Report to the World Anti-Doping Agency Concerning Allegations of Bullying and Harassment

May 15, 2019

COVINGTON

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INTRODUCTION

On October 8, 2018, Beckie Scott, Chair of the WADA Athlete Committee, wrote to WADA's President, Craig Reedie, and Director General, Olivier Niggli, "with concerns related to the WADA Executive Committee meeting held in Mahe Island, Seychelles, on 20, September 2018." (*See* Appendix 1). The letter complained of "remarks and gestures directed toward me by International Olympic Committee (IOC) and Executive Board members Mr. Francesco Ricci Bitti and Mr. Patrick Baumann that were both derisive and inappropriate." Ms. Scott sought assurance "that such unfettered attacks on any members at future meetings be addressed at the time they take place."

Four days later, on October 12, a video interview of Ms. Scott discussing the September 20 Executive Committee meeting was published to the BBC website, under the heading, "Wada: Anti-doping campaigner Beckie Scott says officials tried 'to bully' her." (*See* Appendix 2). The first line of the accompanying article read, "The Chair of the World Anti-Doping Agency's (Wada) Athlete Committee says some of the organisation's most senior officials tried to 'bully' her over her opposition to Russian reinstatement." In the interview, Ms. Scott again complained of "comments and gestures that were inappropriate," which she said were "directed at me by members of the Olympic Movement who are members of the WADA Executive Committee." Ms. Scott described these comments and gestures as designed "to bully."

In response to these claims, WADA management engaged Relais Expert-Conseil, a firm that specializes in organizational psychology, to review the audio recording of the September 20 Executive Committee meeting and determine whether any bullying or belittling took place. Separately, on October 18, Edwin Moses, Chair of the WADA Education Committee, published an article in the *Sydney Morning Herald* in which he said he was told to "shut up" at WADA's May 2018 Foundation Board meeting. (*See* Appendix 3). Dr. Moses also stated that Ms. Scott had "publicly revealed the bullying she received from other senior sporting officials on WADA's executive committee who did not accept her ethical and uncompromising stance against Russian state-sponsored doping."

WADA's Executive Committee was scheduled to discuss Relais's report at its meeting on November 14 in Baku, Azerbaijan. Two days before, Benjamin Chew, an attorney in the Washington, D.C. office of Brown Rudnick LLP, sent WADA a letter on behalf of Ms. Scott. Mr. Chew stated that he represented Ms. Scott with respect to "her allegations that she received inappropriate and unlawful treatment while carrying out her role as the Chair of the WADA Athlete Committee." The letter further asserted that "there is a pervasive problem at WADA" and that "the allegations implicate the most senior leadership of WADA . . . ." The letter did not describe any specific instance of harassment or bullying, but instead stated that "the basic allegations of the extent and gravity of the harassment are known to you."

At its November 14 meeting, the Executive Committee determined that Relais's investigation into Ms. Scott's claims should continue and include interviews of those that attended the September 20 Executive Committee meeting, but also that, in light of the letter from Ms. Scott's lawyer, WADA should seek legal advice.

Mr. Chew subsequently wrote to WADA and stated that he now also represented Dr. Moses. The letter asserted that "[l]ike Ms. Scott, Dr. Moses has witnessed unlawful bullying at the hands of WADA officials," but did not describe any specific incidents. The letter did not allege that Dr. Moses himself was a victim of bullying or harassment.

Further to the decision by the Executive Committee that the organization should seek legal advice, and in light of the assertion by Ms. Scott's U.S. lawyer of "unlawful" conduct, WADA ultimately engaged Covington & Burling LLP to conduct a further investigation into specific allegations of bullying and harassment.

Covington's Investigation

Over the course of Covington's investigation we interviewed 32 witnesses, some more than once. We also collected and reviewed a wide variety of documents and analyzed the audio recordings of multiple Executive Committee and Foundation Board meetings.

While the only specific allegations of bullying and harassment before us were those that Ms. Scott made regarding the September 20 Executive Committee meeting, in our interviews we sought information regarding any other specific allegations of bullying and harassment. We also investigated Dr. Moses's assertion that he had been told to "shut up" at the May 2018 WADA Foundation Board meeting, given that the issue was factually narrow and was joined with Ms. Scott's allegations through their common lawyer.

As detailed below, there is neither an applicable WADA policy or any governing law that defines bullying or harassment. After a broad review of a variety of sources and precedents, we applied the following standard in evaluating whether conduct constituted bullying or harassment:

> *(1) the complainant must have felt threatened, intimidated, or humiliated;*
>
> *(2) the accused must have directed their conduct towards the complainant;*
>
> *(3) a reasonable person would view the conduct at issue as threatening, intimidating, or humiliating; and*
>
> *(4) the conduct must have been repetitive or, if a single instance, extraordinarily severe (e.g., a threat of violence).*

In conducting this investigation, Covington was given the freedom to work entirely independently of WADA management, the Executive Committee, and the Foundation Board. While we relied on WADA for access to documents, contact information for certain witnesses, and other logistical support, WADA did not supervise or guide our work. Until our work was complete, WADA management neither requested nor were provided substantive updates on what we learned or the conclusions we were

forming. Beyond what is set forth in this report, we have not disclosed to anyone what any particular witness reported to us. In addition, both the President and Vice-President of WADA were recused from any decision-making role in connection with our investigation.

Covington has no prior or existing relationship with Messrs. Ricci Bitti or Baumann, or the organizations they represent. Covington likewise has no prior or existing relationship with Ms. Scott, Dr. Moses, or the other organizations with which they appear to be associated.

While no individual brought forward any allegations of bullying or harassment by WADA management, we note that WADA management has instructed our firm with respect to a small amount of work in other areas unrelated to these allegations. So as to eliminate any possibility of WADA management indirectly learning about or having input into our work, we implemented an ethical wall at our firm between the persons working on this investigation and persons working on any other WADA matter.

This Report

This report contains our findings, conclusions, and recommendations regarding the allegations raised by Ms. Scott and Dr. Moses. In order to fully explain the nature and context of the comments at issue, however, the report includes a detailed description of events leading up to the discussion at the September 20 Executive Committee meeting. That discussion and the subsequent allegations unfolded against a backdrop of strong disagreement among various constituencies over the appropriate response to the Russian doping scandal and, relatedly, WADA's governance, the role of the WADA Athlete Committee, and its relationship with the IOC Athletes' Commission.

To be clear, our report is agnostic as to the *merits* of those disagreements. Whether bullying or harassment occurred does not turn on who has the better argument on these issues; we take no position, for example, on whether WADA was right or wrong to conditionally reinstate the Russian Anti-Doping Agency (RUSADA), or whether the WADA Athlete Committee or the IOC Athletes' Commission is more representative of the athlete voice. The *fact* of these political disagreements is relevant, however, to understanding and analyzing both the discussion at the September 20 Executive Committee meeting and the responses to it.

Our report is organized as follows:

- *In Section One* of the report, we discuss the scope of our investigation and the work we performed.

- *In Section Two*, we discuss Ms. Scott's specific allegations, which concerned conduct at the September 20 Executive Committee meeting.

- *In Section Three*, we discuss the background to the two key areas of discussion at the September 20 Executive Committee meeting: (i) the WADA Global Athlete Forum held in June 2018, and the history of

conflict between members of the WADA Athlete Committee and members of the IOC Athletes' Commission; and (ii) the Compliance Review Committee's recommendation regarding reinstatement of RUSADA, which the Executive Committee considered at the September 20 Executive Committee meeting.

- *In Section Four*, we describe the key events at the September 20 Executive Committee meeting.

- *In Section Five*, we set forth the standard for bullying and harassment that we applied and the basis on which it was determined.

- *In Section Six*, we analyze whether the events at the September 20 meeting amounted to bullying or harassment.

- *In Section Seven*, we address Dr. Moses's allegation regarding the May 17, 2018 Foundation Board meeting.

- *In Section Eight,* we discuss the refusal of Ms. Scott and Dr. Moses to participate in the investigation.

- *In Section Nine*, we set forth our recommendations to improve the dialogue at Executive Committee meetings and avoid the recurrence of events similar to those at issue here.

Our report concludes that no one at the September 20 Executive Committee meeting bullied or harassed Ms. Scott regarding her objection to the conditional reinstatement of RUSADA, or even responded directly to it. The exchange between Ms. Scott and Messrs. Ricci Bitti and Baumann at that meeting took place after Ms. Scott presented the Athlete Committee report, in which she criticized the IOC Athletes' Commission, a member of which was at the table. While Mr. Ricci Bitti's response to that report reasonably could be viewed as aggressive or disrespectful, his behavior did not rise to the level of bullying or harassment.

Additionally, while Mr. Baumann objected to Dr. Moses having spoken on a particular issue at the May 2018 Executive Committee meeting, our investigation uncovered no credible evidence that Dr. Moses was told to "shut up" at that meeting or the Foundation Board meeting held the next day.

Ms. Scott's and Dr. Moses's Refusal to Participate

As our very first step in this investigation, on December 20, 2018, we wrote to Mr. Chew to request interviews of Ms. Scott and Dr. Moses. We repeated this request seven more times over the course of this investigation.

Regrettably, both Ms. Scott and Dr. Moses declined to be interviewed unless we agreed to unreasonable and highly unusual conditions on their participation. Among other things, they demanded that:

- All witness interviews be transcribed by a court reporter;
- Mr. Chew be permitted to cross-examine each and every witness; and
- The entire evidentiary record on which the report relies—including all witness interview transcripts and all correspondence reviewed in the course of the investigation—accompany the report.

These are features of a lawsuit, not of an independent investigation.

Ms. Scott's and Dr. Moses's requests are also inconsistent with the expectations of confidentiality that many witnesses expressly noted to us as a condition for their candor in our investigation. In order to preserve the integrity of the investigation, and to ensure witnesses would feel comfortable speaking with us without retribution, we did not agree to these demands.

While Ms. Scott and Dr. Moses invoked the failure to agree to these conditions as a sufficient basis not to participate in the investigation, they also claimed that Covington had a conflict of interest based on the modest additional work our firm has performed for WADA. They refused to substantiate these claims, however. In particular:

- Ms. Scott and Dr. Moses did *not* contend that Covington had a conflict with respect to Messrs. Ricci Bitti and Baumann—the individuals who were the subjects of the only allegations they had made in their correspondence and in their written and filmed media appearance.
- Instead, they ultimately asserted that they had *other* allegations that implicated WADA management.
- When we asked what those allegations were so that we could consider their assertion of a conflict, they refused to tell us—even after we agreed that we would not treat their doing so as acquiescence in the legitimacy of our investigation.

Finally, after we informed Mr. Chew that we would be completing our investigation and presenting this report to the Executive Committee on May 15, he complained that the investigation had proceeded without his clients first being interviewed. But that reverses the sequence of events. We started with Ms. Scott and Dr. Moses and proceeded without them only after they made clear that they would not participate.

As noted above, the refusal of Ms. Scott and Dr. Moses to participate in the investigation is discussed in greater detail in Section Eight. Our complete exchange of correspondence with counsel to Ms. Scott and Dr. Moses is attached as Appendix 4 to this Report.[1] In addition, in Appendix 5 we address additional demands made by Mr. Chew.

[1] Although Mr. Chew's letters unilaterally proposed that the parties' correspondence and details of the investigation be kept confidential, Covington did not agree to that proposal. Doing so would have effectively prevented WADA from publicly responding to Ms. Scott's and Dr. Moses's prior and potential future public allegations. In all events, Mr. Chew himself proceeded to share at least portions of this correspondence with the press after Covington informed him that we would be concluding our investigation.

SECTION ONE:
COVINGTON'S SCOPE OF INVESTIGATION AND METHODOLOGY

Covington's mandate was to investigate specific claims of bullying and harassment. We were not engaged to conduct a general review of WADA's governance or culture. Ultimately, and despite our inquiries in interviews, no specific allegations of bullying or harassment were brought forward other than Ms. Scott's allegations concerning the September 20 Executive Committee meeting.

Although Dr. Moses wrote in his November 12, 2018 letter to WADA that he too had "experienced the marginalization, lack of respect, and denigrating conduct which Beckie described," he did not claim that he himself was "bullied" or "harassed." (*See* Appendix 6). Nonetheless, we investigated Dr. Moses's claim that he had been told to "shut up" at the May 2018 WADA Foundation Board meeting, given that the issue was factually narrow and was joined with Ms. Scott's allegations through their common lawyer.

I. Witness Interviews

Over the course of the investigation, we interviewed 32 witnesses, some more than once. Because the allegations that precipitated the investigation concerned the September 20 Executive Committee meeting, we sought in particular to interview as many of the attendees at that meeting as possible. Aside from Ms. Scott, Dr. Moses, and Mr. Baumann (who passed away in October 2018), 40 persons attended that meeting. We interviewed 29 of them.

The participants in the September 20 Executive Committee meeting that we did not interview fall into three categories:

- First, due to language and distance barriers, we did not seek interviews of the three non-English speaking members of the Japanese delegation aside from ex-State Minister Toshiei Mizuochi.

- Second, two attendees from the African Union delegation, who were instrumental in arranging our interview of Amira El Fadil, did not respond to multiple requests for their own interviews.

- Third, with one exception, all members of the Oceania and Norway delegations declined to be interviewed. Of these six individuals, one did not respond to any text messages seeking a current, valid email address to which we could send our interview request.

  In response to our requests for interviews, each of the remaining five posed questions that were substantively identical to questions that we received from counsel to Ms. Scott and Dr. Moses. We did not receive such questions from any other witness. After securing our written responses, three of these five witnesses stopped responding to our emails, and two formally declined to be interviewed after Ms. Scott and

Dr. Moses publicly announced that they would not participate in the investigation.

Following that announcement, the one member of the Norwegian delegation whom we had interviewed sought to withdraw their testimony.

Consistent with standard best practices for attorney investigations, we took detailed contemporaneous notes at the interviews and prepared privileged interview memoranda. Contrary to the demand by Mr. Chew, we did not have a court reporter transcribe the interviews. That is a feature of litigation, and in our experience is unheard of in investigations. Among other things, witness cooperation is entirely voluntary in an investigation. Allowing counsel for the claimant to cross-examine each witness would be intimidating, and would lead many witnesses not to participate.

Likewise, the knowledge that verbatim transcriptions of each interview would be disclosed publicly would also deter witness participation and candor. Indeed, a number of witnesses sought specific assurances of confidentiality as a condition to speak with us, and in some cases explicitly requested that we seek their consent before ultimately attributing any testimony to them. Others who did not explicitly seek such assurances nonetheless shared information or views that they clearly would not wish to make public. We note, moreover, that a majority of these witnesses were sympathetic to Ms. Scott. Based on the feedback we received from witnesses, we are confident that the record contained herein is more robust and more complete than it would be had we followed the procedure demanded by Mr. Chew.

In line with witnesses' confidentiality expectations, we have with few exceptions avoided identifying witnesses by name.

II. Witness Demands for Information

In response to a demand by counsel to Mr. Ricci Bitti and other Olympic Movement witnesses, we declined to (i) provide a copy of the audio recording of the September 20 Executive Committee meeting, and (ii) identify in advance the specific definition of bullying and harassment that we would apply. This was to ensure that we could elicit the most candid testimony.

One witness—Chiel Warners, a member of the WADA Athlete Committee and of the Norway delegation to the September 20 Executive Committee meeting—requested that we provide our questions in advance as a condition of being interviewed. Consistent with standard best practices, we declined to do so. This likewise was to ensure that we could elicit candid, unrehearsed answers. Providing questions in advance also has the potential to be used to prevent the investigators from asking important questions that emerge during the interview, but could not have been anticipated in advance. At Mr. Warners's request, our email exchange with him is attached to this Report as Appendix 7.

III. Document Review and Forensics

In carrying out the investigation, Covington collected and reviewed more than 1,000 documents, including emails and other electronic messages, policies and governance documents, and other materials, as well as the audio recordings of multiple Executive Committee and Foundation Board meetings.

Because the audio recording of the September 20 Executive Committee meeting reflects certain off-microphone comments that cannot be deciphered, we also engaged a forensic expert, the National Center for Audio & Video Forensics, in an attempt to enhance portions of that audio recording. Due to limitations on how the recording was created, however, it could not be enhanced sufficiently to render those off-microphone comments decipherable.

In addition, in order to assess the vantage point of various witnesses in the room and their ability to observe the conduct of different parties, we reviewed the meeting seating chart and, through interviews, confirmed the location of virtually everyone in attendance.

SECTION TWO:
MS. SCOTT'S ALLEGATIONS

Ms. Scott is the most decorated cross-country skier in Canadian history, with 17 World Cup medals. She participated in the 1998 Winter Olympics in Nagano, Japan; the 2002 Winter Olympics in Salt Lake City, Utah; and the 2006 Winter Olympics in Turin, Italy. In December 2018, she was appointed Officer of the Order of Canada.

Ms. Scott experienced the destructive effects of athlete doping firsthand. At the 2002 Salt Lake City Games, Ms. Scott received the bronze medal in the women's five-kilometer pursuit. By June 2003, however, the IOC annulled the results of the second-place finisher, Russia's Larissa Lazutina, for using a prohibited performance-enhancing drug, and Ms. Scott was awarded the silver medal. Six months later, the Court of Arbitration for Sport stripped Olga Danilova, also of Russia, of her gold medal due to doping violations. As a result, the gold medal was awarded to Ms. Scott—more than two years after the race, and without the satisfaction of receiving it at the Olympic Games.

In February 2006, Ms. Scott was elected to an eight-year term as an athlete member of the International Olympic Committee. In this role, she served on WADA's Foundation Board from 2004–2015 and WADA's Executive Committee from 2012–2014. Ms. Scott joined WADA's Athlete Committee in 2008 and in January 2014 she was appointed as Chair. After her initial three-year term, Ms. Scott was reappointed to this position in 2017. Ms. Scott joined WADA's Compliance Review Committee (CRC) in 2016. As discussed below, she resigned from the CRC on September 14, 2018. Ms. Scott typically attends meetings of the Executive Committee and Foundation Board in her capacity as Chair of the Athlete Committee.

Ms. Scott's letter of October 8, 2018 set forth "concerns related to the WADA Executive Committee meeting held in Mahe Island, Seychelles, on 20, September 2018." (*See* Appendix 1). In the letter, Ms. Scott complained of "remarks and gestures directed toward me by International Olympic Committee (IOC) and Executive Board members Mr. Francesco Ricci Bitti and Mr. Patrick Baumann, that were both derisive and inappropriate." The letter did not identify the remarks or gestures at issue in greater detail.

In her BBC interview posted on October 12, she similarly complained of "comments and gestures that were inappropriate," which she said were "directed at me by members of the Olympic Movement who are members of the WADA Executive Committee." Ms. Scott described these comments and gestures as "indicative of a general attitude of dismissal and belittling of the athlete voice at the table." When asked to specify the behavior at issue, she responded that it was the "combined effect that left me feeling as though there is very little respect, there is very little appreciation, and there is very little value for the contribution that the athletes have at this table."

Based on these allegations and our review of the audio recording of the September 20 Executive Committee meeting, two portions of that meeting became the focus of our analysis.

The first was the discussion at the meeting concerning the CRC's recommendation to conditionally reinstate RUSADA. In her BBC interview, Ms. Scott connected the behavior of which she complained to her position regarding the reinstatement of RUSADA. The video began with Ms. Scott stating that she "fundamentally disagreed" with that decision, which she characterized as a "compromise that was unacceptable." It then immediately transitioned into a discussion of her allegations. In addition, the sole specific conduct that she described was that "there was laughter when I read the list of athlete committees who had produced statements" in opposition to RUSADA's reinstatement.

The second significant portion of the meeting was the discussion during Ms. Scott's report, as Chair of the Athlete Committee, on the WADA Global Athlete Forum held in June 2018. The only exchange of comments among Ms. Scott and Messrs. Ricci Bitti and Baumann occurred during this presentation.

Because the events surrounding both the Forum (including prior tensions between the WADA Athlete Committee and the IOC) and the CRC's recommendation to reinstate RUSADA provide important context to these exchanges, we discuss those events at some length in the following section before returning to the September 20 Executive Committee meeting.

SECTION THREE:
BACKGROUND TO THE SEPTEMBER 20 EXECUTIVE COMMITTEE MEETING

I. Tensions Surrounding the Global Athlete Forum

Understanding the tensions leading up to the Forum requires an understanding of the historical tensions between the WADA Athlete Committee and the IOC Athletes' Commission, and, in turn, some knowledge of their respective structures.

A. Structure of the WADA Athlete Committee and the IOC Athletes' Commission

The WADA Athlete Committee is a Standing Committee. Its Chair is appointed by the Executive Committee. The 16 other members of the Athlete Committee are appointed jointly by the Director General and the President. Four seats are customarily held by the IOC Athletes' Commission members who, by statute, are members of the WADA Foundation Board. Prior to the governance recommendations proposed during the November 2018 Foundation Board meeting, members of the Athlete Committee were appointed jointly by the WADA Director General and President, ensuring appropriate geographic, political, and gender balances. While the members of the Athlete Committee are appointed and not elected to the Committee, the Committee's Terms of Reference in effect from December 2016 through the events at issue state that the purpose of the Committee is to "represent the views and rights of clean athletes worldwide."

By contrast, most but not all members of the IOC Athletes' Commission are elected—albeit only by Olympic athletes, and not a broader athlete constituency. According to a press release by the IOC, both the current Chair of the IOC Athletes' Commission, Kirsty Coventry, and the Vice-Chair, Danka Bartekova, were among four athletes elected to their positions at the 2012 Summer Olympic Games in London. Ms. Bartekova was the leading vote-getter in that election. She sits on the WADA Executive Committee, and both she and Ms. Coventry are members of the WADA Foundation Board as well as of the WADA Athlete Committee.

Our interviews suggest that there is a fairly widespread view that the WADA Athlete Committee has not historically been restricted by WADA with respect to the public positions it takes, whereas the IOC Athletes' Commission typically expresses the views of the IOC with respect to the public positions it takes.

Over time, some members of the IOC Athletes' Commission have questioned the WADA Athlete Committee's ability to speak on behalf of athletes, on the grounds that it is an unelected body. Reciprocally, critics of the IOC Athletes' Commission view it as insufficiently independent from the IOC, and insufficiently representative in that elections are held only among Olympic athletes.

B. Historical Tensions

Dating back to at least 2016, there has been a history of friction between the leadership of the WADA Athlete Committee, including Ms. Scott, on the one hand, and members of the IOC—in particular, members of the IOC Athletes' Commission that sit on the WADA Athlete Committee—on the other.

In May 2016, Grigory Rodchenkov, the former director of Russia's anti-doping laboratory, revealed details about Russia's state-run doping program. In response, WADA appointed Professor Richard McLaren to direct an investigation into Dr. Rodchenkov's revelations. In July of that year, as the Summer 2016 Rio Olympic Games drew near, Ms. Scott circulated a sign-on letter that advocated for a ban of all Russian athletes from the Games. Pat Hickey, a member of the IOC's executive board, publicly criticized Ms. Scott, claiming that the letter was proof that the independence and confidentiality of Professor MacLaren's report had been compromised.

There was further friction the following summer. On August 9, 2017, the WADA Athlete Committee called for the Court of Arbitration for Sport (CAS) to "improve and strengthen its independence and continually strive to increase the quality of its arbitrators."[2] This was perceived as criticism of the IOC.[3] That same day, in response to reports suggesting that the IOC might only fine Russia in connection with the findings of the McLaren Report, Ms. Scott gave an interview stating that a fine would be a "superficial gesture."[4]

Three days later, Angela Ruggiero and Tony Estanguet, then Chair and Vice-Chair of the IOC Athletes' Commission—and both then members of the WADA Athlete Committee—issued a statement that "the comments questioning the independence of CAS and the quality of the arbitrators is misguided." As for Russia, the statement said, "the comments made by the Chair of WADA's Athlete Committee are inappropriate at this time."[5]

That same day, Ms. Ruggiero and Mr. Estanguet also wrote to Mr. Reedie and IOC President Thomas Bach, expressing "confusion and frustration from a lack of clarity around the role of the WADA Athlete Committee in regard to the IOC Athletes' Commission and the wider fight for clean athletes." Their concerns included

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[2] *Statement from WADA Athlete Committee*, WADA (Aug. 9, 2017), https://www.wada-ama.org/en/media/news/2017-08/statement-from-wada-athlete-committee.
[3] *A swipe at WADA? Olympic Summit calls for Election of All Athlete Commissions*, Play the Game (Oct. 30, 2017), https://www.playthegame.org/news/news-articles/2017/0371_a-swipe-at-wada-olympic-summit-calls-for-election-of-all-athlete-commissions/.
[4] Nick Butler, *Ruggiero and Estanguet Criticise WADA Athlete Committee Chair for Expressing Opinion on Russian Doping Punishment*, inside the games (Aug. 12, 2017), https://www.insidethegames.biz/articles/1054025/ruggiero-and-estanguet-criticise-wada-athlete-committee-chair-for-expressing-opinion-on-russian-doping-punishment.
[5] *Statement From IOC Athletes' Commission And Members Of WADA Athlete Committee*, IOC (Aug. 12, 2017), https://www.olympic.org/athlete365/voice/statement-from-ioc-athletes-commission-and-members-of-wada-athlete-committee/#_ga=2.88751576.275514470.1557595194-200280218.1557595194.

disagreement over work on a Charter of Athlete Rights, with Ms. Ruggiero and Mr. Estanguet stating that the WADA Athlete Committee had "directly question[ed] the role of the IOC Athletes' Commission as the appropriate leader for this process."

In response, WADA management made efforts to bridge the gap between the two athlete groups. Mr. Reedie spoke with Ms. Ruggiero and Mr. Estanguet and indicated the need to end the discord. Ms. Ruggiero then requested a meeting with Ms. Scott. Meanwhile, on August 17, Mr. Niggli wrote to Rob Koehler, then WADA Deputy Director General, and Catherine MacLean, WADA's Director of Communications, saying, "I think we need to support Beckie and the Athlete Committee at large in the best possible way so that they don't come under attack nor Beckie is personally exposed. . . . Therefore I would like us to create a small task force within the office comprising of Catherine, Rob and myself to oversee and support the mission of the Athlete Committee."

At Ms. Scott's request, the meeting with Ms. Ruggiero took place at WADA headquarters in Montreal on August 23, 2017, with the participation of Messrs. Niggli and Koehler. Following the meeting, Ms. Scott informed the members of the Athlete Committee that she and Ms. Ruggiero had met and that, "[a]s Chairs of our respective committees, we are in agreement that the way forward should be positive and in the best interests of the athlete community. We have also committed to ensuring we have open and respectful communication on various topics such as the Charter of Athlete Rights, and how we can support each other's Athlete Forums in a constructive way."

A few months later, in October 2017, the IOC issued a communique of the 6th Olympic Summit, which, among other things, "noted the democratic and representative nature of the IOC's Athletes' Commission, with representatives elected at the Olympic Games by the Olympic athletes and with representation on the IOC Executive Board." The media covered the call as "an implicit criticism of the World Anti-Doping Agency (WADA), whose Athlete Committee is still appointed rather than elected."[6]

The two groups also have disagreed about whether, so long as the members of the WADA Athlete Committee are appointed and not elected, the reforms considered by WADA's Governance Working Group should include a recommendation that the Athlete Committee have formal representation on the Executive Committee and Foundation Board.[7]

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[6] Nick Butler, Olympic Summit calls for all athlete commissions to be elected in apparent dig at WADA, inside the games (Oct. 29, 2017), https://www.insidethegames.biz/articles/1057238/olympic-summit-calls-for-all-athlete-commissions-to-be-elected-in-apparent-dig-at-wada.

[7] The tensions appear to continue to the present. Just a few weeks ago, on April 17, 2019, Ms. Scott appeared in a video interview with the Irish radio host Joe Molloy. While noting that Ms. Bartekova voted in favor of the recertification of RUSADA at the September 20 meeting, Ms. Scott referred to Ms. Bartekova as "not an athlete representative," but an IOC representative. Earlier in the interview, Ms. Scott agreed with the hosts' assertion that no clean athletes supported the decision to reinstate RUSADA. "None that we heard from," Ms. Scott said. Off The Ball, *"Doping Was an Open Secret in Our Sport" - Beckie*

C. The WADA Global Athlete Forum

Against this backdrop, the Forum was convened by the WADA Athlete Committee in Calgary, Canada from June 3-5, 2018. One hundred and four athletes from 54 countries attended.

1. Criticisms From the Olympic Movement Before the Forum

Two days before the start of the Forum, WADA began to receive a series of letters from various continental Olympic committees, complaining about the event. The first to arrive was a letter from El Hadj Amadou Dia, head of the Association of National Olympic Committees of Africa, to Messrs. Reedie and Niggli, with a number of IOC members copied. The letter complained of delayed circulation of invitations to the Forum, the failure to consult "elected athletes," and a lack of geographic diversity among speakers.

The next day the Chairman of the Olympic Council of Asia Athletes Committee, who was copied on this communication, responded that he also had not received an invitation to the Forum and that the event did not represent the global Olympic Movement. On June 3, Mr. Amadou Dia replied that he continued to think the Forum was discriminatory and not representative. He urged WADA to not consider the discussions or conclusions from the Forum as reflecting the view of athletes around the world. Mr. Amadou Dia also noted that Ms. Scott was appointed by WADA and not elected by athletes, and that "legitimate" athlete representative organizations would study WADA's thoughts with interest.

Correspondence lodging similar complaints arrived the following day from the President and the Athletes' Commission President of the Panam Sports Organization, and the Chair of the European Olympic Committees Athletes Commission. These various letters and emails, which were clustered over a few days and raised identical issues, had the hallmarks of coordination.

Ms. Scott responded to the regional IOC groups' concerns in a letter on June 5, which Messrs. Koehler and Niggli assisted in drafting. She noted that Forum invitations were first sent electronically on March 14, 2018 to all National Olympic Committees, National Paralympic Committees, International Federations, and National Anti-Doping Organizations, and that an electronic reminder was sent on April 19. She also replied that the Forum's speakers and moderators hailed from 11 different countries and that participants from 54 countries and all continents attended. Ms. Scott closed her letter by noting surprise at the "inaccuracies, critical tone and collective timing" of the

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Scott on WADA and Doping, YouTube (Apr. 17, 2019), https://www.youtube.com/watch?v=qMXzKWHZGzA.

correspondence and expressed "hope [that] this situation can be improved for the future."

2. Criticisms From the Olympic Movement After the Forum

At the conclusion of the Forum, the organizers published a series of written outcomes. These outcomes included positions on issues which had previously been the subject of conflict with members of the IOC Athletes' Commission, including (i) "The Forum supports WADA's decision to ensure that the outstanding items in the RUSADA Roadmap to Compliance are fulfilled before World Anti-Doping Code compliance is declared"; and (ii) "The Forum overwhelmingly endorsed full membership of the WADA Athlete Committee Chair on the Executive Committee."

A few days later, on June 6, IOC Athletes' Commission Chair Kirsty Coventry wrote to Ms. Scott. Her letter reiterated concerns about invitations and diversity at the Forum, and also contended that the published outcomes did not accurately reflect the discussion at the Forum. Ms. Bartekova and Barbara Kendall, Chair of the Association of National Olympic Committees Athletes' Commission, signed onto the letter.

Ms. Scott responded on June 10. She detailed how invitations were distributed and speakers were chosen, and noted that WADA would take the feedback about invitations, panelists, and outcomes into account for the next Forum. With respect to the outcomes, Ms. Scott wrote, "I note and appreciate your feedback on how to improve the format for development of the forum outcomes. And, again, I will take this forward in the spirit of enhancement for the next forum. Having said this, it would also be very helpful to me if you could clarify which outcomes you find objectionable and cannot accept."

Ms. Coventry replied on June 26, in a letter co-signed by Ms. Bartekova and the Chairs of the five Continental Association Athlete Commissions. She noted that she had met with the co-signatories and that they (i) "agreed with the content" in Ms. Coventry's June 6 letter, (ii) "were disappointed with the lack of substance in [Ms. Scott's] response," and (iii) had decided not to support the outcomes from the Forum. Significantly, Ms. Coventry's letter requested that the Forum be added as an agenda item for the September 20 Executive Committee meeting.

Mr. Niggli suggested that Ms. Scott simply acknowledge receipt of this letter and indicate that the issue would be discussed further at the September 20 Executive Committee meeting, which she agreed to do.

D. Subsequent Discussions Between WADA Management and Ms. Scott

The documentary record shows that WADA management was supportive of Ms. Scott throughout this process. As noted, Mr. Niggli contributed to Ms. Scott's letter of June 5 to the various continental athlete commissions. On June 11, after Ms. Scott responded to Ms. Coventry's first letter, Mr. Niggli wrote to Ms. Scott to "thank you for

the work you have done for the Forum and for its success" and to note that "it was well done."

On August 8—with the Athlete Forum now set as an agenda item for the next Executive Committee meeting—Mr. Niggli wrote to Ms. Scott to propose that they meet in person to discuss "how we are going to prepare for the ExCo so that you are in a position to respond, with facts, if we continue to hear the same accusations." Mr. Niggli also inquired "if there would be a way to have a meeting at some point between you and Kirsty to try to sort it out between athletes and not between politicians (like we did with Angela we could be with you in support). I know it is not easy but I cannot believe that there is not a way to get more constructive in this all discussion."

Ms. Scott responded two days later to say that she would be open to meeting with Ms. Coventry, but had "concerns about the behaviour of IOCAC members on the WADAC." The email went on to complain about criticism of the Forum that had been expressed on an IOCAC call, which Ms. Scott felt demonstrated "clear disregard for an agreed process" to discuss the matter at the Executive Committee meeting. Ms. Scott also complained of "[m]isinformation and subjective opinions on the WADA Governance review" expressed on that call.

Ms. Scott stated that both of these statements should "be of concern to WADA management." She added that "this incident follows a pattern of behaviour toward WADA and the WADAC by the Chairs and Vice-Chairs of the IOC AC, that has become increasingly targeted since June 2016." After reciting various past incidents, including some of those cited earlier in this report, she concluded her email as follows:

> It has now been over two years of unwarranted and inexcusable behaviour by the Chairs and Vice-Chairs of the IOC AC toward the WADAC and WADA. The situation is no longer tenable, and in fact, many members of the WADAC now believe the IOC AC's priority within the WADAC is solely to compromise the goals and objectives of the committee.
>
> The WADAC has a mandate to fulfill, and without adherence to basic codes of conduct, we cannot operate effectively. Considering this, and in light of this most recent incident, I think it is only fair that this is addressed at a managerial level, in which expectations of all WADA's Standing Committee members are clearly communicated and enforced.
>
> Therefore, I am asking for your support in addressing this conduct. We can discuss further in London, however, prior to any meeting of the AC Chairs I am requesting that you formally address this issue with the appropriate IOC personnel and work toward a solution that will end this situation.

Mr. Niggli responded that he was prepared to raise these issues with the IOC, but added that "the real focus should be how the WADA Athlete Committee can achieve what it wants to achieve, in particular with regards to the Charter, within the best conditions and without having to deal with conflicts which I am afraid will be more harmful and unhelpful. Despite a lot of frustration, I still believe that much can be achieved through dialogue and in particular dialogue among athletes away from politics."

On August 21, Ms. Scott met with Mr. Niggli and WADA Chief Operating Officer Frederic Donzé, who had recently assumed the role of liaison to the Athlete Committee, to discuss these concerns over breakfast. Messrs. Niggli and Donzé agreed that they would raise her concerns with the IOC—specifically, that Mr. Niggli would speak with Christophe De Kepper, Director General of the IOC, and that Mr. Donzé would speak with Kit McConnell, Sports Director of the IOC.

Mr. Niggli met with Mr. De Kepper on September 4, and discussed Ms. Scott's complaints with him. Approximately a week and a half later, Mr. Donzé met with Mr. McConnell and Kaveh Mehrabi, IOC Head of Athlete Relations and Engagement. In both conversations, Mr. Niggli and Mr. Donzé relayed their concerns about conflict between the two athlete groups. According to Messrs. Niggli and Donzé, the IOC representatives noted their own unhappiness with decisions taken by the Athlete Committee, including the belief that the speakers at the Forum had been intentionally selected to present a "North American" perspective on the Russia issue, but agreed that all parties should work to improve the relationship between the two committees.

E. Preparation of Ms. Scott's Written Report on the Forum to the Executive Committee

The same week that Ms. Scott met with Messrs. Niggli and Donzé in London, she and Mr. Donzé also worked to prepare the written report on the Forum that would be included in the Executive Committee meeting materials.

WADA staff prepared an initial draft of Ms. Scott's report on the Forum and shared it with Ms. Scott and Mr. Donzé. Ms. Scott revised the draft, and included a sentence stating, "The WADA AC was deeply disappointed by the actions undertaken by fellow athlete representatives and colleagues to discredit and undermine the Global Athlete Forum."

In response, Mr. Donzé suggested adding language that the Athlete Committee "looks forward to continuing to work with all Athlete Commissions." He subsequently proposed alternative language, which he believed "would not weaken the expression of the frustration of the WADA AC towards the criticism received and would demonstrate an openness which would diminish the impact of any further criticism expressed at the ExCo meeting."

Ms. Scott replied, "I'm sorry to say that I think any future possibility of collaboration between the two ACs actually lies with management and a clear articulation of expectations and behaviour of members." Ms. Scott did, however, add a

sentence to her report indicating openness to suggestions for an improved Forum and taking feedback and comments into consideration.

F. September 19 Meetings of the Public Authorities and the Olympic Movement

On September 19, the Olympic Movement and the Public Authorities held their respective meetings in advance of the Executive Committee meeting. The Forum does not appear to have been discussed in detail at the Olympic Movement meeting, despite the Olympic Movement having requested that the Forum be designated an agenda item for the Executive Committee meeting. The Olympic Movement position paper for the meeting did not address the Forum at all.

Ms. Scott attended the Public Authorities meeting and expressed her frustrations with the IOC Athletes' Commission. Several witnesses from the Public Authorities told us this was the first they had learned of these conflicts, and they encouraged Ms. Scott to address them at the Executive Committee meeting the next day.

II. The CRC's Recommendation to Conditionally Reinstate RUSADA

The other key subject of discussion at the September 20 Executive Committee meeting related to Ms. Scott's allegations was the CRC's recommendation to conditionally reinstate RUSADA. The CRC, of which Ms. Scott was a member, was grappling with the issue of Russia's 2014 doping scandal over the summer of 2018 at the same time that the events surrounding the Forum were unfolding.

On August 2, 2017, WADA published the "Roadmap to Compliance," detailing steps Russia had already taken and those that remained to be achieved before RUSADA would be deemed compliant with the World Anti-Doping Code. By June 2018, the outstanding requirements were that Russian authorities (1) publicly accept the reported outcomes of the McLaren investigation; and (2) provide access for appropriate entities—including WADA's Intelligence & Investigations Department—to the stored urine samples in the Moscow Laboratory. The CRC was responsible for providing independent recommendations to WADA on Russia's compliance with the Roadmap.

A. June 2018 Endorsement of Conditional Reinstatement

On June 14, the CRC met at WADA headquarters in Montreal. Mr. Niggli informed the CRC that political pressure to reinstate RUSADA was building among Executive Committee members. Mr. Niggli reflected on the importance of getting RUSADA on the path towards compliance, even if it was short of technical proficiency. Mr. Niggli left the room after providing his report on Russia.

The CRC then discussed the possibility of a "breakthrough" method by which to bring about access to the test samples. This breakthrough was articulated in a draft letter that Jonathan Taylor, Chair of the CRC, circulated to the entire CRC for comment and approval.

Specifically, the letter provided that the CRC would "be in a position to recommend immediate reinstatement of RUSADA" if Russia met two conditions: 1) acknowledge the findings of the December 2017 IOC report drafted by Samuel Schmid (Schmid Report), including the finding that a number of individuals in the Ministry of Sport and subordinated entities were involved in the manipulations of the anti-doping system in Russia; and 2) commit unconditionally to provide to WADA "by a specific date in 2018" access to the data and samples sought by the WADA Intelligence & Investigations Department.

Significantly, this proposal reversed the sequence of events required under the Roadmap, by agreeing to recommend reinstatement of RUSADA *before* it provided the data and samples, subject to the condition that they be provided by a specific date in 2018.

All members of the CRC—including Ms. Scott—approved the letter and the concept that RUSADA be reinstated immediately upon committing unconditionally to provide the data and samples to WADA by a date certain in 2018. In an email dated June 18, Ms. Scott wrote, "I am happy with the letter in its current edition . . . ." Based on this unanimous approval, Mr. Taylor transmitted the letter on behalf of the CRC to Mr. Niggli on June 19.

The CRC letter was shared with all Executive Committee members on June 28. Thus, all members of the Executive Committee knew at that point that the CRC had supported the concept that RUSADA be reinstated immediately upon committing unconditionally to provide the data and samples to WADA by a date certain in 2018.

The CRC met in person again on August 21, and reviewed an August 14 letter from Russian sports officials. The CRC determined that the letter did not adequately satisfy the conditions established at the June CRC meeting. During this discussion, no Committee members raised any objections or reservations about the conditions set forth in the June 19 letter for the CRC to recommend that RUSADA be reinstated.

B. September 13 Vote to Recommend Conditional Reinstatement

The CRC met again by telephone on September 13. The meeting began at 2 p.m. London time, which was 7 a.m. in Alberta, where Ms. Scott resides. Messrs. Niggli and Donzé both participated.

Shortly before the meeting began, a letter arrived from the Russian Sports Minister, Pavel Kolobov, and was circulated to the CRC. The letter satisfied the first condition for conditional reinstatement set by the CRC in June, but fell short of the second condition because, while agreeing to provide access to the data "as soon as possible," it did not agree to do so by a date certain.

After considering the letter, the CRC concluded that it would recommend reinstatement of RUSADA, conditioned on RUSADA providing access to the data no later than six months from the date of the Executive Committee's decision, with the samples being re-analyzed within six months after the data was provided, and these

requirements being designated as "Critical" under the International Standard for Code Compliance by Signatories. Jonathan Taylor, Chair of the CRC, polled the members one by one for their vote. The members of the CRC, including Ms. Scott, unanimously agreed to this recommendation.

C. Athletes' Response and Ms. Scott's Reconsideration of Her Vote

That same morning, a social media campaign opposing reinstatement of RUSADA began. At approximately 4:00 a.m. Alberta time, the UK Anti-Doping Athlete Commission tweeted a letter addressed to Mr. Reedie "to insist you and the WADA Executive Committee vote to maintain WADA's current position on the reinstatement of Russia. Two of the conditions directed by the Russia Roadmap have not yet been met, and to readmit them despite this would be a catastrophe for clean sport." The tweet used the hashtags "#NoUturnWADA" and "#Im4cleansport." Over the course of the morning, and while the CRC met, UKADA updated the letter multiple times with additional signatories. At the same time, many others, including WADA Vice-President Linda Hofstad Helleland, retweeted this tweet and posted their own tweets under the same hashtags—some tagging Ms. Scott specifically.

At 12:30 p.m. Alberta time Ms. Scott proposed a call be scheduled between the CRC Chair, Mr. Taylor, and the Athlete Committee to explain the CRC's recommendation. Mr. Donzé responded at 12:57 p.m. Alberta time, suggesting that the call take place immediately after the upcoming Executive Committee meeting, rather than before, in order "to protect the CRC before the ExCo." Ms. Scott did not respond further that day.

At 3:52 p.m. Alberta time, however, she wrote seperately to Mr. Taylor to express concern over her vote, specifically noting the media campaign by other athletes:

> After some reflection, and now seeing the movement afoot in the media by the UK and US athletes, imploring WADA to stock to the roadmap (based on the assumption that the CRC will maintain its position), I have to express that both personally, and as an athlete representative, I am not comfortable with recommending reinstatement based on the condition of access to the lab within 6 months. I feel we were presented with this news very suddenly and did not really explore the full consequences of what a decision like this means for us as a group . . . .
>
> I believe that the CRC has done an outstanding job so far, but fear we will come under heavy criticism for this decision and may suffer harm to our reputation for changing positions. I fully understand the complexity of the situation and very much as well the desire to break through the deadlock. I do see both sides, I assure you . . . but I also have some strong reservations about going this direction and wonder if we

> might have another change to just discuss this further before proceeding and revisit on a phone call.

The following morning, on September 14, there was a leak of the CRC's August recommendation not to reinstate RUSADA. In response, WADA put pressure on Mr. Taylor to circulate a letter to the Executive Committee that reflected the CRC's September 13 decision to reinstate RUSADA. At the same time, WADA drafted a press release announcing the September 13 decision. Mr. Taylor circulated these documents to the CRC requesting immediate feedback. In the midst of these emails, at 6:43 a.m. Alberta time, Ms. Scott emailed the CRC and withdrew her vote in favor of recommending reinstatement:

> After reading through everything again, and having had some time to reflect on what we established in June, and now seeing the movement afoot in the media by clean athletes- imploring WADA to stick to the roadmap (based on the assumption that the CRC will maintain its position), I have to express that both personally, and as an athlete representative, I cannot support recommending reinstatement based on the letter we received yesterday. I feel we were presented with this news very suddenly, that the letter does not meet the full criteria of what we established in June, and that we did not really explore the full consequences of what a decision like this means for us as a group. I'm sorry to present this now, but have to make it known that I cannot support a recommendation to reinstate at this time.

At 10:41 a.m. Alberta time, Ms. Scott responded to Mr. Donzé's email of a day earlier, which had suggested holding a call between Mr. Taylor and the Athlete Committee only after the Executive Committee meeting. She wrote that, "with all due respect, we need to organize a call asap . . . the members are already emailing me and calling me . . . and the very least they deserve is a full explanation as well as to know that I did not support this recommendation."

D. Ms. Scott's Resignation from the CRC

Late that evening, at approximately 10:15 p.m. Alberta time, Ms. Scott resigned from the CRC in a letter addressed to Messrs. Taylor, Reedie, and Niggli, copying the other members of the CRC. The letter, in full, stated:

> I am writing to notify you of my resignation from the WADA Compliance Review Committee (CRC), effective immediately.
>
> As mentioned in my earlier email dated September 13, 2018 to the CRC, I do not support the very recent decision of the CRC to recommend the reinstatement of Russia, based on a conditional commitment. The conditions established have not

> been fulfilled, and I do not believe this is a progressive step toward clean and fair sport.
>
> I am, in addition, concerned about the way this meeting was conducted. I feel a decision of this magnitude should have taken place in person - with a proper amount of time dedicated to deliberation and discussion, and at least partially without the presence of WADA management. We should have, at the very least, had more time prior to the meeting to consider the letter from Russia thoroughly. Instead, we were 'surprised' with a letter just prior to the call, and then, in an unprecedented move, asked to expedite approval of the decision and wording - so that WADA could issue a timely press release. I do not understand the urgency attached to issuing a press release on this decision, and feel this was all deliberately manoeuvred to achieve a desired outcome.
>
> I am disappointed in the direction of this decision, and know for a fact that legions of clean athletes - rightly so - feel enormously let down and disregarded. A global majority of athletes had been relying on WADA - and particularly the CRC - to protect and uphold their right to clean, fair sport. This experience indicates otherwise, and that once again, politics have trumped principle. Clean athletes deserve better.

The tone of Ms. Scott's resignation letter departed substantially from her prior correspondence. Her emails to the CRC reconsidering her vote had acknowledged "the complexity of the situation" and noted that "I do see both sides." By contrast, the resignation letter asserted that clean athletes rightly felt "disregarded," and characterized the decision as proof that "politics had trumped principle." It also did not acknowledge that she had initially voted in favor of the CRC's decision to recommend reinstatement of RUSADA, or that she had supported the concept of conditional reinstatement dating back to June. Further, the letter misstated the date of her email to the CRC opposing reinstatement as September 13, rather than September 14, thereby suggesting that she had opposed the CRC's recommendation on the day that the CRC met. The following day, September 15, the Associated Press reported that Ms. Scott had told the AP of her resignation.

Also that day, pursuant to Ms. Scott's request, WADA held a call between Mr. Taylor and members of the Athlete Committee (including at least one member from the IOC Athletes' Commission) to explain the basis for the CRC's recommendation. Ms. Scott announced her resignation from the CRC to the group, and the balance of the call was led by Mr. Taylor. Mr. Taylor did not tell the group that Ms. Scott had initially voted in favor of the CRC's current recommendation, but did state that the CRC's June decision to support conditional reinstatement was unanimous.

The next morning, September 16, an op-ed by Dr. Moses appeared in the *New York Times*. Dr. Moses stated that "WADA has made a sudden about-face by releasing a

recommendation that its executive committee vote for [Russia's] return," and criticized the decision as disappointing to "clean athletes worldwide, who, like me, and with no transparency from the global antidoping body, are scratching their heads at this abrupt, curiously timed development." He went on to ask, "[h]as WADA now performed the fudge of all fudges to appease the I.O.C., and to simply move on from 'the Russia issue'? Given the facts, it would seem so. We must demand that the global antidoping authority make public its recommendation, and the reasons for it."

Thus, as WADA headed into its September 20 Executive Committee meeting, members of the Olympic Movement knew that Ms. Scott had initially supported the concept of conditional reinstatement of RUSADA dating back to June, and others within WADA knew that Ms. Scott had voted in favor of the CRC's new recommendation and then changed her vote.

SECTION FOUR:
THE SEPTEMBER 20 EXECUTIVE COMMITTEE MEETING

I. RUSADA Reinstatement Discussion

On the morning of the September 20 Executive Committee meeting, it was generally expected that WADA would be making a momentous decision regarding the CRC's recommendation to conditionally reinstate RUSADA. It was also well known that Ms. Scott had publicly opposed the recommendation of the CRC, and had resigned her position on that committee. Given the importance of the pending decision, the presence of press on site, and the risk of leaks, among other things, the atmosphere was somewhat strained, even though some thought the decision was a foregone conclusion.

After addressing several other agenda items, the Executive Committee turned to the discussion of Russia. At Mr. Niggli's invitation, Mr. Taylor spoke first and summarized the background, described the two reinstatement roadmap conditions that were outstanding when the Executive Committee last met in May, and explained how the September 13 letter from Minister Kolobkov led the CRC to change its recommendation to the Executive Committee.

Mr. Taylor then explained the basis for the CRC's recommendation to conditionally reinstate RUSADA. He explained that while WADA could require access to the data as a pre-condition to reinstatement, WADA did not have the authority, under the compliance controls in place and applicable to conduct in 2015, to force Russia to provide the data. He stated that accordingly, a majority of the CRC agreed to recommend that WADA reinstate RUSADA on the condition that it provide the required data by a date certain.

During the approximately 81-minute Executive Committee discussion on Russia, Ms. Scott was referred to only twice. The first reference was by Mr. Taylor, in remarks that were respectful of Ms. Scott:

> Before I go further, I should say it's a majority recommendation. My esteemed colleague, my friend Beckie Scott disagreed with the recommendation, and I respect her disagreement, and I am clear and to state to you I remain of the view that the recommendation that is made by the majority of the CRC remains the correct one.

The second reference was by the Oceania representative to the Executive Committee, Clayton Cosgrove, who likewise was supportive of Ms. Scott: "I want to make very clear that I have absolute respect for Jonathan and the CRC members and Beckie in respect of her position."

Shortly before the lunch break, Ms. Scott offered the following statement:

> Thank you Mr. Chair. I think I would be remiss if I didn't bring the perspective of the athletes of the world to this table and

> while I understand the desire to accommodate Russian athletes, I think we also have to make sure that we listen. There has been an unprecedented global uprising of the athlete voice around this decision. Members of the WADA Athlete Committee, the IAAF Athlete Committee, the IBU Athlete Committee, the UK Athlete Committee, the German Athlete Committee, the Dutch, the US and Canadian Athlete Committees have all spoken with one common position and that is to not reinstate before compliance has been achieved. I am fully supportive of Clayton's proposal to trigger compliance as soon as the terms of conditions are fulfilled but the athletes do not believe this is serving them or the future of clean sport and so I urge you to make a decision based on who your constituents are, who you are serving and who you are accountable to because I do believe this is a defining moment for WADA and you have to make the right choice here. That's all I have to say. Thank you.[8]

Aside from Mr. Taylor thanking everyone for their comments, "both for and against the recommendation," there was no response from anyone—including Messrs. Ricci Bitti and Baumann—to Ms. Scott's statement on Russia. After the Executive Committee voted against postponement of the vote, the Executive Committee voted to approve the CRC recommendation to reinstate RUSADA on the condition that it provide access to the LIMS database and underlying data that WADA had requested by December 31, 2018.

II. Athlete Committee Report

Ms. Scott told the BBC that beyond the alleged laughter at her remarks during the RUSADA discussion, she was "treated with disrespect" by two members of the Olympic Movement—whom her letter to WADA identified as Messrs. Ricci Bitti and Baumann—and faced comments from them "designed to denigrate, to belittle . . . and to bully" as she made a presentation. She characterized this conduct as "indicative of a general attitude of dismissal and belittling of the athlete voice." Although Ms. Scott did not tell the BBC when this conduct occurred, our review of the minutes, transcript and audio recording, and our interviews of individuals who were present at the meeting, indicate that her exchange with Messrs. Ricci Bitti and Baumann did not take place during the discussion on Russia. Rather, it took place during the Athlete Committee report, when Ms. Scott addressed conflicts she was having with the IOC Athletes' Commission.

[8] A transcript of Ms. Scott's comments and the responses are available at Appendix 8. WADA's complete minutes are available at https://www.wada-ama.org/sites/default/files/resources/files/executive_committee_meeting_minutes_20092018.pdf.

A. Ms. Scott's Remarks about the IOC Athletes' Commission

Ms. Scott gave the Athlete Committee report after the Russia discussion had concluded. She began the report by showing a brief video about the Forum. Ms. Scott provided statistics about Forum attendance and discussed the Anti-Doping Charter of Athlete Rights (Charter). She also expressed "disappoint[ment] that the dialogue did not take place between the WADA Athlete Committee and the Management when it was decided that there was not going to be a forum this year." Ms. Scott said that she would have liked to be a part of that conversation because the WADA Athlete Committee felt that the Forum was a very important event.

Ms. Scott then turned to the criticism of the Forum by the IOC Athletes' Commission, and said:

> [W]hile I was disappointed by this incident led by the IOC Athletes' Commission, I have to say that unfortunately I was also not surprised. It's become fairly predictable, sort of pattern for the IOC Athletes' Commission to attack the WADA Athlete Commission and undermine and discredit it and this has been going on for about two years. It's reached the point where I have actually asked for an intervention from management because quite frankly I've lost my patience. My question is what is the end goal with all of this. I don't understand why the WADA Athlete Committee is under such scrutiny from the IOC Athletes' Commission or how some of the behavior is justified. We are a Committee that is gathered and assembled for the purpose of promoting clean sport and being the voice of the clean athletes and why we are continually and routinely subject to the kind of behavior that we are is actually beyond me. If we really are all on the same page and we really are all striving for the same goal so I feel that the time is now to deal with this and I would ask Management to intervene and I have been reassured that you would and may be you can speak to that if you want Fred if you would like to but honestly I think the WADA Athlete Committee has reached the point where we don't feel that the IOC members on the Committee are there to contribute and to collaborate but more to compromise and to impede the goals and objectives of the Committee and we're unhappy about this, and very unhappy in fact that and I think we need to talk about this.

B. Responses to Mr. Scott's Remarks

Numerous witnesses we interviewed were "surprised" by Ms. Scott's report, in that her remarks seemed like an "attack" on the IOC Athletes' Commission in a public forum. One witness recalled their response to Ms. Scott's critique of the IOC as, "oh my god, she wants a fight." Another thought "wow" and yet another recalled thinking "oh boy, here we go," and said that Ms. Scott came out "blazing." Others noted that Ms. Scott's comments were more aggressively than they had seen from her in any previous meeting. On the other hand, in light of the events in the preceding months, some fully anticipated that Ms. Scott would address the conflict between the WADA Athlete's Committee and the IOC Athletes' Commission at some level in her report.

Several Executive Committee members responded to Ms. Scott's comments. A full transcript of the discussion is attached to this report at Appendix 8, but we have summarized and excerpted the relevant portions of those remarks here:

- Marcos Diaz spoke first, noting that "a public attack by anyone to the WADA Athlete Commission publicly is attacking the organization," and stating that "we've got to solve our problems in the room, not outside and that applies to every one of us and I think from some, an article coming from our colleagues, I don't think it is acceptable to publicly attack the organization by pointing the finger like that to the WADA Athlete Commission."

- Ms. Bartekova spoke second, stating there had been "no intention from the IOC Athletes' Commission to attack or in any way discredit the WADA Athlete Committee." She acknowledged that the two groups had disagreements, but said the IOC Athletes' Commission "never had any intention to react on what you are saying or expect the reaction from you on what we are saying publicly and we always offer to discuss things between us and I am not aware of any insultation or any public discreditation of WADA Athlete Committee." She added that "our four members from the IOC Athletes' Commission are part of WADA AC and I don't have a feeling that we would in anyhow or any kind of attack of the integrity of WADA AC." She acknowledged that the IOC Athletes' Commission was "not very happy about the diversity of the speakers on the forum and then the participation of athletes representing not properly all the continents and all the sports," and noted that while they "didn't want to insult you or discourage you to organize the forum," they expected "a better diversity of the speakers and bringing more sports and more representation to the table when you want to speak on behalf of the global athletes." She thanked Ms. Scott for being a "leader" and "the boss of clean athletes," and said that in her planned remarks she had wanted to "reassure" Ms. Scott that the IOC Athletes' Commission wanted to "cooperate still" and "meet and discuss the things together that we have." She wanted to put it on the record that she was extending an offer from the IOC Athletes' Commission "to sit to the table and discuss things together because this is what we should do."

- Mr. Cosgrove spoke third, asking Ms. Scott about the "funding" issue she had raised, and whether the priorities that Mr. Niggli had outlined were "higher than funding for athletes' forum." He asked whether the charter was more important than the forum, and what Ms. Scott "would like to see in respect of forum monies? Another forum number one for the athletes or are the other priorities the Director General indicated were more important, are they priorities for athletes?"

- Mr. Baumann spoke fourth, noting that it was "good to know how everyone feels" and—referring back to Ms. Scott's comment that she had lost her patience—said that the IOC had not lost their patience, but were frustrated. He noted that from the IOC perspective, there has been "a perception, probably wrong and so I don't know but at least the feeling is that it has been used in order to create a certain atmosphere around this body which is mainly negative towards sports movement generally and towards those that have functions in the sports movement." He referenced the governance discussions on the question of "what is the scope of all the commissions, of all the permanent commissions also and how far do they go being an advisory board or being in the Executive Committee or being a consultative body or whatever." He noted that from his perspective, "that's where I think we need to have a frank and open conversation but I don't think, at least from my perspective, we don't see that there is a need to replicate or mirror the IOC within WADA. Whatever body the IOC has, we try to replicate them also in WADA and that is not necessary. . . ."

- Ms. El Fadil spoke fifth, presenting the position of the Public Authorities that they had taken note that the Athlete Committee have complained of a "lack of support from WADA management." She also expressed support for "what's been said by IOC that we should have the trust in each other to sit and discuss the differences." She noted that having been on the Executive Committee for only one year, she had sensed "a feeling of antagonism and lack of trust among the members, whether speaking about the relationship between the public authorities and the sports movement." She made a plea that the governments and the Olympic Movement "need to talk to each other more" and "need to look at mechanisms that really make WADA more stronger because if there is any weakness happens to WADA as an organization that means all of us would lose." She noted the "strategic objectives of this forum which is to have clean sport and to support the athletes, today's athletes and the future athletes."

Mr. Niggli stated that he and Mr. Donzé had met to discuss "the relationship" between the WADA Athlete Committee and the IOC Athletes' Commission and "the way forward." He noted that the priority for the next 15 months was the Charter and that while the Forum was not an expensive endeavor, he wanted to discuss with Ms. Scott what would be the "best forum to have the discussion on the Charter." He noted that the Charter was going to be "part of a broader IOC charter" so it was "important that we

rebuild this bridge between the two committees" and he hoped "this is the road we are going to take."

C. Exchange Between Ms. Scott and Mr. Ricci Bitti

Mr. Ricci Bitti spoke next, and offered the following comments:

> It's not a question to Beckie, it's a remark. I was very surprised of Beckie's attitude, victimistic. I know her from a long time and I believe that everybody was supporting the WADA Athlete Commission as the athletes played an important role but I would say perhaps again for the Russian case or for the last environmental difficulties, I had the feeling totally the opposite of Beckie. This forum was a platform to promote some position. I don't think this is of general interest. What you want, you want support on that? So we respect your idea but people that says that so will I believe that WADA's job is different and I am very scared about the charter too because it is a principle-based document, we do not need so many documents, additional documents. I would like to keep an eye and as the Olympic movement I can assure you, through the athletes that are very qualified, and ourself too we will keep an eye on that because we don't want another document that is a promotional one. The athlete plays a good role but they have to keep their place as everybody. Thank you.

At this point, Ms. Scott asked:

> Exactly what platform was being promoted for me at the forum? That's my only question.
>
> You stated that I used a forum and I think I need to clarify here that this was not just my forum, this was a WADA forum. So leadership, feel free to intervene and show some support as well at any point if you please. You have suggested that the WADA athletes forum was a platform for promoting something for me?

Mr. Ricci Bitti responded:

> Beckie, you know that I have a very good relationship with you historically and that I consider you very important for the system. Apart from that you start your report in a victimistic way saying that you were disturbed by the attitude of the athlete commission of the IOC, or the non-cooperation. I have to confess you that the feeling of a person that is not involved with the athletes, even if I was an athlete so I have some experience too, perhaps not so good like you but I was a good

> athlete. Anyhow the feeling that we got from what was the outcome of this forum was the promotion of the forum to promote some position or some particular situation, like the Russian case and so on and so on. So I don't see your report, really the feeling that we got from the press from that was not exactly a feeling of victimistic, that you were in trouble because somebody did not cooperate. I think it was a very good platform and very partisan platform.

Ms. Helleland spoke after Mr. Ricci Bitti, to say that she was "very sad to hear about this happening," and asked Mr. Reedie for his "point of view on the situation" since he had attended the Athlete's Forum. Mr. Kejval followed Ms. Helleland's comments by stating that he was "concerned about the discussion" and that the situation was the "fault" of the Executive Committee because WADA has "two groups and both groups, they have different rules. Some they are elected who they put into position. We put them together and it does not work."

D. Responses from Dr. Moses and WADA Management

Dr. Moses intervened at this point, to say:

> I have not said anything most of the day but I've really taken offense to the very aggressive, in fact passive-aggressive behaviour that I'm seeing right now. My observation is that the IOC Athletes' Commission member saying how you didn't mean to beat up on Beckie, and you're really sorry and everything then I hear Patrick saying that you don't understand why the WADA Athlete Commission practically even exists and why you should be trying to duplicate what the IOC is doing and then I hear Mr. Ricci Bitti claiming that she is playing the victim and I think it is very, very a high-level and sophisticated game of passive-aggressive behaviour and they are taking out on her and I don't appreciate it at all.
>
> And furthermore I don't really appreciate the comments that were made at the last Executive Committee meeting towards myself and Beckie in terms of us being able to even have a position on the floor. We don't have a vote and I think it's a real tragedy that Beckie doesn't have a vote as a member of this body and a member of the Athletes' Commission. To me it makes no sense why she doesn't have a vote on this commission and in all matters and I'm really just as upset as Beckie. It's a very personal and emotional scenario that we've gone through here today and I would like to say just one thing, that I can assure you that Beckie represents more athletes around the world in her position than the IOC Athletes' Commission. I think it's clear and I think that the numbers show it and the representation and the people who have been

> supporting what she's been trying to do, the numbers are starkly different and it really upsets me.

No Executive Committee members responded or offered comments after Dr. Moses spoke. WADA management provided their views and concluded the discussion. Mr. Reedie offered the view that the Executive Committee meeting was "not the forum for this prolonged debate," and that he understood from the "rather elegant comment from Danka" that she would meet with the IOC Athletes' Commission, and speak with Ms. Scott and the WADA Athlete Commission, and "with some luck . . . resolve your difficulties." He expressed the view that WADA management had "always been supportive and allowed the WADA Athlete Committee, pretty much a clear run of whatever they wanted to do." He did not think it was "healthy at all to have the kind of recriminations that have been going on," and his message to Ms. Scott and to management was to have the groups meet. He was pleased that the IOC Athletes' Commission was going to adopt the Charter.

Mr. Niggli, in concluding the discussion, said that the "forum was organized in good faith," and that WADA had acknowledged it was "not perfect." He thought that the most important thing was to rebuild trust, and observed that as to the IOC Athlete's Commission and the WADA Athlete Committee "you are all athletes," and that "in that spirit we should be able to make sure that everybody does its work going in the right direction." He noted the WADA Athlete Committee had embarked on the "important project of developing the Athlete's Charter," and that he thought WADA should focus on the Charter and "work in good collaboration and good spirit" on that task.[9]

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[9] Following the September 20 Executive Committee meeting, one member of the Olympic Movement delegation shared a cab with Ms. Scott to the airport. That individual reported that they attempted to discuss the events of the meeting with Ms. Scott, but stopped when they saw that she had tears in her eyes. A handful of witnesses reported to us that they heard Ms. Scott had complained of how that individual spoke to her during the cab ride. No witness that we interviewed, however, claimed to have heard that directly from Ms. Scott, and Ms. Scott did not mention any such complaint to the meeting attendee who sat next to her on the flight home.

SECTION FIVE:
STANDARD FOR BULLYING AND HARASSMENT

I. The Absence of a Governing Standard

Neither bullying nor harassment have settled legal definitions. Laws prohibiting bullying have only recently passed in limited jurisdictions, and there are no such laws creating private causes of actions for workplace behavior in Canada (where Ms. Scott resides and WADA maintains offices), in Switzerland (where WADA is headquartered), or in the United States (where Dr. Moses resides and counsel for Ms. Scott and Dr. Moses has threatened legal action). Harassment, when standing alone and not based on a suspect classification such as race, sex, or ethnicity, also lacks a settled definition.

Given this void, bullying and harassment claims typically are evaluated under standards implemented in an organization's internal policies. Internal anti-harassment policies, however, can apply only to those who are subject to those policies and fairly have been put on notice of what they require. The Executive Committee does not have a policy addressing workplace conduct. While the Executive Committee and Foundation Board's Constitutive Instrument of Foundation provides for members to "respect the fundamental principles of ethics, in particular those with regard to independence, dignity, integrity and impartiality," this statement of values does not set forth a standard for evaluating claims of bullying and harassment.

WADA implemented a Policy to Prevent Harassment and Promote a Healthy Working Environment (Anti-Harassment Policy) in its Employee Handbook on May 24, 2018. While Ms. Scott's attorney invoked this policy in his letter of November 12, 2018, the Anti-Harassment Policy applies only to WADA employees. It was not incorporated into the terms of reference or bylaws for WADA's Foundation Board, Executive Committee, or other Standing Committees, and was not shared with or approved by any of their members. Neither the accusers nor the accused in this case were subject to the Anti-Harassment Policy, and could not be expected to have known of or be bound by its requirements.

II. Formulation and Elements of the Standard We Applied

In the absence of any applicable organizational policy or governing law, we sought to identify the most widely-accept elements of bullying and harassment. To do so, we analyzed definitions of bullying and harassment from a variety of sources and existing legal precedent across a range of jurisdictions. We gave weight to the definitions that were the most well-reasoned, most widely-subscribed, and included the most administrable criteria. For the reasons discussed below, the definition of bullying and harassment we apply in this case includes four main elements:

(1) the complainant must have felt threatened, intimidated, or humiliated;

(2) the accused must have directed their conduct towards the complainant;

(3) a reasonable person would view the conduct at issue as threatening, intimidating, or humiliating; and

(4) the conduct must have been repetitive or, if a single instance, extraordinarily severe.

This standard, which is drawn from the authorities discussed below, adopts descriptions of the potentially wrongful behavior, the mindset of the accused, and the required frequency or severity of the behavior that are widely accepted and cited in many of the sources we reviewed. It also strikes a fair balance among differing standards by incorporating both the subjective view of the complainant and the view of an objective, reasonable person, by requiring that both would have to view the conduct as threatening, intimidating or humiliating.

A. Character of the Conduct

The authorities we reviewed consistently use adjectives like "threatening," "intimidating," and "humiliating" to describe behavior that could constitute bullying or harassment. The majority included at least one of these terms.[10] For example, WADA's Anti-Harassment Policy, which may serve as a reference point (even though it is not applicable), defines harassment as:

> [A]ny expressly or implicitly unwanted behaviour that is inappropriate, hurtful, and/or abusive, committed by an individual toward one or more other individuals, and whose perpetrator knew or ought reasonably to have known that such conduct could cause offence or harm and create a harmful work environment. It also includes any act, statement or display that diminishes, *humiliates* or embarrasses an individual by undermining their dignity, as well as any act of *intimidation* or *threat*.

We also looked at model definitions proposed by two leading organizations in the U.S. with a substantial focus on these issues. One, the Workplace Bullying Institute, conducts national surveys on bullying and engages in advocacy for the U.S. Healthy

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[10] *Policy on the Prevention and Resolution of Harassment* app. A, Government of Canada, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041 (last modified June 26, 2013); *2014 WBI U.S. Workplace Bullying Survey* 3, The Workplace Bullying Institute (Feb. 2014), https://workplacebullying.org/multi/pdf/WBI-2014-US-Survey.pdf; U.S. Healthy Workplace Bill, https://healthyworkplacebill.org/ (last visited (May 12, 2019); Cal. Gov't Code § 12950.1 (West, Westlaw through Ch. 5 of 2019 Reg.Sess.); Utah Code Ann. § 67-19-44 (West 2018); N.D. Cent. Code Ann. § 54-06-38 (West 2015); Equality Act 2010, C. 15, https://www.gov.uk/guidance/equality-act-2010-guidance#equality-act-provisions-commencement-dates; *Bullying and Harassment at Work* 1, the Advisory, Conciliation and Arbitration Service, http://www.acas.org.uk/media/pdf/2/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf.

Workplace Bill, a piece of draft legislation that prohibits workplace bullying. Another is the Society for Human Resource Management, the world's largest HR professional society, representing 300,000 members in more than 165 countries.

The Workplace Bullying Institute uses the following definition:

> [R]epeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators. It is abusive conduct that is: *Threatening*, *humiliating*, or *intimidating*, or Work interference — sabotage — which prevents work from getting done, or Verbal abuse.[11]

The Society for Human Resource Management defines workplace bullying as:

> Persistent, offensive, abusive, *intimidating* or insulting behavior or unfair actions directed at another individual, causing the recipient to feel *threatened*, abused, *humiliated* or vulnerable. Workplace bullies and targets may be employees, clients or vendors of the affected organization."[12]

We also looked at various governmental formulations of standards governing workplace conduct that, while not applicable here, offer valuable points of reference. For example, the Canadian Government, in a Policy on the Prevention and Resolution of Harassment that applies to its own employees, also uses the terms that we apply in this case, defining harassment as:

> [I]mproper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal *humiliation* or embarrassment, and any act of *intimidation* or *threat*. It also includes harassment within the meaning of the Canadian Human Rights Act (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual

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[11] As the Workplace Bullying Institute definition demonstrates, the terms "bullying," "abusive conduct," "abusive behavior," and "harassment" are used interchangeably, sometimes in an overlapping manner. *2014 WBI U.S. Workplace Bullying Survey* 3, The Workplace Bullying Institute (Feb. 2014), https://workplacebullying.org/multi/pdf/WBI-2014-US-Survey.pdf (emphasis added).

[12] *SHRM Survey Findings: Workplace Bullying*, The Society for Human Resource Management (Feb. 28, 2012), https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/workplacebullying.aspx (emphasis added).

orientation, marital status, family status, disability and pardoned conviction).[13]

Another example, the United Kingdom's Equality Act of 2010, defines "harassment" as: "a person A harasses another B if (a) A engaged in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of (i) violating B's dignity or (ii) creating an *intimidating*, hostile, degrading, *humiliating*, or offensive environment for B."[14] Although the Equality Act protects against harassment based on certain protected characteristics,[15] cases decided under this Act provide helpful insight into what kind of conduct constitutes bullying in the first place. They establish that "[i]t is not every course of victimisation or bullying by fellow employees which would give rise to a cause of action against the employer, and an employee may have to accept some degree of unpleasantness from fellow workers."[16]

As the foregoing makes clear, there is an important distinction to be drawn between conduct that reflects the expression of a difference of opinion on one hand, and bullying and harassment on the other. This idea is reflected in emerging authority in the U.S., as well. For example, under the Tennessee Healthy Workplace Act, a proposed Model Abusive Conduct Policy would provide employers who adopt it with immunity against suits for negligent or intentional infliction of mental anguish.[17] That proposed policy, which also uses the terms "threatening, intimidating or humiliating" to describe bullying, provides that abusive conduct does not include, among other things, "individual differences in styles of personal expression," "[p]assionate, loud expression with no intent to harm others," and "[d]ifferences of opinion on work-related concerns."[18]

B. Direction of the Conduct At the Complainant

The authorities we reviewed all required as a factor that the accused acted with intent or directed their conduct at the complainants. For example, the Equality Act may

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[13] *Policy on the Prevention and Resolution of Harassment* app. A, Government of Canada, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041 (last modified June 26, 2013).
[14] Equality Act of 2010, P.2, C. 2, § 26, http://www.legislation.gov.uk/ukpga/2010/15/section/26 (emphasis added).
[15] Age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

[16] *Waters v Commissioner of Police* [2000] 1 W.L.R. 1607 (HL) 1616E.
[17] Tenn. Code Ann. § 50-1-504 (West).
[18] Tennessee Advisory Commission on Intergovernmental Relations, *January 2015 Commission Agenda, Tab 4: Recommended Workplace Civility Policy for State Agencies and Local Government (Public Chapter 997, Acts of 2014)–Final Report for Approval* (Jan. 2015), https://www.tn.gov/tacir/commission-meetings/2015-commission-meetings/january-2015.html; *See also Daniel v Secretary of State for the Department of Health* [2014] EWHC 2578 (QB) (concluding that the conduct at issue was not "bullying," as the behavior was not genuinely offensive or unacceptable but instead were "tough exchanges between senior colleagues on a point of principle on which they both felt strongly.")

be triggered if the "purpose" or effect of the conduct was to harass or bully. Both the Canadian Government's internal harassment policy and the WADA Anti-Harassment Policy require that the accused "knew or ought reasonably to have known" their conduct would be offensive or cause harm, and that the accused "directed" their conduct at or committed their conduct "toward" another individual. The Society for Human Resource Management likewise requires that the accused "directed" their conduct towards an individual.

Some authorities, such as the draft U.S. Healthy Workplace Bill and the version of that bill that was passed in California, require that the accused acted with "malice." Faye Mishna, a bullying expert at the University of Toronto, also would require a showing of malice to prove bullying.[19] We considered, but rejected, including this element in the standard we applied. While we believe that whether or not the accused directed his conduct at the complainant is a factor in determining whether the complainant was bullied or harassed, imposing a requirement of subjective intent by the alleged perpetrator would risk excusing conduct that objectively would be considered to amount to bullying or harassment.

C. Perspective From Which the Conduct Is Addressed

The authorities we reviewed reflected some variation as to whose point of view should govern whether the conduct complained of was "threatening," "intimidating," or "humiliating." There are three principal approaches: relying on the subjective view of the accuser, relying on the objective view of a "reasonable person," or considering both.

For example, the Society for Human Resource Management employs a subjective approach in defining bullying, by keying the standard to how the behavior in question caused the affected person to "feel."[20] In contrast, laws passed in the states of California, Tennessee, and Utah to prohibit abusive workplace conduct apply only an objective test: whether a reasonable person would consider the behavior to be abusive.[21] The WADA Anti-Harassment Policy adopts a hybrid approach. It requires the affected person to have a subjective perception that the behavior was bullying or harassing, but applies an

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[19] Mishna focuses on bullying in children and youths, so the language used here is "child or youth," rather than person. However, while many of her conclusions and proposed interventions for bullying are specifically related to children, her general definition is a useful reference point. Faye Mishna, Bullying: A Guide to Research, Intervention, and Prevention 11 (2012).

[20] *SHRM Survey Findings: Workplace Bullying*, The Society for Human Resource Management (Feb. 28, 2012), https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/workplacebullying.aspx (emphasis added).

[21] *See e.g.*, U.S. Healthy Workplace Bill, 2014 Cal. Stat. §1 (g) (2), http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2051-2100/ab_2053_bill_20140220_introduced.pdf ("Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests"); Cal. Gov't Code § 12950.1 (West, Westlaw through Ch. 5 of 2019 Reg.Sess.); Utah Code Ann. § 67-19-44 (West 2018); Tenn. Code Ann. § 50-1-504 (West).

objective, reasonable person standard to determine whether that perception was reasonable.

We have elected to follow a hybrid approach, under which we will take into account both the subjective perceptions of the complainant and the perspective of an objective reasonable person. The U.K.'s Equality Act 2010 models this approach, requiring that in deciding whether the conduct of Person A has "the effect of . . . creating an intimidating, hostile, degrading, humiliating or offensive environment" for Person B, a court must take into account "(a) the perception of B; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect." As Mr. Justice Wright wrote in the matter of *H v Isle of Wight Council* (QBD 23.2.01), decided under the Equality Act, "[t]he criterion for what does or does not amount to bullying in any given circumstances is not to be judged solely by the subjective perception of the victim himself, but involves an objective assessment of the observed behaviour taken in conjunction with any apparent vulnerability."[22]

We rejected a definition that would only account for the subjective point-of-view of a complainant for several reasons. First, a subjective-only test would allow for a finding of fault no matter how reasonable the conduct. In particular, it would allow allegations of bullying to be used as a tool to silence critics and stifle legitimate debate on issues of importance to the organization. Criticism on issues of policy, even on issues that are politically divisive, does not, without more, constitute bullying or harassment. Moreover, construing as bullying or harassment any conduct—no matter how ordinary or reasonable—that makes a given individual feel threatened, intimidated, or humiliated would result in an arbitrary standard that varies according to how sensitive a given individual may be. A hybrid approach that takes account of both subjective perceptions and a reasonable person standard is the most fair, predictable, and administrable definition.

D. Frequency or Severity of the Conduct

The authorities we reviewed are also consistent in the position that typically, bullying or harassment is comprised of a series of events. Some of the authorities we reviewed accept that a single incident can constitute bullying or harassment, but only if it is severe. The California legislation against abuse of conduct in the workplace states that "[a] single act shall not constitute abusive conduct, unless especially severe and egregious."[23] The Workplace Bullying Institute's definition requires that bullying be

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[22] *Daniel v Secretary of State for the Department of Health*, 2014 WL 3671664 (2014) (quoting *H v Isle of Wight Council* (QBD 23.2.01)).
[23] Cal. Gov't Code § 12950.1 (West, Westlaw through Ch. 5 of 2019 Reg.Sess.)

"*repeated*, health-harming mistreatment,"[24] and the Society for Human Resource Management's definition requires "*[p]ersistent*, offensive, abusive, intimidating or insulting behavior . . . ."[25] Likewise, and as a reference point only, WADA's Anti-Harassment Policy states that "[h]arassment is *usually a series of incidents* but can also be a *single severe incident*.[26] We have adopted the same standard here, requiring that bullying and harassment must involve either a series of incidents or, if a single occurrence, one which is egregious.

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[24] *The WBI Definition of Workplace Bullying*, WBI, https://www.workplacebullying.org/individuals/problem/definition/ (last visited May 11, 2019) (emphasis added).

[25] *SHRM Survey Findings: Workplace Bullying*, The Society for Human Resource Management (Feb. 28, 2012), https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/workplacebullying.aspx (emphasis added).

[26] WADA, *Policy to Prevent Harassment and Promote a Healthy Working Environment* ¶ 3 (May 2018), (emphasis added).

SECTION SIX:
ANALYSIS OF MS. SCOTT'S CLAIMS OF BULLYING AND HARASSMENT

To recap, Ms. Scott has described the following conduct from the September 20 Executive Committee meeting as supporting her claims of bullying and harassment:

- That when she read the "list of athlete committees" opposed to the reinstatement of RUSADA, there was "laughter" in the room;
- That she faced "upsetting" comments by "some of the members representing the Olympic movement" that were "definitely designed to denigrate, to belittle . . . and to bully"; and
- That she was subjected to "remarks and gestures" by Mr. Ricci Bitti and Mr. Baumann of the Olympic Movement.

Based on the standard identified in the preceding section, we must determine whether the conduct Ms. Scott complains of actually occurred and, if it did, assess whether:

- Ms. Scott felt threatened, intimidated, or humiliated by the conduct;
- Mr. Ricci Bitti and Mr. Baumann directed their relevant conduct towards Ms. Scott;
- A reasonable person would view their conduct at the September 20 Executive Committee meeting as threatening, intimidating, or humiliating; and
- Their relevant conduct was repetitive or, if a single instance, extraordinarily severe.

As detailed below, after analyzing the facts under the above standard, we conclude that neither Mr. Ricci Bitti nor Mr. Baumann bullied or harassed Ms. Scott at or around the September 20 Executive Committee meeting. Nor did we find any evidence that anyone else bullied or harassed Ms. Scott at or around the meeting.

I. RUSADA Discussion

There is no evidence that *any* conduct was directed at Ms. Scott during or immediately following her statement against the reinstatement of RUSADA.

We closely examined the audio recording of the meeting, on which there are no comments or laughter during or in response to Ms. Scott's comments regarding the conditional reinstatement of RUSADA.

We also interviewed 29 witnesses to the discussion. Two witnesses in a position to observe Mr. Ricci Bitti well noted that he murmured disagreement during Ms. Scott's comments on this issue. These witnesses also noted—as did many others, and as we observed for ourselves in the course of our interview of him—that Mr. Ricci Bitti often laughs to himself when speaking. No witness, however, specifically recalled Mr. Ricci Bitti or anyone else laughing during or in response to Ms. Scott's comments regarding RUSADA reinstatement. Several witnesses recalled that Mr. Ricci Bitti often gesticulates during Executive Committee meetings, but none recalled with certainty that he did so during the RUSADA discussion. No witness recalled any reaction whatsoever by Mr. Baumann to Ms. Scott's remarks on RUSADA.

For his part, Mr. Ricci Bitti did not recall making comments, gesturing, or laughing during any of the Russia discussion. He recalled Ms. Scott expressing her opposition to reinstating Russia, and in particular that she included a long list of organizations in her remarks to show that she was the "legitimate representative" of the athletes on the Russia issue. Mr. Ricci Bitti did not think Ms. Scott's representation was "fair," but he did not make a comment.

Ms. Scott was situated on the other side of the room, and at the far end of the table, from Mr. Ricci Bitti. She was on the same side of the room, but also at the far end of the table, from Mr. Baumann. It is unlikely that Ms. Scott detected laugher, gestures, or comments that were not perceived by any of the many witnesses who were closer to these individuals and in a substantially better position to observe them.

Perhaps most significantly, despite numerous people in the room knowing that Ms. Scott had originally supported conditional reinstatement of RUSADA, no one criticized her for, pressured her over, or indeed made any mention of her changed position at the meeting. Simply put, we did not discover any evidence that Mr. Ricci Bitti, Mr. Baumann, or any other person directed any comments or any conduct at Ms. Scott in connection with her opposition to RUSADA's conditional reinstatement.

II. Ms. Scott's Athlete Committee Report

Unlike Mr. Scott's comments regarding RUSADA, the discussion around Ms. Scott's Athlete Committee report prompted a response on the record from Mr. Baumann and led to an animated exchange between Ms. Scott and Mr. Ricci Bitti.

A. The Complainant's View

Because Ms. Scott refused to participate in this investigation, we cannot directly assess her subjective perceptions of the discussion surrounding the Athlete Committee report. From her interview with the BBC, we can infer that she felt "upset" and "disrespected" by the conduct at the meeting. For purposes of our analysis, and based on her representations to the media and to WADA, and statements by her counsel, we will

assume that during these discussions, Ms. Scott felt threatened, intimidated or humiliated.[27]

B. Direction of Conduct Toward the Complainant

There is little doubt that in one sense, Messrs. Baumann and Ricci Bitti directed their comments towards Ms. Scott, since they were responding directly to the criticisms she lodged during her Athlete Committee report. Both Ms. Scott's comments and the responses by Messrs. Baumann and Ricci Bitti, however, were in large part directed at constituencies rather than an individual. In the same way that Ms. Scott articulated a position that fairly could be viewed as directed at the Olympic Movement, Messrs. Baumann and Ricci Bitti articulated positions that fairly could be viewed as directed at the WADA Athlete Committee and not Ms. Scott individually. Indeed, in her BBC interview Ms. Scott characterized the conduct as belittling or showing little respect to "athletes" or "the athlete voice."

Additionally, given the forum in which this exchange took place, their comments also were meant for the entire Executive Committee and WADA management. This is the case for any policy discussion that takes place during an Executive Committee meeting. Mr. Ricci Bitti explained that his custom at Executive Committee meetings is to speak to the entire room and not to any one individual.

The audio recording reflects that immediately after he realized Ms. Scott had taken his comments as if he had directed them towards her personally, Mr. Ricci Bitti began his next set of remarks with a note of reconciliation, by saying, "Beckie, you know that I have a very good relationship with you historically and that I consider you very important for the system." Additionally, at the Executive Committee meeting in November, Mr. Ricci Bitti apologized and sought to explain that he had intended to respond to the criticism in Ms. Scott's report and to offer a different point of view:

> I have a duty to obviously to be involved to make a declaration, so a declaration for the minutes. I would like to reiterate as I said before many times that in that meeting I never intended, never once, to disrespect Beckie Scott, my long standing colleague in WADA and she should know that we are animated sometimes but on behalf also of Mr. Baumann, I have to say something very clear: there was an intervention after the vote in the report of the Athlete Committee that implied very clearly a criticism. Very respectful everybody

[27] During the telephonic interview she gave to CBC Sports immediately after the Executive Committee meeting, Ms. Scott did not say she was bullied or harassed (or otherwise mistreated). However, several individuals who attended indicated that during and after the meeting, Ms. Scott was "emotional," and after the Athlete Committee meeting was visibly upset. Witnesses noted that her voice was "shaky," that she was "close to tears," and appeared "angry," particularly during her back-and-forth with Mr. Ricci Bitti. Witnesses who observed her over the course of her return travel from the Seychelles noted that she had tears in her eyes and was "very upset."

> could say. I have this morning to mention the freedom of expression so it is a very good way to see. Beckie implied a criticism on two sides of the IOC Athlete Commission: one on the position of the RUSADA case and second on the legitimacy. . . . So together with Mr. Baumann is the reason I speak so to honor his memory, we decided to react to this criticisms with disagreement but not disrespectful. . . . . But this does not mean to have the same position all the time and second to listen to the stakeholders that is different. . . . So I am really sorry that if it is taken this way but there were no intentions and no want to disrespect anybody. Thank you.

C. The View of the Reasonable Person

We concluded that there was nothing objectively offensive about Mr. Baumann's response to the Athlete Committee report. By contrast, some of Mr. Ricci Bitti's comments reasonably could be viewed as aggressive, harsh, or disrespectful. His conduct at the September 20 Executive Committee meeting could not, however, reasonably be viewed as threatening, intimidating, or humiliating.

In reaching this conclusion, we considered a number of elements of the conduct including the following: (1) subject matter and context, (2) the choice of words, tone and speaking style of the accused, both normally and during the September 20 Executive Committee meeting, (3) how these comments compared to discourse at other Executive Committee discussions, and (4) reactions of others in attendance.

1. Subject Matter

In her opening remarks, Ms. Scott criticized the IOC Athletes' Commission, stating among other things that it "had become a fairly predictable pattern for the IOC Athletes' Commission to attack the WADA Athlete Committee and seek to undermine and discredit it," and said that she had lost her patience. Ms. Scott also complained about a lack of support from WADA management. Finally, she called for a response, saying "I think we need to talk about this."

In response to Ms. Scott's invitation, both Messrs. Baumann and Ricci Bitti provided responses that were substantive and related to her complaints.

Mr. Baumann expressed his own frustration and remarked that there was a "perception" that the WADA Athlete Committee seemed to be in opposition to the Olympic Movement, and that while he knew it was a governance question, the Executive Committee needed to have "a frank and open conversation" about whether the Athlete Committee was a representative body or an advisory body. He took the position that since the IOC Athletes' Commission already stood as a representative body, there was no need to replicate that representation through the Athlete Committee.

After expressing surprise that Ms. Scott had a "victimistic" attitude (a remark we discuss further below), Mr. Ricci Bitti observed that (1) WADA management had

provided ample support to the WADA Athlete Committee, and (2) the Forum had become a platform to promote a particular position that appeared to be in opposition to the Olympic Movement. He also expressed concern that the Charter would become "promotional," and said the Olympic Movement, through the IOC Athletes' Commission, would "keep an eye on that."

The remarks of Mr. Baumann and Mr. Ricci Bitti were tied to the subject matter of Ms. Scott's report, and reflected views held by others in the room and discussions that already were ongoing within the organization. The comments themselves include no direct or indirect threats, attempts at intimidation, or efforts to humiliate Ms. Scott.

2. Speaking Style / Tone / Choice of Words

Neither we, nor witnesses who were at the meeting, found anything in Mr. Baumann's choice of words to be objectionable. Two witnesses found his tone to be condescending or passive-aggressive, however. One witness, who later sought to withdraw their testimony, also described it as "demeaning." But these witnesses were a distinct minority; a majority found nothing objectionable about the content or tone of his comments. Our own review of the audio recording shows that Mr. Baumann used a neutral tone of voice in commenting on the Athlete Committee report. There was nothing in his manner of presenting his remarks that was, from an objective point of view, threatening, intimidating or humiliating.

The audio recording shows that Mr. Ricci Bitti also used a consistent and neutral tone of voice. He did not raise his voice, for example, and no witness described his tone as having differed from his usual speaking style.

A significant number of witnesses did zero in on three features of Mr. Ricci Bitti's comments, however, as objectionable. First, numerous witnesses found Mr. Ricci Bitti's choice of words—particularly the use of "victimistic" to describe Ms. Scott, and his statement that athletes "have to keep their place"—as demeaning or condescending. The term "victimistic," in particular, was directed at Ms. Scott personally and not at her position on the issues. Mr. Ricci Bitti explained (and it is our independent understanding) that "victimistic" is a common Italian expression, which he used to mean that Ms. Scott was playing the role of the "poor girl." He did not think this comment was "aggressive" relative to comments he has made at other Executive Committee meetings. Nor did he think it was aggressive to say that the athletes needed to "know their place."

While many witnesses acknowledged that Mr. Ricci Bitti is not a native English speaker and consequently can speak somewhat imprecisely in English, reactions to this choice of words remained strongly negative. One witness "cringed" and expected Ms. Scott to "jump over the table and strangle" Mr. Ricci Bitti. Another witness described the comments as akin to "how one would speak to a little girl." One witness similarly linked the episode in his mind to an instance in October 2018 in which Mr. Ricci Bitti referred to Paulina Tomczyk, EU Secretary General of Athletes, a "girl" during a heated exchange. To be sure, several witnesses thought there was nothing objectionable about this comment. But a majority did.

Second, a number of witnesses felt that the overall atmosphere of his comments was "aggressive" or "disrespectful." Some of these witnesses thought it characteristic of Mr. Ricci Bitti to adopt an aggressive and dismissive speaking style when making a criticism or responding to a challenge.

Third, Mr. Ricci Bitti seemed to chuckle and arguably mocked Ms. Scott's position when, in putting forth his view that the Forum had a partisan platform, he stated, "What you want, you want support on that?"[28] Some witnesses pointed to this laughter as, again, condescending. Many witnesses, however, noted—as we also observed in our interview of Mr. Ricci Bitti—that he often laughs when speaking.

Notwithstanding the foregoing, even those witnesses who were most critical of Mr. Ricci Bitti's comments, and most sympathetic to Ms. Scott in the exchange, did not think that Mr. Ricci Bitti's comments were threatening, intimidating, or humiliating. Nor did any witness, with one exception, believe that Mr. Ricci Bitti's comments met their own perception of "bullying" or "harassment." The sole exception was the one witness who later sought to withdraw their testimony; that witness described the way in which Mr. Ricci Bitti stated that the Forum had been intended to promote a platform as "not nice" and "harassing."

3. Tone and Tenor of Recent Executive Committee Meetings

In assessing what a reasonable person would think of Messrs. Baumann's and Ricci Bitti's behavior, we considered the setting for their conduct, and whether their conduct was within organizational norms or consistent with the usual tenor of Executive Committee meetings.

A majority of witnesses we spoke to believed that the comments addressed to Ms. Scott during the discussion of the Forum were less aggressive and less hostile than comments directed to others at other recent Executive Committee meetings.

For example, several witnesses recounted that at the September 2017 meeting in Paris, tensions regarding RUSADA and a potential conflict of interest involving the International Testing Authority (ITA) erupted. Witnesses reported that there was an exchange between Mr. Ricci Bitti and Mr. Witold Banká over the ITA issue that was "really unpleasant," "very tense," and "heated."

At the May 2018 meeting in Montreal, there were also several harsh exchanges. These included comments directed by multiple Olympic Movement members of the Executive Committee to Mr. Taylor, the CRC Chair, which witnesses described as more

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[28] Ms. Scott interpreted Mr. Ricci Bitti's remarks as accusing her of promoting her own personal platform at the Athlete's Forum. She stated, "You stated that I used a forum and I think I need to clarify here that this was not just my forum, this was a WADA forum." However, the recording makes clear that Ms. Scott was mistaken or misunderstood what Mr. Ricci Bitti had said. His comment actually was: "This forum was a platform to promote some position. I don't think this is of general interest. What you want, you want support on that?"

aggressive than the comments to Ms. Scott regarding her Athlete Committee report. In addition, many witnesses believed the comments by the Oceania representative, Mr. Cosgrove, towards Mr. Reedie at that meeting were more aggressive than comments made by any other individual at that meeting, with two witnesses describing Mr. Cosgrove as a "pit bull."

This deterioration in tone at meetings of the Executive Committee is an issue that arose often in our interviews, and we address it in our recommendations accompanying this Report. In all events, however, the virtually unanimous consensus among witnesses was that comments at other recent meetings by members of both the Olympic Movement and the Public Authorities were more aggressive than those addressed to Ms. Scott regarding the Forum. This supports our conclusion that the comments to Ms. Scott could not reasonably be understood as threatening, intimidating, or humiliating.

4. Reactions of Other Attendees

In assessing the reactions of the witnesses we interviewed, we have taken into account the obvious alliances among stakeholders within WADA. Although those most closely aligned with Ms. Scott refused to be interviewed, we assume for the purposes of our analysis that they would have expressed opinions strongly supportive of Ms. Scott and the view that she was bullied at the September 20 Executive Committee meeting. On the other hand, we interviewed a number of individuals from the Olympic Movement whom we recognize are strongly supportive of Messrs. Baumann and Ricci Bitti, and expressed the opinion that Ms. Scott was not bullied at the September 20 Executive Committee meeting.

However, of the many individuals we interviewed who did not have a clear affiliation with one camp or the other, all—including those who were sympathetic to Ms. Scott or critical of Mr. Ricci Bitti—were surprised that Ms. Scott characterized the events of the September 20 Executive Committee meeting as "bullying."

D. Frequency or Severity of Conduct

Ms. Scott's letter to WADA and her BBC interview referred only to the events that took place at the September 20 Executive Committee meeting. As noted, she declined to identify to us any other alleged instance of bullying or harassment. We understand that Ms. Scott similarly declined to do so in response to questions at the Public Authorities' meeting in Baku on November 13, 2018. In the course of our investigation, we also did not identify, or learn of, any other instances in which Messrs. Baumann or Ricci Bitti, or any other member of the Executive Committee, fairly could be said to have bullied or harassed Ms. Scott.

As described above, a single incident—even if threatening, intimidating, or humiliating—generally cannot be considered bullying or harassment unless that incident is particularly egregious or severe as compared to other such conduct. Based on the foregoing analysis, we cannot conclude that the single incident at issue was threatening, intimidating, or humiliating. Even if it was, however, it certainly was not a particularly egregious or severe instance. Considering all of the circumstances, including

that all of the conduct took place in a public forum where many witnesses did not consider it to constitute bullying, that it was in response to a critical comment by Ms. Scott, and that the sole personal criticism toward Ms. Scott was Mr. Ricci Bitti's statement that she was "victimistic," we do not believe the conduct at the September 20 Executive Committee meeting was sufficiently severe to rise to the level of bullying or harassment.

We considered the possibility that Ms. Scott might point to prior conflicts with the IOC Athletes' Commission as a pattern of bullying or harassment. Because Ms. Scott declined to make any such allegations, we have not investigated those matters here. The facts available to us based on our limited examination, however, reflect a history of sharp conflict and criticism over issues of policy—not conduct that reasonably could be considered threatening, intimidating or humiliating, and certainly not conduct that could support claims concerning Messrs. Baumann or Ricci Bitti.

III. Conclusion

Our review of the available facts leads us to conclude that Ms. Scott was not bullied or harassed at the September 20 Executive Committee meeting. Our conclusion is based on the following findings:

(1) Ms. Scott felt "upset" and "disrespected" at the September 20 Executive Committee meeting. Since we did not speak with Ms. Scott, we assumed for purposes of our analysis that she felt threatened, intimidated, or humiliated.

(2) Neither Mr. Baumann nor Mr. Ricci Bitti directed any comments or gestures at Ms. Scott during or immediately following her remarks on reinstatement of RUSADA.

(3) In discussing the Athlete Committee report, both Mr. Baumann and Mr. Ricci Bitti responded to Ms. Scott's criticism of the IOC Athletes' Commission while directing their comments to the entire room.

(4) While some of Mr. Ricci Bitti's comments in response to Ms. Scott's Athlete Committee report reasonably could be viewed as aggressive, harsh, or disrespectful, a reasonable person would not view them as threatening, intimidating, or humiliating.

(5) The conduct Ms. Scott has complained of consisted of three comments by two individuals, not during a discussion on Russia, but in response to her criticism of the Olympic Movement, during the span of a single 30-minute discussion. It was neither repetitive nor extraordinarily severe.

Ms. Scott told the world in her BBC interview that she was mistreated by members of the Olympic Movement due to her opposition to the reinstatement of RUSADA. She explained that she "fundamentally disagreed" with reinstatement, that she was bullied for that position, and that the treatment she faced was "indicative of a general attitude of dismissal and belittling of the athlete voice." In his op-ed a few days later, Dr. Moses echoed that Ms. Scott was bullied by "other senior sporting officials on WADA's executive committee who did not accept her ethical and uncompromising stance against Russian state-sponsored doping."

We considered the possibility that Ms. Scott might claim she was bullied into initially adopting the CRC recommendation to conditionally reinstate RUSADA, or that the events at the September 20 Executive Committee meeting were a response to her changed position. Our review of the CRC's activities over the summer of 2018, however, showed the opposite. Rather than bullying, what we found is that Ms. Scott willingly and freely agreed to the CRC endorsement in June of conditional reinstatement of RUSADA, and after voting in favor of conditional reinstatement in September, was permitted to change her vote without being subjected to pressure, coercion, or criticism at the September 20 Executive Committee meeting.

We have little doubt that Ms. Scott was genuinely upset by Mr. Ricci Bitti's comments at the September 20 Executive Committee meeting. But those comments were in response to her criticism of the IOC Athletes' Commission, not her position on RUSADA. To be sure, the underlying conflict with the IOC Athletes' Commission concerning the Forum may have been driven in part by disagreements over how to respond to the Russian doping scandal. But none of the discussion about the Forum at the September 20 Executive Committee meeting had to with the decision to conditionally reinstate RUSADA—a decision which was done and over by the time Ms. Scott delivered her Athlete Committee report. While Mr. Ricci Bitti's response to Ms. Scott's comments in that report may have been disrespectful in part, neither it nor Mr. Baumann's response amounted to bullying or harassment.

SECTION SEVEN:
DR. MOSES'S ALLEGATIONS

I. Background

Dr. Moses won gold medals in the 400 meter hurdles at the 1976 and 1984 Olympics. From 1977 to 1987, he won 107 consecutive finals in that event, and he set the world record for the 400 meter hurdles four times. In 2009, he received an honorary doctorate from the University of Massachusetts Boston. Dr. Moses serves as Chair of the U.S. Anti-Doping Association, and he has Chaired WADA's Education Committee since 2014. He is not a member of the Executive Committee or Foundation Board, but typically attends meetings of both bodies in his capacity as Chair of the Education Committee. Multiple witnesses in our investigation described Dr. Moses as their childhood "hero" and one called him a "legend."

II. Allegations

On October 18, 2018, six days after Ms. Scott's bullying allegations were made public, Dr. Moses published an editorial in *The Sydney Morning Herald* supporting Ms. Scott's claim that she had been bullied by "senior sporting officials on WADA's executive committee who did not accept her ethical and uncompromising stance against Russian state-sponsored doping." Dr. Moses went on to write:

> It was only in May, at WADA's last foundation board meeting, that I was told bluntly by various individual not to speak. I was told to shut up.
>
> This would be offensive if it weren't so puzzling: why are some officials who purport to represent clean sport trying to muzzle the interventions of others with whom they disagree at international anti-doping meetings?

WADA publicly denied that Dr. Moses was told to "shut up" at the Foundation Board meeting, stating "[h]ad that happened, it would have been reported by media in the room."

On November 12—the same day that Mr. Chew first wrote to WADA on behalf of Ms. Scott—Dr. Moses wrote to Messrs. Niggli and Reedie indicating that he also "experienced the marginalization, lack of respect, and denigrating conduct" that Ms. Scott alleged. Dr. Moses argued that assessment of the treatment he and Ms. Scott complained of could not be understood from a review of meeting minutes alone, and that the "suppression of debate and athlete voice does not appear to be limited to public meetings, but seems to extend to other settings." Dr. Moses called for a "fully independent, robust and thorough investigation" into "the allegations of bullying, denigrating and demeaning conduct by WADA Ex Co members and other WADA officials and staff and into the culture of WADA and whether WADA management and officials foster and

open environment where ideas and issues may be freely shared, explored and deliberated without fear of reprisal."

Mr. Chew informed WADA on December 14 that, in addition to representing Ms. Scott, he was now also representing Dr. Moses. The letter stated that "[l]ike Ms. Scott, Dr. Moses has *witnessed* unlawful bullying at the hands of WADA officials." Mr. Chew did not assert that Dr. Moses himself was a victim of any bullying.

III. The May 2018 Foundation Board and Executive Committee Meetings

Our review of the May 2018 Foundation Board audio recording and minutes identified no contentious dialogue of any kind involving Dr. Moses. We of course cannot rule out that he was referring to a comment that was made outside of the meeting room. But that would be inconsistent with his reference to the muzzling of an "intervention," a term used at WADA to describe speaking at meetings. It seems somewhat more likely that Dr. Moses was referring to an exchange that took place at the Executive Committee meeting held the previous day, during discussion of an agenda item labeled "Call for a review of the anti-doping system."

In connection with that agenda item, Ms. Helleland that morning tabled an amended two-page proposal for an independent assessment of the international anti-doping system. Executive Committee members representing the Olympic Movement raised a procedural objection to consideration of a proposal that had just been provided that morning and differed from the proposal that had been included in the meeting materials provided prior to the Executive Committee meeting.

As the discussion progressed, Dr. Moses spoke after being recognized by Mr. Reedie, and expressed his view on the value of considering Ms. Helleland's proposal prior to the Foundation Board meeting the next day. Mr. Baumann then made the following comment:

> First, there is a formal point: this is a conversation for Executive Committee members. I believe that that should also be kept like that. Then the second point, I believe that the point that was raised is we aren't against discussing the paper that is in the papers. We studied it, we have our comments. We may agree or disagree; that is the right of anyone sitting around this table. So I think that we haven't said that we were not ready to discuss anything. Third, there's no reason to be put under pressure by any other groups outside there because we have enough on our table. I think we are dealing, the management is dealing, the president is dealing, the vice-president has been dealing with it. So I don't think any other stakeholders has any right to put any more pressure on what is being discussed or not discussed by the Executive Committee members at the Executive Committee meeting. Thank you.

Mr. Reedie did not address Mr. Baumann's points specifically, but rather continued to address the procedural question at issue.

Later in that same meeting, Ms. Scott sought to intervene as well. Mr. Reedie said, "Sorry, there was an observation a moment ago that this should be restricted to members of the Executive Committee." Mr. Reedie then asked the Executive Committee "Are you happy that Beckie speaks?" While there is an off-microphone response that is inaudible, in addition to laughter, Mr. Reedie then says "Okay, you can speak as much as you would like; you're a friend of Francesco's." Ms. Scott and others laughed in response, and she then presented her view.

IV. Analysis

We found no credible evidence that anyone said the words "shut up" to Dr. Moses at the May meetings.

At the outset, we note that one witness reported to us that during a coffee break at the November Executive Committee meeting in Baku, Dr. Moses said he was "effectively" (rather than literally) told to shut up at the May meeting.[29]

Nonetheless, we reviewed the complete audio recordings of both the Foundation Board and Executive Committee meetings, and neither reflects that Dr. Moses was told to "shut up." Of the 27 witnesses we interviewed who attended one or both of these meetings, none recalled any such statement, with the exception of a single witness who recalled Mr. Baumann saying "something like shut up" or "stop talking," to both Dr. Moses and Ms. Scott. When asked if he recalled the exact words Mr. Baumann used, the witness admitted he could not, but that what Baumann said was "aggressive" and "shocking" to him. The witness confirmed that he was referring to the exchange with Mr. Baumann described above.

One other witness recalled "very well" that Mr. Reedie told Dr. Moses, "I believe you cannot speak," and believed that the meeting minutes did not accurately reflect this exchange.

Because both of these recollections are inconsistent with the audio recording of the meeting (and no other witness recalled such statements), as well as in light of the witness report from the Baku meeting, we concluded that these recollections were mistaken.

Four witnesses did find Mr. Baumann's comment objectionable, however, albeit for varying reasons. Two witnesses thought it was improper or offensive for Mr. Baumann to object to Dr. Moses speaking; the other two, including the witness that sought to withdraw their testimony, felt that Mr. Baumann's tone was impolite or disrespectful. In response to this exchange, the Oceania representative presented a draft

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[29] At the WADA Global Education Conference in Beijing in October 2018, Mr. Reedie approached Dr. Moses and disputed his allegation that he was told to "shut up." A WADA staff member who witnessed the conversation recalled that Dr. Moses admitted that the words "shut up" had not been used. Mr. Reedie, however, did *not* recall any such admission by Dr. Moses, and the witness to his conversation also acknowledged that they are poor at recalling these sorts of specific details.

statement at the September 19, 2018 meeting of the Public Authorities that expressed the Public Authorities' continued commitment to, among other things, "[t]he right of the Chairperson of WADA's Working/Standing Committees to participate (apart from voting) in Executive Committee meetings." In addition, the witness who subsequently withdrew their testimony was critical of the fact that Ms. Scott was told that she could speak only because "you're a friend of Francesco's."

In exploring the circumstances under which Standing Committee Chairs are permitted to speak on areas other than their committee reports, we learned that prior to November 2018, the organization had no written guidelines on the issue. In practice, the Athlete Committee and Education Committee Chairs—Ms. Scott and Dr. Moses—have sought, and been freely permitted, to speak on other Executive Committee matters. We are not aware of another recent instance in which objection was raised to a Standing Committee Chair's ability to speak at an Executive Committee meeting; indeed, Dr. Moses spoke freely in response to the comments by Messrs. Ricci Bitti and Baumann during the Athlete Committee report at the September 20 Executive Committee meeting.

In light of that general practice, it is easy to see the sudden objection to Dr. Moses speaking as impolite. It is also reasonable, however, to note that the objection concerned Dr. Moses opining on a procedural issue for a body of which he is not a part, not a policy matter. In all events, nothing about this objection reasonably could be viewed as threatening, intimidating, or humiliating, and no witness we spoke to viewed this incident as tantamount to bullying or harassment. The same is true of the comment to Ms. Scott following Mr. Baumann's earlier objection. These episodes may illustrate the consequences of Ms. Scott or Dr. Moses not being members of the Executive Committee, but objection to someone who is not a committee member speaking on a committee procedural issue at a committee meeting constitutes neither bullying nor harassment.

SECTION EIGHT:
MS. SCOTT'S AND DR. MOSES'S REFUSAL TO PARTICIPATE

As the first step in our investigation, on December 20, 2018 we wrote to Mr. Chew, counsel to Ms. Scott and Dr. Moses, to notify him that we had been retained "to investigate allegations of harassment and bullying, including those made by your clients, Beckie Scott and Dr. Edwin C. Moses." We told him that "[w]e take your clients' allegations seriously and are eager to begin a thorough investigation into their claims," and that "we would like to interview Ms. Scott and Dr. Moses as soon as possible in the new year." We ultimately reiterated that request in various forms seven more times over the succeeding months.

Regrettably, both Ms. Scott and Dr. Moses declined to be interviewed except on terms that were highly unreasonable. They also claimed that Covington had a conflict of interest with respect to their allegations. We address below both the terms they demanded, and their claim of a conflict, as well as other assertions made by their counsel.

I. The Conditions Demanded by Ms. Scott and Dr. Moses

From the outset, Mr. Chew placed unreasonable and highly unusual conditions on Ms. Scott's and Dr. Moses's participation in any investigation. While these demands shifted somewhat over time, they included the insistence that:

- all witness interviews be transcribed by a court reporter;
- Mr. Chew be permitted to cross-examine witnesses at these transcribed interviews; and
- the entire evidentiary record on which the report relies—including all witness interview transcripts and all correspondence reviewed in the course of the investigation—accompany the report.

These are features of a lawsuit, not an investigation. They would have provided Mr. Chew many of the benefits of being a plaintiff in litigation—the ability to conduct his own, transcribed examination of witnesses—without needing first to establish that he has a valid legal claim, and without any of the protections for witnesses provided by the procedural rules governing litigation. No rational organization would agree to these terms.

Of greater importance, complying with these demands would have impeded our investigation and made it more difficult to get at the truth. These demands were inconsistent with the expectations of confidentiality that many witnesses noted to us as a condition for their candor. Because this is a private investigation, in which cooperation is voluntary and there is no way to compel testimony, many witnesses would have chosen simply not to submit to an interview under the terms demanded by Mr. Chew. Allowing counsel for the person making a claim to cross-examine each witness would be intimidating, and would lead many witnesses not to participate.

Likewise, the knowledge that verbatim transcriptions of each interview would be disclosed publicly also would deter witness participation and candor. Indeed, a number of witnesses in this investigation sought specific assurances of confidentiality as a condition to speak with us, and in some cases explicitly requested that we seek their consent before ultimately attributing any testimony to them. Others who did not explicitly seek such assurances nonetheless shared information or views that they clearly would not wish to make public. We note, moreover, that a majority of these witnesses were sympathetic to Ms. Scott. Based on the feedback we received from witnesses, we are confident that the record contained herein is more robust and more complete than it would be had we followed the procedure demanded by Mr. Chew.

Finally, participation by counsel to Ms. Scott also would have compromised our ability to investigate independently, no differently than if counsel to Mr. Ricci Bitti had been permitted to participate in our work.

Under the circumstances, we were forced to proceed without hearing from Ms. Scott and Dr. Moses, beyond what they had set out in their written allegations and Ms. Scott's BBC interview. While we would have benefitted from hearing their stories, we are confident that the record regarding the only specific allegations of bullying or harassment that Ms. Scott and Dr. Moses made is more complete than it would be had we agreed to their conditions.

II. Mr. Chew's Claims of a Conflict of Interest

Mr. Chew also contended that Covington had a conflict of interest because WADA management has instructed our firm with respect to a limited amount of other work. Despite our requests, however, he failed to identify any facts to support this claim.

The sole bullying allegation made by Ms. Scott concerned two Olympic Movement representatives on the Executive Committee: Mr. Ricci Bitti (representing ASOIF), and Mr. Baumann (representing FIBA).[30] As discussed above, Dr. Moses's allegation that he was told to "shut up" also appears to have been referring to comments by Mr. Baumann.

[30] Ms. Scott's letter of October 8 was specific and narrowly focused regarding both the "who" and the "where and when" of her allegations: "remarks and gestures directed toward me by International Olympic Committee (IOC) and Executive Board members Mr. Francesco Ricci Bitti and Mr. Patrick Baumann, that were both derisive and inappropriate," made at "the WADA Executive Committee meeting held in Mahe Island, Seychelles, on 20, September 2018." Her BBC interview of October 12 likewise complained only of comments at that meeting by "two Olympic movement members of the Executive Committee" at the September 20 Executive Committee meeting. In both instances, Ms. Scott expressed disappointment that management had not responded at the time, but she did not allege any wrongdoing by management and did not contend that she had been the victim of any other improper conduct.

Because our firm has no existing or prior relationship with Messrs. Ricci Bitti or Baumann, we asked Mr. Chew to identify the allegations that would give rise to a conflict of interest on our part:

> Our mandate here is to conduct a fair and thorough investigation of the facts. We therefore come to the concerns raised in your letter with an open mind. The fundamental impediment we face in considering them, however, is an apparent disconnect between the single specific allegation of bullying or harassment of which we have been made aware, and the characterizations and conclusions set forth in your correspondence. . . .
>
> In order for us to assess the issues raised in your letter, we therefore ask that Ms. Scott and Dr. Moses agree to meet with us and lay out their allegations in full. We are happy to agree that this meeting will not be deemed or argued by us to constitute acquiescence by Ms. Scott or Dr. Moses in the legitimacy of our investigation. . . .

In response, Mr. Chew did *not* contend that Covington had a conflict of interest with respect to Messrs. Ricci Bitti or Baumann. Instead, he said that Covington is conflicted because "a further complaint against a high-level person within WADA is forthcoming." Mr. Chew refused, however, to identify any specifics—making it impossible to assess his claim of conflict—and no further complaint was brought forward. This was characteristic of his correspondence, which referred to a "pervasive" problem at WADA but never asserted a single instance of alleged bullying or harassment.[31]

Toward the end of our investigation, in our sole oral conversation with Mr. Chew, he contended for the first time that Messrs. Reedie and Niggli—*not* Messrs. Ricci Bitti and Baumann—were the "primary wrongdoers." This was entirely at odds with both Ms. Scott's October 8 letter and the BBC interview arranged for the purpose of making her bullying allegations. Nonetheless, we asked Mr. Chew to identify any instance of alleged bullying or harassment by either of them. Again, he refused to do so.

In short, Mr. Chew never explained how Covington had a conflict with respect to the only allegations of bullying or harassment that his clients ever made. Instead, after our investigation was substantially complete, he identified entirely different people as the principal wrongdoers, without telling us what he claimed they did. This bore on our assessment of his credibility.

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[31] Similarly, Ms. Scott appeared with Mr. Chew at the Public Authorities' "One Voice" meeting held the day before the November 2018 Executive Committee meeting, and (according to multiple witnesses at that meeting) declined to answer when asked whether she had allegations regarding anything other than the September 20 meeting.

SECTION NINE: RECOMMENDATIONS

At the root of the conflicts described in this Report is ongoing tension over allocation of power among different WADA constituencies. Profound disagreement over WADA governance was only part of the dynamic that gave rise to the events we investigated, however. We identified four factors, absent which this investigation might have been avoided notwithstanding any disputes over governance or Russia: (i) the lack of any code of conduct governing committee members and their interactions, and any policy governing complaints about the conduct of committee members; (ii) the lack of formal training on best practices for boardroom dialogue; (iii) the lack of definition regarding the role of Standing Committee Chairs at Executive Committee meetings on matters other than their committee reports; and (iv) a lack of clarity regarding the precise role of the WADA Athlete Committee.

We offer the following recommendations geared to each of these factors.

- **Adopt a Code of Conduct and Complaint Policy for the Executive Committee, Foundation Board, and Standing Committees**

  In conducting our investigation, we were confronted by the absence of any clear standard or internal policy governing how complaints about the conduct of committee members should be handled. In addition, while we did not find conduct that rose to the level of bullying or harassment, many witnesses complained of the poor tone at recent Executive Committee meetings and the failure to police it.

  To be sure, in an organization of diverse interests and constituencies such as WADA there are bound to be disagreements, sometimes deeply felt, on issues of great importance. But dialogue on those matters—including criticism of others' positions—can still be conducted with the utmost mutual respect. Many witnesses felt that WADA falls short of that standard. We were struck in particular by testimony from Public Authorities witnesses, who felt that WADA Executive Committee meetings were substantially more combative than the meetings of any other multilateral organization in which they participate.

  WADA would benefit from (i) adopting a code of conduct governing how members interact in their capacity as Executive Committee, Foundation Board, and Standing Committee members, (ii) implementing a clear policy governing how complaints for violations of that code should be addressed, and (iii) empowering the Chair of the Executive Committee to be vigilant in enforcing the code of conduct. Formulation and application of both the code and the policy may

be well suited for the Independent Ethics Board that the Foundation Board voted to establish in November 2018.[32]

- **Conduct Mandatory Training for Executive Committee Members On Best Practices for Boardroom Dialogue**

  WADA is comprised of persons from many different cultures. How individuals interact—including the use of gestures, tone of voice, and choice of words—differs from culture to culture. Gender differences can also play a role; in our witness interviews, for example, we found that on the whole women reacted more strongly to the use of the word "victimistic" than did men. In addition, because WADA meetings are conducted in English, but many participants are not native English speakers, communication can sometimes be imprecise or more susceptible to misunderstanding than might otherwise be the case.

  In the face of these challenges, compliance with a code of conduct—to say nothing of aspirations for a more refined dialogue than what is minimally required—may be difficult to attain without formal training on best practices for respectful boardroom dialogue.

  We therefore recommend that WADA include a mandatory training for Executive Committee members, to help sensitize members as to how culture and gender differences and perceptions can affect communication, and improve the dialogue and productivity of the Executive Committee. As noted above, the Chair of the Executive Committee should proactively enforce compliance with these norms and standards.

- **Resolve Any Remaining Uncertainties Over the Role of Standing Committee Members at Executive Committee Meetings**

  Mr. Baumann's objection to Dr. Moses's comments at the May 2018 Executive Committee meeting highlighted the lack of clear rules regarding when and under what circumstances Standing Committee Chairs are permitted to speak at Executive Committee meetings. Addressing such matters on an ad hoc basis carries a risk that a given objection will seem arbitrary and targeted.

  To WADA's credit, since that meeting the Foundation Board has approved the Governance Working Group's recommendation to clarify the role of Standing Committee Chairs as Observers to the Executive Committee. That recommendation provides:

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[32] The Independent Ethics Board is tasked with "ensur[ing] the compliance of WADA Officials with the new set of ethical rules" and will hear cases on breaches of such rules in panels of one or three. Members of the Independent Ethics Board will be nominated by the Nominations Committee and appointed by the Foundation Board. The Foundation Board did not reach consensus on whether the Independent Ethics Board will have decision-making power or will serve as a rapporteur to the Executive Committee.

> That the Chairs of the Standing Committees should be invited to report to the Executive Committee on their relevant subject areas, and could be invited by the WADA Chair to contribute their views to other subject areas. It would be at the discretion of the WADA Chair as to what and when their contributions were suitable. It was also noted and agreed that the subject areas of different Standing Committees have varying degrees of scope, with some very broad and others more narrow.[33]

To the extent this results in a continued practice in which Standing Committee Chairs frequently contribute on other subjects, but do not have an established right to do so, there remains room for complaints of inconsistent or arbitrary application. Depending on experience under the newly approved recommendation, WADA may ultimately wish to define more objectively the criteria on which the WADA Chair should base his or her exercise of discretion to allow Standing Committee Chairs to contribute their views.

- **Clarify the Role of the WADA Athlete Committee**

  Resolving the tensions between the WADA Athlete Committee and the IOC Athletes' Commission, and the disagreements that underlie those tensions, is a challenge well beyond the scope of our mandate. Clarifying the role of the Athlete Committee, however—and in particular the extent to which it is meant to be representative, and if so the best way to ensure its representative nature—would be a positive step.

  In November 2018, the Foundation Board adopted the WADA Governance Working Group's Report, which noted that the WADA Athlete Committee is "currently more that of an expert body than that of a representational one." What that means in practice is not entirely clear, and that ambiguity may occasion further disagreement and friction. We encourage the organization to define the role of the Athlete Committee with greater specificity.

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[33] WADA Governance Working Group, *Recommendations for Consideration by the WADA Foundation Board* ¶40, WADA (Nov. 15, 2018), https://www.wada-ama.org/sites/default/files/resources/files/item_4_1_attach_1_wggov_recommendations_and_annexes_26102018_final.pdf.

APPENDIX 1

Dear Craig; Dear Olivier;

8 October 2018

I am writing to you with concerns related to the WADA Executive Committee meeting held in Mahe Island, Seychelles, on 20, September 2018.

I refer to remarks and gestures directed toward me by International Olympic Committee (IOC) and Executive Board members Mr. Francesco Ricci Bitti and Mr. Patrick Baumann, that were both derisive and inappropriate. Indeed, WADA Education Committee Chair Mr. Edwin Moses qualified the comments as "aggressive" and "offensive" during his intervention at the meeting, and later in a NY Times article described the conduct as "sexist."

I am deeply disappointed with the unprofessional behaviour demonstrated by these Senior members of the Olympic Movement. Regrettably, I am equally disappointed by the lack of substantive response to these remarks by WADA leadership at the time of the exchange. It should be a firm expectation that a minimum level of respect and courtesy be exercised during WADA Executive Committee meetings, for all members, including the Standing Committee Chairs.

Therefore, I am seeking your assurance that such unfettered attacks on any members at future meetings be addressed at the time they take place, in order to ensure an environment of equality, dignity and respect for all members.

As the President and Director General of an organisation founded upon the vision of a world "*where all athletes can compete in a doping-free sporting environment*", it goes without saying that the WADA AC looks to you both for strong and supportive leadership, especially as regards the constituents the WADA is tasked with protecting, the athletes.

Thank you for hearing these concerns, and I look forward to your response.

Kind regards,

Beckie Scott

cc: Linda Hofstad-Helleland

APPENDIX 2

Wada: Anti-doping campaigner Beckie Scott says officials tried 'to bully' her

bbc.com/sport/45840481

Exclusive by Dan Roan

BBC sports editor

Wada officials disrespected me - Scott tells BBC sports editor Dan Roan

The chair of the World Anti-Doping Agency s (Wada) Athlete Committee says some of the organisation s most senior officials tried to "bully" her over her opposition to Russian reinstatement.

Beckie Scott told the BBC she was "treated with disrespect" at a recent meeting and faced "inappropriate" comments and gestures from some members of Wada s executive committee.

The Canadian former Olympic cross-country skiing champion resigned from a Wada panel last month in protest at its highly controversial recommendation to end the suspension of Russia from international competition after a state-sponsored doping scandal.

In her first interview since stepping down, Scott said the treatment she faced was "indicative of a general attitude of dismissal and belittling of the athlete voice".

In a statement, Wada admitted "tensions were running high" at last month s meeting, and that the strong views on both sides of the debate "do affect the tone and atmosphere" but "the athletes voice was clearly heard".

It said Scott s concerns "were being taken seriously".

Background

In September the BBC revealed Wada s leadership had secretly softened two key criteria to help bring Russia back into compliance after a three-year suspension.

Once Russia agreed to comply, Wada s compliance review committee (CRC) recommended reinstatement, prompting an outcry from many athletes and national anti-doping agencies.

Scott, who is a former International Olympic Committee (IOC) member and one of the most high-profile athletes in the anti-doping movement, says she resigned because she "fundamentally disagreed" with her colleagues on the CRC.

"I felt it was a compromise," she said.

"I don t think it was acceptable to clean athletes, especially in light of the affront to clean sport that had taken place.

"It was an altering of a roadmap that was established by Wada in order to regain compliance. And it was basically a reversal of the conditions, so compliance was established before conditions had been met.

"I think from an athletes perspective that is such an affront because no-one is altering rules and regulations to ensure athletes reach their goals or achieve their results."

Former cross-country skier Beckie Scott is a three-time Olympian

Beckie Scott

They tried 'to bully'

Wada s all-important 12-person executive committee then held a meeting in the Seychelles to formally approve Russia s reinstatement.

It was there, Scott claims, as she made a presentation, that she faced "upsetting" comments by some of the members representing the Olympic movement "definitely designed to denigrate, to belittle... and to bully".

"I felt an intense amount of pressure going into that meeting. There was laughter when I read out the list of athlete committees who were confronting the decision [over Russia]," she said.

"At the time it was upsetting, and on reflection it s a tactic, a manoeuvre and born out of a long-standing belief that athletes don t have to be part of this conversation."

Scott says she was "disappointed" neither Wada s president Sir Craig Reedie or director-general Olivier Niggli stepped in at the time.

"There was no confrontation or challenging of that behaviour at the time it took place," she said.

"I think it s indicative of the leadership of Wada s alignment with the Olympic movement."

Wada head Reedie defends Russian reinstatement decision

Wada's response

Wada said Scott had shared her concerns in writing with its leadership and they were being taken seriously, with Reedie already responding to her.

However, it denied Scott s suggestion its leadership had become aligned with the Olympic movement as "completely and demonstrably untrue".

"The leadership of Wada are independent and have shown time and time again that they make decisions exclusively in the best interests of the organisation and fight against doping," it said. "In fact, this independence has led to criticism of Wada leadership by the very bodies with

whom Miss Scott claims they are aligned."

Russia has made a qualified admission that its government was involved in an intricate and extensive doping conspiracy. It has also agreed to turn over data and doping samples that could help corroborate positive tests, with Wada insisting Russia will be made non-compliant again if it fails to meet "strict conditions".

Scott accepts she did initially consider a means of breaking the deadlock that had developed with Russia over the terms for reinstatement, but became opposed once she understood the ramifications. The athletes commission of the IOC said it "agreed in principle" with the ending of the suspension, and Wada has pointed out it was backed by a majority of government representatives.

Reedie said some athletes did not fully understand Wada s intentions, a suggestion Scott described as "quite offensive".

"Would we be having this conversation if it was a nation with far smaller resources or far smaller teams participating in Olympic Games? We are talking about a superpower in sport and the influence and pressure that they are able to exert, even within Wada, has been remarkable."

Scott says the time had come for far-reaching reforms of Wada s governance, with athletes given a vote on the executive committee, as well as representatives of the Olympic movement and governments. She said she "100% supported" the proposals of British Paralympic medallist and Ukad athlete representative Ali Jawad, who has demanded an overhaul of Wada s governance structure.

"This is a real opportunity for change," Scott said.

"There has been an incredible loss of confidence and faith in the organisation. Athletes have been galvanised by this and expressed their frustration on a level I ve never seen before.

"We have fallen under the pressure of politics, and we need a return to integrity based decision-making.

"If we go the way of sport just becoming a political arena then something is really lost and we re in danger of that right now."

United States Anti-Doping Agency CEO Travis Tygart said in a statement that Scott s claims "present a damning reflection of the fragile state of the WADA-led global anti-doping system as it exists today."

He said: "It s appalling Olympic sport leaders would attempt to suppress athletes voices.

"Beckie Scott speaks for the huge majority - the silent majority - of athletes and fans when she says confidence in Wada has never been lower.

"There is now a perceptible and deafening noise from the global athlete community for change."

Analysis

Beckie Scott is the nearest thing the Olympic and Paralympic athlete community has to a figurehead.

A highly respected former IOC member, and the most senior athlete representative inside Wada, her explosive claims will be highly damaging for Wada s beleaguered leadership as it faces an unprecedented backlash from western athletes over its decision to reinstate Russia.

With some critics suggesting Wada lacks the independence from the Olympic movement to be fit for purpose, this will only add to the pressure that the regulator is now under. Especially a week after the US indicted seven Russian spies for hacking in connection with the alleged hacking of Wada officials.

APPENDIX 3

The Sydney Morning Herald

OPINION SPORT WADA

World needs to follow Australia's anti-doping lead against IOC bullies

By Edwin Moses
18 October 2018 — 5:27pm

Many in the sporting world have welcomed the call by Australian anti-doping chief David Sharpe for the global anti-doping agency to commission a public inquiry into claims Olympic officials within its own ranks bullied those pushing for a tough stance on Russia.

The bullying is being perpetrated by sporting officials who want to silence those demanding to know why Russia has not been held to proper account for running the worst doping regime in modern sporting history.

Beckie Scott recently resigned as chair of WADA's athlete committee and publicly revealed the bullying she received from other senior sporting officials on WADA's executive committee. THE CANADIAN PRESS

Sharpe's call was prompted by revelations from Canadian cross-country skier Beckie Scott, who recently resigned as chair of the World Anti-Doping Agency's athlete committee.

Scott publicly revealed the bullying she received from other senior sporting officials on WADA's executive committee who did not accept her ethical and uncompromising stance against Russian state-sponsored doping.

Some of those officials alleged to have been bullies are also prominent in the Olympic movement.

I count Scott and Sharpe as key allies in the relentless and increasingly challenging fight against doping in sport. Unfortunately, Scott is not alone in being attacked for wanting to clean things up.

But it's 2018: bullying has no place at the board table of sports governance.

As a prominent Canadian winter athlete whose life was directly and devastatingly affected by doping (her bronze medal in cross-country skiing at Salt Lake City in 2002 was eventually upgraded to silver and then gold when the two athletes that finished ahead of her were sanctioned for doping), Scott is better placed than most to champion the clean sport cause.

She knows what matters to athletes and, significantly, she has her finger on the pulse of athlete and public opinion well outside the International Olympic Committee and WADA boardroom bubble.

That is why when Scott speaks out against the bullying tactics of Olympic officials on WADA's decision-making bodies, it resonates with those of us that have had to witness the hostile atmosphere that is increasingly becoming the norm in the global anti-doping cauldron.

Australia's Sharpe is right to call it out because this inappropriate behaviour is long-standing and wholly unacceptable.

This is why it is all the more surprising that WADA has still not effectively said whether it will conduct an inquiry into Scott's bullying claims, and why it is puzzling that the IOC has remained entirely silent.

If you step outside the WADA boardroom, it is immediately and abundantly clear that the athletes and society at large want the uncompromising, unwavering stance to flourish.

Athletes and sports fans across the world don't want nuance or compromise or flexibility, all of which have become fashionable within WADA and IOC leadership circles. They want relentless and dogged determination to clean up sport.

Doping control at the 2014 Winter Olympics in Krasnaya Polyana, Russia. AP

In recent years, we have seen the biggest doping scandal of all time – "the Russian doping crisis" – and a significant shift in the WADA and IOC leadership towards a softer, more appeasement-focused stance.

It was only in May, at WADA's last foundation board meeting, that I was told bluntly by various individuals not to speak. I was told to shut up.

This would be offensive if it weren't so puzzling: why are some officials who purport to represent clean sport trying to muzzle the interventions of others with whom they disagree at international anti-doping meetings?

The reason – and it's been known to those of us in sport for a long time but it has only now been discovered by the public at large – is because the IOC leadership don't want to draw attention to this unprecedented challenge in the fight for clean sport.

It suits the IOC to have all countries "compliant" at any cost, even if that country (such as Russia) has perpetrated the biggest doping scandal of our time against honest athletes, and even if it has not completed WADA's own so-called "roadmap to compliance" because by keeping doping scandals as muted as possible, the Olympic and sporting brand remains untarnished, which is just the way they like it.

To many, the IOC is becoming increasingly detached from the reality of the wishes and, more importantly, rights of the modern anti-doping community, the modern clean athlete, and modern society.

I believe I speak for many by saying that if its leadership was truly committed to the clean sport cause, it would propose constructive solutions aimed at reforming WADA's governance and creating more distance between itself and WADA so that there can be no conflict of interest.

Unfortunately, the IOC wants to do the very opposite: it wants to be closer to WADA and wants to keep the global regulator within arm's reach and under control.

On the IOC's part, and in the face of the unprecedented scrutiny it is now under, it must start listening more intently to what global athletes are saying, not its own so-called athlete committee which most people now view as nothing more than a token and non-independent athlete mouthpiece for the IOC leadership.

For both WADA and the IOC – two organisations that have become virtually joined at the hip in recent times - athlete and public confidence is now wafer thin.

The IOC is increasingly out of touch, increasingly detached from the concerns of the wider world away from their board table. It is time that they reversed that trend, otherwise this unprecedented athlete revolution we are witnessing will only grow and grow.

Accordingly, WADA and the IOC should back Australia's call via David Sharpe for an independent and transparent inquiry.

Edwin Moses is chairman of the US Anti-Doping Agency, two-time Olympic gold medallist and founding chairman of Laureus World Sports Academy.

APPENDIX 4

brownrudnick

BENJAMIN G. CHEW
direct dial: 202.536-1785
bchew@brownrudnick.com

November 12, 2018

VIA E-MAIL

Sir Craig Reedie
President

Mr. Olivier Niggli
Director General

Ms. Linda Hofstad Helleland
Vice President

World Anti-Doping Agency
800 Place Victoria, Suite 1700
Montreal, Quebec H4Z 1B7
Canada

The Members of the Executive Committee and the Foundation Board listed on Attachment A
World Anti-Doping Agency
800 Place Victoria, Suite 1700
Montreal, Quebec H4Z 1B7
Canada

RE: Request for Independent Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Ladies and Gentlemen:

We represent Beckie Scott with respect to her allegations that she received inappropriate and unlawful treatment while carrying out her role as the chair of the WADA Athlete Committee.

I. Ms. Scott Has Alleged that Individuals at WADA Have Harassed and Bullied Her and that There Is an Atmosphere of Intimidation at WADA.

The basic allegations of the extent and gravity of the harassment are known to you, and Ms. Scott can flesh them out at the appropriate time in the context of the independent investigation described *infra* at Section III. That several others have alleged suffering similar harassment and bullying only underscores the need for such investigation. Support for this necessary independent investigation comes from around the world. We are informed that the leaders of eighteen national anti-doping agencies, the Canadian Centre for Ethics in Sport, and the Ad hoc European Committee for the World Anti-Doping Agency have all submitted requests for such an investigation.

II. The Treatment Ms. Scott Alleges Violates WADA's Policy to Prevent Harassment and Promote a Healthy Work Environment.

WADA has a policy that directly addresses the treatment that Ms. Scott alleges she has endured. The Policy to Prevent Harassment and Promote a Healthy Work Environment and the Process for Filing and/or Resolving Complaints (the "Policy") has "zero tolerance" for harassment or intimidation. Policy

at ¶ 6. The Policy expressly states that "any form of harassment, intimidation or abuse of authority constitutes a violation of basic human rights" and "no form of harassment, intimidation or abuse of authority will be tolerated from any party whatsoever." *Id.* at ¶ 1.

The Policy defines "harassment" as:

> any expressly or implicitly unwanted behaviour that is inappropriate, hurtful, and/or abusive, committed by an individual toward one or more other individuals, and whose perpetrator knew or ought reasonably to have known that such conduct could cause offence or harm and create a harmful work environment. It also includes any act, statement or display that diminishes, humiliates or embarrasses an individual by undermining their dignity, as well as any act of intimidation or threat.

Id. at ¶ 3. Additionally, the Policy defines "intimidation" as:

> Intimidation consists of any repetitive behaviour, word or act, that is deliberate or not and expressed by any direct or indirect means, including in cyberspace, in a context characterized by relations of unequal power, formal or informal, between the persons concerned, with the result of creating feelings of distress or injuring, hurting, oppressing or ostracizing.

Id. Anyone who believes they have been a victim of harassment or intimidation has the right to either follow the informal complaint process by contacting the Ombudsperson designated by WADA or file a formal written complaint with the Ombudsperson. *Id.* at ¶¶ 7(I) & 7(II). WADA must deal with any complaint filed under the Policy impartially and promptly. *Id.* at ¶ 6. Anyone who submits a complaint under the Policy in good faith is protected against acts of retaliation. *Id.*

These procedures are inadequate in this case, especially in light of the severity of these allegations, the allegation that there is a pervasive problem at WADA and the allegation that some of the officials who would be involved in the internal process may be compromised. Accordingly, nothing less than an independent investigation is required.

III. Ms. Scott Requests an Independent Investigation at WADA.

The following elements are critical to an investigation that is independent, objective, thorough and transparent. Such an investigation is essential where an allegation has been made that questions the integrity of leadership of an organization. The essential purpose of the investigation is to allow the organization's stakeholders to evaluate its scope, procedures, evidence and conclusions with sufficient precision to reach their own conclusions about the validity of the allegations and hopefully build a consensus in support of appropriate action to be taken in response to the findings of the investigation.

The investigative team must be comprised of professionals who have had experience in conducting and documenting independent investigations and who have no actual or apparent conflicts of interest. In this case, since the allegations implicate the most senior leadership of WADA, the selection of personnel must be made by board members who have not been implicated in any way by the allegations and who have sufficient independence to bring credibility to the selection process. The scope of the investigation must be as broad as the allegations reasonably imply, so that it cannot be later argued that the scope has been artificially narrowed to achieve a predetermined outcome.

The procedures for the investigation must be fair to the persons making the allegation, witnesses and the accused. Therefore, all parties interviewed should have the right to counsel of their choice, and the right to review and correct any statements attributed to them. To the extent possible, statements should be verbatim and should include the questions asked of the witness as well as his answers. In that way the ultimate reader can judge whether questioning was fair, thorough and objective.

The report should include a description of the scope of the investigation, its procedures, a list of witnesses interviewed and any other sources of evidence relied upon by the investigators. It should also specify the standards of conduct to which the accused are being held accountable. All factual and legal conclusions must be based upon evidence and sources specifically cited in the report so that the reader knows precisely how the investigators have performed their analyses. No factual or legal conclusions should be based on the subjective judgment of the investigators. The reader should be able to review the complete record and reconstruct and evaluate the facts and law without having to rely upon the mental processes of the investigators. Finally, the entire record of the evidence should accompany the report.

There are at least two precedents for such investigations in the Independent Commission and Independent Person investigations of Russian state sponsored doping. Each of those investigations was conducted and reported such that third parties reviewing their records could fully understand how they were conducted and the basis for the conclusions reached.

IV. Conclusion.

We look forward to your prompt and affirmative response and hereby reserve all rights on behalf of Ms. Scott.[1]

Sincerely,

BROWN RUDNICK LLP

Benjamin G. Chew/BMR

Benjamin G. Chew

CC: Beckie Scott

[1] We also caution you against harassing and/or unlawfully retaliating against Ms. Scott following your receipt of this letter.

Attachment A:
Members of the Executive Committee

Mr. Jiri Kejval
Ms. Danka Bartekova
Mr. Ugur Erdener
Mr. Francesco Ricci Bitti
Ms. Amira El Fadil
Mr. Witold Bańka
Mr. Marcos Diaz
Ms. Tomoko Ukishima
Mr. Clayton Coagrove

Members of the Foundation Board

Mr. Ugur Erdener
Mr. Nenad Lalovic
Mr. Robin Mitchell
Mr. Richard W. Pound
Mr. Fabio Pigozzi
Ms. Rania Elwani
Mr. Andrey Kryukov
Mr. Zlatko Matesa
Mr. Tamas Ajan
Mr. Jean-Christophe Rolland
Mr. Francesco Ricci Bitti
Mr. Jan Dijkema
Mr. Seung-Min Ryu
Ms. Kirsty Coventry
Ms. Emma Terho
Ms. Danka Bartekova
Mr. Andrew Parsons
Mr. Philippe Muyters
Ms. Ioana Bran
Mr. Krasen Kralev
Ms. Gabriella Battaini-Dragoni
Mr. Akif Çagatay Kiliç
Mr. Erastus Uutoni
Ms. Macsuzy Mondon
Mr. Rachid Mohammed
Mr. Marcos Diaz
Mr. Gerardo Fajardo
Mr. Ernesto Lucena
Mr. Michael K. Gottlieb
Mr. Mohammed Saleh Al Konbaz
Mr. Taekang Roh
Mr. Yingchuan Li
Ms. Tomoko Ukishima
Ms. Bridget McKenzie
Mr. Grant Robertson

WORLD ANTI-DOPING AGENCY
play true

OFFICE OF THE PRESIDENT
SIR CRAIG REEDIE

13 November 2018

Mr Benjamin G. Chew
Brown Rudnick LLP
Boston MA

By email: c/o brinne@brownrudnick.com

Dear Sir,

This is to acknowledge receipt of your letter dated 12 November 2018. While your client's allegations are hereby fully denied, we inform you that your client's request will be presented to the upcoming meeting of the WADA Executive Committee.

Sincerely,

Sir Craig Reedie
President

brownrudnick

BENJAMIN G. CHEW
direct dial: 202.536-1785
bchew@brownrudnick.com

December 14, 2018

VIA E-MAIL

Sir Craig Reedie
President

Mr. Olivier Niggli
Director General

Ms. Linda Hofstad Helleland
Vice President

World Anti-Doping Agency
800 Place Victoria, Suite 1700
Montreal, Quebec H4Z 1B7
Canada

RE: Renewed Request for Independent Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Madam and Sirs:

This follows up on my correspondence to you dated November 12, 2018 (the "November 12 Letter"). As you know, we are honored to represent Beckie Scott. Please be advised that we now represent Dr. Edwin C. Moses as well. Like Ms. Scott, Dr. Moses has witnessed unlawful bullying at the hands of WADA officials.

I. The Road to Baku.

To date, WADA's response to the November 12 Letter has been inadequate and violative of its own rules. The President's letter dated November 13 consisted of two sentences proclaiming that Ms. Scott's allegations were "fully denied," without an explanation for their determination, much less a rationale for why he was not hopelessly conflicted as a subject of the investigation.

The President's similarly cursory letter to Ms. Scott dated October 11, advising her to "rest assured that [the Director General] and I take your feedback seriously" and pledging to "discuss this in person with you in Baku" proved illusory.

In fact, when Ms. Scott and I appeared at the appointed time to have that discussion we found that the President and Director General had brought with them unannounced someone from Human Resources, which suggested unlawful retaliation. They then stated they would refuse to engage in any conversation "without [their] lawyer" present. This struck us as odd as it contradicted the President's

promise to discuss Ms. Scott's concerns in Baku. Moreover, the Director General is an experienced attorney, having once served as WADA's General Counsel.

The next morning, Ms. Scott addressed a meeting of public officials, explaining why a thorough, independent investigation was necessary. WADA disclosed later that day a letter dated November 12 from Dr. Moses, outlining the seriousness of the allegations of bullying and culture of intimidation at WADA, and making a compelling case for a proper investigation.

After the meeting of the public officials, it appeared that WADA was prepared to do the right thing and engage an appropriate investigative team. Instead, WADA changed course and proposed that there be only a "continuation" of the November 7, 2018 report by the Relais firm (the "Relais Report"). But, of course, the Relais Report was, at best, a whitewash, consisting merely of a review of the soundtrack and transcript of *a single meeting*. Amazingly, the author of the Relais Report herself admitted:

> **"We did not meet with any of the persons that (sic) attended the meeting."**

Relais Report at p. 3 (emphasis added). Thus, the author did not even interview Ms. Scott, nor the President or the Director General. Indeed, the author wisely made clear that:

> "this document does not constitute a legal opinion or advice."

That was by far the truest statement contained in the Relais Report.

In this context, for WADA to re-engage the *same firm* that employed such patently shoddy methodology would be absurd, particularly on the heels of Dr. Moses' letter.

II. WADA Violates Its Own Rules.

Underscoring the bankruptcy of the proposed "continuation" and WADA's bad faith, the Director General immediately advised the press with a prepared internal WADA media statement that there would be a perfunctory "second phase" of an inquiry, which already had "cleared" Executive Committee members of all allegations by Ms. Scott.

In his zeal to further disparage Ms. Scott and cast her in a negative light, the Director General violated Section 6 of WADA's own harassment policy, which requires that "in all cases, any disclosure or formal complaint *will be treated with confidentiality* by all involved parties to prevent the situation from deteriorating (emphasis added).[1] The wrongful leak also shows that the result of any "continuation" by Relais would be a foregone conclusion, a sham. Moreover, the harm to Ms. Scott's public image and credibility cannot be undone.

III. Continuing WADA's Current Investigation Is Not Adequate.

WADA's "second phase" of the investigation is not adequate to address the issues that Dr. Moses and Ms. Scott have raised. The basic allegations of the extent and gravity of the harassment of Ms. Scott already are known to you. Moreover, Dr. Moses has informed you of similar allegations based on his

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[1] We trust that WADA will, going forward, obey its own confidentiality requirements.

own encounters and observations. Our clients can provide more details at the appropriate time in the context of the independent investigation described *infra* at Section IV, and there may be others with similar experiences, as well. This highlights the need for a broader investigation at WADA, beyond one meeting alone.

We reiterate that support for this independent investigation comes from around the world. We understand that the leaders of at least eighteen national anti-doping agencies, the Canadian Centre for Ethics in Sport, and the Ad hoc European Committee for the World Anti-Doping Agency have all submitted requests for such an investigation.

IV. Dr. Moses and Ms. Scott Request an Independent Investigation with Critical Elements.

The following elements are critical to an investigation that is independent, objective, thorough and transparent. Such an investigation is essential where an allegation has been made that questions the integrity of leadership of an organization. The Relais Report was inconclusive and too limited in scope, requiring a new, comprehensive, independent investigation of the full scope of bullying and harassment allegations by Ms. Scott, Dr. Moses and others at WADA. A continuation of that investigation will not address the situation at WADA. The essential purpose of the new investigation is to allow the organization's stakeholders to evaluate its scope, procedures, evidence and conclusions with sufficient precision to reach their own conclusions about the validity of the allegations and hopefully build a consensus in support of appropriate action to be taken in response to the findings of the investigation.

The investigative team must be comprised of professionals who have had experience in conducting and documenting independent investigations, who have the necessary resources, and who have no actual or apparent conflicts of interest. In this case, since the allegations implicate the most senior leadership of WADA, the selection of personnel must be made by board members who have not been implicated in any way by the allegations and who have sufficient independence to bring credibility to the selection process. The scope of the investigation must be as broad as the allegations reasonably imply, so that it cannot be later argued that the scope has been artificially narrowed to achieve a predetermined outcome.

The procedures for the investigation must be fair to the persons making the allegation, witnesses and the accused. Therefore, all parties interviewed should have the right to counsel of their choice, and the right to review and correct any statements attributed to them. To the extent possible, statements should be verbatim and should include the questions asked of the witness as well as his or her answers. In that way the ultimate reader can judge whether questioning was fair, thorough and objective.

The report should include a description of the scope of the investigation, its procedures, a list of witnesses interviewed and any other sources of evidence relied upon by the investigators. It should also specify the standards of conduct to which the accused are being held accountable. All factual and legal conclusions must be based upon evidence and sources specifically cited in the report so that the reader knows precisely how the investigators have performed their analyses. No factual or legal conclusions should be based on the subjective judgment of the investigators. The reader should be able to review the complete record and reconstruct and evaluate the facts and law without having to rely upon the mental processes of the investigators. Finally, the entire record of the evidence should accompany the report.

There are at least two precedents for such investigations in the Independent Commission and Independent Person investigations of Russian state sponsored doping. Each of those investigations was

conducted and reported such that third parties reviewing their records could fully understand how they were conducted and the basis for the conclusions reached.

Finally, we believe that the President and Director General should recuse themselves from all matters relating to this matter, as they are subjects of any proper investigation and clearly have conflicts of interest.

V. Conclusion.

Unless WADA immediately ceases the current "continuation" of the legally flawed Relais investigation and agrees to a truly independent investigation, my clients will seek necessary legal action. To be clear, our proposal is that a new investigation be instigated forthwith, with an experienced independent investigation team acceptable to a court. We are happy to put forward names of appropriately qualified persons and indicate that we would do that in any court action.

We suggest finally that there be no further dealings with the media unless agreed to by all parties, and that this letter and any consequential proceedings be kept confidential.

We look forward to your prompt and affirmative response within ten days. We hereby reserve all rights on behalf of Dr. Moses and Ms. Scott.[2]

Sincerely,

BROWN RUDNICK LLP

Benjamin Chew / jp

Benjamin G. Chew

CC: Edwin Moses
Beckie Scott

[2] We also caution you against harassing and/or unlawfully retaliating against Dr. Moses or Ms. Scott following your receipt of this letter.

brownrudnick

BENJAMIN G. CHEW
direct dial: 202.536-1785
bchew@brownrudnick.com

December 20, 2018

VIA E-MAIL

Sir Craig Reedie
President

Mr. Olivier Niggli
Director General

Ms. Linda Hofstad Helleland
Vice President

World Anti-Doping Agency
800 Place Victoria, Suite 1700
Montreal, Quebec H4Z 1B7
Canada

RE: Renewed Request for Independent Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Madam and Sirs:

In light of the fact that you have not responded to our letter of December 14, 2018, we assume that our clients will have to initiate formal proceedings.

Please advise whether you are authorized to accept service of the forthcoming Complaint.

Very truly yours,

BROWN RUDNICK LLP

Benjamin Chew / RV.

Benjamin G. Chew

CC: Edwin Moses
Beckie Scott

From:	Patel, Mona
To:	"bchew@brownrudnick.com"
Cc:	Sperling, Jonathan
Subject:	Beckie Scott / Dr. Edwin C. Moses
Date:	Thursday, December 20, 2018 8:57:16 AM
Attachments:	image001.jpg

Dear Mr. Chew,

We have been retained by the World Anti-Doping Agency to investigate allegations of harassment and bullying, including those made by your clients, Beckie Scott and Dr. Edwin C. Moses. We take your clients' allegations seriously and are eager to begin a thorough investigation into their claims.

As part of this investigation, we would like to interview Ms. Scott and Dr. Moses as soon as possible in the new year. Please let us know when is a convenient time to discuss scheduling of the interviews, as well as the confidentiality proposal contained in your letter to WADA dated December 14. In the time being, we ask that your clients preserve any documents or other materials related to their allegations.

Sincerely,
Mona Patel

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com
www.cov.com

brownrudnick

BENJAMIN G. CHEW
direct dial: 202.536-1785
bchew@brownrudnick.com

December 21, 2018

VIA E-MAIL (mpatel@cov.com)

Mona Patel, Esq.
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

RE: Renewed Request for Independent Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Ms. Patel:

This is in preliminary response to your note of December 20, so that you may have the benefit of our thoughts prior to the holidays next week. We understand that your clients have acted on our original note of December 14, 2018, without reference to us or our clients Dr. Moses and Ms. Scott.

We are astonished that WADA, a body supposedly of high integrity and experience, should continue to flout the concepts of basic fairness and justice. To operate unilaterally without showing any respect or dignity to our clients' requests indicates bad faith and a sad culture. Now we understand that your clients have decided to start a new investigation in a different manner. What your clients are attempting to do is flawed legally, and highly prejudicial to the rights of our clients, who will govern themselves accordingly.

Very truly yours,

BROWN RUDNICK LLP

Benjamin G. Chew

From:	Patel, Mona
To:	"bchew@brownrudnick.com"
Cc:	Sperling, Jonathan
Subject:	RE: WADA
Date:	Friday, December 28, 2018 3:26:21 AM
Attachments:	image002.jpg image003.jpg

Dear Mr. Chew,
I write in response to your letter dated December 21, 2018. In it, you wrote that our client acted on your "original note of December 14, 2018, without reference to you or your clients Dr. Moses and Ms. Scott." We are unsure what you mean by this. The proposal in your December 14 letter to WADA was that "a new investigation be initiated forthwith." That is just what we have been engaged to do, and we do not understand why you believe it shows any lack of respect or dignity to your clients, or prejudices their rights. We assure you that our mandate and our intention is to conduct a full and fair investigation.

In order to do so, we again request the opportunity to interview your clients to better understand the details (including, for example, the who, what, when, where and how) of their claims. Please let us know when in January we can discuss this request, as well as the confidentiality proposal contained in your December 14 letter, so that we can begin our work.
Sincerely,
Mona Patel

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com
www.cov.com

From: Chew, Benjamin G. <BChew@brownrudnick.com>
Sent: Friday, December 21, 2018 2:45 PM
To: Patel, Mona <mpatel@cov.com>
Subject: WADA

Benjamin G. Chew
Partner

Brown Rudnick LLP
601 Thirteenth Street NW Suite 600
Washington, DC 20005
T: 202-536-1785

F: 617-289-0717
bchew@brownrudnick.com
www.brownrudnick.com

brownrudnick

BENJAMIN G. CHEW
direct dial: 202.536-1785
bchew@brownrudnick.com

January 9, 2019

VIA E-MAIL (mpatel@cov.com)

Mona Patel, Esq.
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

RE: Renewed Request for Independent Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Ms. Patel:

I write in response to your note of December 20, 2018, as well as to the press release that WADA issued on January 3, 2019. As you may be aware, we have *repeatedly* urged WADA to initiate an investigation performed by independent professionals, requesting that such investigation be kept confidential in the meantime.

In direct contravention of both requests, WADA proceeded to engage your firm, which, though much respected, has a clear conflict of interest in this matter and is *not* independent. Additionally, WADA publicly announced your engagement in a press release and used the release as an opportunity to once again declare that it did not believe "a broader, more general investigation of the organization's culture" was merited. *Of course it doesn't*, which is *why* we reasonably believe that the results of WADA's latest "investigation" may be preordained, and that this effort may be as tainted as its predecessor.

Due to your firm's conflict of interest, we again request that WADA work with us collaboratively to hire a truly independent professional for this investigation and to proceed confidentially and without preordained conclusions.

I. WADA Has Ignored Multiple Reasonable Requests from Dr. Moses and Ms. Scott.

In the event Messrs. Reedie and Niggli have not fully apprised you of the full history of events, we provide the following summary:

First, on November 12, 2018, we sent an initial letter on behalf of Ms. Scott to WADA requesting a broad and independent investigation into the allegations of harassment at WADA. We pointed out that because "the allegations implicate the most senior leadership of WADA, the selection of [investigation] personnel must be made by board members who have not been implicated in any way by the allegations and who have sufficient independence to bring credibility to the selection process." We also cautioned against unlawfully retaliating against Ms. Scott following the receipt of the letter.

The following day, President Craig Reedie and Director General Olivier Niggli met with Ms. Scott for a scheduled meeting in Baku, Azerbaijan, but brought with them an unannounced person from

WADA's Human Resources. Upon learning that I intended to remain at the meeting with my client, President Reedie and Director Niggli refused to continue the meeting, demanding to have "their lawyer present" though Mr. Niggli is an experienced attorney himself.

That same day, on November 13, 2018, WADA sent us a two-sentence letter acknowledging receipt of my letter, "fully deny[ing]" the allegations, and informing us that our client's request would be presented at the upcoming WADA Executive Committee meeting.

Ultimately, WADA decided to simply continue the inadequate investigation by the Relais firm. The Relais firm previously had issued a deeply flawed report regarding allegations of bullying and harassment of Ms. Scott at a single WADA meeting (the "Relais Report"). Indeed, the author of the Relais Report admitted that "[w]e did not meet with any of the persons that *[sic]* attended the meeting." More importantly, WADA published or caused to be published the flawed "findings" of the Relais Report to our clients' detriment.

Thus, on December 12, 2018, we sent a second letter to WADA, this time on behalf of Dr. Moses as well as Ms. Scott, repeating the independent investigation request. We highlighted some of the more glaring deficiencies in the Relais Report, including its narrow focus and failure to interview our clients. We requested an "independent investigation team acceptable to a court" and offered to "put forward names of appropriately qualified persons." We also suggested "that there be no further dealings with the media unless agreed to by all parties, and that this letter and any consequential proceedings be kept confidential."

Nonetheless, without any further consultation with us, WADA subsequently engaged Covington, and notified us as such on December 20, 2018. Given the upcoming holidays, we sent a preliminary response acknowledging receipt of your email and expressing surprise at WADA's unilateral actions.

Without allowing us to respond further, WADA then blatantly disregarded our request for confidentiality and issued a new press release on January 3, 2019, announcing that it had hired your firm "to deliver unbiased and independent findings" to the WADA Executive Committee regarding the allegations of bullying and harassment within WADA.

II. Covington Is Not, and Cannot Be, an Independent Investigator.

We understand that Covington has represented WADA, and continues to represent WADA, in a number of significant matters during a lawyer-client relationship that has spanned more than a decade. Covington serves as WADA's privacy and data protection counsel. Covington has advised WADA on whether its Anti-Doping Administration and Management System was compatible with European data protection legislation. Covington has spoken at an annual WADA symposium for the last several years. Covington has served, or continues to serve, on WADA's expert committee. Covington counsels WADA on policy matters, including EU legislative reform efforts dealing with data protection. Covington also has represented WADA in a number of litigation matters in European courts and now has instructions from WADA to act in defamation proceedings in the U.S. courts.

This ten-plus-year, extensive attorney-client relationship that covers multiple areas of law clearly evidences the fact that WADA is a significant client of Covington's and a significant source of revenue. Accordingly, any investigation performed by Covington will not be "unbiased and independent." As we are sure you know, the ABA Model Code of Professional Responsibility requires that a lawyer exercise independent professional judgment. *See* ABA Model Code of Professional Responsibility, Canon 5; *see*

also D.C. Bar Rules of Professional Conduct, Rule 2.1 (providing that "[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice."). Canon 5 specifically provides: "[a] lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client." *See* ABA Model Code of Professional Responsibility, Canon 5, Ethical Consideration 5-2. Here, in light of the extensive professional relationship between Covington and WADA, there is a reasonable probability that the "unbiased and independent" investigation will be adversely affected. In such a situation, the rules dictate that the lawyer should not accept the proffered employment.

At the very least, Canon 9 requires that lawyers avoid even the appearance of professional impropriety. *See* ABA Model Code of Professional Responsibility, Canon 9. It does not appear "unbiased and independent" for a firm with a significant pre-existing relationship with WADA to conduct an investigation into potentially adverse conduct by WADA executives.

For these reasons, we request that Covington recuse itself and assist in transitioning the investigation to a firm without a significant pre-existing relationship with WADA.

III. The Situation Requires an Investigation by Independent and Unbiased Professionals.

Dr. Moses and Ms. Scott have requested an investigation that is independent, objective, thorough and transparent. Such an investigation is essential where an allegation has been made that questions the integrity of leadership of an organization. The purpose of the new investigation is to allow WADA's stakeholders to evaluate its scope, procedures, evidence, and conclusions with sufficient precision to reach their own conclusions about the validity of the allegations and hopefully build a consensus in support of appropriate action to be taken in response to the findings of the investigation. Therefore, the investigative team must be comprised of professionals who have no actual or apparent conflicts of interest. Moreover, in this case, because the allegations implicate the most senior leadership of WADA, the selection of personnel must be made by board members who have not been implicated in any way by the allegations and who have sufficient independence to bring credibility to the selection process.

IV. Conclusion.

Due to your firm's conflict of interest, we request that WADA select, with our input, a truly independent professional to perform this investigation. We expect to receive your response by January 11, 2019.

Finally, we reiterate that this investigation should remain confidential. To date, our clients have bent over backwards to protect WADA, its mission and its leaders. Please be advised that if WADA continues to attack and attempt to discredit our clients in the media, we will be forced to respond aggressively and in kind.

Very truly yours,

BROWN RUDNICK LLP

Benjamin G. Chew

From:	Patel, Mona
To:	Chew, Benjamin G.
Cc:	Sperling, Jonathan
Subject:	RE: World Anti-Doping Agency
Date:	Thursday, January 10, 2019 4:21:00 PM
Attachments:	image003.jpg image001.jpg

Dear Mr. Chew,

Thank you for your letter dated January 9, 2019. While you took 20 days to respond to my last correspondence to you (a short 2-paragraph email), you have asked for our response to your 3-page letter in just 2 days. As I am sure you can appreciate, we will need more time than that to consider and respond to the issues raised in your letter. We will provide a substantive response to your letter soon.

One thing that we agree should be addressed immediately, however, is your assertion that WADA has "attack[ed] and attempt[ed] to discredit [y]our clients in the media." There is no place for such attacks, but we also are unaware of any that have occurred. We would be grateful if you could point us to the statements to which you're referring as soon as possible.

Sincerely,
Mona Patel

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com
www.cov.com

From: Queen, Vickie <VQueen@brownrudnick.com> **On Behalf Of** Chew, Benjamin G.
Sent: Wednesday, January 09, 2019 11:33 AM
To: Patel, Mona <mpatel@cov.com>
Subject: World Anti-Doping Agency

Please see attached letter from Ben Chew.

Regards

Vickie Queen
Legal Executive Assistant to Benjamin G. Chew

Brown Rudnick LLP
601 Thirteenth Street NW Suite 600

Washington, DC 20005
T: 202.536.1724
F: 617.289.0724
VQueen@brownrudnick.com
www.brownrudnick.com

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Mona Patel

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797
mpatel@cov.com

VIA ELECTRONIC MAIL

January 22, 2019

Benjamin G. Chew
Brown Rudnick LLP
601 Thirteenth St. NW Suite 600
Washington, D.C. 20005

Re: World Anti-Doping Agency

Dear Mr. Chew:

We write in response to your letter of January 9, which responded to our letter of December 20, 2018.

Our mandate here is to conduct a fair and thorough investigation of the facts. We therefore come to the concerns raised in your letter with an open mind. The fundamental impediment we face in considering them, however, is an apparent disconnect between the single specific allegation of bullying or harassment of which we have been made aware, and the characterizations and conclusions set forth in your correspondence. The information available to us regarding the only specific allegation that Ms. Scott or Dr. Moses has made to date does not, on its face, implicate "the most senior leadership of WADA," save for a single member of the Executive Committee who played no role in our retention and will not oversee our work. Nor is it obvious why a single incident of improper conduct (accepting your characterizations of it) would warrant a comprehensive outside review of WADA's governance or culture. At the same time, we are acutely aware that we have little information about the scope of your clients' allegations beyond what they have publicly identified.

In order for us to assess the issues raised in your letter, we therefore ask that Ms. Scott and Dr. Moses agree to meet with us and lay out their allegations in full. We are happy to agree that this meeting will not be deemed or argued by us to constitute acquiescence by Ms. Scott or Dr. Moses in the legitimacy of our investigation. This will allow us to consider your positions with the benefit of complete information regarding the nature of your clients' allegations, while preserving all of their rights with respect to the propriety of the investigative process.

Please let us know if we can arrange such a meeting as soon as possible.[1]

Sincerely,

Mona Patel

Mona Patel

cc: Jonathan Sperling

[1] While we disagree with several other assertions in your letter, we do not believe it productive to focus on that here. We can respond to those assertions later if it becomes necessary.

brownrudnick

BENJAMIN G. CHEW
direct dial: 202-536-1785
bchew@brownrudnick.com

February 8, 2019

VIA E-MAIL (mpatel@cov.com)

Mona Patel, Esq.
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

RE: Renewed Request for Independent Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Ms. Patel:

I write in response to your letter of January 22, 2019. My clients are most concerned by your failure to address the clear conflicts of interest present here. As you may be aware, we have *repeatedly* urged WADA to initiate an investigation performed by independent professionals, requesting that such investigation be kept confidential in the meantime. Due to your firm's conflict of interest, we again request that your client work with us collaboratively to hire a truly independent professional for this investigation and to proceed confidentially and without preordained conclusions. Nonetheless, we set forth parameters below to initiate discussion regarding the investigation going forward.

I. A Comprehensive, Independent Review of WADA Is Necessary

We understand a further complaint against a high-level person within WADA is forthcoming. In at least two separate conversations, WADA leadership initiated aggressive or harassing interactions.

Given these allegations, Covington is not, and cannot be, an independent investigator. We understand that Covington has represented WADA, and continues to represent WADA, in a number of significant matters during a lawyer-client relationship that has spanned more than a decade. The ten-plus-year, extensive attorney-client relationship that covers multiple areas of law is in direct contravention of the rules of professional conduct. *See* ABA Model Code of Professional Responsibility, Canon 5 & 9; D.C. Bar Rules of Professional Conduct, Rule 2.1. We therefore reiterate our request that Covington recuse itself and assist in transitioning the investigation to a firm without a significant pre-existing relationship with WADA.

II. The Situation Requires an Investigation by Independent and Unbiased Professionals

Equally important, if not more important, is the need to define the scope of and procedure for the independent investigation before our clients dedicate their valuable time to interviews. Dr. Moses and Ms. Scott have requested an investigation that is independent, objective, thorough and transparent. As such, we request the following:

- Any interviews as part of the investigation should be transcribed by a court reporter;

- The interviewee should be allowed thirty days to review, provide an errata sheet, and sign the transcript;

- Counsel for Dr. Moses and Ms. Scott should have an opportunity to ask questions on redirect;

- Counsel for Dr. Moses and Ms. Scott should be present for any interview of Mr. Craig Reedie and Mr. Olivier Niggli and be allowed the opportunity to question each of them at their respective interviews;

- The investigation should include notice and a procedure for additional witnesses or victims to come forward; and

- Dr. Moses and Ms. Scott should be interviewed in their respective hometowns or WADA should compensate them for travel costs to Washington, D.C.

The purpose of the new investigation should be to allow WADA's stakeholders to evaluate its scope, procedures, evidence, and conclusions with sufficient precision to reach their own conclusions about the validity of the allegations and hopefully build a consensus in support of appropriate action to be taken in response to the findings of the investigation. Therefore, the record must be preserved and balanced. Moreover, in this case, because the allegations implicate the most senior leadership of WADA, the selection of personnel must be made by Executive Committee members who have not been implicated in any way by the allegations and who have sufficient independence to bring credibility to the selection process. Our clients will not countenance, or participate in, anything resembling the sham "investigation" WADA perpetrated last time.

III. Conclusion.

We would appreciate your response by February 15, 2019, after which we would be willing to discuss availability for interviews with our clients.

Finally, as in our previous letters, we reiterate that this investigation should remain confidential and request that confidentiality be an element of the agreed procedure.

Very truly yours,

BROWN RUDNICK LLP

Benjamin G. Chew

From: Patel, Mona
To: Chew, Benjamin G.
Cc: Sperling, Jonathan
Subject: RE: WADA Investigation
Date: Tuesday, February 12, 2019 3:42:01 PM
Attachments: image001.jpg

Dear Ben,

A critical assessment of how the parties have conducted themselves with respect to the events of September 20 is a meaningful component of our work.

To that end, it would be useful for us to understand in what respects you believe WADA's press release was "egregious and misleading," and what Ms. Scott's expectations of confidentiality were following her interview with the BBC. To be clear, we are not challenging your characterizations in the slightest; we simply would like to know the facts on which they are based.

Sincerely,
Mona

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com
www.cov.com

From: Chew, Benjamin G. <BChew@brownrudnick.com>
Sent: Monday, February 11, 2019 6:45 PM
To: Patel, Mona <mpatel@cov.com>
Cc: Sperling, Jonathan <jsperling@cov.com>
Subject: WADA Investigation

Dear Mona,

This was an accident [redacted] will delete the email, the context of which was unfamiliar to her in any event

Glad to know, however, that your client is newly sensitized to confidentiality after their egregious and misleading press release in Baku

Best regards,

Ben

Sent from my iPhone

On Feb 11, 2019, at 4:48 PM, Patel, Mona <mpatel@cov com<mailto:mpatel@cov com>> wrote:

External E-mail Use caution accessing links or attachments

Dear Mr Chew,

We were disappointed to learn that you are sharing this correspondence with persons other than Ms Scott and Dr Moses We would be grateful if you could inform us to whom you sent your letter aside from the two of them and [redacted]

Sincerely,

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov com<mailto:mpatel@cov com>
www cov com<http://www cov com>

<image001 jpg>

From: [redacted]
Sent: Friday, February 08, 2019 2:21 PM
To: Chew, Benjamin G <BChew@brownrudnick com<mailto:BChew@brownrudnick com>>; Patel, Mona <mpatel@cov com<mailto:mpatel@cov com>>
Subject: FW: WADA Investigation

Mr Chew,

Did you send this to me in error?

Regards,

[redacted]

[redacted]

From: [brownrudnick com<http://brownrudnick com>] Chew, Benjamin G <BChew@brownrudnick com<mailto:BChew@brownrudnick com>>
Sent: Friday, February 08, 2019 12:45 PM
To: mpatel@cov com<mailto:mpatel@cov com>
Subject: WADA Investigation

<image005 jpg>

Benjamin G Chew
Partner

Brown Rudnick LLP
601 Thirteenth Street NW Suite 600
Washington, DC 20005
T: 202-536-1785
F: 617-289-0717
bchew@brownrudnick com<mailto:bchew@brownrudnick com>
www brownrudnick com<https://urldefense proofpoint com/v2/url?u=http-3A__www brownrudnick com_&d=DwMFaQ&c=j-EkbjBYwkAB4f8ZbVn1Fw&r=KS3jioSUu2LAL8XrZgnbxG0X-ENQ3JN0TYECCenX1Fs&m=03Ul4oK068N31HITG1QmZOr8cyxUhs2YFEb7cS9oABg&s=8c7qphoGRSRb7nIa7CBgCMyPb6UrzBs5CKHP0kz-Qb4&e=>
<image006 jpg>

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To the extent Brown Rudnick is a "data controller" of the "personal data" (as each term is defined in the European General Data Protection Regulation) you have provided to us in this and other communications between us, please see our privacy statement and summary here which sets out details of the data controller, the personal data we have collected, the purposes for which we use it (including any legitimate interests on which we rely), the persons to whom we may transfer the data and how we intend to transfer it outside the European Economic Area.

****

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Mona Patel

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797
mpatel@cov.com

February 26, 2019

Via Email

Benjamin G. Chew, Esq.
Brown Rudnick LLP
601 Thirteenth Street, NW Suite 600
Washington, DC 20005

Re: World Anti-Doping Agency

Dear Mr. Chew:

We write in response to your letter dated February 8.

We have asked you to explain why Covington is not independent with respect to Ms. Scott's and Dr. Moses's allegations, and you have declined to do so. Instead, you continue to assert without explanation that, to the extent our firm has performed other work for WADA, conducting this investigation on WADA's behalf violates the ethical rules governing lawyers. Your most recent letter went so far as to assert that a ten-year relationship between a client and a law firm that covers multiple areas of law would, on its own, be "in direct contravention of the rules of professional conduct."

You know that this argument is nonsense, and we see no value in pretending otherwise; we are confident, for example, that your own firm regularly conducts investigations for existing clients.[1] You also know that the procedures you have demanded, such as transcribed cross-examination of witnesses by the complainants' lawyer, are well outside the norms of internal investigations or what any entity commissioning such an investigation would reasonably accept. All of this comes on the heels of several seemingly counterfactual assertions that you have declined to substantiate despite our several requests that you do so.

We encourage you to move past this sort of posturing, which we believe is doing Ms. Scott and Dr. Moses a great disservice and risks damaging their good reputations. We reiterate our two-month-old request to interview Ms. Scott and Dr. Moses regarding their claims. We

[1] The primary source that your letters cite, the ABA Model Code of Professional Responsibility, was replaced more than 35 years ago by the ABA Model Rules of Professional Conduct (and was never binding on anyone). The other rule you cite, D.C. Rule of Professional Conduct 2.1, does not address conflicts of interest; those are governed by Rule 1.7, which, as Comment 1 to the Rule states, "is intended to provide clear notice of circumstances that may constitute a conflict of interest." Your letters do not assert that any of those circumstances are implicated here.

would be happy to conduct those interviews in their hometowns or in Washington, D.C., with their counsel attending and participating in the interviews.

Sincerely,

Mona Patel

Mona Patel

cc: Jonathan Sperling

From: Chew, Benjamin G.
To: Patel, Mona
Cc: Rinne, Blair M.; Sperling, Jonathan
Subject: Re: Follow Up Response to Your Most Recent Letter
Date: Monday, March 25, 2019 3:25:06 PM
Attachments: image005.jpg
image006.jpg
image001.jpg

Dear Mona,

Without responding to the other averments in your letter, I would be available to meet with you on April 3.

Please advise.

Best regards,

Ben

Sent from my iPhone

On Mar 20, 2019, at 2:25 PM, Patel, Mona <mpatel@cov.com<mailto:mpatel@cov.com>> wrote:

External E-mail. Use caution accessing links or attachments.

Dear Ben,

Thank you for your emails of March 12 and March 18. I trust that you received my automated out-of-office message in response to your March 12 email, letting you know that I was traveling and would be delayed in responding to messages.

We are performing our investigation according to customary best practices. As you know, and as I indicated to you in my last letter, best practices do not include converting the investigating firm's witness interviews into depositions by the complainant's attorney. This is an investigation, not an adversarial proceeding.

The other requests contained in your email of March 18 similarly seek for you effectively to participate in the conduct of our investigation. As we have indicated in response to similar inquiries about our work from others, however, in light of the independent and confidential nature of our work we are unable to share with you the investigative steps that we are taking with respect to other parties.

That said, we would like to take account of any information or concerns that you believe we should be aware of in conducting our investigation. To that end, we would be happy to arrange an in-person meeting with you. Please let us know if you are available on April 1 or 3.

Sincerely,
Mona

Mona Patel

Covington & Burling LLP

One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com<mailto:mpatel@cov.com>
www.cov.com<http://www.cov.com>

<image001.jpg>

From: Chew, Benjamin G. <BChew@brownrudnick.com<mailto:BChew@brownrudnick.com>>
Sent: Monday, March 18, 2019 1:05 PM
To: Patel, Mona <mpatel@cov.com<mailto:mpatel@cov.com>>
Cc: Rinne, Blair M. <BRinne@brownrudnick.com<mailto:BRinne@brownrudnick.com>>
Subject: Follow Up Response to Your Most Recent Letter

Dear Mona,

We have yet to hear back from you as to our correspondence of last week (March 12). Please see below. As you know, one of our requests- No. 3- was that WADA provide us at least two weeks' notice prior to any interviews of Mr. Reedie and Mr. Niggli so that we could arrange to attend and participate.

In the interim, we have been informed that Mr. Reedie may have been examined some time shortly after I sent you the message below, which, if true, would be another disturbing fact.

Please:

1. let us know if, in fact, Mr. Reedie was interviewed, and, if so, on what date and by whom;

2. assuming the affirmative, please provide us a copy of the transcript of the interview;

3. if no transcript was made, please provide us all notes taken of the interview;

4. provide us a list of those whose interviews have been taken;

5. provide us a list of those interviews that have been scheduled or that you intend to schedule;

6. scan us the terms of reference (i.e., the protocol) for your investigation);

7. copy us on your correspondence with WADA to the extent not privileged; and

8. otherwise respond to our message of March 12.

Very truly yours,

Ben

<image005.jpg>

Benjamin G. Chew
Partner

Brown Rudnick LLP
601 Thirteenth Street NW Suite 600
Washington, DC 20005
T: 202-536-1785
F: 617-289-0717
bchew@brownrudnick.com<mailto:bchew@brownrudnick.com>
www.brownrudnick.com<http://www.brownrudnick.com/>

From: Chew, Benjamin G.
Sent: Tuesday, March 12, 2019 1:19 PM
To: 'mpatel@cov.com<mailto:mpatel@cov.com>'
Cc: Rinne, Blair M.
Subject: Response to Your Most Recent Letter

Dear Mona,

We still have serious misgivings about Covington's ability to act as a disinterested investigator when the wrongful conduct at issue involves WADA's chief executives, the very people charged with selecting and paying counsel and directing their activities. The fox watching the henhouse aspect of this is disturbing. Moreover, in light of WADA's history of bad faith, bullying and misleading, self-serving leaks, your reference to purported concern about damaging our clients' good reputations ironic.

With that said, we agree that further correspondence on the subject would not be productive.

Our clients remain open to the possibility of sitting for interviews if WADA agrees to certain reasonable conditions designed to increase the possibility of a fair investigation and recommend that we set up a call tomorrow, Thursday or Friday to discuss, inter alia:

1. In addition to attending the interviews of our clients, we ask that

a) you engage a court reporter to transcribe the proceedings; and

b) we be allowed the opportunity to re-direct as appropriate.

2. We be provided timely advance notice of other interviews, in case we would like to attend, and examine the witnesses.

3. In particular, we ask that you provide at least two weeks' advance notice of the interviews of Messrs. Reedie and Niggli, as we definitely will want to examine them.

Look forward to your letting us know what time will be best.

Best regards,

Ben

<image005.jpg>

Benjamin G. Chew
Partner

Brown Rudnick LLP
601 Thirteenth Street NW Suite 600
Washington, DC 20005
T: 202-536-1785
F: 617-289-0717
bchew@brownrudnick.com<mailto:bchew@brownrudnick.com>
www.brownrudnick.com<http://www.brownrudnick.com/>
<image006.jpg>

****

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COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Mona Patel

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797
mpatel@cov.com

VIA ELECTRONIC EMAIL

April 3, 2019

Benjamin G. Chew
Brown Rudnick LLP
601 Thirteenth St. NW Suite 600
Washington, D.C. 20005

Dear Mr. Chew:

Thank you for meeting with us earlier today.

As we indicated in our letter to you of January 22, 2019, we are unable to further consider the issues raised in your January 9, 2019 letter without knowing your clients' allegations, if any, beyond those expressed in their personal letters to WADA and their public statements. Again, we ask that you lay out your clients' allegations in full.

Whether Ms. Scott and Dr. Moses choose to participate in our investigation is, of course, up to them. Should they decline, that will have no bearing on our posture toward them, which—from our end at least—is entirely non-adversarial. We do believe, however, that their participation would benefit the investigation and—as we have communicated to you before— better serves their interest by ensuring that they are fully heard.

Sincerely,

Mona Patel /LRQ

Mona Patel

From: Patel, Mona
To: Chew, Benjamin G.
Cc: Sperling, Jonathan; Rinne, Blair M.; ACrawford@brownrudnick.com
Subject: RE: World Anti-Doping Agency
Date: Thursday, April 25, 2019 4:52:00 PM
Attachments: image001.jpg

Dear Ben,

I am writing to follow up on your email of April 11, in which you said you were dealing with travel issues and would be back in touch "within a few days" regarding your clients' response to our request to interview them. Can you provide us with an update regarding your clients' response? We expect that Covington will complete its investigation in this matter and present its report to the WADA Executive Committee on May 15. Accordingly, while we would still like to interview your clients, we will not be in a position to do so after next week. Please let us know by tomorrow (Friday, April 26) whether or not your clients will agree to meet with us next week.

Sincerely,
Mona

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com
www.cov.com

From: Chew, Benjamin G. <BChew@brownrudnick.com>
Sent: Thursday, April 11, 2019 12:23 PM
To: Patel, Mona <mpatel@cov.com>
Cc: Sperling, Jonathan <jsperling@cov.com>; Qadir, Lala <LQadir@cov.com>; Crawford, Andrew C. <ACrawford@brownrudnick.com>; Rinne, Blair M. <BRinne@brownrudnick.com>
Subject: Re: World Anti-Doping Agency

Dear Mona,

Out of respect I will resist the temptation to reply other than to say we will agree to disagree on that point.

Re our clients' response, we are dealing with travel issues, and will be in further touch within the next few days.

Sincerely,

Ben

Sent from my iPhone

On Apr 5, 2019, at 5:33 PM, Patel, Mona <mpatel@cov.com<mailto:mpatel@cov.com>> wrote:

External E-mail. Use caution accessing links or attachments.

Dear Ben,
Your statements Wednesday and your email below make it clear at this point that you choose not to understand what we said yesterday, which was only that we believed that the better choice for your clients was to participate. The reason for that is simple: that way our findings will include their voice. Your assertion that we meant anything other than that is unreasonable and just plain wrong.

As for the scope of our investigation, we refer you to WADA's press release of January 3, 2019. We look forward to hearing the response from your clients.

Sincerely,
Mona

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com<mailto:mpatel@cov.com>
www.cov.com<http://www.cov.com>

<image001.jpg>

From: Chew, Benjamin G. <BChew@brownrudnick.com<mailto:BChew@brownrudnick.com>>
Sent: Thursday, April 04, 2019 3:47 PM
To: Patel, Mona <mpatel@cov.com<mailto:mpatel@cov.com>>
Cc: Sperling, Jonathan <jsperling@cov.com<mailto:jsperling@cov.com>>; Qadir, Lala <LQadir@cov.com<mailto:LQadir@cov.com>>; Crawford, Andrew C. <ACrawford@brownrudnick.com<mailto:ACrawford@brownrudnick.com>>; Rinne, Blair M. <BRinne@brownrudnick.com<mailto:BRinne@brownrudnick.com>>
Subject: World Anti-Doping Agency

Dear Mona,

Thank you for hosting us yesterday. We remain disappointed by WADA's continuing lack of transparency concerning the investigation. Our clients, who have devoted enormous time and effort to assist WADA, an organization they have loyally served, continue to be disrespected. You ask them for more information yet provide none, which creates reasonable concern. However, we understood what your colleague said yesterday about the consequences of their not participating in the interviews, which hardly allay concerns about the objectivity of the process (we may have been born at night, but it wasn't last night), and are in the process of contacting our clients. We will endeavor to have an answer to you by Tuesday, May 1, which should meet the timeline you laid out yesterday for completion of your report.

In the meantime, we ask yet again that you please let us know in general terms the scope of the investigation.

Best regards,

Ben

<image005.jpg>

Benjamin G. Chew
Partner

Brown Rudnick LLP
601 Thirteenth Street NW Suite 600
Washington, DC 20005
T: 202-536-1785
F: 617-289-0717
bchew@brownrudnick.com<mailto:bchew@brownrudnick.com>
www.brownrudnick.com<http://www.brownrudnick.com/>

From: Patel, Mona [mailto:mpatel@cov.com]
Sent: Wednesday, April 03, 2019 10:17 PM
To: Chew, Benjamin G.
Cc: Sperling, Jonathan; Qadir, Lala
Subject: World Anti-Doping Agency

Dear Ben,

Please see the attached correspondence.

Sincerely,
Mona

Mona Patel

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com<mailto:mpatel@cov.com>
www.cov.com<http://www.cov.com>

<image006.jpg>

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****

brownrudnick

BENJAMIN G. CHEW
direct dial: 202-536-1785
bchew@brownrudnick.com

April 26, 2019

VIA E-MAIL (mpatel@cov.com)

Mona Patel, Esq.
COVINGTON & BURLING LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956

RE: Response to Investigation of Allegations of Bullying and Harassment at World Anti-Doping Agency ("WADA")

Dear Ms. Patel:

As you know, we have the honor of representing Beckie Scott, three-time Olympian and gold-medalist in cross country skiing, and Dr. Edwin C. Moses, two-time gold medalist in the 400 mm hurdles. Both have loyally served WADA for several years, at considerable personal sacrifice and time away from their families. They had hoped and expected WADA would undertake a robust independent investigation of their serious allegations.

Unfortunately, WADA disappointed those expectations. Based on WADA's unwarranted failure to a) provide *any transparency whatsoever*; b) to adopt best practices; or c) even consider their proposals to ensure an authentic investigation, Dr. Moses and Ms. Scott decline to participate in what they deem a fatally flawed process, the outcome of which appears to have been determined at inception.

Antecedents

WADA's refusal to enact a fair process is especially egregious in light of the first abortive "investigation" it commissioned, dated November 7, 2018, which WADA was later forced to disavow. In reaching its pre-determined conclusions, WADA's original "investigator" did not even bother to interview Ms. Scott. Having orchestrated the whitewash, WADA should have bent over backwards to do the right thing this time around. Ms. Scott was willing to explain what happened to her, and to identify leads, and to point WADA to percipient witnesses.

To that end, we sent your client a detailed letter dated November 12, 2018, (the "November 12 Letter"), setting forth how the conduct at issue violated WADA's policy on harassment and intimidation. The November 12 Letter also contained a request for a truly independent investigation (as opposed to the prior whitewash) offered to join in the selection of a new impartial professional to perform the investigation, and enumerated certain best practices for the investigation, including, *inter alia*:

- Any interviews as part of the investigation should be transcribed by a court reporter;
- The interviewees should be allowed to review and correct any statements attributed to them; and

- Counsel for Dr. Moses and Ms. Scott should have an opportunity to ask questions on redirect;

- Counsel for Dr. Moses and Ms. Scott should be present for any interview of Mr. Craig Reedie and Mr. Olivier Niggli and be allowed the opportunity to question each of them at their respective interviews;

- The investigation should include notice and a procedure for additional witnesses or victims to come forward; and

- The report from the investigation must cite specific evidence and sources for all factual and legal conclusions such that any reader may be able to review the factual record and evaluate the ultimate conclusions.

See **Exhibit A**, November 12 Letter; *see also* **Exhibit B**, Letter dated February 8, 2019. WADA made no material response.

Accordingly, via our deficiency letter dated December 14, 2018 (the "December 14 Letter"), we noted WADA's inadequate response to the November 12 Letter and advised of our representation of Dr. Moses, an American Olympic hero who had experienced and witnessed unlawful bullying. *See* **Exhibit C**, December 14 Letter. We again requested an independent investigation, reiterating the critical elements and offering to assist in the selection of independent counsel.

Without making *any* response or acknowledgement of our clients' requests, WADA engaged your firm, despite what we understand is a longstanding attorney-client relationship with WADA. We then raised serious questions, concerning potential conflict of interest, which might compromise the integrity of any results. *See* **Exhibit D**, Letter dated January 9, 2019. You dismissed them out of hand, refusing to elaborate on the extent and length of your firm's representation of some of the very people who were to be subjects of any real investigation. We later learned that you had already interviewed Mr. Reedie, contrary to our clients' explicit requests. This also begged the obvious question: how could an impartial investigator interview potential subjects and witnesses before speaking with the victims?

In summary, the following concerns have fallen on deaf ears:

- The conflict of interest using Covington & Burling LLP ("Covington") given their long-standing relationship with WADA on privacy protection in addition to Covington currently representing WADA in a lawsuit from a Russian sport agent;

- The request for the official letter of engagement from WADA to Covington;

- The request for Terms of Reference and scope of investigation including reporting requirements and public disclosure protocols; and

- The concerns that Covington (WADA) has proceeded with the investigation without, in the first instance, hearing from our clients to understand the scope complaint.

In a last-ditch effort to salvage the process, I recommended a confidential meeting among counsel. Specifically, to encourage frank discussion, I asked whether you would agree that our meeting be off the record. Despite your agreeing in writing to our conditions for confidentiality, you brought a reporter to transcribe our discussion which violated our agreement. You made clear that WADA would

not accede to any of our clients' requests for transparency or fair process. One of your colleagues added that WADA would be issuing its report with or without interviews from Dr. Moses and Ms. Scott, and that it would be doing so by the middle of next month. This effectively presented our clients with a Catch 22: participate in a flawed process and be victim shamed or refuse to and endure the same fate. Faced with this Hobson's choice, our clients decline.

Because of WADA's refusal to provide transparency, our clients respectfully decline to appear for an interview.

Very truly yours,

Benjamin G. Chew

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Mona Patel

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797
mpatel@cov.com

May 3, 2019

Benjamin G. Chew
Brown Rudnick LLP
601 Thirteenth Street, NW
Suite 600
Washington, DC 20005

Re: World Anti-Doping Agency

Dear Ben:

I write in response to your letter of April 26. We strongly disagree with your letter's narrative of our dealings before our in-person meeting, but our position is already amply documented in our prior correspondence and we will not repeat it here.

I write only to correct the multiple misrepresentations concerning our meeting that are contained in the penultimate paragraph of your letter. First, you did not recommend a meeting among counsel (whether "[i]n a last-ditch effort to salvage the process" or otherwise). As reflected in my email to you of March 20, Covington requested the meeting, as part of our ongoing efforts over a period of months to interview your clients. Second, as reflected in my email to you from the morning of April 3, we did not agree in writing to any conditions for confidentiality, other than that the discussion would be for settlement purposes only. We did discuss at the meeting your request that it be "off the record," which you stated would not preclude either of us from sharing the details of the discussion with our respective clients. Third, we did not bring a reporter to transcribe our discussion; our associate attending the meeting took notes, just as yours did.

Finally, as you well know, nothing about that note-taking—by your colleague or by ours—violated either our agreement that the discussion was for settlement purposes only, or your "off the record" request. By contrast, you providing your April 26 letter and its purported description of our meeting to the Associated Press—which quoted from the letter and described other features of the letter that were not contained in your press release—certainly violated those "off the record" expectations.

Sincerely,

Mona Patel

Mona Patel

cc: Jonathan Sperling

APPENDIX 5

Supplement Regarding Allegations and Demands by Counsel to Ms. Scott and Dr. Moses

While Mr. Chew, counsel to Ms. Scott and Dr. Moses, did not allege any instances of bullying or harassment by WADA staff, he did offer three other complaints about WADA management in the course of our correspondence. Each of them was illogical on its face, however, and when asked to explain or substantiate them, Mr. Chew simply moved on without responding. In our view, his failure to explain his claims or respond to simple requests for additional information, along with his other conduct described in the report, raised significant questions regarding his credibility.

"Retaliation"

In response to Ms. Scott's October 8 letter, Messrs. Reedie and Mr. Niggli wrote to her and offered to meet in person before the next Executive Committee meeting in order to address her concerns. All three ultimately agreed to meet on the morning of November 13 in Baku.

Messrs. Reedie and Mr. Niggli brought with them to the meeting WADA's Chief Administrative Officer, Angela Iannantuono. Ms. Scott was accompanied by two members of the WADA Athlete Committee, Chiel Warners and Ben Sanford, as well as Mr. Chew. After Mr. Chew introduced himself, Mr. Reedie, Mr. Niggli, and Ms. Iannantuono declined to participate without having their own counsel present, and left.

In subsequent correspondence, Mr. Chew claimed that Ms. Iannantuono's presence at this meeting "suggested unlawful retaliation," which he later explained meant that WADA staff came to the meeting intending to "fire" Ms. Scott.

This assertion was nonsensical. Ms. Scott is not an employee of WADA. Pursuant to Article 11 of the Constitutive Instrument of Foundation of WADA, she is appointed to her position as Chair of the Athlete Committee by the Executive Committee. Neither Mr. Reedie, Mr. Niggli, nor Ms. Iannantuono have the ability to remove her from her position.

"Breach of Confidentiality" and "Misleading Press Statements"

Following the November 14, 2018 Executive Committee meeting, WADA issued a short press statement describing the results of the Relais investigation and announcing that the Executive Committee would pursue a further investigation of Ms. Scott's claims.[1]

Mr. Chew subsequently argued that this statement was "egregious and misleading," and that it "violated Section 6 of WADA's own harassment policy, which

[1] https://www.wada-ama.org/en/media/news/2018-11/wada-foundation-board-approves-wide-ranging-governance-reform

requires that 'in all cases, any disclosure or formal complaint will be treated with confidentiality by all involved parties to prevent the situation from deteriorating.'"

This confidentiality argument was frivolous. Leaving aside that Ms. Scott is not subject to WADA's employee policies, Ms. Scott did not make a confidential complaint. She made her claim of bullying in a video interview with the BBC, broadcast worldwide and arranged for that purpose. Nor could we identify any way in which WADA's short, factual description of the decision reached by the Executive Committee was misleading.

On February 12, 2019, we therefore wrote to Mr. Chew that

> it would be useful for us to understand in what respects you believe WADA's press release was 'egregious and misleading,' and what Ms. Scott's expectations of confidentiality were following her interview with the BBC. To be clear, we are not challenging your characterizations in the slightest; we simply would like to know the facts on which they are based.

Mr. Chew never responded.

Ironically, while Mr. Chew demanded that his correspondence on behalf of his clients be kept confidential, his demand to cross-examine witnesses and have interviews transcribed, if adopted, would have violated the confidentiality interests of everyone else involved in this matter. In all events, Mr. Chew himself proceeded to share at least portions of this correspondence with the press after Covington informed him that we would be concluding our investigation.[2]

"Attacks in the Media"

On January 9, 2019, Mr. Chew wrote that "if WADA continues to attack and attempt to discredit our clients in the media, we will be forced to respond aggressively and in kind." Because we were not aware of any statements by WADA criticizing Ms. Scott or Dr. Moses, we wrote to Mr. Chew the next day as follows:

> One thing that we agree should be addressed immediately, however, is your assertion that WADA has "attack[ed] and attempt[ed] to discredit [y]our clients in the media." There is no place for such attacks, but we also are unaware of any that have occurred. We would be grateful if you could point us to the statements to which you're referring as soon as possible.

---

[2] *See* Eddie Pells, WADA's Scott Won't Partake in Bullying Investigation, San Francisco Chronicle (Apr. 26, 2019), https://www.sfchronicle.com/sports/article/WADA-s-Scott-won-t-partake-in-bullying-13797431.php (quoting from letter sent by Chew to Covington).

As with his breach-of-confidentiality allegation, Mr. Chew never responded.

APPENDIX 6

Via Email To: craig.reedie@wada-ama.org , olivier.niggli@wada-ama.org

November 12, 2018

Dr. Edwin C. Moses
Chairman, WADA Education Committee
ecmoses@mindspring.com

Sent via Email

Sir Craig Reedie
President

Mr. Olivier Niggli
Director General

World Anti-Doping Agency
Stock Exchange Tower
800 Place Victoria, Suite 1700
Montreal, QC H4Z 1B7

Re: Request for appointment of independent investigation regarding allegations of bullying and culture of intimidation at WADA

Dear Sir Craig, Dear Mr. Niggli:

As I explained when I came out in public support of an investigation into the conduct experienced by Beckie Scott, I too have experienced the marginalization, lack of respect, and denigrating conduct which Beckie described. This conduct, while very real and a threat to full debate and the free exchange of ideas, is typically not captured in the meeting minutes and cannot be understood merely from transcripts of the official meetings themselves. Full understanding can only be achieved by broadening the scope of the investigation beyond just what was said on the record in a single meeting.

The suppression of debate and the athlete voice does not appear to be limited to public meetings, but seems to extend to other settings. It is important therefore that the inquiry extend to whether WADA management has fostered and facilitated an open environment where the best interests of clean sport and the wellbeing of athletes may be freely discussed, with all options on the table, and only the interests of clean sport determining the outcome of the decision-making process.

For years WADA Athlete Commission Chair Beckie Scott has been a passionate, articulate, and graceful leader within the anti-doping movement and by her conduct and through her character Beckie has epitomized the best that both sport and anti-doping have to offer.

Yet, on October 12, 2018, the BBC reported that Beckie experienced bullying, denigrating and belittling conduct from members of the WADA Executive Committee and senior leadership in response to the positions she had taken as a former member of the Compliance Review Committee and as Chair of the WADA Athlete Commission. Such is the regard and respect for Ms. Scott within the global sport and

athlete communities that Beckie's revelations led to immediate calls for an independent investigation of her treatment and of the broader culture at WADA. In short, the world realized that if a person of this unchallengeable integrity and character could feel bullied, belittled, disrespected and marginalized, that something is potentially seriously amiss with the way business at WADA is being conducted.

The calls for an immediate, independent and thorough investigation into the culture of WADA and the bullying, have come from around the globe. For instance, I understand that on October 24, WADA received a joint letter signed by the Canadian Centre for Ethics in Sport and the President of Athletes Canada on behalf of its 41 member sport organizations requesting an independent investigation.

The 44th meeting of the Ad hoc European Committee for the World Anti-Doping Agency (CAHAMA), was held in Strasbourg, France on 29 and 30 October 2018. As you know, CAHAMA represents the governments of Europe in their common commitment to the fight against doping in sport and its representatives agreed an independent and broad ranging investigation was necessary. According to their report, "CAHAMA is concerned by the recent reports on misconducts *during various WADA meetings* and encourages WADA not to use the Intelligence & Investigation Department to investigate internal cases but instead to consider commissioning an external independent thorough review on the matter."

On October 29 the leaders of 18 National Anti-Doping Agencies holding an emergency summit in Paris called for an "immediate, thorough, independent and transparent investigation." The anti-doping agencies making this request to WADA, included:

1. AFLD (Agence Française de lutte contre le dopage)
2. Anti Doping Danmark
3. Anti-Doping Norway
4. Anti-Doping Singapore
5. ASADA (Australian Sports Anti-Doping Authority)
6. CCES (Canadian Centre for Ethics in Sport)
7. Doping Autoriteit
8. Drug Free Sport New Zealand
9. FINCIS (Finnish Center for Integrity in Sports)
10. JADA (Japan Anti-Doping Agency)
11. NADA Austria
12. NADA Germany
13. POLADA (Poland Anti-Doping Agency)
14. Sport Ireland
15. Swedish Sport Confederation
16. Swiss Anti-Doping
17. UKAD (UK Anti-Doping)
18. USADA (US Anti-Doping Agency)

A few days later, on October 31, Sport Ministers from the UK and Ireland as well as other government officials and athletes from a dozen countries joined for a special anti-doping summit at the White House in Washington, D.C., and issued a "call for a robust independent inquiry to examine WADA's culture, leadership and operations following the recent allegations of bullying and acts of intimidation at WADA."

The calls for a broad, robust, thorough and independent investigation into allegations of bullying and the internal culture of WADA were immediate and forceful, and came from dozens of governments and other WADA stakeholders. Yet, I understand that in response WADA has not commissioned a thorough and independent review as requested, but instead arranged for a consultant or law firm to conduct a narrow review of only recordings and minutes from the most recent WADA Ex Co meeting, and that conclusions from this review are planned to be presented at the upcoming WADA Ex Co meeting.

I write to you because of my deep concern that this narrow response to widespread calls for an independent investigation into bullying and the culture at WADA is insufficient on numerous levels.

First, the selection of a law firm or consultant to render an opinion on a short time frame is not the sort of robust and independent review demanded by WADA's stakeholders.

Second, the process by which any such review has been conducted has not been transparent, calling into question its legitimacy.

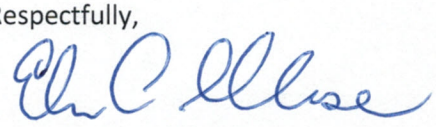
Third, and perhaps most important, the scope of review appears to have been dramatically and artificially truncated from what has been requested by WADA's stakeholders.

For instance, the background and context of comments made outside the WADA Ex Co meeting and during breaks within that meeting were apparently not reviewed. Obviously, without this context a full understanding of communications made within the meeting is not possible. Moreover, I am aware of no interviews of individuals within the meeting that have been conducted. Finally, as noted above, calls for an investigation into WADA's culture have not been limited to the singular event of the September 20, 2018, WADA Ex Co meeting. A more thorough review of the internal culture at WADA is needed.

As the Chairman of WADA's Education Committee it is my privilege to travel the globe, speaking with athletes about clean sport and working to educate the next generation of athletes on competing clean. My travels have allowed me to witness firsthand the disappointing widespread disillusionment and discouragement that athletes are experiencing as a result of what appears to be indifference to, and disrespect for, their views at the highest levels of WADA's leadership. WADA can only lead athletes if athletes are convinced WADA is sensitive to their concerns and interests and is willing to take athletes into consideration when decisions are made. For this reason as well, I believe it is essential that a robust independent investigation be conducted into whether athletes are bullied and/or whether their views and voice are treated with sufficient respect within WADA.

For these reasons, President Reedie and Director General Niggli, I respectfully request that WADA fund a fully independent, robust and thorough investigation into: the allegations of bullying, denigrating and demeaning conduct by WADA Ex Co members and other WADA officials and staff and into the culture of WADA and whether WADA management and officials foster an open environment where ideas and issues may be freely shared, explored and deliberated without fear of reprisal.

Respectfully,



Edwin Moses
Education Commission Chairman

cc: Public Authorities

APPENDIX 7

From:	Sperling, Jonathan
To:	Chiel Warners
Cc:	Patel, Mona
Subject:	RE: WADA Investigation: Request for Interview
Date:	Thursday, May 9, 2019 4:33:04 PM
Attachments:	image001.png

Chiel, we will be happy to include the complete email chain below with our report.

Sincerely,

Jonathan M. Sperling

Covington & Burling LLP
The New York Times Building, 620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1153 | jsperling@cov.com
www.cov.com

From: Chiel Warners <chielwarners@gmail.com>
Sent: Monday, May 06, 2019 11:06 AM
To: Sperling, Jonathan <jsperling@cov.com>
Subject: Re: WADA Investigation: Request for Interview

Chiel Warners
28, Rue de la Liberation

L-7263, HELMSANGE

LUXEMBOURG
chielwarners@gmail.com
+31610380236

Luxembourg May 5th 2019

Ref: WADA investigation

Dear Mr. Sperling, Jonathan,

After having reviewed your answers to the questions I posed prior to engaging in the requested interview, I have come the conclusion below.

Before elaborating on this, let me re-emphasize the fact that I have not reached this conclusion lightly. Finding the truth about what happened over a prolonged period of time to two well respected people is important to me. From my perspective what I have seen in the meeting

attended in the Seychelles last year, does not constitute a professionally conducted meeting but rather an unguided gathering where normal standards of conduct and values and professional behavior were at times hard to discern.
I am therefor hopeful that the learnings from what happened, and in particular the way this was handled and is still being handled by WADA, will be a learning experience and help make it a better organization.

In my email of Wednesday, April 24, 2019 8:44 AM, I posed a number of questions that seem to me fair in preparation to the interview as described by you on Saturday, April 13, 2019 5:50 AM. Fair for the following reasons:

- In a normal proceeding both sides (plaintiff and defendant) together would agree on a process and party executing that process, that are to both of them sufficiently capable and free of conflicts of interest. From what I understand this has not been the case.

- Indeed there is an inherent conflict of interest of your company providing this service to WADA. Covington is an external legal adviser to WADA - "Advising the World Anti-Doping Agency (WADA) with respect to its compliance with European data privacy laws in connection with its global administration and management of athlete doping procedures." https://www.cov.com/en/professionals/c/daniel-cooper. Covington was also advising WADA on " The International Standard for the Protection of Privacy and Personal Information (ISPPPI), which is the new version adopted by WADA's ExCo in May 2018" https://www.wada-ama.org/sites/default/files/20190122_progress_of_the_anti-doping_system.pdf. And there are more examples of this when conducting a simple google search.

Considering the above an truly independent, open and transparent investigation is not at all possible. That in itself would not necessarily have been a reason not to cooperate if I could trust the process. For me to trust that the input I give is used the way I intended it to be used and the outcomes of the investigation reflect what happened equally from all perspectives. To that end it is crucial to:

- Know the rules around the investigation, its scope and the way the results will be disseminated etc.

- Know what will be asked of me. Most of the facts that are being investigated have taken place over 7 months or more ago and refreshing the mind is therefore needed to provide meaningful answers.

Despite repeated requests I have not received any substantial insight in the workings of the investigation other than the reference to a brief press release announcing the fact WADA commissioned your company with the investigation. This lacking of rules in combination with the conflict of interest and way the investigation was established is highly unusual and does not give confidence in the objectivity and robustness of the results. I therefor respectfully decline the offer to be interviewed.

In the interests of transparency, I expect this letter to be included in full in the outcomes of the

investigation. If this cannot be guaranteed, I reserve the right to make this letter public at any time if I feel that my position in it is incorrectly reproduced.

With kind regards, Chiel Warners

Op ma 29 apr. 2019 om 18:10 schreef Sperling, Jonathan <jsperling@cov.com>:

> Chiel, given that these allegations were ultimately accompanied by threats of legal action, the investigation was charged to our law firm, not to a committee, and the nature of that engagement is different than the circumstances that I think you're referring to. In all events, the mandate is exactly as set forth in the press release: to investigate allegations of bullying and harassment within WADA. In conducting that investigation, we are working independently and without the oversight of anyone at WADA in determining what questions to ask and what leads to follow.
>
> Our findings will be presented in a report to the WADA Executive Committee, and while it is a decision for the ExCo to make, we expect that the material findings will be made public.
>
> With respect to questions, we certainly understand your instinct in wanting to prepare in advance. The goal of a truly independent investigation, however, is to get at the truth by eliciting the most candid, unrehearsed recollections possible from all parties. Providing in advance the questions that we would ask, by contrast, allows witnesses to prepare and coordinate responses, which impedes the truth-finding process. For that reason, we generally do not disclose in advance the questions that we ask in investigations, and we have not done so for any of the many witnesses that we have interviewed in this investigation.
>
> I can tell you that, on a non-exhaustive basis, we would seek to explore your observations from the September 20 ExCo meeting; whether you are aware of other instances that you believe amount to bullying or harassment within WADA; and any other knowledge you have of the circumstances surrounding the allegations that led to our investigation. If there are particular subjects on which you are unwilling to answer questions, you are of course welcome to identify those to us in advance, or to simply decline to answer them at the time. Your participation is

entirely voluntarily and we cannot compel you to do anything that you do not wish to do.

Please let us know if we can schedule an interview for this week. If you are not willing to proceed with an interview, we regret it but appreciate your taking the time to engage with us, especially while on holiday.

From: Chiel Warners <chielwarners@gmail.com>
Sent: Friday, April 26, 2019 11:14 AM
To: Sperling, Jonathan <jsperling@cov.com>
Cc: Patel, Mona <mpatel@cov.com>
Subject: Re: WADA Investigation: Request for Interview

Dear Jonathan,

Thank you for the quick reply.

To further elaborate, what I mean is basically the details of the mandate you received from WADA to conduct this investigation. It is normal that in the assignment given the exact scope of the investigation is mentioned, what format of the result will be, what will be done with the result etc. Furthermore what rules you have agreed to apply while conducting the investigation.

As to the question, you must have an idea what you would like to ask me and I feel it is not more than reasonable, especially considering the time past, that I would like to be able to refresh my memories on this before answering the questions.

Hope to hear back, Chiel

Op 25 apr. 2019 om 22:38 heeft Sperling, Jonathan <jsperling@cov.com> het volgende geschreven:

> Chiel, thanks for responding while you are on holiday.
>
> Your first three questions are answered by WADA's press release of 3 January, 2019, which is available at https://www.wada-ama.org/en/media/news/2019-01/wada-engages-covington-burling-llp-to-further-investigate-allegations-of-improper. Your fourth question was not entirely clear, but to the extent you are inquiring about how to ensure that we do not attribute to you something that you did not say, we can agree that we will not attribute any comments to you without confirming them with you in writing.

Due to the nature of this sort of investigation, however, we are not able to provide in advance the questions we would ask, although all of them would relate to the matters described in the press release linked above.

Please let us know if we will be able to speak next week. Regards.

From: Chiel Warners <chielwarners@gmail.com>
Sent: Wednesday, April 24, 2019 8:44 AM
To: Sperling, Jonathan <jsperling@cov.com>
Cc: Patel, Mona <mpatel@cov.com>
Subject: RE: WADA Investigation: Request for Interview

Dear Jonathan,

Sorry for not getting back to you sooner, it has been a busy period with travelling, conferences etc and I am currently enjoying my holiday.

I have had time to check with my lawyer (on a anonymous basis of course) what I should do in preparation for the interview. We both had the same ideas. Therefor for me to prepare for the interview, please send me the following no later than 72 hours before the interview is to take place. Since I can imagine others have asked for this, this should not be hard to deliver.

- Who ordered the investigation? Please send me a copy of this
- What research questions have been drawn up? What is the investigation exactly hoping to answer/solve? What is the end product to be delivered? Please send me a copy of this.
- What authorization, what mandate, did you receive and what is the evidence for this? Please send me the terms
- What will be done with input, specifically mine? How do I find this back in the to make sure that this is truly my reflection of what has happened? (this especially considering English is not my first language)
- I would like to receive all the questions you want to ask in advance.

Hope the above is clear, if not do not hesitate to ask for clarification. Hope to hear from you.

Best Chiel Warners

From: Sperling, Jonathan
Sent: Tuesday, April 23, 2019 4:59 PM
To: Chiel Warners
Cc: Patel, Mona
Subject: RE: WADA Investigation: Request for Interview

Chiel, I'm just following up on the below. We would need to conduct the interview by next week -- when you have a chance, please let us

know if the times we proposed would work, of alternatively if there's another time next week that would be better for you.

Thanks.

From: Sperling, Jonathan <jsperling@cov.com>
Sent: Monday, April 15, 2019 5:22 PM
To: Chiel Warners <chielwarners@gmail.com>
Cc: Patel, Mona <mpatel@cov.com>
Subject: RE: WADA Investigation: Request for Interview

Thanks for your response. We're available any time after 3 pm CEDT on April 29 or 30. Please let us know if we can lock something in for one of those days.

Regards.

From: Chiel Warners <chielwarners@gmail.com>
Sent: Saturday, April 13, 2019 5:50 AM
To: Sperling, Jonathan <jsperling@cov.com>
Cc: Patel, Mona <mpatel@cov.com>
Subject: Re: WADA Investigation: Request for Interview

Dear Jonathan,

Thank you for your email.

In principle I am OK with being interviewed. However I will not be available until after April 28th. Can you please send me some options for after that date?

Thank you, best Chiel

Op 9 apr. 2019 om 17:54 heeft Sperling, Jonathan <jsperling@cov.com> het volgende geschreven:

> Confidential
>
> Dear Mr. Warners:
>
> As you likely know, the World Anti-Doping Agency has retained our law firm to conduct an investigation into recent allegations of harassment and bullying.
>
> As part of that investigation, we are conducting interviews of the attendees at the September 20, 2018 meeting of the

WADA Executive Committee, and therefore would like schedule a time to speak with you in the near future. We can conduct the interview by videoconference or telephonically.

We would be grateful if you could let us know your availability as soon as possible, and in all events no later than April 16. If you would prefer to speak with us regarding scheduling, please contact Mona Patel at +1 202 662 5797 or Jonathan Sperling at +1 212 841 1153. In addition, if you have questions about the investigation, we would be happy to discuss those with you in advance.

Pursuant to your Confidentiality Agreement, as well as the Athlete Committee Terms of Reference, which incorporate WADA's Media Policy, please hold this email and related communications in confidence.

Thank you,

Mona Patel
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5797 | mpatel@cov.com

Jonathan Sperling
Covington & Burling LLP
The New York Times Building, 620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1153 | jsperling@cov.com

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