

CCES Submission to 2027 Code Review Third Consultation Phase

In response to the World Anti-Doping Agency's (WADA) request for comments as part of Phase 3 of the 2027 World Anti-Doping Code consultation process, the Canadian Centre for Ethics in Sport (CCES) submitted the following comments.

Article 4.3.1.1 and 4.3.1.2

The CCES feels the scientific criteria outlined in the 2021 Code should be maintained. The use of WADA's determination is already covered at the outset by WADA's sole discretion. The inclusion of "Medical or other scientific evidence, pharmacological effect or experience" is beneficial for transparency.

Article 5.6.1

The CCES would reiterate our previous comment that WADA could consider clarifying whether the conditions for granting the exemption have to be agreed to between WADA and the relevant anti-doping organization (ADO)s or if WADA will make the ultimate decision.

Article 6.2

The CCES reiterates that to address apparent inconsistencies between the Code and data protection laws, the 2027 Code should prohibit the use of Samples and Doping Control information for purposes unrelated to anti-doping activities (i.e., for purposes unrelated to Doping Control, WADA's Monitoring Program, quality assurance, and research), similar to the restrictions placed on the use of athlete whereabouts information in Article 5.5. This comment also applies to Article 23.2.2.

Article 7.1.6

The CCES finds this change overly complicated. The organization that initiated the test should be responsible for the pursuit of an individual whereabouts failure. For a violation, the organization to which the athlete files their whereabouts should be responsible for pursuing the violation.

Article 7.8

In principle, the CCES has no issues with the new article, but additional details must be provided about who is the Independent Review Expert, the process by which they will be identified, if they hold this role for a specified term and/or any term limits. A lack of transparency regarding this individual could create the perception that they are not, in fact, independent. Prior to inclusion in the Code, the CCES would suggest that a limited scope review of this Article takes place once the details are confirmed.

Article 10.2

This article references Appendix 2 and a chart illustrating the application of 10.2; however, this chart does not appear to be included in the document. Should this chart not be included in the Code, the CCES would suggest it is included in the ISRM Guidelines.

Article 10.2.1.3

The CCES feels that this article might disproportionately disadvantage athletes that have fewer financial resources.

Article 10.2.3

The CCES would recommend that for a first violation, the starting sanction be a one-month period of ineligibility. The CCES agrees that the starting sanction for a second violation is a four-month period of ineligibility.

Article 10.2.4

Alternatively, to our comment to 10.2.3, the CCES would also support, in such situations, the finding of a violation, with no associated period of ineligibility. If it is accepted that the athlete was properly using the prohibited substance for medical reasons, and a full TUE is subsequently granted prospectively (meaning the athlete's error was purely administrative in not filing for a TUE in advance), the fact that a violation has been determined seems a sufficient punishment (given the heightened consequences that would come from any additional violation) and should disincentivize athletes from deliberately delaying the filing of an application.

Article 10.3.2

The CCES feels the terms "heightened alert" and "considered equally" are contradictory. Consider whether one of these references should be removed.

Article 10.6.1.2

The CCES welcomes the broadened definition, and would request clarity on the required threshold that must be met for an ADO to agree with an athlete that the prohibited substance came from the contaminated route they identified. Such additional clarity could be outlined in the Guidelines.

Article 10.7.2

The CCES would request WADA considers a flat 15% suspension of the period of Ineligibility rather than "no more than 15%." A flat 15% provides consistent application and in some cases less than 15% is likely to be an immaterial reduction for an athlete and may not incentivize them to provide such information.

Article 10.9.3.4

The CCES is uncertain that the scenario described in the article should result in a violation and consequences where it can be proven that presence of the prohibited substance is the residual of the

ingestion or use that resulted in the first anti-doping rule violation, as long as there is no continued performance-enhancing effect.

Article 10.14.1

Specific to the applicability of the rules to employees, the CCES would suggest consideration be given to any employment law ramifications that may result during a period of ineligibility.

The CCES would also suggest removing *other Person* from the final paragraph of this article as they are not subject to testing.

Comment to Article 13.2.2

The CCES would suggest that for Therapeutic Use Exemption (TUE) appeals, the recommendation is changed to include a physician as an expert witness and not as part of the appeal panel.

Articles 14.3.2 & 14.3.4

The CCES maintains its position that public disclosure is viewed as a punishment, and the identity of an athlete found to have No Fault or Negligence should remain confidential. The CCES acknowledges that this poses a challenge to a fair, consistent application of the Code, as jurisprudence of similar cases would not be available. The CCES would support consideration for the disclosure of thoroughly redacted file outcome summaries to create meaningful jurisprudence. Similar redacted file outcome summaries could also be considered for minors and protected persons to ensure consistent application of the Code. Another potential consideration could be the use of ADAMS as a repository for ADOs to access decisions and case summaries.

Article 23.2.2

The CCES reiterates that to address apparent inconsistencies between the Code and data protection laws, the 2027 Code should prohibit the use of Samples and Doping Control information for purposes unrelated to anti-doping activities (i.e., for purposes unrelated to Doping Control, WADA's Monitoring Program, Quality Assurance, and Research), similar to the restrictions placed on the use of athlete whereabouts information in Article 5.5. This comment also applies to Article 6.2

Definitions - International-Level Athlete

While the CCES appreciates that TUE recognition could reduce the burden caused by international federations (IF) having differing definitions, the CCES reiterates that ADAMS is uniquely positioned to centralize this information and assist ADOs. Particularly for IFs that are granted an exemption from TUE recognition, the requirement to publish their definition in ADAMS would be helpful.