



Arbitration CAS 2018/A/5885 Scott Salmond v. International Ice Hockey Federation (IIHF) & CAS 2018/A/5936 World Anti-Doping Agency (WADA) v. IIHF & Scott Salmond, award of 6 March 2020 (operative part of 31 May 2019)

Panel: Mr Ken Lalo (Israel), President; Mrs Maidie Oliveau (USA); The Hon. Michael Beloff QC (United Kingdom)

Ice Hockey

Doping (complicity)

Comfortable satisfaction

Departures from the ISTI

Identification of the DCO

Notification of potential consequences for failing to provide a sample

Right of a coach or employee of a national federation to participate in the doping control process

Departures from the RMHD Guidelines and DCO Tool Kit Manual

Intent in the context of complicity

Requirement of an underlying ADRV in the context of complicity

Minimum sanction

1. The “*comfortable satisfaction*” standard of proof is higher than a mere balance of probabilities. The test of comfortable satisfaction must take into account all the circumstances of the case. Those circumstances include the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities.
2. The existence of certain standards as detailed in the International Standard for Testing and Investigations (ISTI) and anti-doping rules is considered to be fundamental and central to ensuring integrity in the administration of sample collection such that certain departures therefrom could result in the automatic invalidation of an anti-doping rule violation (ADRV). To demonstrate such departure, the consideration of the evidence presented by the parties concerning the circumstances of the doping control would have to show that violations of mandatory requirements, if any, could have reasonably caused the ADRV.
3. A Doping Control Officer (DCO) will have satisfied the requirements regarding identification under the ISTI by carrying an authorization letter from the testing authority as well as an identification which includes his/her name, photograph, and the expiry date of the identification. The Letter of Authorization is a document used to show that the sample collection personnel has the authority to collect the sample. There is no specific rule that requires mandatorily the presentation of a paper identification and *a contrario* that forbids electronic identification (a modern form of ID increasingly used

in other contexts). Consequently, an electronic identification is satisfactory for the purposes of identification under the ISTI.

4. In accordance with Article 5.4.1 (e)(iii) of the ISTI, the athlete should be advised of the possible consequences of failure to comply. On the plain reading of this provision, there is no reference to providing such a warning to a coach or other employee of the national federation. Moreover, the word “should” implies some form of recommendation or guideline and therefore does not impose an obligation. “Should” does not read as a “must”.
5. The ISTI does not give any right to a coach or employee of a national federation to participate in the doping control process.
6. The Results Management, Hearings and Decisions (RMHD) Guidelines and the Doping Control Officer’s Training Tool Kit Manual contain guidelines, not requirements. These guidelines contain guidance as to how best to comply with the mandatory requirements in the ISTI or the anti-doping rules, but they do not themselves constitute mandatory requirements. Besides, the “Introduction and Scope” of the RMHD Guidelines underlines that the Guidelines are not mandatory but are intended to provide clarity and additional guidance to anti-doping organisations as to the most efficient, effective and responsible way of discharging their responsibilities in terms of results management.
7. In order to determine a violation of the Complicity article, intent is to be determined based on the conduct of the individual charged with the alleged violation, not the person who himself/herself is the subject of the doping control. In this context, intent refers simply to the intent to act, not necessarily to the intent to achieve the result or to commit a doping violation. The act of encouragement itself constitutes sufficient intent for the purposes of Article 2.9 WADC.
8. The act of encouraging an anti-doping rule violation necessarily occurs before any commission of the ADRV that has been encouraged. Therefore, no underlying ADRV is required for the purposes of Article 2.9 WADC.
9. As complicity is an intentional ADRV, no reduction is permitted below the two year minimum sanction on grounds of No Significant Fault or Negligence. Consequently, a one-year period of ineligibility cannot be imposed on grounds of proportionality, since such decision departs from the mandated minimum set out in the WADC. The deciding body must impose a sanction that respects the applicable rules, including the mandated two-year minimum. Further reduction on the basis of proportionality is not acceptable. The WADC has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction.

I. PARTIES

1. Mr. Scott Salmond (“Mr. Salmond”) is a former Senior Vice President and Head of Men’s Elite Performance for Hockey Canada.
2. The International Ice Hockey Federation (“IIHF”) is the world governing body administering the sport of ice hockey. Its seat is in Zurich, Switzerland.
3. The World Anti-Doping Agency (“WADA”) is a Swiss private law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms on the basis of the World Anti-Doping Code (the “WADC”), the core document that harmonizes anti-doping policies, rules and regulations around the world.
4. Mr. Salmond, the IIHF, and WADA are collectively hereinafter referred to as the “Parties”.

II. FACTUAL BACKGROUND

A. Introduction

5. This dispute concerns an appeal by Mr. Salmond against a decision of the Disciplinary Board of the IIHF dated 26 July 2018 (the “Appealed Decision”) whereby it was determined that Mr. Salmond committed an anti-doping rule violation when he allegedly instructed Mr. Brandon Kozun, a member of the National Ice Hockey Team of Canada, to refuse sample collection during a doping control. As a result of his actions, Mr. Salmond was suspended from all ice hockey activities for a period of one year. In his appeal, Mr. Salmond seeks a finding that he did not commit an anti-doping rule violation, or alternatively, apply the principle of proportionality to reduce the period of ineligibility to less than 12 months.
6. WADA also filed an appeal against the Appealed Decision. In its appeal, WADA seeks rather to increase Mr. Salmond’s period of ineligibility to between two to four years following his intervention in Mr. Kozun’s doping control.

B. Background Facts

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

8. At the outset, the Panel wishes to note that the material facts of this procedure remain strongly contested between the parties. For the most part, the factual scenario surrounding the events in question remains in dispute. What is set out below is a neutral recitation of the facts, bearing in mind the stark differences in the various accounts of the events leading to this dispute. Unless otherwise specified when reciting the facts below, the Panel has refrained from adopting the tones emphasized by the Parties.
- a. 12 December 2017: The Doping Control(s)*
9. On 12 December 2017, Mr. Salmond was staying at the Holiday Inn Tagansky Hotel in Moscow, Russia (the “Hotel”) with the Canadian Men’s Ice Hockey Team (the “Team”). The Team was in Moscow competing in the Channel One Cup, a lead-up tournament in advance of the 2018 Winter Olympics.
10. Shortly before 06h00, four to five doping control officers from the Russian Anti-Doping Agency (“RUSADA”), at the request of the Canadian Centre for Ethics in Sports (“CCES”), arrived at the Hotel to conduct doping control tests on five Canadian players. The Desk Manager at the Hotel contacted A., Coordinator of Men’s Team Operations for Hockey Canada, who in turn contacted Mr. Salmond to inform him of the impending doping control tests by RUSADA/CCES.
11. Mr. Salmond and A. met with the RUSADA/CCES doping control officers and inspected their paperwork and identification. The paperwork and identification satisfied Mr. Salmond and A. that the RUSADA/CCES doping control officers had the requisite authority to test the players. Mr. Salmond and A. then escorted the CCES doping control officers to a room on the fifth floor of the Hotel (designated as the “testing room”), and thereafter assisted in locating the players required by RUSADA/CCES for doping control (the selected players were later brought to a “holding room”).
12. Meanwhile, between 06h45 and 07h00, Mr. Cem Barut (the “DCO” or “Mr. Barut”), a doping control officer not affiliated with RUSADA/CCES, and Ms. Alla Borisova, a doping control assistant, entered the Hotel in an effort to conduct a doping control on Mr. Brandon Kozun (“Mr. Kozun”), a member of the Canadian Men’s Ice Hockey Team. The DCO and DCA were assigned to collect Mr. Kozun’s sample by the International Doping Test & Management Company (“IDTM”), a testing collection entity delegated by the IIHF to collect athlete samples in Russia from 1 January 2017 to 31 December 2017, in accordance with the date and location information submitted by Mr. Kozun (the “Player”) in his Whereabouts Filing¹.
13. Shortly after their arrival, the Desk Manager at the Hotel escorted the DCO and the DCA to the Player’s room. Upon arrival, the DCO knocked on Mr. Kozun’s door and while doing so,

¹ All undefined terms are defined as in the WADC.

was informed by B., Mr. Kozun's teammate and roommate who was standing in the hallway, that Mr. Kozun was in the room. There was no answer at the door.

14. Upon seeing the DCO at Mr. Kozun's doorway, Mr. Salmond approached the DCO in an effort to obtain his identity and to ascertain the purpose for his visit. Neither man allegedly identified himself to the other, but at a certain point, it became apparent that the DCO was there to collect a sample from Mr. Kozun.
15. Eventually, Mr. Kozun answered his door whereby the DCO informed him that he was there to conduct a doping control on behalf of the IIHF. In doing so, the DCO displayed his Electronic DCO ID Card issued by IDTM on his iPhone 6 Plus telephone (the "ID Card").
16. Mr. Salmond then proposed that the DCO relocate to the Hotel lobby so as to allow him to inspect his credentials and paperwork (as was done with the CCES doping control officers). Such offer was refused by the DCO and he informed Mr. Salmond and others in the vicinity that he would only speak with Mr. Kozun and moreover, that Mr. Kozun must remain in his constant purview until the end of the doping control.
17. The DCO and DCA entered Mr. Kozun's room, followed shortly thereafter by Mr. Salmond, A., and C., Manager of Hockey Operations with Hockey Canada. While in the room, Mr. Salmond and A. continued to urge the DCO to provide identification and paperwork. At one point, the DCO provided a letter from the IIHF dated January 2017. Such paperwork, however, was not acceptable to Mr. Salmond as constituting a mission document to collect Mr. Kozun's sample. The dispute over the DCO's identification continued with each party growing increasingly frustrated by the other.
18. The DCO, under the impression (either directly or indirectly, a matter disputed by the parties) that C. was Mr. Kozun's representative, consented to C.'s attendance during the sample collection. He, therefore, requested that all others leave the hotel room during the collection process.
19. Mr. Salmond continued to take issue with the DCO's refusal to provide further identification and/or paperwork, and to the extent the "requisite identification" was not provided, Mr. Salmond informed the DCO that the doping control test would not proceed.
20. Between 07h15 and 07h21, the DCO made repeated attempts to contact his supervisor at IDTM, Ms. Jasmina Glad-Schreven (the "Supervisor") to report the current situation. Once his call was answered by the IDTM Supervisor, the DCO explained his version of the situation, following which the phone was passed to Mr. Kozun, who voluntarily spoke with her and answered her questions. In particular, it is alleged that the conversation between Mr. Kozun and the Supervisor was as follows:

- Mr. Kozun initially stated that the DCO did not show any identification when requested. When asked if the DCO showed any documents at all, Mr. Kozun acknowledged that the DCO did show him a letter from the IIHF and the ID Card on his phone, but that such card had no information on it.
 - The IDTM Supervisor explained to Mr. Kozun what an IDTM ID Card looks like, and in particular, the exact information contained therein including the DCO's name, photo, IDTM's contact details, and card's validity date. Mr. Kozun confirmed seeing this information on the ID Card.
 - The IDTM Supervisor also explained to Mr. Kozun that the ID Card was a valid form of documentation, that the DCO was a certified IDTM DCO trained in conduction doping controls, and that he was authorized to conduct this particular doping control.
 - The IDTM Supervisor expressly informed Mr. Kozun that if he did not provide a sample, his actions could have serious consequences.
21. Mr. Kozun then passed the telephone to Mr. Salmond, who spoke with the IDTM Supervisor. Mr. Salmond introduced himself, and the IDTM Supervisor, in essence, repeated the same information concerning the ID Card to Mr. Salmond. Mr. Salmond explained, *inter alia*, that if the DCO would only show his identification, there would be no issue proceeding with the sample collection.
22. In the interest of proceeding with the collection in an amicable fashion, the IDTM Supervisor agreed to try to find a replacement DCO to collect Mr. Kozun's sample. In the meantime, the DCO would remain in the purview of Mr. Kozun until his replacement arrived. Thereafter the parties relocated to the lobby of the Hotel.
23. After unsuccessfully attempting to secure a replacement doping control officer, the IDTM Supervisor informed Mr. Kozun that no other doping control officer in the region was available to replace the DCO. Consequently, Mr. Salmond made it clear that no doping control test would then take place.
24. The parties differ vastly in their account of what happened next:
- Mr. Salmond asserts that the IDTM Supervisor informed Mr. Kozun and A. (who by this point was acting as Mr. Kozun's representative) that Mr. Kozun could (1) provide his sample notwithstanding the incidents that transpired earlier that morning; or (2) abandon the process and complete an "incident report". To the extent Mr. Kozun abandoned the process, Mr. Kozun was informed that, at worst, he would receive an "*X on a three X system*". Moreover, at no time did the IDTM Supervisor or DCO inform Mr. Kozun that not taking the test would constitute a refusal or be a sanctionable offence.

- WADA and the IIHF assert that the IDTM Supervisor spoke with Mr. Kozun who confirmed that it was acceptable to him to proceed with the doping control, but that he needed approval from A. The IDTM Supervisor then spoke with A. and explained that if Mr. Kozun did not take the test, serious consequences would follow. There was no indication by her that such refusal would only be considered an “*X on a three X system*” and she confirmed (again) that the DCO was duly qualified to conduct the test. A. confirmed that, for her, everything was in order and Mr. Kozun could proceed with test pending approval from Mr. Salmond.
25. At approximately 08h20, Mr. Salmond returned to the lobby of the Hotel. The IDTM Supervisor then spoke with Mr. Salmond. Here, again, the parties differ in their account of what was stated:
- Mr. Salmond asserts he was told that if Mr. Kozun was not comfortable providing his sample with the DCO, then Mr. Kozun and A. should write an “incident report” explaining the situation (Mr. Salmond was not requested to provide a statement). The IDTM reinforced to Mr. Salmond that the word “refusal” should not feature in the statement and that, given the circumstances, the incomplete test would not be considered a “refusal” and Mr. Kozun would not face sanctions. Mr. Salmond repeated the IDTM Supervisor’s instructions to Mr. Kozun and A. and left the lobby of the Hotel. Mr. Kozun and A. proceeded to prepare their statements accordingly.
 - WADA and the IIHF assert that Mr. Salmond expressly stated that Mr. Kozun would not take the test and that such test should be cancelled. In response, the IDTM Supervisor informed Mr. Salmond that the test could not be cancelled as Mr. Kozun was already notified. She further explained that the DCO had shown the appropriate paperwork and that there was no reason not to proceed with the test. The IDTM Supervisor then instructed Mr. Salmond to have Mr. Kozun and A. provide a written statement regarding the morning’s events. Mr. Salmond instructed Mr. Kozun and A. on what to write “word for word” (Mr. Salmond did not write anything down despite a request to do so by the DCO).
26. At approximately 09h20, after collecting the written statements of Mr. Kozun and A. and Mr. Kozun’s signed doping control form, the DCO and DCA left the hotel.
- b. The Video Footage**
27. At some point during the doping control process, the DCO noticed that D., Hockey Canada’s videographer, was recording video footage of the doping control. The DCO did not consent to be filmed and it remains undisputed that the DCO repeatedly requested that D. stop filming.

28. Mr. Salmond adduced portions of this video footage as evidence in this procedure. WADA and the IIHF assert that portions of the footage are missing, indeed intentionally so. As set out below, the Panel sought assurances from Hockey Canada that the footage produced was indeed complete and accurate, but regrettably no response was provided to the Panel.

c. *IIHF Notification to Mr. Kozun – The Kozun Decision*

29. Following the failed doping control on 12 December 2017, the IIHF brought charges against Mr. Kozun asserting a violation of Article 2.3 of the WADC – *evading, refusing, or failing to submit to Sample Collection* (as reflected under Article 2.7 of the IIHF Doping Control Regulations).
30. On 26 July 2018, the IIHF Disciplinary Board, after hearing from Mr. Kozun and assessing the charges against him, notified a decision determining that Mr. Kozun did not commit a violation of Article 2.3 of the WADC (the “Kozun Decision”). The Kozun Decision was thereafter the subject of an appeal to CAS, *CAS 2018/A/5935 World Anti-Doping Agency (WADA) v. International Ice Hockey Federation (IIHF) & Brandon Kozun* (the “Kozun proceedings”).
31. The Panel constituted to hear the Kozun proceedings was as follows: Mr. Ken Lalo (President), Hon. Michael J. Beloff QC and Ms. Annabelle Bennett (Arbitrators).
32. On 18 March 2019, the parties to the Kozun proceedings informed the CAS Court Office that they had resolved their dispute and requested the Kozun Panel to enter a Consent Award. Attached to the letter was a confidential settlement agreement.
33. On 9 April 2019, the Kozun Panel executed a Consent Award confirming that the parties’ agreement constituted a *bona fide* settlement of their dispute, which included the sanctioning of Mr. Kozun for a one-year period of ineligibility commencing 15 March 2018 for failing to submit a sample for doping control on 12 December 2017.

d. *IIHF Notification to Mr. Salmond – The Appealed Decision*

34. On 27 March 2018, the IIHF Disciplinary Board brought charges against Mr. Salmond asserting a violation of Article 2.9 of the WADC – *Complicity* (as reflected under Article 2.14 of the IIHF Doping Control Regulations).
35. On 14 August 2018, the IIHF Disciplinary Board, after hearing from Mr. Salmond and assessing the charges against him, issued a decision determining that Mr. Salmond committed a violation of Article 2.9 of the WADC (the “Appealed Decision”). Mr. Salmond was suspended for one year, commencing 1 June 2018.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 4 September 2018, Mr. Salmond filed his statement of appeal against the IIHF with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). In his statement of appeal, Mr. Salmond nominated Ms. Maidie E. Oliveau as arbitrator.
37. Mr. Salmond’s appeal was designated procedural reference *CAS 2018/A/5885 Scott Salmond v. IIHF*.
38. On 19 September 2018, the IIHF nominated Hon. Michael J. Beloff QC as arbitrator.
39. On 4 October 2018, WADA filed a statement of appeal against the IIHF and Mr. Salmond with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code. In its statement of appeal, WADA also nominated Hon. Michael J. Beloff QC as arbitrator.
40. WADA’s appeal was designated procedural reference *CAS 2018/A/5936 WADA v. IIHF & Scott Salmond*.
41. On 9 October 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the consolidation of these two procedures in accordance with Article R52 of the Code.
42. On 23 October 2018, Mr. Salmond, following an agreed-upon briefing schedule between the parties, filed his appeal brief in accordance with Article R55 of the Code.
43. On 30 October 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that Mr. Ken Lalo was appointed as President of the Panel in accordance with Article R54 of the Code. Mr. Lalo’s appointment as President of the Panel was the subject of challenge by Mr. Salmond.
44. On 21 December 2018, WADA filed its answer (CAS 2018/A/5885) and appeal brief (CAS 2018/A/5936) as agreed upon by the parties in their briefing schedule.
45. On 23 January 2019, a Decision on Petition for Challenge was issued by the Board of the International Council of Arbitration for Sport dismissing this challenge.
46. On 30 January 2018, the IIHF filed its answer (both CAS 2018/A/5885 and CAS 2018/A/5936) as agreed upon by the parties in their briefing schedule.
47. On 29 March 2019, Mr. Salmond filed his answer (CAS 2018/A/5936) as agreed upon by the parties in their briefing schedule.

48. On 16, 21 and 25 April 2019, WADA, the IIHF, and Mr. Salmond signed and returned the order of procedure to the CAS Court Office, subject to various editorial comments made by the parties which were confirmed by the Parties at the outset of the hearing.
49. Additionally, in the order of procedure and various other correspondence, Mr. Salmond reiterated his position that he believes that he has not been granted a fair or equitable procedure, “*such that his rights to a fair hearing, to be heard and to equal treatment have not been respected*” with reference in particular to what he considers to be the effects of the settlement of the Kozun proceedings on the present proceedings. The Panel noted that Mr. Salmond maintained his position that he had not waived any of his previous procedural objections or reservations of rights by signing the order of procedure or by taking any additional steps following its execution.
50. On 24 April 2019, Mr. Salmond filed a petition to challenge Mr. Lalo and Hon. Beloff. QC.
51. On 25 April 2019, a Decision on Petition for Challenge was issued by the Board of the International Council of Arbitration for Sport dismissing the challenges to Mr. Lalo and Hon. Beloff QC.
52. On 29 & 30 April 2019, a hearing was held in Montreal, Canada. The Panel was assisted by Me. Marianne Saroli, *ad hoc* clerk and joined by the following, either in person, by telephone or video conference:

For Mr. Salmond

Mr. Scott Salmond (Party)

Mr. Mike Morgan (Counsel)

Mr. Tom Seamer (Counsel)

Mr. Henry Goldschmidt (Counsel)

A. (Witness, Formerly Hockey Canada)

C. (Witness, Formerly Hockey Canada)

D. (Witness, Hockey Canada)

Mr. Paul Melia (Witness, Canada Centre for Ethics in Sport)

Mr. David Branch (Witness, Canadian Hockey League)

F. (Observer, Hockey Canada)

E. (Observer, Hockey Canada)

G. (Observer, Hockey Canada)

For the IIHF

Ms. Ashley Ehlert (IIHF Legal Director)

Mr. Jonathan Taylor (Counsel)

Ms. Lauren Pagé (Counsel)

For WADA

Mr. Cyril Troussard (WADA Senior Manager Legal Affairs)

Ms. Marissa Sunio (WADA Manager Legal Affairs)

Mr. Ross Wenzel (Counsel)

Witnesses called by both IIHF and WADA

Mr. Cem Barut

Ms. Jasmina Glad-Schreven

Ms. Alla Borisova

Mr. Brandon Kozun

53. At the outset of the hearing, the parties confirmed that they had no objection to the constitution of the Panel, other than those set forth in Mr. Salmond's challenges. No further objections were raised by any party as it related to the CAS procedure prior to the hearing.
54. The Panel reaffirmed at the outset of the hearing, including in response to Mr. Salmond's letter of 25 April, its position which was already advanced in a letter dated 16 April 2019, that the Panel "*is not bound by any findings in the Kozun case*". The Panel further highlighted that its position on this point had been clearly stated. Nevertheless, the Panel emphasised again that while it accepts that Mr. Kozun reached a settlement, admitted an ADRV and was sanctioned for it, it would be open to the Panel to conclude on the evidence before it in the present case that, in fact, Mr. Kozun did not commit an ADRV (or per contra confirm that he did), if indeed the Panel concludes that it does need to make such a determination regarding Mr. Kozun in these proceedings.

55. Furthermore and addressing a separate letter of Mr. Salmond dated 25 April 2019, the Panel reconfirmed its indication contained in its letter of 23 April 2019 that “[t]he Panel confirms that Mr. Salmond will, at the hearing, be permitted to present whatever relevant arguments he deems necessary in relation to the developments relating to the Kozun proceedings and those arguments will not be deemed inadmissible on the basis that they did not feature in his Appeal Brief or Answer”.
56. At the close of the hearing, the parties confirmed that their right to be heard – as it related to the hearing itself - was fully respected.
57. Following the conclusion of the hearing, and as agreed upon by the parties and Panel at the hearing, WADA filed 6 previous CAS decisions and the IIHF 1 decision on which they intended to rely and which were not included in their written submissions. Mr. Salmond did not file any additional CAS decisions. While the Panel has accepted and read these cases, its decision set out below was not in the event influenced by the post-hearing cases filed by WADA or the IIHF.

IV. SUBMISSIONS OF THE PARTIES

A. The Position of Mr. Salmond

58. Mr. Salmond’s submissions, in essence, may be summarized as follows:

a) The underlying ADRV - The Player did not commit a violation to Article 2.3 WADC

- The commission of an ADRV by another person is a prerequisite to a complicity violation under Article 2.9 WADC (based on Article 2.14 of the IIHF Doping Control Regulations) and a person can only commit a complicity ADRV if he or she has been intentionally complicit in another person's commission of an ADRV. Mr. Salmond submits that he did not commit a complicity violation under Article 2.9 WADC because the Kozun Decision determined that Mr. Kozun did not commit an ADRV under Article 2.3 WADC (reflected as article 2.7 of the IIHF Doping Control Regulations). Therefore in as much as Mr Kozun did not commit an ADRV, Mr. Salmond cannot be found to have committed a complicity violation.
- In support of his argument, Mr. Salmond cites *Legkov/Zubkov v. IOC*, CAS 2017/A/5379 *et al.* to explain that liability for complicity is necessarily conditional upon the existence of a freestanding ADRV under Articles 2.1 to 2.7 WADC by another person.

b) *Lack of Intent*

- Intent is an essential element of “complicity”. Given that the burden is on the IIHF to prove an ADRV, the IIHF has to prove to the comfortable satisfaction of the Panel that Mr. Salmond intended to commit a violation of Article 2.7 WADC1. However, as appears below, it is clear from the evidence that Mr. Salmond did not intend to assist Mr. Kozun in the commission of any ADRV.
- Mr. Salmond was on high alert due to his concerns surrounding the integrity of doping control processes in Russia and the possibility of Russian retaliation against non-Russian athletes. Mr. Salmond had gone out of his way to communicate those concerns to his superiors at Hockey Canada, who in turn shared the concerns with the CCES. The CCES evidently considered those concerns to be well-grounded given that it passed them on to WADA and, in the process, expressed its own concerns about the risk of clean samples being manipulated in Russia. The DCO’s belligerent conduct and repeated refusal to provide what Mr. Salmond believed to be the requisite documentation served only to heighten Mr. Salmond’s concerns.
- In addition, Mr. Salmond agreed to proceed with the sample collection with another DCO, and to wait for that alternative DCO to arrive, thus further establishing that he had no intent to commit an ADRV.

c) *Abandonment of the sample collection*

- Mr. Salmond did not commit an ADRV because the sample collection was abandoned from the moment it was confirmed that no alternative DCO was available to replace Mr. Barut.
- More specifically, once the Supervisor confirmed that an alternative DCO would replace Mr. Barut, such decision represented the termination of the DCO’s involvement in the sample collection process. That being so, once Mr. Salmond was informed that no alternative DCO would indeed be attending, it was clear to IDTM that Mr. Salmond, Mr. Kozun and A. understood that the sample collection process was being abandoned.
- The abandonment was reaffirmed by the DCO who, once he was told that an alternative DCO would not be attending, made no attempt to notify Mr. Kozun, Mr. Salmond, A. or anyone else of any potential consequences of not providing him with a sample. The DCO was simply told by the Supervisor to “*end the test and go home*”.

d) *Departures from the International Standard for Testing and Investigations (“ISTI”) and associated rules*

- Mr. Salmond did not commit an ADRV because various departures from the International Standard for Testing and Investigations and associated rules that occurred on 12 December 2017 caused the alleged doping violation. Mr. Salmond explains that the 2018 IIHF Doping Control Regulations are silent as to the consequences of a departure from the ISTI and therefore, the relevant provisions of the WADC apply. Notably, Article 3.2.3 of the WADC provides, inter alia, that: “[...] *If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation*”.
- In other words, if Mr. Salmond can establish a departure from the ISTI which could reasonably have caused the potential ADRV, the IIHF will have the burden of proving, to the comfortable satisfaction of the Panel, that the relevant departure from the ISTI did not cause the factual basis for the ADRV.
- In the context of the foregoing, Mr. Salmond alleges that IDTM failed, in various respects set out below, to comply with the mandatory requirements of the ISTI, the Results Management, Hearings and Decisions Guidelines (“RMHD Guidelines”) and the Doping Control Officer’s Training Tool Kit Manual as follows:

i. ISTI

- Part One, Section 1, of the ISTI states that mandatory standards for the notification of athletes must be met, and that due consideration must be given “*to the principles of respect for human rights, proportionality, and other applicable legal principles*”. The ISTI also provides the following requirements:

“5.3 Requirements prior to notification of Athletes

(...)

5.3.3 Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorisation letter from the Testing Authority. DCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver’s license, health card, passport or similar valid identification) and the expiry date of the identification.

(...)

5.4 Requirements for notification of Athletes

5.4.1 When initial contact is made, the Sample Collection Authority, DCO or Chaperone, as applicable, shall ensure that the Athlete and/or a third party (if required in accordance with Article 5.3.8) is informed:

- a) That the Athlete is required to undergo a Sample collection;*
- b) Of the authority under which the Sample collection is to be conducted;*
- c) Of the type of Sample collection and any conditions that need to be adhered to prior to the Sample collection;*
- d) Of the Athlete's rights, including the right to:*
 - i. Have a representative and, if available, an interpreter accompany them, in accordance with Article 6.3.3(a);*
 - ii. Ask for additional information about the Sample collection process;*
 - iii. Request a delay in reporting to the Doping Control Station for valid reasons; and*
 - iv. Request modifications as provided for in Annex B – Modifications for Athletes with Impairments.*
- e) Of the Athlete's responsibilities, including the requirement to:*
 - i. Remain within direct observation of the DCO/Chaperone at all times from the point initial contact is made by the DCO/Chaperone until the completion of the Sample collection procedure;*
 - ii. Produce identification in accordance with Article 5.3.4;*
 - iii. Comply with Sample collection procedures (and the Athlete should be advised of the possible Consequences of a failure to comply); and*
 - iv. Report immediately for Sample collection, unless there are valid reasons for a delay, as determined in accordance with Article 5.4.4.*

- Article 5.3.3 of the ISTI requires that the DCO shall carry, prior to notification, official documentation provided by the Sample Collection Authority to prove the DCO's authority to collect a sample from that particular athlete.

- Article 5.3.3 also provides that the DCO shall carry complementary identification which includes the name, photograph and the expiry date of the identification.
- In other words, a DCO must inform an athlete, on initial contact, of the authority under which the sample collection is to be conducted. On such contact with an athlete, a DCO must identify himself to the athlete by producing: a) official documentation provided by the Sample Collection Authority evidencing the DCO's authority to collect a sample from that athlete; and b) an additional identification document displaying the DCO's name and photograph and the expiry date of that additional identification document.
- However, in point of fact the alleged letter of authority that was shown to A. and Mr. Salmond did not confirm the DCO's identity and made no reference to Mr. Kozun.
- Therefore in point of fact the DCO did not comply with all the mandatory requirements of the ISTI in respect of *inter alia* notification of the Player, including showing him all the required documentation establishing his identity and authority to carry out the test. Moreover, the letter of authority was not adequate because it pre-dated Mr. Kozun's registration in the IIHF Registered Testing Pool ("IIHF RTP") by 11 months.
- Separately, pursuant to 5.4.1(e)(iii) ISTI, the DCO shall ensure the athlete or other party is informed of the consequences of a possible failure to comply. In this respect, Mr. Salmond highlights Articles 5.4 a) and 5.4(e)(iii), 7.3.2 and Annex A, Articles A.3.2 and A.3.3 of the ISTI:

Articles 5.4 a) and 5.4e)iii ISTI:

"5.4 Requirements for notification of Athletes

5.4.1 When initial contact is made, the Sample Collection Authority, DCO or Chaperone, as applicable, shall ensure that the Athlete and/or a third party (if required in accordance with Article 5.3.8) is informed:

(a) That the Athlete is required to undergo a Sample collection;

(...)

(e) Of the Athlete's responsibilities, including the requirement to:

(...)

iii. Comply with Sample collection procedures (and the Athlete should be advised of the possible Consequences of Failure to Comply); (...)"

Article 7.3.2 ISTI:

"7.3.2 The DCO shall ensure that the Athlete has been informed of his/her rights and responsibilities as specified in Article 5.4.1".

Annex A, paragraphs A.3.2 and A.3.3 ISTI:

"A.3 Responsibility

[...]

A.3.2 The DCO is responsible for:

a) informing the Athlete or other party of the Consequences of a possible Failure to Comply;

[...]

A.3.3 Sample Collection Personnel are responsible for:

a) informing the Athlete or other party of the Consequences of a possible Failure to Comply;"

- Furthermore, Mr. Salmond refers to the definition of "Consequences" provided by the Appendix of the WADC, which details five specific consequences:

"An Athlete's or other Person's violation of an anti-doping rule may result in one or more of the following: (a) Disqualification means the Athlete's results in a particular Competition or Event are invalidated, with all resulting Consequences including forfeiture of any medals, points and prizes; (b) Ineligibility means the Athlete or other Person is barred on account of an anti-doping rule violation for a specified period of time from participating in any Competition or other activity or funding as provided in Article 10.12.1; (c) Provisional Suspension means the Athlete or other Person is barred temporarily from participating in any Competition or activity prior to the final decision at a hearing conducted under Article 8; (d) Financial Consequences means a financial sanction imposed for an anti-doping rule violation or to recover costs associated with an anti-doping rule violation; and (e) Public Disclosure or Public Reporting means the dissemination or distribution of information to the general public or Persons beyond those Persons entitled to earlier notification in accordance with Article 14. Teams in Team Sports may also be subject to Consequences as provided in Article 11".

- In point of fact neither Mr. Kozun, nor A., nor Mr. Salmond were informed, by either the DCO or the Supervisor of the potentially very serious consequences that could ensue if a sample was not provided to the DCO and as a result, none of them

were aware that they could face a sanction. Indeed, the Supervisor told A. that “*in a worst-case scenario*” Mr. Kozun would “*receive an X on a three X system*”. In short, the lack of warning was a departure from the mandatory requirements that could reasonably have caused the ADRV.

ii. RMHD Guidelines

- According to Article 3.8.1.1 of the RMHD Guidelines, to constitute an ADRV under Article 2.3 of the WADC, Mr. Kozun must have been properly notified by the relevant doping control personnel, clearly advised of the potential consequences of not providing a sample and he must have understood the implications of being notified.

iii. Doping Control Officer’s Training Tool Kit

- The Doping Control Officer’s Training Tool Kit (the “DCO Manual”), provides that, prior to notification, the DCO must have a Letter of Authority with him containing the date range of the test mission and signed by the anti-doping organisation. Pursuant to Article 4.1 DCO Manual the DCO must have additional photo identification during the sample collection process.
- Moreover, in accordance with the DCO Manual, the notification should occur as soon as possible upon arrival at the venue for out-of competition testing (Article 5.1) whereas the identification and authorization documentation must be shown (Article 7.5). The DCO must notify the athlete that he may be subject to sanctions for refusing to provide a sample (Article 6.9).
- In point of fact that the DCO and the Supervisor failed to comply with the mandatory notification under Article 6.9.

e) *Estoppel*

- Estoppel may be invoked on the basis of an express statement, but also from an inaction or omission, or even from silence, as described in *CAS 2002/O/401, IAAF, USATF*. Here, the IIHF (via IDTM) was largely responsible for the events of 12 December 2017 by its acts, omissions and/or representations of the DCO, the Supervisor and/or IDTM generally. As a result, the IIHF is estopped from asserting that Mr. Salmond committed an ADRV.

- When the events of 12 December 2017 occurred, the IIHF had delegated its sample collection authority to IDTM. The DCO and the Supervisor were acting as agents and/or representatives of the IIHF.
- In its section “Definitions and interpretation”, the ISTI defines “Sample Collection Authority” and explains that, regardless of such delegation: *“the Testing Authority always remains ultimately responsible under the Code for compliance with the requirements of the International Standard for Testing and Investigations relating to collection of Samples”*. Thus, the IIHF was at the relevant time responsible for the acts, omissions and representations made by IDTM, the DCO and/or the Supervisor for the following reasons:

i. Russian Doping Scandal

- IDTM was aware by December 2017 of the Russian doping scandal that had resulted in the expulsion of Russia from the 2018 Winter Olympic Games, not least since IDTM DCOs had been implicated. IDTM must, therefore, have been aware that athletes and athlete support personnel worldwide harboured very serious and justified concerns as to the integrity of the doping control process in Russia.
- It was incumbent on IDTM to ensure that its employees (i.e. including DCOs and supervisors) conducted themselves impeccably and professionally, and without doing anything which might arouse suspicion or mistrust, or which might otherwise raise the concerns of an athlete or their support team. Yet, IDTM failed in this obvious regard.

ii. Deploying Mr. Barut

- IDTM decided to deploy the DCO to collect Mr. Kozun’s sample, despite the existence of serious complaints lodged against him in relation to his conduct and refusal to present identification during prior sample collections. Such complaints referenced aggressive conduct during sample collections and general lack of professionalism as well as his failure or refusal to present identification / authorisation documentation or, to allow those documents to be inspected.
- Within 20 minutes of having arrived at Mr. Kozun’s door, a complaint was lodged to IDTM with respect to Mr. Barut’s conduct and his refusal to show identification. It is indisputable from the video that, at the time of that recording, the atmosphere was relatively calm, and Mr. Barut was not being interrupted in performance of his functions
- Nevertheless, as noted above, the DCO’s mission was abandoned once it became apparent that a substitute DCO could not be found. Moreover, IDTM failed to

express that Mr. Kozun could be charged with an ADRV and/or could be banned from all sports for a period of several years if a sample was not provided to Mr. Barut, notwithstanding the circumstances. Had Mr. Kozun, Mr. Salmond or A. been warned of the potential consequences, then it is clear that a sample would have been provided to the DCO.

59. In his appeal brief, Mr. Salmond sought the following relief:

- (a) *set aside the Salmond Decision; and*
 - (i) *Eliminate the period of ineligibility imposed on him, on the basis that he did not commit an ADRV; or alternatively*
 - (ii) *Apply the principle of proportionality to eliminate the period of ineligibility imposed on him; or alternatively*
 - (iii) *Apply the principle of proportionality to reduce the period of ineligibility to less than 12 months, to be deemed to have commenced on 12 December 2017 (further to Article 10.11.1 of the WADA Code); or in the final alternative*
 - (iv) *Backdate the period of ineligibility imposed by the Deciding Panel to 12 December 2017, further to Article 10.11.1 of the WADA Code.*
- (b) *order the IIHF to*
 - (i) *Reimburse Mr. Salmond his legal costs and other expenses pertaining to his appeal proceeding before CAS;*
 - (ii) *Bear the costs of the arbitration.*

Mr. Salmond respectfully requests the right to file separate costs submissions on completion of his Appeal”.

60. Such requests were confirmed in Mr. Salmond’s answer in case CAS 2018/A/5936.

B. The Position of WADA

61. WADA’s submissions, in essence, may be summarized as follows:

a) Russian Doping Scandal

- An excessive emphasis was placed on the Russian doping scandal and Mr. Salmond improperly attempts to associate state-sponsored doping control manipulations in Russia

with the events that took place on 12 December 2017. He relies on documents mentioning IDTM that predate the relevant events by at least 2 years and up to 9 years, with no evidence that Hockey Canada harboured concerns regarding IDTM in December 2017.

- Mr. Salmond makes multiple references to the testing that took place next door to the Player's room. However, it is entirely misleading to state that CCES conducted those tests as they were carried out by RUSADA. Mr. Salmond's submissions are post-fact attempts to excuse his conduct towards the DCO who was ethnically Turkish, not Russian.
- Mr. Salmond and his witnesses put forward a version of the facts that was consistent with the single clip of video footage that Mr. Salmond chose to produce. However, it was proven that these submissions are untrue or inaccurate in material respects by the additional footage disclosed following WADA's requests.

b) Abandonment of the sample collection

- The sample collection was never abandoned. In an effort to calm down Mr. Salmond and settle a tense situation, the Supervisor agreed to try to find another DCO to replace the DCO. During this time, the DCO kept Mr. Kozun under his surveillance, knowing that he was still the one conducting the doping control. Additionally, once in the hotel lobby, the DCO showed his national ID to Mr. Kozun and A., something he would not have done had he thought his role to be over.
- Mr. Salmond simply took the decision that Mr. Kozun would not be providing a sample and informed the Supervisor of his position. As a result, all that remained was for the DCO to conclude the control by filling in the doping control form, which he did.

c) Departures from the ISTI and associated rules

- The ISTI does not provide a coach or employee of a national federation with any right to participate in the doping control process. As such, Mr. Salmond was neither entitled to be shown the DCO's documents nor to determine whether such documents were adequate. Indeed, contrary to Mr. Salmond's assertion, the ISTI does not require a DCO to identify himself with an official document evidencing that a particular DCO is authorized to collect a sample from that particular athlete. Rather, the document must simply show that the sample collection personnel has the authority to collect the sample. Here, the DCO was clearly able to demonstrate he was an IDTM DCO acting on behalf of the IIHF.

- The contents of the IIHF Letter of Authorization itself prove that the DCO was duly authorized to conduct a doping control on behalf of the IIHF, anywhere in the world, during 2017.
- Mr. Kozun and Mr. Salmond knew that Mr. Kozun was part of the IIHF Registered Testing Pool.
- The IIHF Letter of Authorization fulfils the requirement of Article 5.3.3 of the ISTI as it provides evidence of the authority of the DCO to collect a sample from Mr. Kozun.
- The DCO showed his electronic IDTM identification card on multiple occasions to Mr. Kozun as well as to A. and Mr. Salmond, which contained all the requirements under the ISTI, notably the IDTM logo, the DCO's full name, the DCO's photo, the DCO's authorization to conduct doping controls for IDTM, IDTM's appointment to act on behalf of the organization indicated on the letter of authority, the expiry date of the identification and the signature of the IDTM managing director.
- Moreover, the DCO had no obligation to inform Mr. Salmond of any potential consequences as the DCO's duties pursuant to Article 5.4.1 of the ISTI are towards the player. Hence, the warning of potential consequences to Mr. Kozun is the only relevant notice for this case. Mr. Kozun was warned on numerous occasions of the consequences for failing to provide a sample (including when he signed the Doping Control Form, which also contained an explicit warning of the failure to provide a sample). Besides, the Supervisor warned Mr. Kozun, A. and Mr. Salmond in each of her calls as to the potential consequences.

d) *Estoppel*

- The estoppel submission is flawed on the facts and the law and should never have been made. CAS has consistently found the principle of estoppel under common law to require as an essential element a representation on which reliance is placed in good faith so as to make it inequitable for the representor to resile from it or something equivalent to the civil law concept of *venire contra factum proprium*. In point of fact, the DCO's and the Supervisor's conduct did not satisfy the relevant criteria for an estoppel.
- Moreover, there is no evidentiary basis to assert that the doping scandal in Russia placed a greater duty of care on IDTM, especially because no stakeholder, including Hockey Canada, had any concern at the time about IDTM.
- Put simply, Mr. Salmond's actions, statements and behavior are the reasons that Mr. Kozun did not provide a sample.

e) *Complicity and Intent*

- For the purpose of an ADRV, intent is related to the behavior of the individual in question and not the violation itself. When an individual acts intentionally to assist another person to engage in a conduct which objectively constitutes an ADRV, such act is enough to meet the subjective element of an Article 2.9 violation of the WADC. Here, Mr. Salmond acted intentionally when instructing Mr. Kozun not to provide a sample.
- Regardless of whether Mr. Salmond knew that what he did constituted an ADRV, under Article 2.9 the fact that he instructed Mr. Kozun not to submit to doping control was sufficient to commit one.
- Mr. Salmond's alleged ignorance of the rules or consequences is of no avail to him. Individuals subject to the WADC have a responsibility to know what constitutes an ADRV and ignorance is not a defense.
- Mr. Salmond has 17 years of experience as a member of Hockey Canada and has witnessed and/or overseen more than 200 doping controls. Mr. Salmond was aware that Mr. Kozun was part of the IIHF Registered Testing Pool, including the fact that he was subject to IIHF testing. Based on his professional experience, Mr. Salmond cannot reasonably argue that he could not have known that Mr. Kozun not submitting a sample could have resulted in an ADRV.
- Mr. Salmond explicitly and intentionally instructed Mr. Kozun not to provide a sample and thus intended the actions he undertook.

f) *Requirement of an underlying ADRV*

- Even if Mr. Kozun did not commit an ADRV, Mr. Salmond should nevertheless be found to have committed one.
- Based on a literal interpretation, Mr. Salmond encouraged Mr. Kozun not to submit to the doping control and has therefore breached Article 2.9 of the WADC. Furthermore based on a purposive interpretation, the Article cannot be construed so as to allow a person escape liability in circumstances where despite his own reprehensible conduct in seeking to encourage an underlying violation such violation was not committed because the subject of the doping control resisted that encouragement.

g) *Sanction*

- The period of ineligibility imposed by the IIHF Disciplinary Board was reduced to one year on the basis of proportionality after ruling that the “*special features of the case at hand are*

sufficiently different from those of the cases which Code Article 2.9 is designed for and justify the consideration of the two-year ineligibility period according to Code Article 2.9 as disproportionate to Mr. Salmond's behavior”.

- The Appealed Decision erred in reducing Mr. Salmond’s sanction on the basis of the principle of proportionality. The “*period of ineligibility imposed shall be a minimum of two years, up to four years, depending on the seriousness of the violations*” in accordance with Article 7.3.4 of the IIHF Doping Control Regulations (“IIHF DCR”), for violations of Article 2.9 of the WADC.
- Pursuant to Article 7.5.2 of the IIHF DCR, “*if a player or other person establishes that he bears No Significant Fault or Negligence, then subject to further reduction or elimination provided in IIHF Disciplinary Code Article 7.6 (WADA Code Article 10.6), the otherwise applicable period of ineligibility may be reduced based on the player's or other person's degree of Fault, but the reduced period of ineligibility may not be less than one-half of ineligibility otherwise applicable*”.
- Because of the commentary to Article 10.5.2 of the WADC, Mr. Salmond cannot benefit from a reduction based on No Significant Fault or Negligence, which is only available for violations in which intent is not an element of the violation.
- The principle of proportionality could only potentially apply to situations in which there is a gap in the rules, but this is not the case here.

62. In its statement of appeal, WADA sought the following relief:

“WADA hereby respectfully requests CAS to rule that:

- 1. The Appeal of WADA is admissible.*
- 2. The decision dated 26 July 2018 rendered by the IIHF Disciplinary Board in the matter of Scott Salmond is set aside.*
- 3. Scott Salmond is found to have committed an anti-doping rule violation.*
- 4. Scott Salmond is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Scott Salmond before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
- 5. WADA is granted an award for costs.*

63. In their appeal brief and answer, WADA sought the following relief:

WADA hereby respectfully requests CAS to rule that:

1. *Scott Salmond's Appeal (CAS 2018/A/5885) is dismissed.*
2. *The Appeal of WADA (CAS 2018/A/5936) is admissible.*
3. *The decision dated 26 July 2018 rendered by the IIHF Disciplinary Board in the matter of Scott Salmond is set aside.*
4. *Scott Salmond is found to have committed an anti-doping rule violation.*
5. *Scott Salmond is sanctioned with a period of ineligibility of 2 to 4 years starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Scott Salmond before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
6. *WADA is granted an award for costs”.*

C. The Position of the IIHF

64. The IIHF's submissions, in essence, may be summarized as follows:

a) Russian Doping Scandal

- The Russian doping scandal provided no justification whatsoever for Mr. Salmond's interference with the doping control process. There is no basis to believe that any retaliation against non-Russian athletes could or would occur. In fact, Mr. Salmond cites no evidence of any such attempt either before or after December 2017, because there was none.
- On 12 December 2017, the Player was not tested by RUSADA since the test was conducted through the IIHF by a DCO from IDTM, a private Swedish company. Moreover, the DCO was ethnically Turkish and not Russian.
- At least one IDTM DCO based in Russia had been accused of helping with the original doping conspiracy, but IDTM had fired its DCOs operating in Russia in 2014 and hired new ones. To the IIHF's knowledge, no allegations of corruption had been made against these new IDTM DCOs.
- There was no connection between the IDTM testing and Russia, other than the fact that it took place in Russia, where Hockey Canada had itself chosen to play in a tournament.

- If Hockey Canada had serious concerns about such risk to its players, it would have not exposed them to the risk especially considering that it had no obligation to participate in the Channel One Cup in Moscow in December 2017. The Channel One Cup is a yearly tournament organized as part of the European Hockey Tour, which is not sanctioned by the IIHF and has no bearing on a nation's IIHF world rankings or on participation/seeding in the IIHF World Championships or Olympic Games.

b) Departures from the ISTI and associated rules

- Mr. Salmond was not entitled to insist that the DCO had to notify and produce documentation to him before notifying Mr. Kozun. Mr. Salmond's objections to the testing procedure that followed is contrary to the mandatory "no notice" requirements of the ISTI and the IIHF DCR.
- Pursuant to Article 3.2.3 of the WADC, Mr. Salmond must prove not only a departure from the rules, but also that such departure could have reasonably caused the ADRV. It must be established that a mandatory requirement set out in the ISTI or in the applicable anti-doping rules has not been followed, not just a provision suggesting that the collection agency "may" or even "should" do something. Moreover, Mr. Salmond must show that there is a causative link between the departure and the commission of his ADRV.
- The RMHD Guidelines and the DCO Manual are not mandatory requirements since they simply provide suggestions as to how to comply with the mandatory requirements in the ISTI or the anti-doping rules.
- There were no departures from any mandatory requirements of the ISTI or the IIHF DCR that could justify Mr. Salmond's instruction to Mr. Kozun not to submit to doping control, for the following reasons:
 - Mr. Salmond was not entitled to demand that DCOs wishing to test Hockey Canada players first report to him and show him their papers.
 - As soon as Mr. Salmond saw Mr. Barut knocking on Mr. Kozun's door, he immediately inserted himself improperly into the process. He requested Mr. Barut's papers and such demand was completely improper, and a violation of the ISTI/improper interference with doping control.
 - The ISTI is clear that the athlete must be the first person notified that she/ he is required to give a sample and must not receive any advance warning of that testing.
 - Article 5.3.8 of the ISTI specifies that third parties may be notified when the athlete is a minor or has an impairment and so requires assistance, but the

comment to that article states that *“there is no requirement to notify any third party of the doping control mission where such assistance is not needed”*.

- The CCES testing conducted by RUSADA’s DCOs on other Hockey Canada players cannot be used as an example of what should have been done in regard to Mr. Kozun. By meeting with A. and Mr. Salmond in advance of the testing, the RUSADA DCOs actually violated the important requirement of no advance notice set out in various ISTI articles. Mr. Barut was correct to hold his ground and to refuse to comply with Mr. Salmond's requests, which ignored the rules.
- In view of the following facts, the DCO properly notified Mr. Kozun that he had been selected for testing:
 - Mr. Barut met all the requirements set out in Article 5.3.3 and Article 5.4.2 ISTI. Notably, when Mr. Kozun opened his hotel room door, the DCO immediately informed him that he was an IDTM DCO sent by the IIHF to conduct a doping control on him. He then showed Mr. Kozun his electronic IDTM identification card on his iPhone.
 - Even though he was not required to do so, the DCO showed his electronic IDTM identification card to Mr. Salmond. The DCO also told Mr. Salmond that he was with IDTM and he was there on behalf of the IIHF, but Mr. Salmond refused to look at the phone as he wanted to see paper identification.
 - The Supervisor specifically confirmed on the phone, very early on in the notification process, to both Mr. Kozun and Mr. Salmond, that the DCO is a certified IDTM DCO and that his electronic IDTM card and letter of authority were valid forms of identification. Once he had shown Mr. Kozun his electronic IDTM identification card, the DCO was no longer required to show him his national ID (passport), but he nevertheless did so later in the process.
- Mr. Salmond’s allegation that the DCO had not shown the proper documentation is simply wrong and is based on utter ignorance of the rules.

c) *Abandonment of the sample collection*

- The IDTM did not abandon the sample collection. Mr. Salmond said that Mr. Kozun would not undergo the doping control without a new DCO, but neither the Supervisor nor the DCO ever agreed with that assertion.
- Despite Mr. Salmond's request for the DCO to leave, the Supervisor said *“the DCO cannot leave him (the Player) alone”* because Article 5.4.1(e)(i) of the ISTI is clear that once an athlete

has been notified, he must be kept under constant supervision until he has provided his sample. The DCO understood that he might still have to conduct the test.

- As soon as the Supervisor determined that there were no other DCOs available to replace the DCO, she then told the Player, A. and Mr. Salmond that the DCO had to complete the doping control.
- Mr. Salmond's argument that the doping control was abandoned when the Supervisor said that she could not find an alternative DCO is also completely baseless as she strongly recommended that the sample be provided after having determined that there was no other DCO available and confirmed that the DCO was authorized.
- Had the Supervisor agreed that the doping control would be abandoned if a new DCO could not be found, she would not have stayed on the phone for around 38 minutes to convince Mr. Kozun, A. and Mr. Salmond to allow Mr. Kozun to take the test.
- Article 5.4.1(e)(iii) of the ISTI is not a mandatory requirement as it uses a "should" rather than a "shall".
- Article 7.3.2 of the ISTI simply refers back to the requirements of Article 5.4.1 of the ISTI, and does not change, or add any element to, them.
- Annex A of the ISTI explains that the DCO and Sample Collection Authority are responsible for "*informing the Athlete or other party of the Consequences of a possible Failure to Comply*", but this is only if the athlete has refused to sign the notification or evaded notification.
- Mr. Kozun signed the doping control form and confirmed: "*I understand that any refusal or failure to submit to doping control, and/or any attempt to interfere with the doping control process, may be treated as an anti-doping rule violation*". Since he did not refuse to sign and thereby acknowledged that understanding, there was no mandatory requirement under the ISTI to give him any further warning.
- The facts establish that Mr. Salmond formed a personal aversion towards the DCO from the moment he refused to depart from the ISTI requirements by moving to the hotel lobby so that Mr. Salmond and other members of the Hockey Canada staff could inspect the DCO's documents prior to notifying Mr. Kozun.
- In reality, Mr. Salmond was never going to allow Mr. Kozun to submit to sample collection regardless of the fact that:

- The DCO showed his electronic IDTM identification card and the IIHF authorization.
- The DCO and the Supervisor attempted to explain that the electronic IDTM identification card was a valid form of DCO identification.
- The DCO and the Supervisor attempted to explain that the DCO was a qualified and sent by the IIHF to conduct a doping control on Mr. Kozun.
- The Supervisor explained the serious consequences that could result for Mr. Kozun if he did not provide a sample.

d) Requirement of an underlying ADRV

- Mr. Salmond cannot be exonerated on the basis that the commission of an ADRV by another person is a prerequisite to a complicity violation under Article 2.14 of IIHF DCR.
- Mr. Salmond's interpretation of Article 2.14 IIHF DCR is incorrect as it would completely frustrate the purpose of the rule. Article 2.14 IIHF DCR means that complicity does not require a completed ADRV as there only have to be steps taken towards the commission of an ADRV.
- It follows from the CAS jurisprudence that a rule has to be interpreted in a manner that advances the purpose of this particular rule rather than adopt a meaning that frustrates it whereas the drafters of a rule cannot have intended an irrational result.
- The IIHF refers to Article 20 para. 1 of the Swiss Code of Obligations and Article 2 para. 2 of the Swiss Civil Code, which dictate rejection of Mr. Salmond's proposed interpretation. Indeed, these Articles provide for the application of the legal principle *ex turpi causa non oritur actio*, i.e. no one may be permitted to profit from their own wrong.
- Mr. Salmond's reference to the case *Legkov/Zubkov* as authority for the proposition that liability for complicity "*is necessarily conditional upon the existence of a freestanding ADRV under Articles 2.1 to 2.7*" by another person carries his argument no further as there is no principle of *stare decisis* at the CAS.

e) The required intent for complicity

- Mr. Salmond's direction to Mr. Kozun not to provide a sample constitutes an action that has the effect of encouraging an ADRV within the meaning of Article 2.14 of the IIHF DCR. It is enough to show that Mr. Salmond intentionally encouraged Mr. Kozun to perform the acts that constitute the ADRV, i.e. not provide a sample.

- Mr. Salmond was well aware that Mr. Kozun's non-provision of a sample may be deemed an ADRV. Mr. Salmond was clearly warned that if Mr. Kozun did not provide a sample, it could result in an ADRV for Mr. Kozun.

f) *Estoppel*

- The IIHF was not estopped from enforcing its rules against Mr. Salmond.
- The IIHF and IDTM are not responsible for the Russian doping scandal. In any event, Hockey Canada and Mr. Salmond travelled to Moscow to compete understanding the risks presumed by them, including the risk of tampering with their players' samples, which was assessed as "*an absolute stretch, highly unlikely*".
- The DCO did not fail to produce a valid letter of authority establishing his right to collect a sample from Mr. Kozun. There was nothing wrong with Mr. Barut's refusal to show his passport in the room as he had already shown his electronic IDTM identification card, which met all necessary requirements. Subsequently, Mr. Barut presented his passport to Mr. Kozun and A.
- The Supervisor and the DCO never disclosed to Mr. Salmond that the test would be abandoned if no substitute DCO could be found to replace the DCO. To the contrary, the Supervisor and the DCO made it clear that a failure by Mr. Kozun to provide a sample might be treated as an ADRV, with serious consequences.

g) *Sanction*

- The CAS should impose a sanction in the 2-4 year range prescribed by the IIHF DCR. To comply with the IIHF DCR, the IIFH asserts that the Panel should increase the one-year sanction imposed by the IIHF Disciplinary Board at first instance.
- The IIFH also submits that Panel should back date the decision no further than 1 June 2018.

65. In its answer, the IIHF sought the following relief:

"7.1 The IIHF hereby respectfully asks the CAS to:

7.1.1 dismiss Mr. Salmond's appeal (CAS 2018/A/5885);

7.1.2 confirm that Mr. Salmond has committed an anti-doping rule violation under IIHF DCR Art 2.14;

7.1.3 *impose a period of ineligibility on Mr. Salmond that complies with the IIHF DCR, starting from 1 June 2018; and*

7.1.4 *order Mr. Salmond to reimburse all legal fees and other costs incurred by the IIHF in relation to this case”.*

V. JURISDICTION

66. Article R47 of the Code provides as follows:

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

67. The Parties rely on Article 12.4.4 of the Disciplinary Code as conferring jurisdiction on the CAS, which provides as follows:

“12.4.4 Doping Appeals

All disciplinary decisions made as indicated in the WADA Code 13.2 (Appeals from Decision Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Recognition of Decision and Jurisdiction) may be appealed to the Court of Arbitration for Sport (CAS)...

The following parties have the right to appeal to CAS:

a) The athlete or other person who is the subject of the decision being appealed.

...

f) WADA ...”.

68. In their respective Statement of Appeal, Mr. Salmond and WADA both rely on Article 12.4.4 of the Disciplinary Code, which falls within the scope of Article 13.2 of the 2015 WADC and provides generally the right to appeal to CAS. Furthermore, no Party objects to the application of Article 12.4.4 of the Disciplinary Code or CAS jurisdiction, generally. Indeed, the Parties confirmed CAS jurisdiction when they signed the order of procedure.

69. The Panel, therefore, confirms CAS jurisdiction.

VI. ADMISSIBILITY

70. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association 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. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

71. The Appealed Decision was notified to Mr. Salmond on 14 August 2018. His statement of appeal was subsequently filed on 4 September 2018 and, therefore, within the 21-day deadline set out in Article R49 of the Code.

72. Article 12.4.4 of the Disciplinary Code provides as follows:

“... the time limit for WADA appeals shall be the later of: (i) 21 days after the last day on which any other party in the case could have appealed, or (ii) 21 days after WADA’s receipt of the complete case file”.

73. Article 12.4.4 of the Disciplinary Code further provides that the following have the right to appeal to the CAS:

“National Anti-Doping Organisation of the person’s country of residence or countries where the person is a national or license holders”.

74. Mr. Salmond is a Canadian national and the Canadian Centre for Ethics in Sport was notified of the Appealed Decision on 23 August 2018. Their deadline to file an appeal expired at earliest on 13 September 2018 and as such, WADA’s deadline to file a statement of appeal started to run on that date. WADA filed its appeal on 2 October 2018 and, therefore, within the deadline set out in Article 12.4.4 of the Disciplinary Code.

75. No Party has otherwise objected to the admissibility of these appeals

76. The Panel therefore confirms that the Appeals are admissible.

VII. APPLICABLE LAW

77. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

78. In the present case, the “*applicable regulations*” for the purposes of Article R58 of the Code are those contained in the Disciplinary Code, because the appeal is directed against a decision issued by the IIHF Disciplinary Board, in application of those rules.
79. As a result, the Disciplinary Code applies primarily, and the Panel will also consider the IIHF DCR, the WADC and the ISTI where necessary.
80. Swiss law, being the law of the country in which the IIHF is domiciled, applies subsidiarily to the above-referenced rules and regulations.

VIII. MERITS

A. Preliminary Procedural Matters

i. Mr. Brandon Kozun (CAS 2018/A/5935)

81. Throughout the procedure, Mr. Salmond filed various requests for information and file materials relating to an appeal filed by WADA against Mr. Kozun concerning the Kozun proceedings (CAS 2018/A/5935). In this respect, Mr. Salmond raised issues of equal treatment and denial of the opportunity to adequately defend himself.
82. In response, the Panel reminded Mr. Salmond that all elements of the CAS file as it related to Mr. Kozun’s proceedings were to remain confidential in accordance with Article R59 of the Code, unless otherwise agreed upon by the parties to the Kozun proceedings. Moreover, the Panel informed Mr. Salmond that the Panel could not direct the Panel in Mr. Kozun’s proceedings (where one arbitrator was not involved in this procedure) to release such documents to a non-party. In short, without consent of all parties to the Kozun proceedings, the Panel could not produce any such documents filed in the Kozun proceedings to a non-party.
83. The Panel also informed Mr. Salmond that the parties to the Kozun proceedings were, indeed, invited to lift confidentiality and produce their case file to Mr. Salmond in this procedure. Such invitation, however, was rejected by the parties to the Kozun proceedings.
84. Consequently, the Panel denied Mr. Salmond’s request that the case file in Mr. Kozun’s procedure be turned over to Mr. Salmond.
85. Separately, Mr. Salmond raised various objections concerning the settlement in the Kozun proceedings, and in particular, Mr. Salmond requested full disclosure of the terms and conditions of the Consent Award issued in that procedure.
86. By letter dated 23 April 2019, the Panel reiterated its position that by virtue of Mr. Kozun entering the Consent Award, the Panel did not itself take any decision or position relating to

any factual and/or legal issues in the Kozun proceedings. It was the task of the Panel in the Kozun proceedings (“Kozun Panel”) only to verify the bona fide nature of the parties’ settlement agreement so as to ensure that the will of the parties was not manipulated to commit fraud and to confirm that the terms of the agreement were not contrary to public policy principles or to mandatory rules of the law applicable to the dispute. It follows that in reviewing the terms of the settlement agreement, the Kozun Panel must have found no grounds to object to or disapprove the terms of the settlement agreement since it entered the Consent Award.

87. The Panel further confirmed that Mr. Salmond would, at the hearing, be permitted to present whatever relevant arguments he deemed necessary relating to the Kozun proceedings and those arguments would not be deemed inadmissible on the basis that they did not feature in his Appeal Brief or Answer.
88. Moreover, Mr. Salmond was invited to ask the Panel to draw any inferences he wished to advance as regards the legitimacy of the Kozun settlement and related matters, which the Panel was free to accept or not after hearing the respective arguments on the point.
89. On 25 April 2019, the CAS Court Office, on behalf of the Panel, wrote to Mr. Paul Greene, counsel for Mr. Kozun, and requested that Mr. Kozun make himself available for testimony at the hearing.
90. Further to the Panel’s request, Mr. Kozun voluntarily testified at the hearing by telephone conference. Over the objection of Mr. Salmond, the Panel permitted Mr. Greene to join the call on his client’s behalf so as to intervene, as necessary, to the extent any examination concerned confidential matters. In the event Mr. Greene did not interject or intervene in the examination at any time and Mr. Kozun’s responses to Mr. Salmond’s examination alleviated the preliminary concerns raised by Mr. Salmond prior to the hearing.
91. The Panel was, therefore, satisfied that Mr. Salmond was by these means not disadvantaged in any way by his absence from the Kozun proceedings or specific information concerning Mr. Kozun’s settlement.

ii. Video Footage

92. During the course of the procedure, WADA and the IIHF filed requests of Mr. Salmond to produce the complete, 2 full-length videos that were recorded by D. of the events in question. For his part, Mr. Salmond voluntarily responded to such requests by producing a total of 4 video clips of various lengths, shot at various times during the doping control. This allegedly incomplete production raised concern for WADA and the IIHF, who raised an objection as to its selective nature and requested complete access to the entire video footage.

93. In response, Mr. Salmond confirmed that WADA and the IIHF were provided with the only 4 video clips available, as any surplus video footage would have been deleted by D. in ordinary course at the conclusion of each day.
94. On 6 December 2018, WADA made a further request of Mr. Salmond to provide any correspondence associated with the alleged video footage in question.
95. On 11 December 2018, Mr. Salmond responded to WADA's request noting that all such video and correspondence in Mr. Salmond's custody and control had already been produced.
96. On 4 February 2019, the CAS Court Office, on behalf of the Panel, sent Hockey Canada and D. a letter in accordance with Article R44.3 of the Code seeking the production of the alleged complete, unedited version of D.'s video footage. Moreover, the Panel invited Hockey Canada and/or D. to explain any "gaps" in the footage, as necessary.
97. On 7 February 2019, the CAS Court Office, on behalf of the Panel, reiterated its request of 4 February 2019 and clarified the Panel's request as it related to correspondence associated with the video footage.
98. Neither Hockey Canada nor D. responded to the Panel's requests.
99. At the hearing, A. confirmed that she had indeed reviewed the complete video footage following the incident and in December 2017, edited portions of the video footage that was considered at the time (in Hockey Canada's view) not important or not material.
100. The Panel, therefore, confirms that it has not had access to all the original video footage, but instead only select portions thereof.

iii. Mr. Tim Ricketts

101. On 25 April 2019, the IIHF sought to introduce a witness statement of Mr. Tim Ricketts, WADA Director of Standards and Harmonization.
102. Mr. Salmond, by his letters dated 23 and 24 April 2019, objected to the introduction of Mr. Ricketts into these proceedings (such objection being made prior to the IIHF's submission of Mr. Rickett's witness statement).
103. During the hearing, and after orally hearing the parties, the Panel declined to entertain Mr. Ricketts' witness statement and did not permit him to testify on the principal basis that his statement/evidence did not deal with fact or factual circumstances and instead, contained analysis of legal/code provisions which were matters for counsel.

104. The Panel, therefore, sustained Mr. Salmond's objection and accordingly Mr. Ricketts' statement was not admitted.

B. Issues before the Panel

105. While the Panel has carefully considered the entirety of the Parties' written and oral submissions, witness statements, and oral testimony at the hearing, it only refers below to those matters which it deems necessary to decide this dispute.
106. Before addressing the merits of the Parties' factual and legal arguments in the appeal, it is necessary to identify the relevant provisions, which define the components of the specific ADRV allegedly committed by Mr. Salmond and which govern how the Panel must carry out its task of determining whether this ADRV was in fact committed.
107. For the purposes of the present appeal, the salient provision is Article 2.9 of the WADC, *Complicity* (as reflected under Article 2.14 of the IIHF DCR), which reads as follows:

"2.9 Complicity

Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an anti-doping rule violation, Attempted anti-doping rule violation or violation of Article 10.12.1 by another Person".

108. Article 3.1 of the WADC, in its first sentence, establishes that the burden of proving an ADRV lies with the relevant anti-doping organization: *"The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred"*.
109. Accordingly, the IIHF bears the burden of establishing that Mr. Salmond committed an ADRV. The remainder of Article 3.1 of the WADC addresses the standard of proof:

"The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof".

110. Pursuant to Article 3.1 of the WADC, the standard of proof applicable in these appeal proceedings requires the IIHF to establish *"to the comfortable satisfaction"* of the Panel that Mr. Salmond committed the specific alleged ADRV. The CAS jurisprudence provides important guidance on the meaning and application of the *"comfortable satisfaction"* standard of proof (see *supra*), which is higher than a mere balance of probabilities. The test of comfortable satisfaction

“must take into account the circumstances of the case” (CAS 2013/A/3258). Those circumstances include *“[t]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities”* (CAS 2009/A/1920; CAS 2013/A/3258). In considering whether it is comfortably satisfied that an ADRV occurred, the Panel will consider all the relevant circumstances of the case.

111. In order to do so, the Panel focuses its award on a single issue, namely: *Did Mr. Salmond have any reasonable grounds to instruct Mr. Kozun not to provide a sample to the DCO such that he was not in fact encouraging, or aiding an anti-doping rule violation?*
112. The Panel will address this question while examining the evidence surrounding the doping control on 12 December 2017.

a. *The Storyline on Video*

113. In an otherwise “he said, she said” account of the evidence in this procedure, the Panel had the benefit of video footage taken at the time of the dispute in question. The video footage presented corroborates the Panel’s understanding of the events surrounding the doping control and provides a real-time account of what transpired and the parties’ reactions thereto. It is from this video footage that the Panel derives an accurate account of what transpired during the events in question and who said what and to whom.
114. With the benefit of sight and sound of their testimony, the Panel is constrained to say that Mr. Salmond and A. were less than satisfactory witnesses and the Panel was apt to reject their evidence where it conflicted with the evidence of the witnesses for the IIHF and notably where it was at odds with the video footage. It appeared to the Panel that both were seeking retrospectively to put the best construction possible on the unfortunate events of that morning in order to justify Mr. Salmond’s actions, uncharacteristic as they may have been.
115. From the moment Mr. Kozun opened his hotel room door, Mr. Barut informed him that he was a DCO sent by the IIHF to conduct a doping control and showed him his electronic IDTM identification card issued by IDTM on his iPhone 6S Plus. The DCO allegedly informed Mr. Kozun that he was notified of the doping control and had to remain under his constant observation until the end of the control.
116. The Panel acknowledges that Mr. Kozun's roommate, B., and D., Hockey Canada's videographer, filmed the incident as of that particular moment.
117. The footage begins with Mr. Salmond confronting the DCO outside of Mr. Kozun’s open room door, requesting to see identification on paper as he refused to accept the electronic identification on a phone. While the DCO explained that his electronic IDTM identification

card was a real form of identification, Mr. Salmond maintained his refusal and continued to interfere with the doping control process.

118. It appears from the transcript of the video footage that Mr. Salmond told the DCO that he *"should be downstairs until I see papers before you even come up here, before you even open that door and knock on the door"*.
119. Mr. Salmond was then advised by the DCO that he would show his documents to Mr. Kozun since he – not Mr. Salmond - was the subject of the doping control, which he did while letting Mr. Kozun know that he was required to be under observation during this process. In response, Mr. Salmond told Mr. Kozun that he should order Mr. Barut out of the room, but the video footage shows that Mr. Kozun did not follow such direction. Mr. Salmond was then advised that C. would act as Mr. Kozun's assigned representative. Again, Mr. Barut informed Mr. Kozun who he was, explained to him that he worked for IDTM and showed him his Electronic IDTM identification card, which the Player inspected.
120. Despite having been told by the DCO that doping controls could not be filmed, Mr. Salmond asked D. to keep filming. At this point, the DCA closed the door of the room, where the Player, his representative, the DCO, and the DCA were located and started to carry out the doping control. The footage was cut and edited at that very moment.
121. The Panel next focuses on the testimony of Mr. Barut and the DCA, who both confirmed that Mr. Barut showed Mr. Kozun and Mr. Kozun's representative the Letter of Authorization from the IIHF alongside his Electronic IDTM identification card. It appears that Mr. Salmond and A. had left the room when Mr. Barut showed the Letter of Authorization and his electronic IDTM identification card. The Panel finds that Mr. Kozun did not make any objection to either the IIHF Letter of Authorization or the Electronic IDTM identification card.
122. The recording of the video resumes when Mr. Salmond and A. re-enter Mr. Kozun's room. Mr. Barut was asked several times by Mr. Salmond to get out of the room and to provide identification paperwork.
123. Mr. Barut informed Mr. Salmond that Mr. Kozun would have to sign the doping control form and specifically demanded that Mr. Kozun confirm in front of Mr. Salmond that he reviewed his Electronic IDTM identification card. Nevertheless, Mr. Salmond interjected asserting that Mr. Kozun would not sign the doping control form. Indeed, Mr. Salmond asked Mr. Barut to stop talking to Mr. Kozun altogether.
124. After this event, Mr. Barut saw D. filming from the hallway and asked his DCA to close the door. From this moment, the video was again cut.

125. The Panel notices that the footage continued with Mr. Salmond opening the door to D. and telling him *“make sure you film the whole thing”* whereas Mr. Barut is seen trying to place a call to his Supervisor at IDTM.
126. The evidence establishes that Mr. Barut called the Supervisor at 07h15, at 07h16, 07h18, and 07h19. It further demonstrated that A. requested Mr. Barut to show her his documents if she showed him hers. It seems that Mr. Barut accepted but specified that there should only be one representative during the doping control, with C. already having been indicated as the representative up until that point. At this juncture, A. subsequently took over as representative for Mr. Kozun and from that moment on, the footage was yet again cut.
127. In view of the witnesses’ statements and testimony at the hearing, it appears that the Supervisor answered her phone at 07h21 and Mr. Barut explained to her that he had shown his Electronic IDTM identification card and the Letter of Authorization to Mr. Kozun and his representative once in the room.
128. The Supervisor asked to speak to Mr. Kozun, who was calm and receptive to her questions.
129. When the Supervisor asked Mr. Kozun to explain the problem, he initially answered that the DCO had not shown any identification, but then mentioned that the DCO had shown him a card on a phone and a letter from the IIHF but that the card did not have any information on it.
130. After the Supervisor explained to Mr. Kozun what information appeared on an Electronic IDTM identification card, the latter confirmed he had seen this information on the Electronic IDTM identification card shown by Mr. Barut.
131. The Supervisor further enlightened Mr. Kozun that the Electronic IDTM identification card shown by the DCO was a valid identification document and that Mr. Barut was a certified IDTM DCO trained for conducting doping controls, who had been working for IDTM since 2015 and who was authorized to conduct this doping control.
132. The IDTM Supervisor allegedly warned Mr. Kozun that if he did not provide a sample, it could have serious consequences for him. This segment of the evidence is, however, not crystal clear for the Panel from the video clippings and will be discussed below.
133. The footage resumed in Mr. Kozun’s room with Mr. Salmond already speaking on the phone to the Supervisor, who claimed that the DCO had not shown identification, was not acting appropriately, and should leave the room. She explained to him that Mr. Kozun had confirmed that the DCO showed his Electronic IDTM identification card and the IIHF Letter of Authorization while generally reiterating what she had said to Mr. Kozun previously. However, Mr. Salmond refused this explanation and confirmed that they would not permit the control to take place without a new DCO.

134. The Supervisor indicated to Mr. Salmond that the test could not be abandoned as Mr. Kozun had already been notified. The Supervisor indicated that she would try to find a new DCO to defuse the situation, but she did not guarantee that she would be able to do so.
135. Following this call, the footage was cut once again. The video resumed with the DCO, the DCA, Mr. Kozun, A., and D. moving to the hotel lobby. While Mr. Kozun and A. were sitting down on a couch, Mr. Barut asked to show his documents to Mr. Kozun. He then showed his National ID (i.e. his passport) to both Mr. Kozun and A., who looked at it and indicated that they would be waiting for another DCO.
136. The video next displayed the DCO sitting on the couch facing Mr. Kozun, but soon after, the video footage was once more cut.
137. Mr. Kozun, A., the DCO, and the DCA waited in the lobby for approximately 30 minutes. The Supervisor testified that during that time she had called all male IDTM DCO's in the Moscow region to check whether they could conduct the control. However, none of them were available.
138. The Supervisor called the DCO back to indicate she could not find any alternative to him. She confirmed that the DCO would be the one to carry out the doping control, which the DCO acknowledged. She then asked to speak to Mr. Kozun to advise him that no other DCO was available and to validate the identification documents Mr. Kozun had reviewed. He confirmed that he had seen the DCO's Electronic IDTM identification card, the IIHF Letter of Authorization, and the DCO's National ID. This was also confirmed by Mr. Kozun at the hearing.
139. Mr. Kozun indicated to the Supervisor that it was fine for him to proceed with the control, but he needed approval from A. The Supervisor spoke to A., asking what documents the DCO had shown her and Mr. Kozun so far. According to the Supervisor, A. confirmed that the DCO had shown his Electronic IDTM identification card, the IIHF Letter of Authorization and his National ID. A., however, disagreed at the hearing with the Supervisor's account of what was said.
140. Nevertheless, it appears that A. herself consented to Mr. Kozun concluding the sample collection process but would nevertheless have to check such outcome with Mr. Salmond. The video shows the Supervisor hearing A. informing Mr. Salmond that Mr. Barut had shown the appropriate identification, that he was a certified DCO, and that it was acceptable to go through with the control.
141. Mr. Salmond spoke again on the phone to the Supervisor and told her that Mr. Kozun would not provide a sample. Again, according to her testimony, the Supervisor explained to Mr. Salmond that the DCO had shown the required documents to Mr. Kozun and his representative, was a certified IDTM DCO, and there was no reason not to proceed with the

doping control. She allegedly warned Mr. Salmond of the serious consequences this might have for Mr. Kozun. Mr. Salmond did not change his mind.

142. The Supervisor testified that she then explained that Mr. Kozun, A. and Mr. Salmond should explain in writing why no sample was provided and the details regarding what took place during the events in question. Mr. Salmond instructed A. word for word what to write down on her sheet of paper, and A. did likewise for Mr. Kozun.

b) *Abandonment of the sample collection*

143. Mr. Salmond asserts that he did not commit an ADRV because the sample collection was abandoned from the moment it was confirmed that no alternative DCO was available to replace Mr. Barut. This represented the termination of Mr. Barut's involvement in the sample collection process.
144. Based on this assertion, the Panel must turn its attention to the following key question: *did Mr Salmond encourage or assist in a doping violation pursuant to Article 2.9 or was the sample collection abandoned by IDTM?*
145. Mr. Salmond indicated that he would not permit Mr. Kozun to undergo a doping control without a new DCO and requested that Mr. Barut leave. He also argued before the Panel that Mr. Barut's involvement in the sample collection process was terminated when the Supervisor decided that an alternative DCO would attend. The Panel notes that Mr. Barut, Mr. Kozun, A. and Mr. Salmond were aware that the Supervisor would try to find a new DCO to whom she could delegate the testing but did not confirm that one would definitely be found.
146. During the hearing, the Supervisor testified in full accord with her previous written statements. In this respect, the Panel acknowledges that the Supervisor was an experienced supervisor, did not show any bias or ill intent and accepts the Supervisor's explanation of what happened on 12 December 2017, which was given in a credible fashion. In particular, the Panel notes that it would be a gross and inexplicable dereliction of duty for the Supervisor to have authorised an abandonment of doping control in the circumstances which obtained on that morning.
147. As soon as the Supervisor determined that there were no other DCOs available to replace Mr. Barut, she called Mr. Barut and told him that she had not been able to find someone to replace him and that it was therefore up to him to proceed with the collection of the sample.
148. On the evidence, the Panel understands that utilizing a replacement DCO is very rare but used in this procedure in consideration of Mr. Salmond's behaviour and in an effort to defuse the situation. In fact, the Supervisor expressed "*that this was not standard procedure*" and that she "*could not promise or guarantee*" a replacement. The evidence is, however, clear that the Supervisor agreed to try and actually tried to find another DCO as requested by Mr. Salmond. The

Supervisor states in the “supplementary report” she filed with IDTM that: *“Mr. Salmond said that he wants the DCO to leave now and somebody else to come and test the athlete. I explained that as the athlete has been notified the DCO cannot leave him alone and I cannot leave the athlete with the female blood collection officer”*. Such declaration from the Supervisor is in line with Mr. Barut’s behaviour, who kept Mr. Kozun under his surveillance as he was still the one conducting the doping control.

149. Thereafter, the Supervisor spoke to Mr. Kozun. The key features of this conversation come from the Supervisor’s Witness Statement namely:

“37. I asked the Player what documents he had seen and he confirmed that he had seen the DCO’s E-IDTM ID, the IIHF Letter of Authorization, and now also his National ID (passport).

38. I strongly recommended the Player to provide a sample, and I again clearly warned him that if he did not provide a sample, the DCO would have to report it as a potential refusal and that this might have serious consequences for him. The Player told me that it was ok for him to proceed with the control, but that he needed approval from his representative. He then gave the phone to his representative, A”.

150. The Supervisor also confirmed orally that she informed A. and Mr. Salmond of the above-mentioned risks of non-compliance.

151. The Panel makes further reference to para. 45 to 47 of the Supervisor’s Witness Statement, which provides as follows:

“45. After speaking to A., Mr. Salmond came on the phone and immediately indicated that the Player would not provide a sample. Mr. Salmond told me that he wanted to cancel the control. I explained that the Player had been notified of the control and that it was, therefore, impossible to cancel it.

46. I told him that the DCO had shown the required documents to the Player and his representative. I confirmed multiple times that this was a certified IDTM DCO, so that there was no reason not to proceed with the doping control. Mr. Salmond did not seem to listen to what I was saying and kept repeating that the DCO did not show any identification documents; he kept referring to the beginning of the process when he met the DCO for the first time.

47. I again warned him that if the Player did not provide a sample, the IIHF could consider this as a refusal and that this could have serious consequences for the Player”.

152. In her Witness Statement, the Supervisor indicated to Mr. Kozun *“that there is no other DCO available and as the DCO had shown the DCO ID card and the LoA, I strongly recommend him to provide the sample”*.

153. Mr. Barut confirmed that the Supervisor told him: *“After talking to Mr Salmond she told me that there was no available DCOs at that moment and that I should end the test and go home”*.
154. The Panel poses to itself the rhetorical question: If he was no longer conducting the doping control, why would Mr. Barut show his National ID to Mr. Kozun and A. in the hotel lobby? It can conceive of no rational answer. Furthermore, the Panel draws attention to the answer provided by Mr. Kozun at the hearing when asked if the test was abandoned or cancelled, who declared that *“no one said to me that it was cancelled. It was more like the test was over”*.
155. The Panel stresses that Mr. Barut carried out his duties throughout the encounter and only filled out the doping control form once Mr. Salmond had made clear he would not let Mr. Kozun provide a sample.
156. Hence, the Panel concludes that the sample collection was never abandoned but concluded when Mr. Salmond instructed Mr. Kozun not to provide a sample.

c) *Various departures from the ISTI*

157. The Panel notes the parties’ competing positions: On one hand, for WADA and the IIHF, Mr. Salmond’s encouragement constitutes an ADRV as Mr. Kozun confirms that he duly received notice of the doping control and based on his express testimony at the hearing, that he would have likely submitted the sample had Mr. Salmond not instructed him to refrain from providing it. On the other hand, for Mr. Salmond, his encouragement does not constitute an ADRV as Mr. Barut was simply not authorized to collect the sample or did not comply with the notification requirements. The question then becomes whether Mr. Salmond’s view is credible and whether there is a violation of Article 2.9 WADC or whether Mr. Kozun should be found to not have committed an ADRV?
158. Mr. Salmond argues that IDTM failed, in various ways, to comply with the mandatory requirements of the ISTI, the RMHD Guidelines and the DCO Manual. He alleges that these violations were so fundamental that such departure detrimentally affected the integrity of the sample collection process.
159. With respect to departures from the ISTI, Article 3.2.3 of the WADC provides that: *“Departures from any other International Standard or other anti-doping rule or policy set forth in the Code or Anti-Doping Organization rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation”*.

160. A reading of this article makes it clear that if Mr. Salmond can establish a departure from the ISTI which could reasonably have caused the potential ADRV, the IIHF will have the burden of proving to the comfortable satisfaction of the Panel that the relevant departure from the ISTI did not cause the factual basis for the ADRV.
161. The existence of certain standards as detailed in the ISTI and anti-doping rules is considered to be fundamental and central to ensuring integrity in the administration of sample collection such that certain departures therefrom could result in the automatic invalidation of an ADRV.
162. To demonstrate such departure, the consideration of the evidence presented by the Parties concerning the circumstances of the doping control would have to show that violations of mandatory requirements, if any, could have reasonably caused the ADRV.
163. Having determined the relevant criteria for notification, the Panel must now answer the question whether Mr. Kozun was properly notified in compliance with the ISTI or not. The Panel begins this analysis by summarizing the alleged fundamental violations of the ISTI, the RMHD Guidelines and the DCO Manual, as argued by Mr. Salmond.

i. Authority and identification

164. Mr. Salmond does not dispute that when Mr. Kozun opened his hotel room door, Mr. Barut notified him that he was required to provide a urine sample for drug testing on behalf of the IIHF. However, Mr. Salmond claims that Mr. Kozun was not properly notified, namely by asserting that both the authorization and identification process were improper. Hence, the dispute is as to whether Mr. Barut showed Mr. Kozun the documentation required under the rules to identify himself and to confirm his authority to conduct such a test.
165. The Panel must address the question as to whether the DCO provided Mr. Kozun with the documents required under the ISTI to establish his identity and authority to test Mr. Kozun.
166. Article 5.3.3 of the ISTI states the following regarding identification:

“Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorisation letter from the Testing Authority. DCOs and BCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver’s licence, health card, passport or similar valid identification) and the expiry date of the identification”.

167. Hence, a DCO will have satisfied this requirement under the ISTI by carrying an authorization letter from the testing authority as well as an identification which includes his name, photograph, and the expiry date of the identification.

168. The Letter of Authorization is a document used to show that the sample collection personnel has the authority to collect the sample. Mr. Kozun was part of the IIHF Registered Testing Pool and as a result, Mr. Kozun and Mr. Salmond were aware of Mr. Kozun's obligations in this respect.

169. The Panel observes that Mr. Barut showed Mr. Kozun and Mr. Salmond a letter of authorization from the IIHF. This letter was on IIHF letterhead and was signed by the IIHF Sport Director Dave Fitzpatrick and confirmed that: *"the International Doping Tests & Management (IDTM) has been appointed as a Sample Collection Agency for the International Ice Hockey Federation (IIHF). IDTM Doping Control Officers (DCOs) are authorized to collect urine and blood samples on behalf of the IIHF. The samples may be collected in any country. Sample collection will be in accordance with the IIHF Anti-Doping Rules and the WADA International Standard for Testing. This Authorization is valid from January 1, 2017 to December 31, 2017"*.

170. Furthermore, the Panel remarks that the letter included the IDTM's appointment as a sample collection agency for the IIHF, the IDTM DCOs' express authorization to collect urine and blood samples on behalf of the IIHF in any country, which was valid from 1 January 2017 to 31 December 2017. Thus, the Letter of Authorization satisfies the requirement of Article 5.3.3 of the ISTI since it proves the authority of Mr. Barut, an IDTM DCO, to collect a sample from Mr. Kozun, a Player then in the IIHF RTP.

171. It was also demonstrated to the Panel that the DCO showed his electronic IDTM identification card on multiple occasions to Mr. Kozun as well as to A. and Mr. Salmond. Mr. Kozun confirmed as much in his testimony at the hearing. Based on the evidence presented, the Panel recognizes that Mr. Barut's electronic IDTM identification card contained the following information:
 - The IDTM logo;
 - The DCO's full name;
 - The DCO's photo;
 - The expiry date of the identification; and
 - The signature of the IDTM managing director.

172. Hence, the Panel concludes that all requirements for identification set out in Article 5.3.3 of the ISTI were met by Mr. Barut. It should be highlighted that Mr. Barut made an effort to show his electronic IDTM identification card to Mr. Salmond despite not being required to do so. This behavior supports the assertions of WADA and IIHF that Mr. Barut was, indeed, cooperative through the process.

173. The Panel also reiterates that Mr. Barut showed his passport to Mr. Kozun and A. when they were sitting in the lobby of the hotel. From the video footage, the Panel remarks that Mr. Barut was quite calm when he did so.
 174. On a different note, Mr. Salmond contests the presentation of an electronic IDTM identification card. As seen on the video footage, Mr. Salmond confronted the DCO outside of Mr. Kozun's open room door, requested to see identification on paper and told Mr. Barut that he should not be in the hotel until he showed him paperwork. Mr. Salmond dismissed Mr. Barut's electronic IDTM identification card, uttering that an identification on his phone could not constitute a valid identification. Nonetheless, the evidence illustrates Mr. Barut informing Mr. Salmond that his electronic IDTM identification card was a real form of identification and that he was with IDTM.
 175. Nonetheless, Mr. Salmond and other Hockey Canada staff contend that they did not know that DCOs could identify themselves through electronic IDTM identification cards. Mr. Salmond was accustomed to DCOs identifying themselves through physical cards, alleging that educational material produced by WADA and distributed by the IIHF imposes a standard for sample collections, i.e. DCOs must identify themselves via the presentation of physical identification. However, the Panel finds no legal ground to support Mr. Salmond's view in this respect. There is no specific rule that requires mandatorily the presentation of a paper identification and *a contrario* that forbids electronic identification (a modern form of ID increasingly used in other contexts). Consequently, the Panel declares that an electronic identification is satisfactory for the purposes of Article 5.3.3 of the ISTI. In addition, the Panel relies upon the written and oral statements of the Supervisor, who explicitly confirmed to Mr. Kozun and Mr. Salmond that Mr. Barut was a certified IDTM DCO and that an electronic IDTM identification card was a valid form of identification. It appears more likely that Mr. Salmond simply did not want to accept Mr. Barut's involvement in the collection process at all rather than he did not want merely to accept his form of identification.
 176. In essence, the Panel is of the opinion that Mr. Barut was and was shown to be properly authorized to conduct the doping control, if not earlier (its preferred view), certainly by the time Mr. Kozun, A. and Mr. Salmond were in the hotel lobby. Mr. Barut showed Mr. Kozun the documentation required under the rules to identify himself and confirmed his authority to conduct such a test. Such was supported by the Supervisor when she confirmed that Mr. Kozun and A. specifically told her that they had seen sufficient documentation and as far as they were concerned, the test could go ahead.
- ii. *Proper notification of potential consequences*
177. Mr. Salmond claims that he and Mr. Kozun were never warned of the consequences for failing to provide a sample.

178. In accordance with Article 5.4.1 (e)(iii) of the ISTI, “*the **Athlete** should be advised of the possible Consequences of Failure to Comply*”. Based on this plain reading, the Panel considers that there is no reference to providing such a warning to a coach or other employee of the national federation. Hence, Mr. Barut did not have an obligation to warn Mr. Salmond of any potential consequences and the notification to Mr. Kozun is all that is relevant to this analysis.
179. The Panel also notes that Article 5.4.1(e)(iii) of the ISTI stipulates “*the Athlete **should** be advised of the possible Consequences of Failure to Comply*”. The Panel does not read “should” as a “must”. The word “should” implies some form of recommendation or guideline and therefore does not impose an obligation on Mr. Barut.
180. Nevertheless, the Panel recognises that there is conflicting evidence regarding the consequences warning made by the Supervisor over the phone.
181. During his testimony, Mr. Kozun did not remember any warning, but reported confusion and an unclear situation. He testified that “*the Supervisor was just trying to defuse the situation. She was not really trying to help or explaining. All she said is that I needed to make sure that I did not refuse the test, because otherwise, I could be in trouble. I was under the impression, than I would be ok you if I put on the form that I did not refuse the test*”.
182. As to Mr Barut, he claimed that the authority was delegated to the Supervisor and believed that the Supervisor warned Mr. Kozun.
183. With regard to the Supervisor, the Panel observes that she did not make any reference in her supplementary report dated 13 December 2017 to the consequences warning. In fact, the Supervisor’s response when asked at the hearing why her supplementary report made no reference to this specific warning was as follows: “*The supplementary report is a free text that I wrote as soon as I got home as I traveled all night. I wrote what I could remember at that point. There’s no specific structure or order. There’s no form to fill in for cases like that. I wrote it so I can send it to the Federation as soon as possible so they could know what happened at this point and could call after to ask me more specific questions about it*”.
184. At the hearing, A. testified that no notification of the potential consequence had been provided. Yet, the Panel found her evidence contradictory, filled with inconsistencies and memory lapses. Mr. Salmond shared the same position as A. regarding the notification.
185. The Panel refers to the video footage transcript, where A. can be heard saying “*Yeab, he’s gonna take an X*” while Mr. Salmond is knocking on the Player’s room door and she is standing next to him. These words were pronounced before she spoke to the Supervisor on the phone.
186. Notwithstanding the above, the Supervisor is, the Panel repeats, experienced and appears to it to be knowledgeable. Her supplementary report written the day after the events of 12 December 2017 is, explicable, general in nature, not overly detailed and did not recite any

explicit warning she provided, which was only specified in the later Witness Statement provided by the Supervisor in connection with these proceedings, in November 2018.

187. Considering the evidence as a whole and recognizing that parts of the video footage were deleted and not disclosed, thus placing an additional question mark on certain of the facts alleged in the testimony of Mr. Salmond and A., the Panel is comfortably satisfied of the correctness of the version of events provided in the clear testimony of the Supervisor, both in her witness statement and orally, that a consequence warning was provided by the Supervisor over the telephone to Mr. Kozun and A.
188. The Panel further remarks that Mr. Kozun signed the Doping Control Form which also contained an explicit warning regarding the failure to provide a sample. The WADA doping control form template, and the one used by IDTM, contains a clear statement that the athletes sign to acknowledge notification. The doping control form signed by the Player included this acknowledgment of notification and of the consequences for a failure or refusal to submit to doping control:

2. NOTIFICATION							
DATE	12	12	20	17	LOCATION	MOSCOW	COUNTRY
	DD	MM	YY	YY			RUS
					TIME OF NOTIFICATION		
					07:02		
IN-COMPETITION TESTING					<ul style="list-style-type: none"> I understand that I have been selected for a doping control and acknowledge that I have received and read this notice. I understand that I must report to the doping control station immediately after notification. I understand that any refusal or failure to submit to doping control, and/or any attempt to interfere with the doping control process, may be treated as an anti-doping rule violation. 		
N/A <input checked="" type="checkbox"/> EVENT							
NOTIFYING PERSON NAME							
Cem BARUT							
NOTIFYING PERSON SIGNATURE					ATHLETE'S SIGNATURE		

4. CONFIRMATION OF PROCEDURE FOR URINE TESTING							
COMMENTS: Any comments and/or irregularities regarding the Sample Collection Session should be noted here. <i>The athlete has not provided any sample. (Identification) Cem BARUT DCO</i> <i>Tester did not provide proper documents to feel comfortable test</i>							
I certify that the Sample Collection Session was conducted in accordance with the relevant procedures						I certify that the information given in this form is accurate.	
N/A <input checked="" type="checkbox"/>	ASSISTANT 1 NAME	SIGNATURE		N/A <input type="checkbox"/>	ATHLETE'S REPRESENTATIVE		
					NAME		
					SIGNATURE		
N/A <input checked="" type="checkbox"/>	ASSISTANT 2 NAME	SIGNATURE			NAME		
					SIGNATURE		
DOPING CONTROL OFFICER							
NAME		SIGNATURE		DATE		TIME OF COMPLETION	
Cem BARUT				12 12 20 17		09:14	
					DD	MM	YY

2. NOTIFICATION							
DATE	12	12	20	17	CITY	MOSCOW	COUNTRY
	DD	MM	YY	YY			RUS
					TIME OF NOTIFICATION		
					07:02		
IN-COMPETITION TESTING					<ul style="list-style-type: none"> I understand that I have been selected for a doping control and acknowledge that I have received and read this notice. I understand that I must report to the doping control station immediately after notification. I understand that any refusal or failure to submit to doping control, and/or any attempt to interfere with the doping control process, may be treated as an anti-doping rule violation. 		
N/A <input checked="" type="checkbox"/> EVENT							
NOTIFYING PERSON NAME							
Cem BARUT							
NOTIFYING PERSON SIGNATURE					ATHLETE'S SIGNATURE		

4. CONFIRMATION OF PROCEDURE FOR BLOOD TESTING

COMMENTS: Any comments and/or irregularities regarding the Sample Collection Session should be noted here.

The athlete has not provided any sample. (Ident. F. conf. 09)
Tester did not provide proper documents to feel comfortable to test. *Cem BARUT DCO*

I certify that the Sample Collection Session was conducted in accordance with the relevant procedures

N/A ☐ BLOOD COLLECTION OFFICER NAME *Alla Borisova* SIGNATURE *[Signature]*

N/A ☒ ASSISTANT NAME *[Signature]* SIGNATURE *[Signature]*

I certify that the information given in this form is accurate. N/A ☐ ATHLETE'S REPRESENTATIVE

NAME *Xaiter Dawu* SIGNATURE *[Signature]*

DOPING CONTROL OFFICER

NAME *Cem BARUT* SIGNATURE *[Signature]* DATE *12 12 2017* TIME OF COMPLETION *09:06*

189. As shown above, while Mr. Kozun specified on his doping control form the following: “tester did not provide proper documents to feel comfortable test” and Mr. Barut wrote on it: “the athlete has not provided any sample”, the passage in the doping control form adverting to the consequences of non-compliance was never amended or modified.
190. The Panel acknowledges the arguments of the IIHF and WADA regarding the Annex A of the ISTI, which explains that the DCO and Sample Collection Authority are responsible for “informing the Athlete or other party of the Consequences of a possible Failure to Comply” only if the athlete has refused to sign the notification or evaded notification. It finds that since Mr. Kozun signed the doping control form, there was no mandatory requirement under the ISTI to give him any further warning.
191. Nevertheless, the Panel does not rely solely on the doping control form, but is convinced by the evidence provided by the Supervisor, on whose general acceptability it has already commented, that she duly followed the procedure of notifying the athlete of possible consequences for his decision not to provide the sample at doping control.
192. Therefore, the Panel is of the opinion that the Player was clearly notified of the consequences, and in any event should have been aware of the consequences for not providing his sample.
- iii. *Who should have been notified?*
193. Mr. Salmond alleges that he had a right to be shown the DCO’s documents and to determine whether such documents were adequate. The Panel again specifies that the ISTI does not refer to a coach or employee of a national federation having any right to participate in the doping control process. So while this may have been Mr. Salmond’s desire, it was not his right.
194. The Panel refers to the following articles of the ISTI:

Article 4.6.2: ‘Save in exceptional and justifiable circumstances, all Testing shall be No Advance Notice Testing’.

195. Similarly, Article 5.3.1 of the ISTI and the comment of this Article state as follows: “*Save in exceptional and justifiable circumstances, No Advance Notice Testing shall be the method for Sample collection. [Comment to 5.3.1: It is not justifiable for a National Federation or other body to insist that it be given advance notice of Testing of Athletes under its jurisdiction so that it can have a representative present at such Testing.]*”.
196. In the same line of thoughts, Article 5.3.7 of the ISTI stipulates: “*The Athlete shall be the first person notified that he/she has been selected for Sample collection, except where prior contact with a third party is required as specified in Article 5.3.8*”.
197. Moreover, the Panel recognizes that Article 5.3.8 of the ISTI stipulates that “*there is no requirement to notify any third party of the doping control mission where such assistance is not needed*”.
198. Hence, the Panel concludes that it was legitimate for Mr. Barut to refuse to comply with Mr. Salmond’s requests as the latter was not permitted to demand that Mr. Barut report to him and show him his papers. In fact, Mr. Salmond inserted himself into the process from the moment he saw Mr. Barut knocking on Mr. Kozun’s door, but had no authority to interfere with the process.

iv. Requirements under RMHD Guidelines and the DCO Manual

199. The Panel took into consideration the arguments submitted by Mr. Salmond with respect to the alleged departures from the requirements of the RMHD Guidelines and DCO Tool Kit Manual. The Panel agrees with the IIHF that the RMHD Guidelines and the DCO Manual contain guidelines, not requirements. These guidelines contain guidance as to how best to comply with the mandatory requirements in the ISTI or the anti-doping rules, but they do not themselves constitute mandatory requirements.
200. For the purpose of this appeal, in the Panel’s view, the requirements set out in the WADC (Article 3.2.3), the ISTI and the applicable anti-doping rules are mandatory while the RMHD Guidelines and DCO Tool Kit Manual are instead suggestions for best practice, a distinct matter.
201. In this context, the Panel makes reference to the “Introduction and Scope” of the RMHD Guidelines and underlines the following:

“Given the importance of issuing fully reasoned and comprehensive decisions in respect of the procedural rights and general principles of law, these Guidelines also include recommendations regarding the hearing process and the resultant decision. They are not designed to assist in the assessment/review of the merits of a potential ADRV or of the applicable Consequences under the Code. Given the complexity of dealing with cases where an Athlete or other Person provides Substantial Assistance, a specific section has been added to address this issue.”

*These Guidelines are a model for best practice developed as part of the World AntiDoping Program. They have been drafted to provide ADOs with Results Management responsibilities with a document detailing in a step-by-step fashion the phases of the Results Management process, hearing, and decision processes, and execution. These Guidelines build on existing anti-doping practices to promote harmonization in the administration of potential ADRVs. **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. Various Signatories have already created their own approach to Results Management and many have proven to be fair, effective systems. These Guidelines aim at ensuring that the basic principles of the Code are duly respected” (emphasis added).*

- v. *Who remained in charge when the DCO left the room and everyone went to the hotel lobby?*
- 202. The Panel needs to determine whether the Supervisor rather than the DCO was allowed to provide the consequences warning, and whether the DCO was still allowed to go ahead with doping control after the suspension of the sample collection while a substitute DCO was sought.
- 203. Mr. Barut testified that he delegated the authority to the Supervisor once advised that she would try to find a replacement DCO. Nevertheless, Mr. Barut continued to be IDTM’s representative in the collection area and continued to supervise Mr. Kozun per the Supervisor’s directions and later sought to continue with sample collection. Based on this delegation, was the Supervisor permitted to provide the consequences warning to Mr. Kozun instead of the DCO?
- 204. The Panel agrees that IDTM operated through its agents of whom both the Supervisor and the DCO (in the field) were examples and that the joint and several actions of the DCO and the Supervisor were the ones that had to meet the ISTI requirements. Both were clearly identified and were acting together in relation to Mr. Kozun during the sampling process. Thus, the Supervisor was acting within her authority in providing the consequences warning to Mr. Kozun. In general while a junior may not perform roles ascribed to a senior officer (unless the latter is empowered to delegate such roles), it would be odd and counterintuitive if a senior officer could not, where necessary, act on behalf of a junior one.
- vi. *Conclusion on the assertion of various departures*
- 205. In conclusion, the Panel concludes that Mr. Salmond did not successfully establish any departures from the ISTI and, if (*quod non*) he had established any, these could not reasonably (or sensibly, based on the facts presented) have caused the ADRV in the present case.

d) *Estoppel*

206. Mr. Salmond argues that the IIHF was estopped from asserting that he committed an ADRV since IIHF (via IDTM) was largely responsible for the events of 12 December 2017 by its acts, omissions and/or representations of Mr. Barut, the Supervisor and/or IDTM generally, namely:

i. IDTM's decision to deploy the DCO

207. The Panel notes that the prior alleged issues with Mr. Barut were not in evidence. Even if they were, Mr. Barut's arrogance and behaviour on other occasions would not be sufficient reason to allow Mr. Salmond to prevent the doping control process. The DCO and the Supervisor were cooperative at least towards Mr. Kozun and his representative throughout the entire process and made every effort so that Mr. Kozun would provide a sample. Mr. Salmond encouraged Mr. Kozun not to proceed with the doping control despite every document shown and every reassurance given.

208. In any event, IDTM's decision to deploy Mr. Barut was not on its face an act by IDTM that in point of fact led to the events in question. The Panel finds that Mr. Barut was prepared to discuss matters calmly with Mr. Kozun and to showing all requisite documents proving his authority and was not on occasion either arrogant or guilty of misbehaviour.

ii. The DCO's failure to produce a valid letter of authority

209. As mentioned previously, the Panel rules that Mr. Barut provided a valid letter of authority, which was presented to Mr. Kozun and his representative, A.

iii. The DCO's refusal to show his passport

210. The Panel confirms that Mr. Barut presented his national identification to the Player and A., despite being not obliged to do so pursuant to the requirements of ISTI 5.3.3.

iv. The failure to inform Mr. Kozun that the sample collection was not abandoned

211. The Supervisor only indicated that she would try to find an alternative DCO. The Panel does not accept that any other assurances were provided by her.

212. The evidence is clear that Mr. Barut continued to perform his duties by keeping Mr. Kozun under supervision and by presenting all his documentation. From the moment Mr. Salmond decided that Mr. Kozun would not be providing a sample, Mr. Barut was entitled (indeed had no other option than) to conclude the control process by filling in the doping control form.

He only filled out the doping control form once Mr. Salmond had made it absolutely clear he would not let Mr. Kozun provide a sample.

213. Hence, the Panel concludes that the sample collection was never abandoned by IDTM but rather was terminated only after Mr. Salmond instructed Mr. Kozun not to provide a sample. The Panel further concludes that the Supervisor and the DCO never acted in a way to suggest that the doping control was abandoned.

v. The fact that Mr. Kozun was not informed of the consequences

214. As noted above, the Panel finds that (quite apart from his signature of the doping control form) Mr. Kozun was notified of the consequences of failing to provide a sample by the Supervisor.

vi. IDTM's failure to appreciate the unique anti-doping climate at the time in Russia

215. The Panel observes that Mr. Salmond, through his written and oral submissions, placed a particular emphasis on the Russian doping scandal to justify his interference with the IIHF's attempt to test Mr. Kozun on 12 December 2017. Hence, the Panel must address the question as to whether the Russian doping scandal had any bearing on the events in question.

216. The Panel notes that since the release of the documentary "Top Secret Doping: How Russia makes its winners" in December 2014, the doping situation in Russia was harshly criticized and deep concerns were raised in the sports world. The allegations of Russian doping were later endorsed in four reports issued by the Pound Commission and by Professor McLaren from 2015 until 2016.

217. The Panel points out that RUSADA was suspended in December 2015 and all its DCOs were fired. WADA laid out several requirements with which the Russian authorities had to comply in order to have RUSADA reinstated. Notably, the Russian authorities were required to accept an international expert appointed by WADA onto the RUSADA supervisory board as well as two more international experts appointed by WADA to oversee RUSADA's operations from inside its Moscow headquarters, with UK Anti-Doping appointed to implement a test distribution plan on athletes within Russia. They were also obligated to use DCOs from private companies PWC and IDTM.

218. In this respect, the Panel finds it relevant to mention that Paul Melia at CCES wrote to Rob Koehler at WADA prior to the events of 12 December 2017 that: "*Canada will be participating in the Channel One Cup in Moscow December 12 — 16 (IIHF Men's Hockey). Doping control (testing) will take place under the auspices of the IIHF. Given that RUSADA is not Code compliant, Hockey Canada has concerns about the integrity of the doping control process during this event. The CCES understands that doping control testing can be carried out by RUSADA under the watchful eye of the U.K. Anti-Doping*

Agency. Is that accurate and will they do so for this event or does IIHF use IDTM or PWC in Russia?” In response, Rob Koehler reassured Paul Melia by affirming that “we just recently conducted an audit of RUSADA and as a result I think you can have faith in their system”.

219. Notwithstanding the above, it appears that the testing of Mr. Kozun was in fact conducted on 12 December 2017 through the IIHF by Mr. Barut, who is a DCO from IDTM. The testing was not conducted by RUSADA or by a Russian DCO as Mr. Barut was Turkish.

220. Mr. Salmond alleges that he was on high alert due to the concerns about the integrity of doping control processes in Russia and the possibility of Russian retaliation against non-Russian athletes. He explained having gone out of his way to communicate those concerns to his superiors at Hockey Canada, who in turn shared the concerns with the CCES. While Mr. Salmond contends that the CCES considered those concerns to be well-grounded, the Panel points out the existence of an email from E. of Hockey Canada to Paul Melia of CCES, which states: *“We have a good number of potential Olympians in our lineup and I am concerned that those whom will be tested could have their samples compromised. Believe me I understand this is an absolute stretch, highly unlikely etc”.*

221. The Panel’s understanding based on the above emails is that Hockey Canada and Mr. Salmond were nervous about the possibility of Russian interference in the doping control, but determined nevertheless to take the risk. A heightened concern regarding Russian interference may have influenced Mr. Salmond’s behaviour, but the fact that he was willing to have Mr. Kozun undergo doping control with another DCO to be provided by IDTM is also noted by the Panel. The Hockey Canada nervousness was one factor in the events surrounding this aborted doping control, but could not warrant in advance an absolute invalidation of the actions of any IDTM DCO in Russia.

222. Without denying that the events of 12 December 2017 took place right after the IOC Executive Board decision of 5 December 2017 to suspend the Russian Olympic Committee, the Panel observes that Hockey Canada, following advice from the CCES, instructed to all its players verbally and in writing, to: *“a) exercise due diligence during the doping control processes; b) have a representative present to witness any testing; c) only use supplements and medication provided/prescribed by National Team doctors – rather than by their respective club doctors, noting that certain members of the squad played for Russian clubs in the KHL”.*

223. The Panel can appreciate that the perceived “Russian issues” may have caused some initial red flags to be raised when Mr. Barut first arrived, but those flags should certainly have been lowered once the Supervisor confirmed Mr. Barut’s identity and his mission. Indeed, it appears to the Panel that to the extent the Player and A. had themselves raised any flags, they were certainly lowered by that time. For the Panel, it was Mr. Salmond who chose to unnecessarily keep those flags at full mast.

224. The Panel holds that Mr. Salmond failed to provide sufficient evidence to substantiate his claim that the doping control manipulations in Russia had significant bearing on the events that took place on 12 December 2017 or, in particular, justified Mr. Salmond's interference with Mr. Kozun's test.
225. It was Mr. Salmond's own somewhat intemperate actions which caused the later exchanges between himself, the DCO and the Supervisor to find a replacement and were the deciding reason that Mr. Kozun did not provide a sample. Those efforts to find a replacement DCO were merely conducted in an attempt to defuse the situation caused by Mr. Salmond himself and to seek to avoid a potential refusal.

e) *Intent*

226. In order for the Panel to determine a violation of the Complicity article, intent is to be determined based on the conduct of the individual charged with the alleged violation, not the person who himself/herself is the subject of the doping control.
227. Individuals subject to the WADC have a responsibility to know what constitutes an ADRV. For example, in CAS 2012/A/2791, a coach was found to be complicit after having instructed athletes not to take part in a doping control and the Panel determined *"that, whether or not the coach was submitting to the orders of his superior, Karim Ibrahim, he clearly committed an anti-doping violation as defined in Rule 32.2(b) IAAF ADR by first instructing the Athletes to bring samples of urine of other persons and then participating in instructing them not to take part in the anti-doping control (...) As a very experienced coach, he clearly must have understood what he was doing and intended the actions he undertook"*.
228. The Panel concludes that intent in the context of the Complicity article refers simply to the intent to act, but not necessarily the intent to achieve the result or to commit a doping violation. In this instance, it is undisputed that Mr. Salmond intentionally instructed Mr. Kozun not to provide a sample during a doping control which on any view constitutes encouragement.
229. The Panel bears in mind that Mr. Salmond did everything he could to stop Mr. Barut from collecting a sample from Mr. Kozun, including repeatedly telling Mr. Kozun not to cooperate with Mr. Barut. Therefore, Mr. Salmond expressed clear intent from the moment he decided Mr. Kozun would not be tested by Mr. Barut.
230. Indeed, the act of encouragement itself constitutes sufficient intent for the purposes of Article 2.9 WADC as the reference to *"or any other type of intentional complicity involving an anti-doping rule violation"* means literally (and purposively) that encouragement must itself be one type of intentional complicity of which the italicized phrase cited contemplates other types.
231. While Mr. Salmond may have believed that the ultimate decision not to provide a sample to Mr. Barut could not amount to an ADRV by Mr. Kozun, the Panel is of the opinion that such

assertion is not a valid defense. Even if, due to his ignorance of the rules, Mr. Salmond thought that not providing the sample would not be ruled an ADRV, that is not enough to escape his own liability.

232. In any event, the Panel believes Mr. Salmond must have known or should have known as an experienced executive in Hockey Canada, having participated in over 200 doping controls, that the failure or the refusal of Mr. Kozun to submit to doping control could constitute an ADRV.
233. Based on the foregoing, “encouragement” itself must be found to be intentional. While the Panel notes that the act of encouragement is not denied by Mr. Salmond, it must still ascertain whether the act of encouragement involved an ADRV or not.

f) *Underlying Anti-Doping Rule Violation*

234. Mr. Salmond alleges that as the Player was not found to have committed an ADRV by the IIHF, he cannot be found to have breached Article 2.9 WADC.
235. The Panel finds that no underlying ADRV is required as Article 2.9 WADC specifically provides it is a violation if “... *encouraging, ... abetting, ... involving an anti-doping rule violation, Attempted anti-doping rule violation ... by another Person*”. It is enough if the encouragement “involves” an ADRV or an “*Attempted*” ADRV. In fact, the act of encouraging an anti-doping rule violation necessarily occurs before any commission of the ADRV that has been encouraged.
236. Relying upon Mr. Kozun’s testimony at the hearing, the Panel believes Mr. Kozun was ready to provide a sample subject to confirmation from A. and Mr. Salmond who were his lineal superiors at the event.
237. Mr. Salmond's actions were the reason that Mr. Kozun did not provide a sample. Mr. Barut showed Mr. Kozun his electronic IDTM identification card, which Mr. Kozun inspected and to which he did not object. However, Mr. Salmond interrupted and prevented the DCO from carrying out the doping control by dismissing the documents the DCO did show him and repeatedly telling Mr. Kozun not to cooperate.
238. Mr. Salmond told the DCO to leave Mr. Kozun’s room, not to speak to Mr. Kozun, and that Mr. Kozun would not sign the doping control form. The Supervisor spoke to Mr. Salmond and informed him that Mr. Barut was a duly authorised DCO and had shown the requisite documents. Mr. Salmond rejected this and said that Mr. Kozun would not provide a sample to Mr. Barut.
239. Mr. Salmond and the Supervisor then spoke again on the phone, where Mr. Salmond stated at the outset that Mr. Kozun would not provide a sample, but was told by the Supervisor in

no uncertain terms that this was not possible as Mr. Kozun had been notified. As it appears from the Supervisor's credible written statements and oral testimony, Mr. Salmond required the control to be cancelled. He was, however, advised by the Supervisor that it was impossible to cancel it since Mr. Kozun had already been notified.

g) Generally

240. The Panel bears in mind that the purpose of Article 2.9 WADC is to prevent individuals, like Mr. Salmond, from encouraging other individuals not to undergo doping control. In this respect, the Panel relies upon CAS jurisprudence. In CAS 2007/A/1407, it was established that the *"rule that words must be construed in their ordinary sense will be departed from when the meaning would involve an absurdity or create an inconsistency with the rest of the document"*. In CAS 2006/A/1165, it was expressed that *"the presumption is that the words in documents should be given their natural and ordinary meaning and it is only when such an approach creates an unreasonable result that it is necessary to look to other meanings"*.
241. Hence, the Panel finds that Mr. Salmond intentionally encouraged Mr. Kozun to not submit a sample, and that not submitting a sample once doping control has been properly notified is an ADRV, within the meaning of Article 2.9 of the WADC.
242. While the Panel does not rely on anything particular to the Kozun proceedings as it is a separate proceeding, it can rely on the indisputable fact that Mr. Kozun did not submit a sample – a fact comprehensively evidenced in these proceedings, Article 2.7 of the IIHF Doping Control Regulations stipulates that refusing, evading, or failing sample collection *"after notification is an ADRV if done 'without compelling justification'"*. No *"compelling justification"* for avoiding the test was ever advanced. Indeed, in coming to its decision, the Panel would be remiss to not note that its decision does not rely on any element of facts unique to the Kozun proceedings. As his testimony made clear, Mr. Kozun would likely have submitted to sample collection in the absence of Mr. Salmond's encouragement (if not actual direction) not to do so. Mr. Salmond also confirmed that he instructed Mr. Kozun not to provide a sample.

h) Determining the Sanction

243. Article 7.3.4 of the IIHF Disciplinary Code provides that for violations of Article 2.14 of the IIHF DCR, the *"period of ineligibility shall be a minimum of two years, up to four years, depending on the seriousness of the violation"*.
244. The comment in relation to Article 10.5.2 of the WADC is clear that no reduction is permitted below the two year minimum on grounds of No Significant Fault or Negligence because complicity is an intentional ADRV.

245. Consequently, the minimum sanction for a violation to Article 2.14 of the IIHF DCR is two years while the Panel has the discretion to impose an ineligibility period of 2 to 4 years.
246. The Panel determines that the Disciplinary Board was wrong to impose a one-year period of ineligibility on Mr. Salmond on grounds of proportionality, since such decision departs from the mandated minimum set out in the WADC. The Panel must impose a sanction that respects the applicable rules, including the mandated two-year minimum. Further reduction on the basis of proportionality is not acceptable.
247. In this respect, the Panel refers to CAS 2016/A/4534, which indicated in respect of WADC 2015 that: *“the WADC was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim”*.
248. Along these same lines, the CAS Panel in CAS 2017/A/5110 mentioned that the WADC *“has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction”*.
249. As to the appropriate start-date for the sanction, the Panel finds it reasonable in all the circumstances and accedes to the request of the IIHF to back date such two-year period of ineligibility to 1 June 2018, the date Mr. Salmond began his current period of ineligibility.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Scott Salmond on 4 September 2018 against the International Ice Hockey Federation with respect to the decision of the Disciplinary Board of the IIHF dated 26 July 2018 is dismissed.
2. The appeal filed by the World Anti-Doping Agency on 4 October 2018 against the International Ice Hockey Federation and Mr. Scott Salmond with respect the decision of the Disciplinary Board of the IIHF dated 26 July 2018 is upheld.

3. Mr. Scott Salmond is sanctioned with a two-year period of ineligibility as from 1 June 2018.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.