governance. They have seen that a Russian state sponsored anti-doping scheme went largely undetected for at least a half a decade, then when it was detected there was initially less than a fully vigorous effort to investigate the allegations and bring the perpetrators to justice. Once most of the facts made their way into the public domain and WADA had issued three independent reports detailing the corruption, the IOC chose to permit the Russian Olympic Committee to participate in the Rio Olympic Games without restriction. It downloaded eligibility decisions for Russian athletes to more than three dozen individual sports federations.

The world has also seen and receives frequent reminders in the press of a police investigation in France in which the highest officials in the IAAF, perhaps the best known of all sport federations, are accused of accepting bribes to ignore drug test results. Recent reports allege that some of these same officials were related to an effort to rig the bidding for the Rio Olympic Games. Coupled with a string of scandals from the far-reaching FIFA bribery scandal to allegations of an IOC official's reported involvement in an illegal ticket scalping scheme in Rio, the public is losing faith in the ability of sport to effectively promote and police itself. This spills over into the leadership and exercise of anti-doping.

### **Sport Cannot Police Itself**

It has been a basic issue for anti-doping for years: the "fox guarding the henhouse" problem when sport, which must promote athletes and sport events, is involved in policing anti-doping rules violations. Violations result in the disqualification of athletes, the alteration of the outcome of past or upcoming sports events, and make sponsors skittish. Such outcomes are seen as running contrary to the promotion of sport. The abstract principle of the need for "independence" in anti-doping has been paid lip service for years and is commonly accepted. But it has not been achieved. This was recognised by the IOC in 2015 in its call for anti-doping to be independent of international sport organisations.

## **WADA's Mandate**

WADA's governance is based on a representational model involving only those organisations which fund it. By definition then, the organizational interests of those representatives are meant to impact on the exercise of WADA's anti-doping mandate. In practice WADA's governing body, the WADA Foundation Board, and its executive board, the WADA Executive Committee, have remained subject to substantial influence from sport. The thirty-eight member Foundation Board has nineteen sport representatives. Likewise, the twelve member WADA Executive Committee has six sport representatives. Additionally, WADA's President in his second three-year term is a long-time sport executive and current IOC member. Throughout his first term the WADA President was an IOC Vice President and IOC Executive Board member. This illustrates the structural nature of WADA's independence deficit which raises doubts about the unqualified pursuit of WADA's mandate.

Sports influence within WADA does not stop at the WADA board memberships and executive positions held by sport officials. Sport also has influence upon WADA because the IOC is by far the single largest contributor to WADA. The IOC provides 50% of WADA's annual funding. No other funder contributes more than about 6%. Additionally, while purporting to recognise the importance of the principle of WADA independence, the IOC regularly holds "Summits" and issues statements regarding how the IOC is implementing reforms to WADA and the global anti-doping system. These announcements are frequently coupled with IOC declarations that additional funding to WADA is tied to WADA's acceptance of IOC demands regarding restructuring the anti-doping system.

## **Protecting Clean Athletes and Whistleblowers**

WADA needs greater independence to protect clean athletes (and support personnel) from doping. WADA and the IOC have suffered a hit to their credibility from the Russia doping scandal. To those not directly involved in WADA and IOC governance, it appears that the speed and timing of the WADA investigations and the implementation of an effective response to the crisis would have differed absent the dominant role international sport currently plays in the governance of WADA and in the implementation of sanctions which flow from anti-doping investigations. The investigations would have commenced sooner. The responses would have been firmer (as were those of the IAAF and IPC). Even WADA recognises that it did not act quickly enough and decisively enough to protect Russian whistleblowers Yulia and Vitaly Stepanov.

## **Protecting Sport without Fear or Favour**

We believe that most of the sport world, athletes, coaches, fans, sponsors, governments and the public at large want the advances and confidence in the anti-doping system that true independence will bring. Hence the need for single-minded dedication to the principle of independence in WADA's governance. Only such independence will demonstrate an absolute commitment to pursue doping no matter how important the sport, the country or the event (financially or culturally). Only independent anti-doping organisations, of which WADA must be the leader, can put the interests of clean athletes, whistleblowers and clean sport first and foremost. Protecting clean sport exclusively also ultimately serves other stakeholders in the business of sport (such as sport organisations, suppliers, fans and the media) who depend on clean sport for their livelihoods.

WADA cannot achieve this purpose if it is not seen to be entirely independent. Current athlete disquiet with anti-doping is in large measure a result of perceptions that clean sport is but one interest that is brokered against others, such as the promotion of international sport and sport events, and that WADA has neither the mandate nor ability to ensure all of its stakeholders accept clean sport as the paramount interest.

### **Conflicts of Interest**

This is a particular and central problem resulting in ineffective anti-doping programmes and potentially unjust outcomes. Conflicts can enter the equation on at least two levels: mandate and governance. WADA was conceived to protect sport organisations and governments from having to balance competing interests and getting that balance wrong. By giving exclusive anti-doping mandate or authority to a dedicated and independent WADA, the possibility of such conflicts is largely reduced. But WADA governance must itself be free of structural and individual conflicts of interest lest its mandate be subverted. To maintain the full confidence of its stakeholders, especially clean athletes, those individuals overseeing WADA's administration and operations must be independent and be seen to be independent and must be fully dedicated to clean sport as an end in and of itself. They must be free of conflicting loyalties to sport or to country. It must be recognised that perception of conflicting interests can be as corrosive to public confidence and the confidence of clean athletes as are conflict of interests themselves.

This requires the current structure of WADA's governance bodies, discussed above, to be significantly altered.

### **Dedicated Expertise**

Anti-doping is increasingly a complex undertaking requiring a mix of specialised scientific, legal, pedagogical and ethical skills. It is not for amateurs (although many major event organisers and their local organizing committees continue to think that anti-doping does not require particular expertise to organise and administer, despite doping being one of the major threats to a Games' reputation). Anti-doping rules under the World Anti-Doping Programme now run hundreds of pages, thousands if you include models of best practice and guidelines in addition to the mandatory documents. Only a dedicated and specialist organisation with appropriate expert staff can develop, manage and oversee all the existing (and future) requirements.

It is important, however, that WADA not become insular in its thinking and approach and be run by people that understand the practicalities and difficulties encountered "in the field" in pursuing clean sport. For this reason, it is important that sport organisations play a role in amending and adopting the Code in a legislative capacity on a recurring basis. Likewise, it is important that individuals on WADA's governance boards have practical experience in anti-doping. WADA's governance standards do not at present, but should in the future, require that there be a percentage of individuals with expertise in anti-doping and who have worked with independent national anti-doping agencies and include retired elite athletes.

### **Optimised Use of WADA Resources**

Harmonised anti-doping standards across sports can only be achieved under the authority of an independent, central agency. Prescribing these standards and monitoring compliance with them has

now become WADA's most important role. This is necessary to ensure the most optimal spread of WADA's activities and resources over many countries and sports. There is never enough money or other resources to provide ideal coordinating and regulatory activities. Only a truly independent WADA can have the judgement and the expertise to provide the best possible coordination and regulation, and allocate its available resources to oversee both in the most constructive way.

### **Enhancing Public Confidence**

Doping reflects wider societal forces. Those include the search for and use of short cuts in all fields of society to make life easier. How often are we told that taking a pill can solve any manner of problem, or are we urged to buy "labour-saving" devices? But sport is by its nature rules-bound not to be easy: sport is by its nature supposed to be difficult. And while by nature sport is about competitive advantage, any competitive advantage achieved must have been obtained be within the rules. Taking short cuts that flout sport rules is cheating and sometimes illegal. In the face of societal pressures, there needs to be a credible public advocate to defend sport's integrity. Clean athletes and their support personnel need to see that someone with authority and credibility is guarding their interests by standing up for sport's rules. A fully-independent WADA is best placed to speak globally for clean competition as essential to the very meaning and purpose of sport.

### **Justifying Government Contributions to WADA**

Without all of the above, governments will be tempted to pull-back from funding WADA. They already make significant financial contributions to national anti-doping programmes and organisations, to funding the hosting of international sport events (which helps to pay for the anti-doping programmes at those events), to drug research and regulation, to public health programmes combatting doping, to border controls and to the administrative and criminal law infrastructure that provides investigations and prosecution of offenses involving prohibited substances. Why should they contribute to an organisation that lacks effectiveness? If WADA cannot demonstrate independence, some governments may conclude that international sport should be left on its own when it comes to the funding and governance of WADA.

### **3. Limits on WADA Independence that Need Not Compromise it**

The call for WADA to be independent from sport is not a call for WADA to have no limits, accountability or oversight. On the contrary, there will always be necessary limitations upon WADA which must be recognised and managed in a transparent fashion. Control mechanisms are necessary to ensure WADA is not captured by one or more stakeholders. This is an opportunity, not a burden.

In addition to independent governance, WADA's independence must be subject to accountability coming from at least five sources:

- Transparency in decision-making and reporting to allow input, review and oversight by all stakeholders, the media and the public
- Accountability and compliance with global norms (including external oversight) and regular independent auditing of WADA functions
- Observance of national laws
- Judicial oversight of outcomes in individual cases

- Legislative oversight and revision of the Code through the regular World Anti-Doping Code review process

This section concludes with a discussion of WADA's funding and how limitations on WADA's independence flowing from its financing can be prevented.

### **Transparency and Public Reporting**

WADA's accountability and oversight should start with a defined written commitment to transparency and public reporting that will permit more robust review and oversight of WADA's processes and decision-making by all stakeholders, the media and the public. These reporting requirements should be precise and capable of auditing and specifically set forth what information and reports WADA will regularly make available to the public. While there is an overriding need for WADA investigations and specific anti-doping cases to be conducted confidentially, other aspects of WADA's operations such as education, the Prohibited List Committee process, budgeting and spending, and compliance programmes would not be harmed by regular reporting requirements. More robust and regular public reporting would improve public confidence in WADA and should be provided in return from increased funding from sport and a withdrawal of sport representatives from WADA's governance.

### **Compliance with Global Norms and External Oversight and Auditing**

Compliance with global norms has to do first with implementing the World Anti-Doping Code and the WADA International Standards. WADA is itself an "Anti-Doping Organisation" for the purposes of the Code. So WADA must itself "accept" and "implement" the Code under Article 23.

There is currently no independent mechanism by which WADA compliance with the Code, International Standards, and WADA's effectiveness can be measured and ensured. WADA's Compliance Review Committee is probably not sufficiently independent from WADA to fulfil this function. According to Code Article 23, it is currently the WADA Foundation Board that receives reports of non-compliance and determines that non-compliance exists. As WADA is not in a position to sit in judgment on its own Code compliance there is a need for an independent Code compliance review process for WADA itself.

This introduces the issue of oversight and auditing of WADA in all respects. There is currently no oversight mechanism, no external and independent body and to which with a stakeholder can bring concerns about WADA's governance, policies and activities. Beyond external financial auditing and meeting the requirements of Swiss law relating to the operation of the Foundation Board (such as maintaining a current registration of Foundation Board members), there is no comprehensive and formal oversight mechanism for WADA outside of the agency and its governance structure.

A much-used and accepted method of holding international organisations accountable is a process of regular review and auditing by an independent body. It is clear that WADA needs to have such an external review process and that it will be helpful in insuring sport and government confidence in WADA's functioning after WADA's governance structures are changed to ensure independent review of its operations and administration.

Many leading NADOs and independent service providers to IFs are ISO certified to a quality management system that provides external audit (and requires internal audit mechanisms in

support of ensuring customer satisfaction and response to operational non-conformities and opportunities for improvement). WADA itself has secured ISO quality management certification for its Code compliance programme. WADA should be held accountable through a quality management standard for the agency as a whole and regular audits concerning compliance with this standard.

Some intergovernmental organisations deal with such matters through external oversight bodies. For example:

- UNESCO: <http://www.unesco.org/new/en/unesco/about-us/how-we-work/accountability/internal-oversight-service/how-we-work/oversight-advisory-committee/>
- World Health Organisation Health Emergencies Programme: [http://www.who.int/about/who\\_reform/emergency-capacities/oversight-committee/en/](http://www.who.int/about/who_reform/emergency-capacities/oversight-committee/en/)

The OECD has prepared advice on oversight bodies for regulatory reform within government that sets out useful principles: <http://www.oecd.org/mena/governance/36785272.pdf>.

External oversight is an accepted aspect of good governance for international organisations. It contributes to good governance in a way that does not compromise an organisation's independence. On the contrary, external oversight is a way of ensuring independence is maintained and exercised.

### **Observance of National Laws**

WADA is bound by the laws of Switzerland, the jurisdiction within which it is legally created and maintained, and by the general laws of the other countries within which it has its offices: Canada, Japan, South Africa and Uruguay. For example, with respect to its legal constitution as a "foundation," its employment practices, data protection, taxation status, ownership of property, and so on.

### **Judicial Oversight**

WADA's conduct in individual anti-doping cases (as well as in matters such as laboratory accreditation and TUE decisions) is subject to review through the arbitration process. This is an important aspect of oversight and accountability and increases confidence in the conduct of WADA's affairs in areas which are subject to such review.

### **Legislative Oversight and Code Revision Process**

WADA is also accountable to stakeholders in its "legislative" or policy-making function by virtue of the regular processes of amending the World Anti-Doping Programme. Especially the Code review and revision process, whereby stakeholders can modify anti-doping rules, permits changes to the rules that apply to WADA and which applies to others. This interdependency between WADA and its stakeholders operates as a useful control mechanism.

## Funding

Currently the confluence of 50% of WADA funding coming from sport organisations and the fact that sport controls 50% (or more when sport controls the WADA presidency) of WADA governance positions creates a significant limitation on WADA independence. The fact that WADA's independence is currently compromised through its dependence on funding from sport is easily seen; for example, in the most recent Olympic Summit Declaration of the IOC in which additional funding to WADA from the IOC is specifically conditioned upon implementation of the specific structural changes in the anti-doping system demanded by the IOC. The IOC therefore clearly recognises that it can seek to compel WADA compliance with IOC wishes by conditioning additional funding on WADA compliance; this recognition is explicit in the IOC's recent declaration.

Obviously, the funding for anti-doping (as for everything) has to come from somewhere and with sufficient protections in place funding need not be a limit WADA's independence. A key principle is that funders must respect the autonomy and the mandate of WADA; there must be no expectation that funding buys influence or constrains authority and the prohibition on *quid pro quo* offers must be memorialized in clear written guidelines with adequate sanctions if the guidelines are violated. WADA must also be careful to structure funding agreements to safeguard its autonomy and an important aspect of ensuring this is requiring that all funding agreements are written and publicly disclosed. This, of course, would include WADA's funding arrangements with the different levels of Canadian governments related to the location of its head office in Montreal.

It is an important aspect of WADA's independence from sport and governments going forward that financial contributions to WADA not be conditioned on particular policy or case outcomes. A specific *quid pro quo* conditioning of sport funding upon demanded outcomes such as in the recent Olympic Summit Declaration should be recognised as detrimental to WADA's independence. Specific ethical guidelines should be put in place to forbid such funding offers from sport – or from governments – in the future. Consideration should be given to including such ethical guidelines in the World Anti-Doping Code or other mandatory document which binds sport organisations and governments in the future.

The principle that funding is not necessarily in conflict with independence so long as safeguards are implemented is illustrated, for instance, by provisions of the Code that require NADO independence in all circumstances:

### 20.5 Roles and Responsibilities of *National Anti-Doping Organisations*

#### 20.5.1 To be independent in their operational decisions and activities. (Emphasis added)

This illustration is reinforced by the Code's expectation that governments funding NADOs must respect NADO autonomy and not interfere with their operational decisions and activities:

#### Article 22. Involvement of Governments

...

#### 22.6 Each government will respect the autonomy of a National Anti-Doping Organisation in its country and not interfere in its operational decisions and activities. (Emphasis added)

The same principle ought to apply to WADA vis-à-vis its funders. The mechanisms expected of NADOs to maintain their independence from their funders ought to be in place for WADA for the same purpose.

The need for a higher degree of transparency and accountability from WADA is the appropriate exchange for increased funding from sport and the relinquishment of sport governance positions within WADA. Such increased transparency and accountability can take a number of forms: financial accountability for stakeholder contributions; legal accountability for meeting general statutory requirements for WADA's legal constitution (such as annual corporate or financial filings); and accountability for exercise of WADA's mandate or authority (setting and meeting strategic and operational goals). This is all part of good governance and will not impact WADA's independence in any negative way. WADA acts in the public interest and in the interest of its sporting stakeholders. It should do so in a way that is above reproach and be seen to be so.

#### **4. Proposals for Enhanced WADA Independence**

Recognising the limits to absolute autonomy, what are the necessary elements of WADA independence? What does "autonomy" mean for WADA? What is it to "not interfere with operational decisions and activities"?

At a level of fundamental principle, we suggest that WADA independence and operational autonomy should have at least these twelve elements:

- Complete separation of sport organisations (as such) from WADA's governing boards
- Independent governance and executive functions (not beholden to any stakeholder)
- Robust conflict of interest policies applicable to governance, executive and staff positions
- External oversight to include transparent and accountable processes and independent auditing of investigations and outcomes after cases are concluded to ensure appropriate standards are being maintained while preventing external oversight processes from controlling or influencing ongoing cases and investigations)
- Financial independence and written guidelines regarding funding (funding cannot be allowed to influence decision-making in investigations, cases and public positions taken by WADA and *quid pro quo* offers must be specifically prohibited)
- Policy independence (freedom/authority to implement the World Anti-Doping Programme)
- Operational independence (freedom to conduct anti-doping testing and investigations as circumstances require without the need for advance external approval or oversight)
- Compliance authority (i.e., the ability of WADA to implement and enforce its decisions)
- Legislative interdependence (sports, governments and other stakeholders should have regular input into the anti-doping rules applicable to sport)
- Judicial dependence (WADA's results management decisions in particular anti-doping or Code compliance cases should be subject to appeal by affected parties to an independent judicial body)
- Freedom to determine interdependencies (nationally and internationally)
- Representation of independent national anti-doping agencies, anti-doping experts and former athletes in its governing bodies

## Independent governance

This is vital. To a large extent, good governance is independent governance.

According to the WADA Statutes, at present WADA's Foundation Board "is an equal partnership between the Olympic Movement and public authorities." The Foundation Board "delegates to an Executive Committee ... the actual management and running of the Foundation, the performance of all its activities and the actual administration of its assets." "The Executive Committee, a sub-committee of the Foundation Board, and sharing the Foundation Board's chair and vice-chair (the WADA President and Vice-President), is competent to take all decisions which are not reserved by the Law or by the present statutes for the Foundation Board; ..." So by definition WADA governance is not independent but rather representative – and then only of its funders.

### Proposals:

- It is well-recognised that sport cannot both promote itself and be involved in policing anti-doping (the "fox in the henhouse" problem). This principle must be embedded in WADA's governance structure by eliminating sport representation on WADA's Foundation Board and Executive Committee and forbidding sport representatives from holding any executive or staff position within WADA.
- For the Foundation Board to be an effective governance body, and to remove existing structural conflict of interest, it should be comprised of individuals chosen for their expertise, not representative persons. Those individuals should combine expertise in all important aspects of the anti-doping process, including the operations of players in anti-doping that are Code Signatories (such as anti-doping organisations) and those who are not (such as athletes and their support personnel, public health organisations, drug regulators, accredited laboratories and private service providers).
- A separate advisory committee that includes all stakeholders, including sport representatives, governments, athletes, NADOs, and anti-doping experts should be established to address the regular Code review process and other "legislative" matters.
- The chair and the vice-chair of the Foundation Board (WADA's President and Vice President) should be independent persons free of any current involvement with any Code Signatory or other potential conflicts of interest.
- There should be term limits for both the Foundation Board and the Executive Committee. This is widely accepted good governance practice to avoid entrenched interests. For example, iNADO's Board of Directors are eligible for two three-year terms.
- Gender and racial equity is needed in WADA governance. There should be a systematic programme for recruiting women and minorities to the Foundation Board and the Executive Committee.
- For the Executive Committee to continue to have authority over WADA operations, administration and management, it must not be representative but rather entirely independent of WADA's stakeholders. To conduct executive oversight of WADA's administration and operations, it must be comprised of independent individuals and operate independently of the Foundation Board (but ultimately accountable to it). The WADA Director General should be an ex officio/non-voting member.

- A reformed Executive Committee should be comprised of leading experts in relevant fields (science, law, medicine, ethics, education, psychology, finance, communications, public administration, etc.), and be self-organising and self-generating. One model is the governing board of the Canadian Centre for Ethics in sport which is not appointed but self-renewing and comprising experts in a broad range of fields: <http://cces.ca/nominations>. However, the first reformed Executive Committee would have to be appointed by the Foundation Board according to clear and transparent criteria and processes.
- The Executive Committee should be responsible for operational decisions such as oversight of the Compliance Review Committee on Code compliance decisions, or on launching a major WADA or independent investigation.
- The Executive Committee should be generally responsible for appointment of WADA standing committees and working groups. Most should report to the Executive Committee, perhaps with the exception of the finance committee which could report to the FB as part of the budget-making process. But a new audit committee should report to the reformed Executive Committee.
- For all WADA's subsidiary bodies (standing committees and sub-committees, working groups, etc.), steps should be taken to enhance appointment criteria, processes and transparency (and personal conflict of interest measures), transparent meetings and decision-making (except when personal, financial or operational privacy must be protected), transparent objectives and performance evaluation, periodic public policy or operational reviews.

### Independent Oversight

WADA currently lacks independent oversight or control aside from its annual external financial audit.

#### Proposals:

- WADA should be certified to a quality management standard specific to anti-doping and WADA's unique mandate, and covering all aspects of WADA operations except as subject to independent financial audit. This would build on WADA's own Code compliance review programme. It would also reflect the practice of many leading NADOs. This would provide periodic external audit of WADA operations and ongoing consideration of the "customer satisfaction" of Code Signatories and other stakeholders.
- Article 23 of the World Anti-Doping Code be amended to recognise the Code Compliance Review Committee and to authorise it to make determinations about WADA Code compliance that are currently the purview of the Foundation Board.
- A robust and transparent Conflict of Interest Policy for all WADA staff and volunteers, and mechanism for overseeing it. Currently a search of the WADA website does not disclose its conflict of interest policy and practices.
- An external oversight body should be put into place. An external, independent oversight committee/ethics committee/inspector general would handle issues about WADA administration, operations or governance issues that cannot be dealt with by the Executive Committee or Foundation Board without conflict of interest. There is no lack of established models in international business, government and non-governmental organisations. In addition to the intergovernmental examples identified above, from the sport world regard should be had to the IAAF Ethics Board and its Code of Ethics, mandate and processes: <https://www.iaafethicsboard.org/>.

## Legislative or Policy Independence

Within the confines of international norms for anti-doping, WADA must have the policy independence to find the most effective way to protect clean sport internationally: to shape the anti-doping rules and to determine in the rules and practices the appropriate balance between education and prevention, and testing, and use of intelligence and investigations, to decide what efforts to devote to international anti-doping capacity building or cooperation to give clean athletes more confidence that their competitors from all countries are competing clean, and to decide how and when to enter the public debate about protecting the integrity of sport.

### Proposal:

- Review and if necessary revise Article 4 of the Foundation Statutes to ensure policy independence is recognised as a basic operational goal and function of WADA.

## Operational Independence

As the Code states, operational independence is an absolute necessity. For WADA this takes many forms, including:

- The autonomy to balance priorities between dozens of stakeholder sport organisations, especially in light of the differences in risk of doping from sport to sport
- The autonomy to determine what balance of research, test subsidy, education and prevention, ADAMS development, and of investigations will produce the greatest deterrence against doping, and the most effective detection of anti-doping rule violations
- The discretion to determine which possible cases to pursue and to what outcome, and which to abandon or seek accommodation because of flaws in doping control, evidentiary problems or proportionality
- The freedom to find additional sources of revenue to supplement public or sport organisation funding
- Independence in hiring, in managing finances and in managing public relations

### Proposals:

- To enshrine operational independence in the Foundation Statutes.
- These decisions in particular to be identified as operational and not within direct Foundation Board (but rather within Executive Committee) oversight:
  - Hiring decisions (except perhaps for a Director General)
  - The implementation of decisions of the Foundation Board and Executive Committee
  - The monitoring of implementation of the World Anti-Doping Programme (the World Anti-Doping Code and WADA International Standards), and the compliance decisions arising from that monitoring
  - The allocation of staff and finances as between WADA's functions, such as the balance between Code monitoring, research and support services such as ADAMS and investigations

- The content and delivery of education and prevention campaigns both to elite and non-elite athletes and their support personnel
- Therapeutic use exemption decisions
- Funding of stakeholder testing programmes (such as those of RADOs)
- The conduct of results management in individual cases of possible anti-doping rule violations, including decisions on which cases to appeal
- The conduct of anti-doping investigations and any cases flowing from them
- Decisions on operational cooperation between WADA and other organisations including public authorities
- Decisions on international collaborations and partnerships, such as with which other international or intergovernmental organisations
- Media and public announcements, and public information campaigns

### **Interdependencies**

Finally, WADA must have the independence to determine its interdependencies. WADA staff must have the right to decide with whom and why they enter into casual or binding relationships with other organisations.

### Proposals:

- These decisions in particular to be identified as operational and not within direct Foundation Board oversight:
  - Decisions on operational cooperation between WADA and other organisations including public authorities
  - Decisions on international collaborations and partnerships, such as with which other international or intergovernmental organisations

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