

Submission to the Standing Committee of the Status of Women With Respect to the Participation of Women and Girls in Sport

From: Dr. Leslie A. Howe, Professor of Philosophy, University of Saskatchewan

I offer the Committee the following submission as a Canadian woman who has long been involved in sport as a competitive amateur and masters athlete, in rowing, hockey, and soccer, both women's and mixed. I am also a professor of philosophy at the University of Saskatchewan and have done extensive work in the philosophy of sport and with respect to feminism and sexuality. I have also recently collaborated with an internationally respected researcher to produce a series of reports for Sport Canada on women's high-performance women's voices in sport in Canada.¹ My submission is largely drawn from that work.

The Committee is concerned with the safety of women in Canadian sport. If Canada is to shake its growing reputation as a country that does not learn from its own sporting scandals it must ensure that women and girls who dare to speak up about unfairness and injustice in their sporting environments can be heard. Being heard, or even permitted to speak, is precisely what has been denied to women in sport and, if anything, the pressure to comply with fundamentally abusive structures has only increased in recent years. It has become clear that speaking up is actively discouraged and a sure way for an athlete to become shut out of their sport.

For example, recent efforts to enhance inclusion have had the opposite effect for many women and girls, who may be required by their sport organisations to comply with arrangements that constitute safe-guarding risks, such as having to accept sharing accommodation and changing rooms with opposite sex teammates or competitors, often without being informed, and having no option to refuse. To add to the injury to female participants, we have testimony that they are directly discouraged from expressing their views on this and fear repercussions in terms of their ability to compete if they do. Further, that their physical performances are compared by coaches unfavourably with transwomen athletes, and reference to the biological sex of these athletes is considered transphobic. This is a grave and unjustifiable infringement of those women's explicit Charter protections.

Appropriate age and sex classifications in competition, whether at elite or community level, are critical to keeping girls and women in sport. Physiologically informed sporting classifications are essential to maintaining participation levels in sport, and ultimately, whether Canada will continue to be able to field elite level women's teams. The current science in this area provides ample and emphatic evidence that sex-based physiological differences post-puberty are effectively insurmountable, even after many years.

¹Cathy Devine and Leslie A. Howe. "Canadian High-Performance Female Athletes' Voices: Transgender Inclusion in Elite and Olympic Sport Guidelines." *Sport Canada*. August 2022. Cathy Devine and Leslie A. Howe. "Policy Review: International and National Transgender Inclusion Strategies". *Sport Canada*. August 2022.

Despite the frequent claim that the numbers are minute and that no male bodied competitors are taking places from women or young girls, we are increasingly finding women excluded (or indeed self-excluding) from their own competitions and thus denied the advancement for which they have worked, usually for many years. Inclusion is a value that we all share but the approach that many Canadian organisations currently follow will have diminishing returns for women and girls in sport, and for Canada internationally as global federations move to more careful policies respecting fairness and safety than our own.

It is important to note the possible rights infringements that may accrue from institutional failure to address these concerns, most notably in relation to safe sport, respect, dignity, and privacy for female athletes. Inclusion policies which permit athletes to self-identify as the opposite sex by way of gender identity commonly require no disclosure of transgender status. This has potential follow-on effects for safe sport, respect, dignity, and privacy rights of female athletes. For example, current CCES guidelines state, '[n]o information should be given out concerning someone's gender identity or stage of transition status, without the individual's express consent' and '[n]or should there be any requirement for disclosure of trans status.' Further, that '[t]rans athletes generally should be assigned to share hotel rooms based on their gender identity'.² The CCES transgender guidelines remove the autonomy of female athletes to decide for themselves, and consent or otherwise, to the situations in which they feel comfortable and safe, including the sharing of rooms with transwomen (biological males). This cannot be considered to be in line with the requirements of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS).

This submission should in no way be interpreted as opposition to the inclusion of transgender athletes in sport. But safety, fairness, and justice, which are constitutive values in sport and constitutional rights in Canada, must be protected for women and girls. Inclusion does not require that these be overridden and doing so will have the long term effect of excluding women and girls from sport at all levels. There are other options besides eliminating the opportunities that women have fought so hard for and won so recently, such as maintaining both open and protected categories on the basis of biological sex, or providing additional transgender categories. Sport is a human good, one with profound significance and benefit for those who choose to pursue it. But sport is not a human right and no one's legal right to participate in a specific sport overrides the more basic rights of other human participants, or in the case of women, their Charter-grounded sex-based right to equality and safety, dignity of the person, or speech. Canadians talk a good game about equality and fairness; it is time to deliver on those values for women and girls by guaranteeing safety of competition and the right and the means of speaking out when these are threatened.

Yours respectfully,
Dr. Leslie A. Howe

²<https://cces.ca/sites/default/files/content/docs/pdf/cces-transinclusionpolicyguidance-e.pdf>, pp. 44-49.