

Bruce Kidd

## ONTARIO LEGALIZES DISCRIMINATION

*Le nouveau Code des droits de la personne de l'Ontario, révisé et mis en vigueur en 1981, rend légal la discrimination sexuelle dans les sports. Selon cette révision, le traitement égal en matière de services et d'installations ne s'applique qu'à une organisation ou une activité d'athlétisme réservée aux personnes d'un même sexe. Les notions patriarcales de masculinité et de féminité ont influencé la discrimination sexuelle du nouveau code. Certains faits nouveaux aideront peut-être à lutter contre cette discrimination; entre autres, des études récentes de l'Ontario sur les droits des athlètes au Canada et sur l'égalité des chances en sport.*

An ugly thing happened on the way to the revision of the Ontario Human Rights Code in 1981. The draft bill circulated for public hearings appeared to extend the antidiscrimination protections of the code to those sporting activities and associations that previously the Ontario Supreme Court had ruled beyond the scope of the existing code. Yet there was some ambiguity in the draft bill, and those deputations that wanted to end sex discrimination in sport urged the Conservative government to clarify its intent. In the final version of the bill

it did just that, but the effect was to legalize discrimination. According to subsection 19(2) of the new code, which went into effect in June of 1982, "the right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in an athletic organization or participation in an athletic activity is restricted to persons of the same sex." A similar protection for sex discrimination in access to the services or facilities of a recreational club was written into subsection 19(3).

The immediate effect of the new code was to nullify more than twenty complaints of sex discrimination in sport which had been filed with the Ontario Human Rights Commission. Henceforth, the law says, girls and women who have been excluded from membership in a sports-governing body or a competition simply on the basis of gender have no legal recourse. The ultimate effect will be to perpetuate present inequalities in opportunity.

Historically, males have been actively encouraged to participate in sport, while females have been systematically discouraged. Not surprisingly, males enjoy the best opportunities and in most sports have achieved the highest standard of performance. Although female

performances are now improving at a significantly faster rate than those of males, the present gap is still considerable. Thus as long as females are excluded from competition with males, one important avenue for improvement — the challenge of better competition — will be blocked. And as long as female performances are generally inferior to those of males and affirmative-action programs in sport are non-existent, then performance-conscious decision makers will continue to steer the lion's share of resources into men's sport. What makes this vicious circle so outrageous is that today sport development has become a highly visible, privileged public enterprise. The Ontario Ministry of Tourism and Recreation, for instance, heavily subsidizes the provincial sports-governing bodies and the construction of facilities, conducts its own provincial games, and annually honours the province's best athletes. So for outstanding female athletes, there's a double standard: we like what you do, the government is saying, as long as you don't aspire to play against the best. So much for the Province of Opportunity.

I have been unable to pinpoint exactly why sex discrimination in sport was entrenched in the new

code, but it is clear that patriarchal notions about masculinity and femininity played a big role. The proponents of sex-segregated sport have been explicit about their fears that integration will upset traditional sex roles. "You play softer when you play against (women)," a softball official told an OHRC Board of Inquiry in explaining why he felt that female participation would reduce the satisfaction for men. "If I were playing hockey I would be very careful about checking a woman into the boards," Liberal MPP Jack Riddell told a provincial legislative committee. "I happened to have boxed all through university. I think I would refuse to box if a girl stepped into the ring because I do not think I could stand to see the blood rushing out of her nose and ears." Though these statements appear to express a desirable concern for female safety and the quality of sport, they fly in the face of the fact that in every test case so far, the ability and competitiveness of the female athletes involved were never an issue — in the Debbie Baszo case, for example, softball player Baszo was the star of the otherwise all-male team. When used to justify the legal perpetuation of sex segregation, these statements are revealed to be the ideological camouflage for male control. These men are not only alleging that women have different aptitudes for sport than men do and that they are weak, passive, and in need of male protection. They are also claiming that women should stay that way and should be legally discouraged from changing.

As Nancy Chodorow has argued in *The Reproduction of Mothering*, male children develop their identity positionally, by differentiating themselves from their mothers. Since the major tasks of childrearing have been performed by women, the primary interaction for young males has been with women, with the result that young males have great difficulty in identifying with their fathers. So, Chodorow says, in developing a "masculine" identity, males are essentially learning to differentiate themselves from their mothers and women generally.

## "YOU PLAY SOFTER WHEN YOU PLAY AGAINST WOMEN"

They rehearse and strengthen this positional masculinity in activities that accentuate male-female differences and stigmatize those characteristics generally associated with women. Sport has always been an activity where positional identity can be acquired and celebrated. In fact, the modern, "manly" sports were developed for that very purpose. It is the positional nature of masculinity that helps to explain why so many men are determined to keep sport a male sanctuary, why in the quintessentially masculine sport of boxing the Ontario Athletics Control Act prohibits women from competing at all, even against other women. It also helps explain why male coaches, administrators, and sportswriters require female athletes to be sexually "feminine." At a deep psychological level, the blurring of sex roles is very threatening to men. The problem is that sharp male-female distinctions reinforce an exploitative sexual division of labour, the underdevelopment of the majority of the population, the undervaluing of those traditionally "feminine" characteristics essential to human survival and liberation, and, and, and — the list is very long. That is why the sex-segregation clause in the new code must be strenuously opposed.

Now that legal remedies have been blocked, the struggle must be continued by political means. If previous test cases are any indication, the conditions under which any challenge to an all-male league or

sports-governing body will have to be fought may not be entirely unfavourable. Without much prompting, the sports-governing body may act out the role of male chauvinist pig (vs. gifted underdog); the resulting media coverage can be used to garner support from feminist groups, progressive physical educators, trade unions (many of which sponsor sports teams and have come to accept the importance of women's rights), and the public at large. If the athlete has the support of coach and teammates — another likely circumstance — the males may be divided as well. Furthermore, despite the strategic role women have played in the New Right, I know of no case where women have opposed sexual integration in sport. Instead of going to the Human Rights Commission, the challenge would be presented to the sports association's annual general meeting. Although it's hard to win a vote if you have to organize it from the outside, a sports-governing body is much more open to grassroots pressure than is a corporation. I think it would be much easier to persuade the Ontario Minor Hockey Association to accept girls than to get Alcan to withdraw its investments from South Africa (which a coalition of religious and anti-apartheid groups is presently attempting). Softball and soccer might be easier still.

Three developments since the new code was passed may facilitate struggles of this kind. First, a recent

study of athletes' rights in Canada published by the Ontario government has recommended that the code be amended to prohibit sex discrimination in any sports-governing body or event "that receives public funds or uses public facilities." Secondly, the new Charter of Rights and Freedoms, scheduled to come into effect in the spring of 1985, may well outlaw sex discrimination in sport. Under section 15 of the charter, "Every individual is equal before and under the law and has the right to the equal protection under the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability." This is reinforced by section 28: "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons." Sections 15 and 28 will almost certainly have the effect of nullifying the Ontario Athletics Control Act's discrimination against female boxers and will likely nullify the sex-segregation clauses of the Ontario Human Rights Code. Unless reaffirmed by special new provincial legislation (section 33), these restrictions could only be retained if a court were persuaded that they were "reasonable . . . in a free and democratic society" (section 1). In the meantime, just to ensure that no discriminatory law is overlooked, a group of lawyers associated with the Ontario Action Committee on the Status of Women is collecting evidence of laws that hurt women. So if you have a case you would like to protest or challenge, get in touch with this group; write or phone M. Elizabeth Atcheson, c/o Cassels, Brock, 130 Adelaide Street West, Suite 2300, Toronto M5H 3C2 (416-869-5382).

There's also a task force in the Ontario Ministry of Labour presently investigating equality of opportunity in sport. Although it's not clear that the task force, headed by Toronto lawyer John Sopinka, will recommend changes to the Human Rights Code, it has been collecting an enormous amount of comparative data on the funding, facilities, qualified coaches, etc., available to

males and females at every level of Ontario sport, from municipal recreation leagues to college and university high-performance programs. In several communities, it has already stimulated a good deal of discussion and recommendations for change. The publication of its report, expected in the summer of 1983, could well be the starting point for a further assault on sex-divided sport. For even if Sopinka recommends a strategy of separate-but-equal in the funding of women's sports (attractive for the renewed possibility it would afford to women to develop different, more humane definitions of sport), the question of integrated sport cannot be avoided. For as Harriet Taylor Mill and John Stuart Mill argued more than a century ago, if there really is to be equality, then women must be able to enter whatever field for which they are qualified.

The changes that integration will bring about in men, women, and sport can only be for the good.

**Further Reading:**

M. Ann Hall and Dorothy A. Richardson, *Fair Ball: Towards Sex Equality in Canadian Sport*, Canadian Advisory Council on the Status of Women, Ottawa, 1982.

Ken Dyer, "Females Are Catching Up," *Newscientist*, September 22, 1977, pp. 722-723.

Bruce Kidd and Mary Eberts, *Athletes' Rights in Canada*, Ministry of Tourism and Recreation, Government of Ontario, 1982.

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<p>The Women's Program, an integral part of Fitness and Amateur Sport, works at the national level with sport and fitness associations and with women's organizations. It administers projects that improve the status of women in fitness and amateur sport, assesses that status, and acts as a focal point within the federal government for issues related to women and physical activity. The program produces films, books, and pamphlets to increase awareness about the role of women in sport and fitness activities. For more information write the Fitness and Amateur Sport Women's Program, Government of Canada, Ottawa, Ontario K1A 0X6.</p>

# And Ain't I A Woman

The Calgary Women's Summer Festival, "And Ain't I a Woman," will be held on Prince's Island, July 29-31, 1983. The festival will bring together women from differing backgrounds and experiences to develop, reinforce, and support the efforts of all women for viable networking and information sharing. Money raised will help support Calgary's existing women's resource activities. For more information write the Calgary Women's Summer Festival, 1221 Bowness Road, N.W., Calgary, Alberta T2N 3J6, or call (403) 244-0202.