



# Sport in Transition

## Making Sport in Canada More Responsible For Gender Inclusivity

The Report of a Conversation of Discovery, Clarification,  
& Implications Among Experts

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# SPORT IN TRANSITION:

Sport is a mirror for society, and sometimes a magnifying glass.

A forum for our efforts and achievements, sport reflects many of the qualities and attributes that are valued in society at large. We play and watch sports to discover what excellence looks like. That very compelling drama of striving, overcoming, and winning, which sport exemplifies – and which so captures our imagination and hearts – sometimes also brings into focus troubling dilemmas or unexpected difficulties on the playing field, which have yet to come into clear focus or resolution in society. Jackie Robinson’s first game for the Montreal Royals on April 18, 1946, crashed the nearly century-long barrier that excluded black players from the professional leagues. Neither racism nor segregation ended overnight, but the story that played out in games and seasons helped society reconsider its own prejudices, and re-imagine those new possibilities and practicalities to be developed in order to extend basic rights to all.

Sport is today again a mirror and a magnifying glass for society, this time as it deals with the exclusions and harms that have all too often impeded athletes with variations of sex development.

For social, cultural and historical reasons, as well as from a basic commitment to fairness, much of sport is organized by sex or gender. The vast majority of persons fit easily into male and female binary categories, developing and thriving as athletes on community playgrounds, and all the way onto podiums at elite international events. However, for the small group who identify (or have been labeled) as transgender or intersex, the opportunities for participation are hampered by the confusion or prejudice from seemingly not clearly fitting into one or the other category.

For several decades, sports bodies in Canada and internationally have struggled with various medical programs for sex verification, including “gender testing.” But this desire to

definitively demarcate sex has proven to be scientifically elusive. Of much more serious concern, it has also been harmful for some of the athletes ensnared by the ill-considered, usually inconclusive testing. From the stories and experiences of transgender and intersex persons, including transgender and intersex athletes, society is becoming more aware of the fact that sex is not universally binary, and that as a complex and multi-faceted phenomenon, sex cannot be determined by any simple or arbitrary marker.

Sport is in transition because more and more transgender and intersex athletes at all levels are at risk of falling into the still-often-hostile uncertainty brought about by medical tests, or from obsolete attitudes and structures in sport's governance.

Sport is in transition because medical verification of sex, or "gender testing," has proven to be not only intrusive and inaccurate, but also premised on the still-lingering Cold War suspicions that presume athletes with variations of sex development are motivated by cheating and must be policed.

Sport is in transition because the need to welcome and protect transgender or intersex athletes is increasingly understood to be of an urgency that, because sex is naturally complicated, can no longer wait in the hope for a scientifically perfect and uncontroversial solution to sex determination.

Sport is in transition because many of its bodies and regulators are already trying or anxious to reform policies for inclusion, particularly to fulfill their duty of care towards transgender and intersex athletes, while maintaining the level playing field (or fairness) that is essential for sport's legitimacy and integrity.

And sport is in transition because society is in transition as well, as we encounter sex and gender barriers in other spheres of culture, entertainment, or competition, and develop the public awareness and resources for reinforcing fairness in all our institutions and activities.

# BACKGROUND:

Over the last decade, Sport Canada, the Canadian Association for the Advancement of Women and Sport and Physical Activity (CAAWS) and the Canadian Centre for Ethics in Sport (CCES), have worked together on a number of national policy initiatives aimed at making sport more inclusive and welcoming. These projects have led to anti-harassment standards, accessibility programs, education and awareness about bullying and violence, protocols for volunteer screening, as well as processes to promote safety, fun, fair play and ethical conduct in Canadian sport.

In 2007, an ad-hoc working group comprised of Sport Canada, AthletesCAN, CAAWS, the CCES, Water Ski and Wakeboard Canada, Canadian Olympic Committee, Canadian Academy of Sport Medicine, Centre for Sport and Law, and GLISA, met to examine the specific issues relating to the inclusion and integration of transgender and intersex athletes in Canadian sport. A smaller committee was established to take the work forward. Via three-way partnership, AthletesCAN, the Canadian Centre for Ethics in Sport, and CAAWS conducted Canada's first theoretical and practical enquiry on this topic, and published two literature reviews and a discussion paper entitled: *Including Transitioning and Transitioned Athletes in Sport: Issues, Facts and Perspective* in 2009.

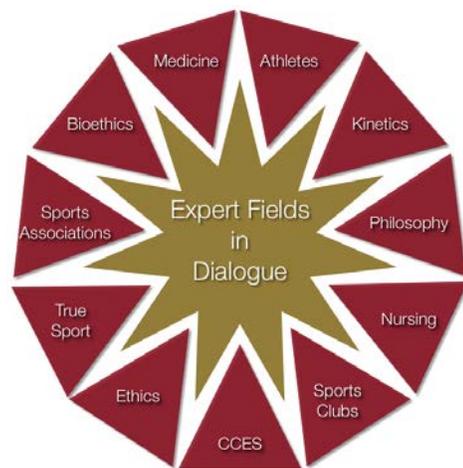
A few months before the start of the 2010 Vancouver Olympic and Paralympic Games, it became known through media reports that the IOC was in the process of setting up “gender testing” facilities. The opaque nature of this revelation was in itself of concern. More troubling were the previous failures in testing in which athletes were exposed for variations of sex development, penalized or banned, only to be reinstated after considerable effort and embarrassment by the athletes effected. These questions and concerns prompted the Canadian Centre for Ethics in Sport, with CAAWS and AthletesCAN to launch an ethics and policy enquiry.

Enquiries are exactly that: a formal process for questioning and probing, evaluating the available data to discern potential ethical implications, and working out the consequences

from a range of possible outcomes. This quick-response enquiry made two proposals:

- First, a letter was drafted and sent to the IOC, objecting to the gender testing as reported, since it was unclear whether previously experienced problems with this approach had been sufficiently addressed. The letter included draft principles for re-considering the decision to test, as well as specific steps for meeting “the duty of care” in the event that such testing did proceed. A meeting was arranged between Paul Melia, President and CEO of the Canadian Centre for Ethics in Sport, and Dr. Arne Ljungqvist, Chair of the IOC Medical Commission, to better understand the IOC’s position on and plans for gender verification at the games. (While the IOC remained prepared to carry out gender testing at Vancouver, should they determine there was a need to do so, concerns from the Canadian perspective were staked out, and, as it turned out, no athlete was subjected to this testing during the games.)
- Second, the lead-up to the Vancouver Games understandably focused on elite athletes who might be put at risk or disadvantage from this still-controversial “gender testing.” However, enquiry participants were also concerned about extending the questions and lessons raised in the context of the Games to undertake more systematic change. Stories of misunderstanding or exclusion from around the world showed that confusion on transgender and intersex issues was having a negative effect on some athletes at all levels of sport. A more comprehensive and proactive approach was deemed necessary, and the enquiry recommended convening a broad stakeholder group to set the foundations for making sport in Canada fully inclusive for transgender and intersex participants.

In April 2011, a stakeholder group met in Ottawa. Aiming for as wide a variety of inputs as possible, the group included experts from numerous fields, as well as sport representatives with deep experience in administration, elite level competition, and transitioning athletes. (Participant list is appended below as Appendix I.)



# SCOPE:

It was neither the mandate nor the presumption of the stakeholder group to formulate a final or all-encompassing policy. Rather, the in-depth conversation aimed for two outcomes: first, to begin to clarify the terms and insights for engaging this issue with the systematic thoroughness it deserves; and second, to do so in ways that would also be accessible and practically helpful to those who organize and participate in sport “from playground to podium.”

This conversation was intended as a starting point, yet even as the group made important breakthroughs in creating context, and deciphering some of the scientific learning, it was clear that clarity itself would continue to be hard to come by.

For example, although they are often grouped together, transgender and intersex usually represent markedly different categories, with controversies, questions and needs that are unique to each. Conflating these categories all too often only perpetuates the experience of each group as neither being seen nor understood with due respect for their unique differences and challenges.

Transgender describes a psychological identification with the gender that is different from the person's gender as assigned at birth.

Intersex refers to persons born with congenital conditions in which development of chromosomal gonadal or anatomic sex is atypical.

What these distinct groups have in common is that both have been victimized by the current regimen of “gender testing.” Specifically, both transgender and intersex athletes bear the heavy weight of suspicion for not fitting the arbitrary categories presumed by gender testing. Both have also been casualties, experiencing exclusion or disqualification from bias, confusion and misunderstanding, as well as faulty testing. And both have borne stigmas among peers, with families and, in some cases, in public, for being judged sexually inappropriate by governing or regulatory bodies.

These shared hazards and harms are in fact preventable through education and policy, so the focus of the stakeholder group was to urgently address the misunderstanding or prejudice causing athletes with variations of sex development to be singled-out or excluded.

It must be said that the science, sociology and psychology relating to “athletes with atypical sex development” posed complexities that were not easy to grasp even by the accomplished group assembled for the conversation. Scientific distinctions or technical terms, which were of crucial importance for experts, were at times perplexing for those whose training or background was in other fields. Even what were commonly assumed to be acceptable designations, such as the very terms transgender and intersex, came to be understood as problematic – either for being less than accurate, or for carrying baggage from misuse or misapplication.

This elusiveness turned out to be an important (if humbling) outcome of the conversation, if for no other reason than to underscore that the ambition for clear and definitive gender verification has now become a complication perpetuating harmful stereotypes and undermining inclusiveness.

Having arrived with many questions, the stakeholder group disbanded with both fewer answers than expected, but much greater hope. What are the reasons for this optimism?

First, without all participants necessarily mastering all the complexities relating to gender testing, the stakeholder group recognized that the overall evidence from genetics and science supported dismantling the structures of suspicion towards athletes with variations of sex development. Even as our knowledge continues to grow, the pivotal point is to transition sport policies and attitudes from gender verification to gender inclusion.

Second, without resolving all the important questions concerning fair play and competition, the stakeholder group concluded that the greatest and potentially most damaging unfairness would be to continue to marginalize or exclude athletes with variations of sex development. Gender testing has been justified for upholding the integrity of sport, however, while the threat to fair competition turns out to be virtually non-existent, the actual harms experienced

by athletes from such testing have been acute, and in a few instances, catastrophic. With the risks in such imbalance, and with the risks primarily falling on transgender and intersex athletes, fairness dictates a preference for inclusion – for welcoming and accepting those persons who are “different than typical.”

Third, without the prospect of definitive scientific answers to the complex physiology of sex categorization, or to the complex social construction of gender, the stakeholder group based its convictions for the unequivocal inclusion of transgender and intersex athletes on the basic values of sport and Canadian society. Values are beacons for guiding groups or cultures through the fog of incomplete information. And they are the principles for making productive meaning out of partial or contradictory answers. While the evidence strongly points to ending prejudicial exclusion for athletes based on variations of sex development, the values of fairness, respect, dignity, safety and diversity demand inclusion – without undue intrusion or interference.

Obstacles remain, and much groundwork needs to be undertaken to realize the promise of this optimism. As it happened, the writing of this report benefited immensely from the ongoing contributions and enthusiasm of stakeholders, and from the changes occurring in society itself. Without the technical insights or vocabulary available to stakeholders, the public has recently been exposed to more stories of exclusion experienced by transgender or intersex persons in fields other than sport. These stories have raised difficult yet important questions about sex and gender that the majority of people had simply never experienced or considered.

Confusion – and indeed suspicion – persist, yet, perhaps as never before, there is growing public awareness of gender discrimination, and therefore an opening, if not receptivity, to correcting injustice towards persons with variations of sex development, and instituting inclusion.

# **METHOD, DEFINITIONS AND PURPOSE:**

The stakeholder group was drawn from a variety of disciplines to provide as wide a range of input as possible. Scientific and academic articles were provided in advance of the session to all participants, but this meeting was not for producing scholarship. Rather, the aim was to bring to synthesis the lessons and implications that would be of immediate benefit to the broadest group involved in organizing, regulating, governing, and participating in sport.

There are no footnotes in this report. Instead, a detailed bibliography, including the resource material for many of the conclusions expressed in this report, will be available on-line.

Conversation is by nature a rich yet imprecise methodology. Not all insights receive the depth of examination they merit; nor do all concerns or reservations get addressed with the fulsomeness required. Nonetheless, sufficient clarity about direction or implications emerged during the face-to-face dialogue, (and sufficient collective editing followed the first complete draft of this report), to affirm this output as accurately reflecting the conversation and its clarity about direction and the implications for future action. Obviously, not everyone agreed with every detail, but the commitment to foster aggressive inclusiveness – advancing acceptance for transgender and intersex athletes – was unanimous.

The primary questions for this conversation were framed by ethical concerns. More than simply rules for compliance, ethics are essential for the process of solving problems together, and for bringing values into everyday practice. Laws mandate action from what we already know. Ethics, instead, invite responsibility in unprecedented or ambiguous situations so as to secure the most human outcomes for everyone involved. Usually this means working towards foundational or inspirational ideals, while meeting the practical requirements for dignity and fairness in everyday decisions and actions. Finding the ethical solution to new or difficult dilemmas involves much more than applying new understanding. It also usually

requires changing those attitudes or behaviors that prevent us from grasping the right or best options in a new situation.

Throughout history, the process of realizing or expanding the most human outcomes and rights has produced what turn out to be sharp transitions in public sensibility after a prolonged and not very linear of re-examination and learning. Long-established beliefs or structural norms need to be reformed to make anew the space for persons who had been excluded from participating fully in society's activities. The stakeholder group came to believe that this on-going process of creating new understanding, and insisting on fair inclusion, is now occurring within rights for persons with variations of sex development.

As previously noted, it is very important to recognize the differences between transgender and intersex persons, and respect that the needs and remedies for realizing inclusiveness in sport are distinct for each group. Dr. Alice Dreger – one of our stakeholder participants – unpacked the basic definitions for our conversation and report:

- “Gender” refers to identity (self or social understanding), whereas “sex” refers to an individual’s biological attributes.
- Transgender describes a psychological identification with the gender that is different from the person’s gender as assigned at birth.
- Intersex refers to persons born with congenital conditions in which development of chromosomal, gonadal, or anatomic sex is atypical. The clinical designation of “Disorders of Sex Development” (DSD) is being challenged and refined, to better reflect the natural variances in sex development, and to remove any stigma associated with labels of abnormality, disorder or disability.
- In most instances, people with “variations in sex development” (VSD) have stayed in the gender identities they were assigned at birth.
- For people who identify themselves as transgender, the feeling that the gender assigned to them at birth does not capture their sense of self often leads them to seek medical interventions in order to sex transition.
- The core issue affecting transgender, transitioned, or intersex people is the problematic way sex atypicality is treated in medicine and the rest of culture. In

short, it is the shaming and secrecy surrounding sex atypicality from which these people have suffered.

- In sport as currently structured, the system has led people to being lied to about their medical histories, being subjected to damaging elective surgeries aimed at making them more sex typical, and being left with a general sense that they are abnormal without “correction.”

Since the consequences of clinical labeling affect human beings in often profound ways, even the most careful language, or most widely used designations, stir-up sensitivities, disagreements or resistance. These considerations were discussed in the stakeholder group, and reinforced the need to proceed with both great care and flexibility. Some of the terms will require the input and feedback of athletes with VSD, or those who self identify as transgender or transitioning. But even as the language or sensibilities evolve, the priority must be to fashion the systematic inclusion of gender that will help us all escape the segregating traps of labels. The obligation – no longer to be evaded in sport – is to create safe and welcoming mechanisms of participation for persons so that no one will be shamed or excluded on the basis of variations of sex development.

Many who have sought the benefits and pleasure of sport have been forced to undertake by themselves the difficult struggles for personal acceptance, and to qualify for participation. Many more may not have been willing to subject themselves to these difficult struggles and consequently chosen to forego the benefits and pleasures of sport. This report, as its title suggests, envisions a far-reaching cultural shift across sport in which the burden of inclusiveness is taken up by the structures and associations that organize sport at all levels.

# SITUATING THE ISSUES:

## *FOUNDATIONAL LESSONS*

To enrich the dialogue, and extend its applicability to the sport community at large, the stakeholder group set out to establish a common basis for critical information. We asked three basic questions: What have we been wrong about? What have we learned? And, what can we do to get this right?

### *a) What have we been wrong about?*

We were wrong to think that sex fits into fixed and precise categories. Science is increasingly affirming the experience and stories of a growing number of persons. Rather than a simple duality, sex is inherently complex and constituted by multiple factors. While culture and sport have mostly presumed there to be clear and verifiable demarcations between the sexes, the research from genetics, physiology, and other disciplines is showing that nature is much more imprecise, rich (and to some degree impenetrable) from its diversity, multiplicity and variability.

We were wrong to believe that medical tests could simply verify sex categorization. No single marker exists to conclusively naturally determine a person's sex or gender. In fact, the outdated medical orientation that has usually judged variations of sex development to be a defect in need of correction has hurt athletes, as well as the basic values of true sport, much more than it has helped.

We were wrong to also situate gender testing in the context of anti-doping because this presumed that transgender or intersex athletes have always been intentionally using their "atypicality" to cheat. Some tests are vital to providing clinical support for transgender or

transitioning athletes, but we've been wrong for approaching this from a perspective of suspicion rather than from a position of care and support.

We were wrong to place the burden of proof on transgender or intersex athletes to qualify for participating in sport in the sex category that best fits a person's deeply rooted sense of self.

### ***b) What have we learned?***

We learned (as if we didn't already know) that sex and gender are essential features of our being human. Despite that near universal quality, or perhaps because of it, the expectations we attach to sex and gender identity have been shaped by numerous considerations, including from history, tradition, culture, medicine, and politics, as well as religious beliefs and economic roles. Change in such context is not without understandable difficulty, so we need the pull of principles to draw us forward towards full inclusion, and the prod of education to help us persist with the practical responsibilities we gain from new understanding about sex and gender.

We learned (again, as if we didn't already know) that sport is already organized according to numerous classification schemes that reflect our human diversity. Clubs, events and competitions are organized for different ages, and by criteria developed over time to reflect different levels of skill. Yet, even these categories are never uniform. As well as differences based on culture, gender, race, skill, or ability, all athletes are also unique because of biological qualities such as strength, height, age, muscle development, and temperament; and because of socio-economic variables such as access to training or new technology.

Importantly, beyond accommodating differences to secure a level playing field for all participants, respect for diversity is also increasingly recognized – in sport as in society – as a fundamental attribute for personally experiencing the dignity of inclusion. It is within this larger shift towards embracing diversity with dignity that sport's transition to be more welcoming to transgender and intersex athletes is now occurring.

We learned (of course) that institutional change is difficult, even when new data comes to light, or unrecognized injustices are finally acknowledged. Simply scanning recent news in Canada reminds us that discrimination is never fully canceled: racial prejudice still occurs in sport at all levels, including among parents and fans in stands, and equity for women remains incomplete. As noted earlier, part of what makes it difficult to achieve diversity is that old assumptions must be unlearned before new inclusiveness can take root. However, we also learned that part of the struggle for athletes with variations of sex development, as has happened with other human rights, also involves resistance. Often this resistance is passive, reflecting fears or uncertainties posed by the new norms. But sometimes the opposition is entrenched because of vested interests or from the status or power derived from existing authority structures. Ultimately, new rules are not enough. Defeating prejudice and removing barriers to inclusiveness also require new attitudes, values and ethical practices.

We learned (disconcertingly) that for all the reasons provided for gender testing, and despite the harassment, humiliation and emotional pain caused to the athletes caught up in the resulting web of suspicion, the evidence from scholars shows few, if any, instances of intentional cheating based on sex or gender self-identification. The concern that athletes with variations of sex development or identity pose risks to the integrity of sport is not substantiated by history. What history does show is that suspicion has been severely unfair to the transgender and intersex athletes the system has been policing. This does not mean that sex categories are not important, or that perceptions among “typical” sport participants are to be suppressed or dismissed. Rather, it means making gender inclusion a positive expectation and experience, replacing the indignity of suspicion, with the commitment to work out issues of fairness through the respectful participation of all athletes.

We learned (that even with our best intentions) the terminology we were using was imprecise and sometimes contested. Having experienced stigma from labels such as “hermaphroditism” and “disorders,” persons with variations of sex development, along with clinicians, scientists and activists are still often divided about the most appropriate terms or designations. This struggle is not unusual. From society’s experience with civil rights in the 1960s and 70s, we know that the words for identifying ethnic or minority groups used in one context may over time take on unacceptable or derogatory connotations. Arbitrarily

choosing “the right language” is therefore ill advised, if not impossible. However, to address the issues as precisely and transparently as possible, the stakeholder group continued – with caution – to use transgender and intersex designations. These are the common parlance throughout sport. We also adopted as our umbrella term “variations in sex development,” not to diminish the very real differences between transgender and intersex, but rather to situate those and all differences within the variability that is shared by all humans.

Finally, we learned (but could not work through all the implications) that fairness is a multi-dimensional and evolving construct in which organizations strive on an on-going basis to balance the rights of all participants while maintaining the integrity for sport as fair competition. Although still a work in progress, adjusting these terms of fairness is in fact a powerful teaching moment for all involved, since it involves listening to the stories and concerns of affected athletes, while diligently working out together the technical, biological and educational implications for fair play based on this “welcomed participation”.

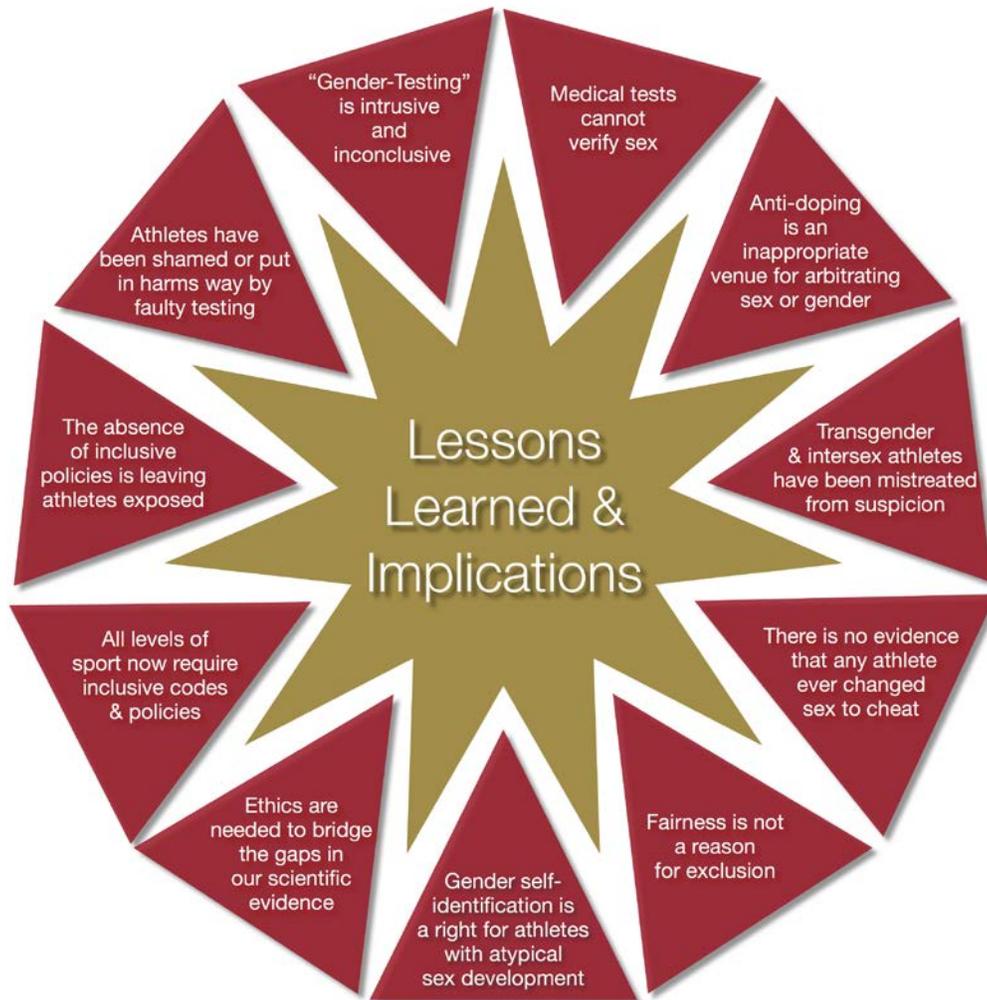
### *c) What can we do to get this right?*

To get this right, sport in Canada will need to build sex and gender inclusivity from the playground to the podium. Since sex and gender are basic to identity, inclusivity for participants is a matter of dignity, requiring receptivity and protections at all levels of sport. Much of the research regarding genetics and biology has been generated in relation to the elite level of competition. However, because the issues are human as well as social, local, community and amateur sport organizations share responsibility with elite and professional sport bodies to build greater inclusiveness.

To get this right, sport needs to take the initiative institutionally – reforming policies, practices, safety and privacy protections – for accommodating the needs and choices of transgender or intersex athletes. Education, training and ethical guidelines also need to consistently reflect this commitment to unequivocal gender inclusivity.

To get this right, national and provincial bodies, associations, clubs and communities, as well as governance boards and operational executives across sport must begin (or continue)

undertaking the important changes to better accommodate the diverse needs of participants in, ways that give credit, and do justice, to sport.



To get this right, this transitioning of sport will require outreach at all levels of sport, from community through to professional ranks. The process of dialogue with stakeholders and sport participants at all levels provides an indispensable opportunity for learning, sharing best-practices, engaging the complexity relating to sex and gender, and instilling the true sport values of open participation, fairness and mutual respect. Most importantly, the credibility and coherence of this conversation hinges on the participation of transgender and intersex persons, whose ongoing experiences will be the ultimate test for the effectiveness of new policies and laws.

# PRELIMINARY COMMITMENTS FOR TRANSITIONING SPORT

Recognizing that there are no instant or perfect solutions, the stakeholder group nonetheless resolved to reject any exclusion based on gender.

Sport's various institutions, including national and regional governing bodies, athletic associations, clubs and community-level organizations, are collectively responsible for the integrity of sport. These institutions also have the resources and reach to effect positive change.

Cognizant of this power, the stakeholder group also agreed that the responsibility for inclusion should be reversed. In other words, it is no longer acceptable to place the burden for securing safe and full participation in sport on the shoulders of individual athletes with variations of sex development. The responsibility should be placed with sport and those charged with its administration. Indeed, the vulnerability of athletes – as painfully exposed during previous missteps with gender testing - warrants a sport-wide commitment to providing safety, dignity and welcome.

Transitioning sport on these terms involves at least three levels of commitment:

1. Respecting the right of athletes with variations of sex development to choose the category in which to play or compete that corresponds to their own self-identification;
2. Establishing momentum for the principle to eliminate gender testing – accepting all the rules of anti-doping but removing any arbitration of gender or sex, pursuing instead the education, policy reforms and multi-level negotiations for focusing on gender inclusion rather than gender verification.

3. Leading with urgency the far-reaching change at all levels of competition and play to achieve inclusivity in ways that celebrate diversity and respect the dignity of all participants.

The definition of rights in law continues to evolve in Canada and internationally. From an ethical perspective, rights correspond to those qualities essential for human dignity. The reason for insisting gender self-identification to be a right is that, for the persons involved, it is so a matter of freedom and conscience that dignity is fundamentally harmed without such choice.

Canadian sport is played both at home and internationally. Given the absence or inconsistency of policies relating to gender, the practice of these commitments will involve work on two levels.

- First, there is the need to advance inclusivity within Canada's national sporting activities, everywhere from the "playground to the podium."
- Second, as a global player, there is the need for Canada to participate in the international system, influencing change without conceding the principle of full, open and safe inclusion for all athletes.

From experience with prejudice based on race, gender and disabilities, it is clear that rules prohibiting exclusion are often needed in advance of wider social understanding or acceptance. The right to self-determine in which sex category one plays similarly requires supportive principles in the face of on-going uncertainty, resistance and misunderstanding.

At the elite level of sport, anti-doping remains essential to the integrity of competition. The basic, and urgently needed transformation among regulatory bodies is to ensure that anti-doping will not violate the dignity and rights of any person by exposing an athlete to peer or public questions regarding gender. This means that transgender and intersex athletes will be responsible for complying with anti-doping rules, and securing for their confidential file any needed therapeutic use exemptions. Meanwhile, testing authorities will be responsible for treating atypical results as points for discovery, clarification, or possibly eventual censure, without intruding at all into questions of sex or gender.

# THE SPORT CONTEXT

It turns out that very few sport bodies or associations have standards in place for welcoming and protecting the rights of transgender and intersex athletes. In the absence of policy, athletes or prospective participants in sport are left on their own to navigate the inconsistencies, or to challenge prejudice.

As noted, the most apparent obstacle preventing athletes with variations of sex development from exercising their right of choice concerns fairness.

At the highest levels of sport competition, every effort is made to ensure a level playing field for all athletes. One of the ways of organizing for more level playing fields has been to divide athletes by gender. This structure has yielded many benefits, allowing individuals to compete, develop skills, strengthen bonds with peers, and build confidence within male or female categories. The binary distinction works for the vast majority of persons participating in sport, but this can become a barrier for individuals with variations of sex development. The core challenge is to uphold fairness for all athletes, protecting the integrity of gender categories in ways that accommodate the rights of athletes with variations of sex development.

High performance sport also attempts to level the playing field by eliminating doping in sport. As part of the ongoing effort to prevent athletes from gaining an unfair advantage by doping, athletes' hormone levels, including testosterone and androgens, are measured. In keeping with sport's binary approach to gender, hormone levels have been established for males and females. In the case of testosterone, a range has been established for males and a separate range for females. If a female athlete has a testosterone level outside the "female" range (or within the male range), a doping violation is believed to have occurred.

Transitioning, transgender and intersex athletes may have testosterone levels not consistent with the established ranges for their genders. Application by an athlete for a therapeutic use exemption to explain their level of testosterone may not be approved by anti-doping

therapeutic-use medical committees. If they are approved, the result may be an athlete of one gender (female) having testosterone levels in the range of the other gender (male).

Athletes are aware that testosterone is a hormone that can build strength through the development of muscle mass. Female athletes with testosterone levels within the established female range, competing against other female athletes whose testosterone levels are within the male range, may perceive the athletes with testosterone levels in the male range to have an unfair competitive advantage. This perception, whether supported by empirical evidence or not, remains a serious concern among female athletes in high performance sport, and deserves consultation and education as well as careful analysis.

One point to make is that fairness, like gender, is complex. It involves weighing and balancing multiple considerations. Throughout history, notions of fairness in sport have in fact evolved, including to breach race and other barriers, improve safety, apply new technologies, or change rules relating to behaviours that cause concussion or other injuries. As much as we need rules for fair play, the larger understanding of fairness in sport has always been flexible so as to be responsive to new information and values.

Another point to highlight is that motives also matter. Unlike doping, where the majority of those violating rules are seeking unfair competitive advantage, the majority of transgender and transitioning athletes face considerable complications to exercise the right for how to express their gender identity. For most athletes in these circumstances, participation in sport usually involves overcoming considerable social disadvantage rather than exploiting competitive advantage – a crucial distinction that is overlooked in current testing processes.

This is not to say that biological factors do not play a role in athletic development. However, research cannot at this point provide a definitive line at which certain sex-typical characteristics provide a competitive advantage. With between 200 to 300 genes affecting sport performance, testing any single sex-typical marker is just too limited to ever provide a conclusive basis for exclusion, or categorical proof of advantage.

Since the scientific evidence regarding competitive advantage for transitioning and transgender and intersex athletes is inconclusive, the ethical priority (indeed, principle) must be to choose respectful inclusion over exclusion due to confusion.

Transitioning sport to help develop new sensibilities and understanding is difficult, and will no doubt be a complex undertaking. Beyond formulating fair and inclusive policies, the implementation will require considerable change, experimentation, and improvisation. Longer-term, the reform will effect organizing, supervising, managing, playing and competing – literally from “the playground to the podium.”

### *A Mutual Responsibility*

Obviously, such cultural transitioning cannot be prescribed. The key, instead, is to recognize that fairness and rights are in continuous conversation.

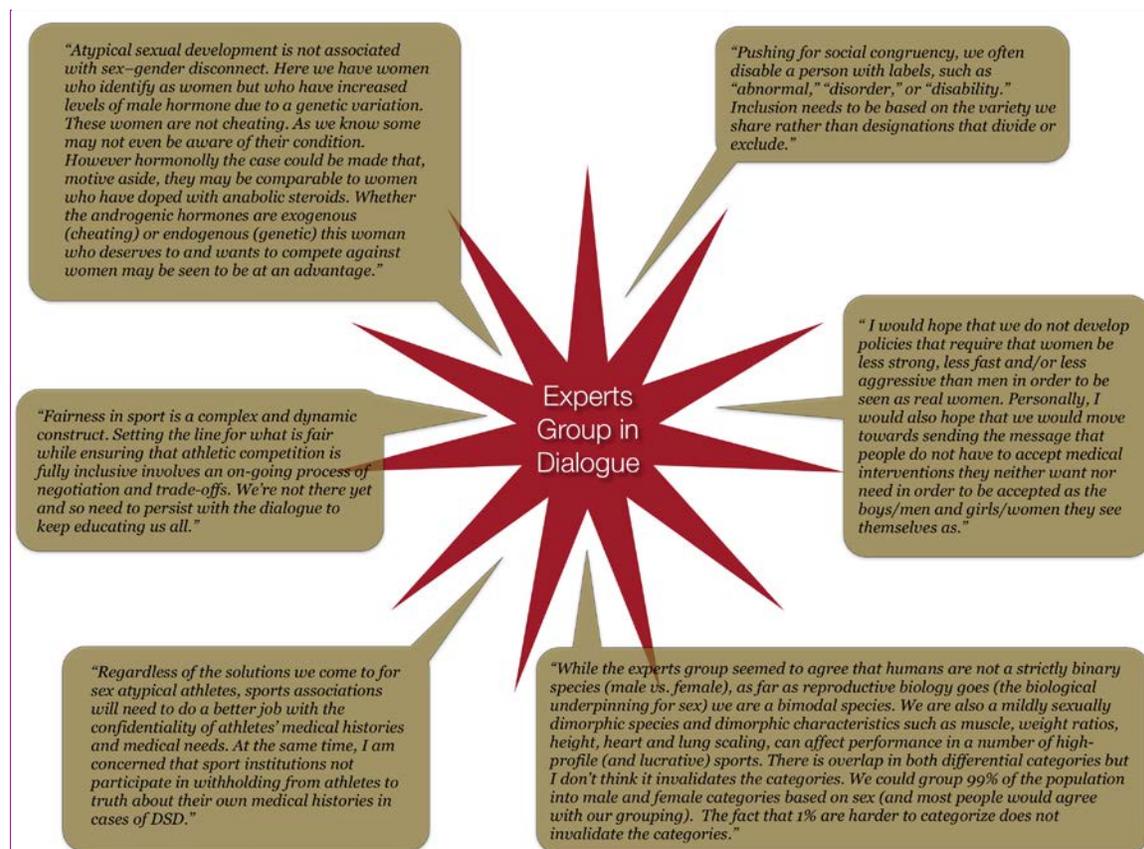
To be fair, sport needs to respect the rights of athletes with variations of sex development to self-declare which gender category matches the person’s authentic sense of self.

And to be fair, athletes who exercise this right need to assume the responsibility to play or compete with integrity, so that therapeutic use exemptions formally obtained for their care will be in harmony with the gender markers of colleagues and competitors.

The mutual trust to strengthen inclusivity flows from exercising mutual responsibility for upholding the values of true sport.

# DIFFICULT QUESTIONS EVADING EASY ANSWERS

The conversation of the experts groups was always envisioned as a starting point. Structural change is not easy. Nor can change be imposed, especially if it is to be truly transformative. Important and difficult questions were raised that will require more expertise, consultation, reflection, and dialogue with athletes, governing bodies, international agencies, and sport associations. A sample of these on-going dilemmas is detailed below. However, while the issues are complex, the group's commitment is to decouple gender from anti-doping, and continue to navigate the questions relating to fairness in ways that fulfill both inclusivity and the integrity of competition.



# TRANSITIONING SPORT: A CHARTER FOR ACTION

Transgender and intersex athletes have faced numerous obstacles as a result of misunderstanding or prejudice. Many have taken on enormous personal risks to find acceptance in sport. The task now is to transition sport in its culture and practices. Sport is for everyone, and at its best, sport works to bring down any of the barriers that exclude persons from participation.

Transitioned sport would recognize gender self-identification as a basic right for athletes with variations of sex development.

As a human activity, sport is a forum for the rich process of human self-discovery, self-understanding, and self-definition. Sport also opens the possibility for relating to others, forging identity and finding acceptance in the interactions of team and competition. Exclusion on any basis harms those affected, and diminishes sport's value as a model for humanity's ideals and aspirations.

At root, the dignity and safety of athletes cannot be compromised. These rights have priority for the simple reason that the potential consequences from gender testing for athletes with variations of sex development have proven to be far more damaging than to fair competition in sport. While testing has been discriminatory, highly invasive, and humiliating for athletes, there is no evidence that any athlete has ever intentionally used sex-deception to realize competitive advantage.

As noted, empirical research does not yet provide conclusive answers regarding possible competitive advantages for transitioning, transgendered, or intersex athletes. This means that the framework for anti-doping therapeutic use exemptions for elite athletes must avoid becoming *de facto* gender tests, and presume instead that such exemptions are based on the athletes' need for health and care.

For sport's legitimacy, diligence regarding the use of banned substances obviously requires on-going study and learning to establish whether variables, such as testosterone levels, are natural, purposeful (in support of transitioning), or from deliberate doping. However, in practice, as the doping rules may apply to transgender and intersex athletes, this on-going diligence will need to shift its ethical stance from suspicion to openness – from presuming “to filter out” cheaters, to instead “welcome in” athletes across the whole spectrum of diversity, including gender self-identification.

Gender rights, and rights relating to gender self-identification, are at this point still very fragile. Many cultures and institutions remain hostile or un-accepting of transgender and intersex athletes. All too often, simply being identified as a “gender test” candidate has exposed athletes to peer or public suspicion, and in some instances, outright rejection by family and friends. Such risks and harms obviously go against the values of sport and the duty of care. With their organized capacities and collective power, the clubs, associations and bodies involved in sport have considerable clout to undo this discrimination and prepare a safe place for all athletes to compete and play.

# TRANSITIONING SPORT: PRINCIPLES

The task now is to get beyond the suspicion upon which “gender testing” is premised to ensure safety, dignity and respect for all athletes. Achieving this turning point in the transition of sport will require innovation and enterprise, as well as care. The principles for such far-reaching transition of sport include:

1. *In keeping with basic human freedoms*, affirming without reservation the athlete’s right to declare his or her gender;
2. *In keeping with integrity*, presuming the person’s motives for gender declaration to be truthful and honest;
3. *In keeping with the need for dignity*, welcoming diversity and growing shared respect for differences;
4. *In keeping with fairness*, extending access and equitable participation to all participants;
5. *In keeping with the duty of care*, eliminating any language, policies, habits or rules that may cause exclusion or undue shame;
6. *In keeping with the primary pleasure of sport*, celebrating difference as a core aspect of excellence;
7. *In keeping with sport’s drive for higher achievement*, advocating against exclusions in society and other institutions, especially when the unfairness puts a person at risk of harm.

Clubs, associations and bodies are best positioned to formulate the goals and practices for strengthening diversity in their particular sport. These principles are designed as a starting point, aiming not only for new rules but, more importantly, for a new orientation.

- Where current cultures and practices are suspicious towards transgender and intersex athletes, the new culture strives to be inviting and generous towards differences.
- Where existing policies or traditions focus on protecting the interests of the sport, the new orientation extends equal priority to the interests of all athletes.

- Where gender and sex variances are automatically regarded as medical problems, the new standards recognizing variability as a natural phenomenon.
- Where the primary ethical concerns have been towards maintaining fairness in sport, the new ethical urgencies focus as well on inclusion, safety, and respect for diversity.
- Where “gender testing” has inherited presumptions about catching “cheaters,” the new trajectories for governance aim to bequeath fair access and safe participation.
- Where therapeutic adjustments are necessary for transgender or intersex athletes, the rationale and language will be based not on exceptionality, but rather on the clinical care, safety and health of athletes.

# ETHICS FOR TRANSITIONING SPORT

Recognizing both the claims for dignity and the all too real dangers that attend gender and sex variations, the transition of sport is based on three ethical imperatives:

- To uphold and be fully accountable to the *privacy* of athletes.
- To extend *participation* in sport without conditions or reservations.
- To *protect* athletes who in the current ‘patchwork’ of policies may be singled out for suspicion or testing.

PRIVACY	PARTICIPATION	PROTECTION
<ul style="list-style-type: none"> <li>• The choice belongs to the person.</li> <li>• Freedom to self-identify is beyond interference or influence.</li> <li>• Privacy is paramount since disclosure or suspicion may be dangerous.</li> <li>• Breaches of privacy will be regarded as violating the most basic trust from the fiduciary obligation for safety.</li> <li>• Dignity and respect depend on the care and protections for privacy.</li> </ul>	<ul style="list-style-type: none"> <li>• Involvement in sport will not be precluded on any political or medical designation of gender or sex.</li> <li>• The ‘infrastructure of welcome’ will include respectful language and policies inviting diversity.</li> <li>• Inclusiveness will be expressed materially at all levels, including whenever feasible having transgender or intersex representation on boards, policy committees and monitoring or dispute resolution panels.</li> </ul>	<ul style="list-style-type: none"> <li>• As with other prejudices, language, attitudes or actions that dehumanize transgender or intersex participants will not be tolerated.</li> <li>• Given the vulnerability from suspicion, the institutions of sport will use their resources to protect the dignity and safety of transgender or intersex individuals.</li> <li>• Creating a safe environment requires educating coaches, athletes and the public on the rationale for inclusiveness.</li> </ul>

# TRANSITIONING SPORT IN PRACTICE

Where feasible, transitioning sport will aim for the widest and easiest possible inclusion by supporting integrated sport activities. Where gender or sex segregation makes a material difference to safety and performance, transitioning sport will, as a condition of fair competition, protect the fundamental rights of choice, self determination, and privacy for all participants.

To be consistent, such transitioning will require numerous changes:

- Governance codes

and statutes for boards will need to specifically address commitments to gender self-identification.

- Board and executive recruitment will need to aim for specific representation from transgender and intersex communities.



- Rather than serving as the arbitrator on gender or sex, the sports-medical community will need to retrieve its original commitment to health care, focusing on providing for the special needs of transgender and intersex athletes.

- Anti-doping rules will remain in force, but the process will be without any role in arbitrating sex or gender. Protocols for test results and confirmation of therapeutic use exemptions will be strengthened to ensure the confidentiality necessary for protecting the privacy of athletes. Procedures as well as accountabilities will be mapped to determine how rules and training can be more effective in fulfilling the duty of care towards athletes.
- Coaches and athletes will need support for managing conversations, privacy, policies, and questions relating to gender and sex. Education and awareness are vital for dissolving misunderstandings, eliminating prejudice, and creating a more inclusive sport culture. Besides being recipients of information, such deep change requires the participation of everyone involved in sports. In this case, the inclusiveness comes from sharing stories and experiences, as well as contributing to the policy-making and monitoring.
- Based on concerns for fairness, gender and sex variances have been primarily managed from an anti-cheating perspective. As it turns out, athletes suspected of cheating based on gender are the ones who have been cheated of the opportunity to participate without prejudice or threat of harm. Instead of catching violators, the system will proceed with the duty of care to maintain the rights of athletes.
- Science cannot definitively assign gender or unequivocally define sex categories, so neither, with absolute fairness, can sport. While the scientific evidence regarding the possible advantage of transgender or intersex athletes remains unclear, the true stories of athletes who have suffered catastrophic harm from gender testing and privacy violations are beyond dispute. Going forward, terms of integrity in sport will need to evolve to protect and elevate the dignity of all participants.

# TRANSITIONING SPORT AS TRUE SPORT

Across Canada, sport organizations, clubs, grass roots community groups, and individuals have pledged support to the “True Sport” movement. Aspiring to a set of principles, True Sport members aim to derive the fullest social, community, developmental, and economic benefits from sport involvement. These principles are powerful assets for promoting the transitioning of sport, particularly when applying the ethics of “care” and “courage” that are crucial for supporting athletes.

<b>TRUE SPORT PRINCIPLES</b>	<b>GIVING PRIORITY TO CARE OVER SUSPICION</b>	<b>COURAGE IN THE CAUSE OF INCLUSIVITY</b>
<p><b>Go for It</b> Always strive for excellence and rise to the challenge, but never at the expense of others Discover how good you can be</p>	<p>Support personal self-discovery as part of striving for excellence</p>	<p>Insist locally and internationally on gender self-identification as a right</p>
<p><b>Play Fair</b> Play honestly and obey the rules, in letter and spirit Winning is only meaningful when competition is fair</p>	<p>Work to dissolve fears about unfair competitive advantage through education and dialogue</p>	<p>Lead in reformulating the terms of fairness to make inclusivity the bedrock of sport’s legitimacy</p>
<p><b>Respect Others</b> Show respect for everyone involved in creating a sporting experience, both on the field and off Win with dignity and lose with grace</p>	<p>Respect differences as an expression of care for human dignity</p>	<p>Actively oppose gender and sex discrimination</p>

<p><b>Keep it Fun</b></p> <p>Find the joy and have a good time</p> <p>Keep a positive attitude and look to make a positive difference, on the field and in your community</p>	<p>Presume participation to be motivated by desires for belonging, learning, recognition, and sheer enjoyment</p>	<p>Diffuse fears through education, focusing on many personal and social benefits from participating in sport</p>
<p><b>Stay Healthy</b></p> <p>Place physical and mental health above all other considerations and avoid unsafe activities</p> <p>Respect your body and stay active</p>	<p>Recognize therapeutic use exemptions as essential aspects of healthcare (rather than as a criteria for inclusion)</p>	<p>Orient medicine to the healthcare of athletes, eliminating the policing role in gender and sex adjudication</p>
<p><b>Include Everyone</b></p> <p>Share sport with others, welcoming and relishing differences in creed, ethnicity, gender, sexual orientation or ability</p> <p>Invite everyone into sport to make it more meaningful for the whole community.</p>	<p>Welcome all equally, creating conditions for inclusivity so that all participants thrive, regardless of background or skills-level</p>	<p>Challenge barriers to entry, particularly attitudes that may reinforce sport as the domain of only one group or level of achievement</p>
<p><b>Give Back</b></p> <p>Always remember the community that supports your sport and helps make it possible</p> <p>Find ways to show your appreciation and help others get the most out of sport</p>	<p>Acknowledge those who have challenged exclusions based on gender, or gender self-identification</p>	<p>Support athletes so that they have resources and support for any challenges to their gender self-identifications</p>

# TRANSITIONING SPORT: PRACTICAL DETAILS

## *1. Policy Template:*

<p><b>Research:</b></p> <ul style="list-style-type: none"> <li>. Science review to collect gender and sex data relevant to the sport</li> <li>. Stories and input from athletes to gauge current inclusiveness and attitudes</li> </ul>
<p><b>Commitment:</b></p> <ul style="list-style-type: none"> <li>. Gender self-identification as a human right</li> <li>. Zero-“gender testing” to prevent harm, exclusion or prejudice</li> </ul>
<p><b>Principles:</b></p> <ul style="list-style-type: none"> <li>. Continue to develop inclusiveness as an attribute of fairness</li> <li>. Assume the honesty and goodwill of athletes</li> <li>. Strengthen privacy protections as the duty of care</li> </ul>
<p><b>Implementation:</b></p> <ul style="list-style-type: none"> <li>. Provide clear and accessible documentation</li> <li>. Create with transgender and intersex athletes the specifications for language and logistics</li> </ul>
<p><b>Education:</b></p> <ul style="list-style-type: none"> <li>. Internal learning and training with administrators, coaches and participants</li> <li>. External learning with sports peers, other associations and community groups</li> </ul>
<p><b>Appeals:</b></p> <ul style="list-style-type: none"> <li>. Set up confidentiality protocols</li> <li>. Create appeals panels that include transgender or intersex representation</li> </ul>
<p><b>Accountabilities:</b></p> <ul style="list-style-type: none"> <li>. Institute a process for monitoring attitudes and behaviours</li> <li>. Test learning and practices relative to best practices in other sports</li> </ul>
<p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>. Training materials/Best practices</li> <li>. Third-party advisors for implementation design or audit</li> </ul>
<p><b>Affiliations &amp; Advocacy:</b></p> <ul style="list-style-type: none"> <li>. Build commitment with peers, within communities, and internationally</li> </ul>

## 2. Roles & Responsibilities

ASSOCIATIONS & CLUBS	COACHES	PARTICIPANTS
<ul style="list-style-type: none"> <li>. Collect and continue to build-up scientific, legal and anecdotal learning as the foundation for commitments and training</li> <li>. Urgently develop clear and forceful policies</li> <li>. Establish air-tight privacy systems</li> <li>. Co-develop inclusive and respectful language</li> <li>. Consistently explain gender commitments to coaches, participants, parents and the public</li> <li>. Send formal notice of policy to organizers, coaches, parents, participants and community groups</li> <li>. Share lessons and learning with peer sports groups and officials</li> <li>. Anticipate how to respond to protect potentially vulnerable athletes during training, competition or testing</li> </ul>	<ul style="list-style-type: none"> <li>. Access information to become familiar with policies and practicalities</li> <li>. Commit to terms of privacy and guide the team in understanding policies</li> <li>. Set team guidelines for respectful language</li> <li>. Monitor behaviours on the team, and with other sports participants during competition</li> <li>. Have conversations with parents, team members and others involved in sports activities to clearly establish principles and shared responsibilities</li> <li>. Anticipate responses for supporting vulnerable athletes (for example, from name calling or taunting) in team or public situations</li> </ul>	<ul style="list-style-type: none"> <li>. Commit to the spirit of sport and team policies</li> <li>. Do your best and appreciate others doing theirs</li> <li>. Make inclusiveness a key part of fair play</li> <li>. Welcomes differences with language and actions that are respectful of diversity</li> <li>. Relish the sheer joy of play, competition and achievement made possible by others participating in sport</li> <li>. With care for safety, avoid harmful words or actions</li> <li>. Make your team and sport an example to the community for society's commitment to human rights</li> </ul>

## APPENDIX I

### The Gender Discussion Expert Panel Included:

<p>Chris Daw General Manager, Vancouver Curling Club</p> <p>Dr. Alice Domurat Dreger Professor, Clinical Medical Humanities and Bioethics, Northwestern University</p> <p>Dr. Stephen H. Feder Head, Adolescent Health, Children’s Hospital of Eastern Ontario</p> <p>Dr. Joy Johnson Scientific Director, CIHR Institute of Gender and Health</p> <p>Natasha Johnston Director, True Sport Secretariat</p> <p>Dr. Bruce Kidd Professor, Faculty of Kinesiology and Physical Education University of Toronto</p> <p>Danny Lamoureux Director, Curling Club &amp; Championship Services</p> <p>Karin Lofstrom Executive Director, Canadian Association for the Advancement of Women and Sport and Physical Activity</p>	<p>Ole Sorensen, Senior Program Officer, Canadian Heritage – Sport Canada Anti-doping and Ethics Unit</p> <p>Jasmine Northcott Executive Director, AthletesCAN</p> <p>Dr. Christine Overall Professor, Department of Philosophy Queen’s University</p> <p>Dr. Jim Rupert Associate Professor, School of Human Kinetics University of British Columbia</p> <p>Paul Melia, President and CEO, Canadian Centre for Ethics in Sport</p> <p>Rosemary Pitfield Former Director of Executive Operations and Public Affairs, Canadian Centre for Ethics in Sport</p> <p>John Dalla Costa Founding Director Centre for Ethical Orientation</p>
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