

Can't Get No Satisfaction: The IOC, Women and the Olympics:

A Bit of Background:

In 1978 Edmonton, Alberta hosted the Commonwealth Games, and, as an avid and competitive cyclist, I traveled half way across the country and volunteered to work at the cycling venue. I was twenty years old and one of the fastest women in Canada, but all I could do at those Games was be a volunteer, as women cyclists were not allowed to compete. I asked a number of officials why this was the case and no one could give me a straight answer. They eventually would mutter that there weren't enough women racing in the Commonwealth countries to make the field competitive. I asked them how they knew that. They said they just did. But how is the women's field going to increase if women don't have any opportunities?

I could see these officials were feeling cornered and uncomfortable. With British or British colonial briskness I would be dismissed—a reaction I still seem to evoke from any number of sports officials. Women cyclists were finally allowed to compete at the Commonwealth Games in 1990.

In 1987 women cyclists were allowed, for the first time, to compete at the Pan-Am Games, and in 1999, Winnipeg, Manitoba hosted those Games. I covered them as a journalist for Pedal Magazine, Canada's leading cycling magazine, and remember asking the chair of the Pan American Sport Organization (PASO), Mexico's Mario Vazquez-Rana why there were so few events on the track at the Games for women. He smiled a fatherly smile, put his arm around my shoulder and told me that these things will come in time and sent me on my way. Ten years later, women's cycling at the Pan-Am Games has yet to reach parity with men's. The women have five events on the track while the men have eight, subsequently countries can send significantly more men than women.

Women's cycling made its Olympic debut at the 1984 L.A. Games, eighty-eight years after the first Olympic men's race. A maximum of three women per nation were allowed while a maximum of five men per country could compete. These inequitable numbers still exist. In 1984 women were only allowed to compete in the road race, with no time trial or track events. Twenty-four years later at the Beijing Olympics in 2008 the number of events for women had increased to seven (mountain biking and BMX had been added for both sexes) while men had eleven. The maximum amount of female cyclists a country could send to the Games was ten as far as I could determine while a maximum number of men, as far as I could determine, was twenty-one.

Last summer I was able to catch Hein Verbruggen immediately after the medal ceremony at the Great Wall where the road race and time trial ended at the Beijing Olympics. I had a very short time with him as his handlers tried to block me from speaking with him. Mr. Verbruggen was the president of the UCI—Union Cycliste Internationale from 1991 to 2006. He was made an honorary IOC member in 2008, and at the Beijing Olympics, was chairman of the Coordinating Commission. If there was one person on the planet who could answer my questions about why women have been shut out of cycling, it had to be him. And so I asked Mr. Verbruggen why these inequalities existed. He looked at me and shrugged his shoulders. "I don't know" he said as security guards tried to intervene. "But why are there so few women competing in so few events?" I asked again. Verbruggen shrugged again. "It must be historical" he replied and then I was physically blocked and shoved off by security.

At the press conference after Britain's Nicole Cook so brilliantly won the gold in the road race, I asked the women cyclists the same question. Cook had a slightly different opinion than did Mr. Verbruggen. "I think the inequality of women is what needs to be addressed," she said in the

conference. She expanded upon that later in a separate interview, saying that sex discrimination at the Olympic level was appalling, which of course it is. Later she was joined in the Games by her teammates on the track team who let loose on the IOC, called them sexist and their treatment of women unacceptable.

The Flying Fifteen v. VANOC:

So here we are nearly a year after Beijing with another example, despite what Richard Pound might call it, of sex discrimination by the IOC and the Vancouver Winter Games organizing committee (VANOC) before us. An international group of fifteen female ski jumpers—the Flying Fifteen as they will forever be remembered—took VANOC to the Supreme Court of British Columbia in April 2009, saying that disallowing women ski jumpers from competition contravened Canada's Charter of Rights and Freedoms. The verdict has not yet been delivered, so there can be no comment made on it, but the arguments used, both by the ski jumpers and VANOC are of great importance in terms of human rights, and what happens to a country's human rights laws when a city hosts an Olympic Games, or large sports event and signs a contract with the IOC, or other international sporting organizations that may actually contradict human rights laws of the country in which the city is located.

The Canadian Charter of Rights and Freedoms:

Canada's Charter of Rights and Freedoms was entrenched in the Constitution in 1982, when then Prime Minister Pierre Elliott Trudeau repatriated the Constitution by "bringing it home to Canada" and in entrenching the Charter in the Constitution, making laws that concern collective

and individual rights supreme laws of the land when government activities are concerned.

Section 15 of the Charter addresses Equality Rights:

EQUALITY BEFORE AND UNDER LAW AND EQUAL PROTECTION AND BENEFIT OF LAW / Affirmative action programs.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Charter does not cover the private sector and it is this particular juncture in law that the Flying Fifteen case rests on. I will come back to this in a second, but chronologically, the first legal redress Canadian female ski jumpers took was challenging the federal government at the Canadian Human Rights Commission.

Canadian Human Rights Commissions:

Prior to the 1982 entrenchment of the Charter of Rights and Freedoms in the Constitution, Canada operated under the British North America Act since confederation in 1867. In the 1950's and early sixties, the Canadian Civil Liberties Association and the Canadian Commonwealth Federation, which became the New Democratic Party, worked so the provinces, territories, and federal government developed Human Rights Codes. The codes cover all activities, private and government, but they are only quasi-judicial, can be overturned in the courts and do not have the same legal status that decisions in the judicial system have. Still, over the years many discriminatory actions have been addressed at the various commissions, and so in September

2007, Jan Willis, mother of Canadian ski jumper Kati Willis filed a complaint on her behalf at the Canadian Human Rights Commission saying the federal government discriminated against female ski jumpers by allowing an Olympics where those females were not allowed to compete. From the start all levels of government involved, including the Canadian Secretary of Sport at the time, Helen Guergies, have said they support the inclusion of women's ski jumping, but thrown up their hands and said it was the IOC, not them that determined what sports are included in the Olympics.

But Ms. Guergies did agree, during mediation with the human rights commission and the athletes, to lobby the IOC to include females in ski jumping, and an agreement with the federal government was reached in 2008 with the Willis's, who were acting on behalf of all women ski jumpers. Evidence given in the 2009 lawsuit against VANOC mentioned only one phone call from Ms. Guergis to IOC president Jacque Rogge about the issue--a futile effort and not the kind of lobbying the ski jumpers, a number of whom are still legally minors, and their mothers had in mind. This may be an indication of two factors at work: One is the lack of importance the Conservative government of Canada puts on women's equality, and/or two, the lack of power a female Minister of Sport has. The effort was, not surprisingly, useless.

Back to the Charter:

VANOC's Argument:

In May 2008 women ski jumpers filed a sex discrimination lawsuit against VANOC citing Section 15 of the Charter, the section that guarantees equality for all before and under the law. By then women ski jumpers all over the world had been organized by Women's Ski Jumping USA president Deedee Caradanni, who is the former mayor of Salt Lake City where women's

luge and bobsled were added as sports at the 2002 Olympics. Interestingly, one of VANOC's affidavit was a 200-odd page tome filed by Walter Sieber, a member of VANOC's board of directors, fifteen of whom are male, five of whom are female. He is also vice president of the Canadian Olympic Committee (15 men and 6 women on the board of directors), and a member of the IOC's Olympic Games Program Commission, which is composed of fourteen men and two women. This commission decides what sports and events will be included in the Games.

In his affidavit, Sieber used several pages of his affidavit to extol the great work of the clearly feminist IOC, with its ninety-odd male and fifteen member female membership, and how it has, over the years, ensured equality for women. Sieber wrote glowingly about the IOC's Women's Commission, the composition of which is nearly 50% male, but he also referred to Deedee Carradanni. He was not so glowing in his description of the former mayor.

There was no IOC Programming Commission in 2002 when Salt Lake City hosted the Games. At that time the host city had much more of a say in terms of what sports got into the Games. Sieber wrote that it was Carradanni who slipped in women's bobsled and luge, and inferred that such participation threatened to "dilute" the standard of excellence that the Games extolled. In reaction to the addition of two sports for women that did not meet Olympic standards, the IOC re-initiated the Program Commission. Sieber did not tell us when last the IOC actually had a Program Commission. Carradanni was, wrote Sieber, behind the lobbying of women ski jumpers. There was a strong inference that one outspoken woman with an agenda would unduly influence female athletes and before you knew it, they had mistaken a natural chain of events, like Olympic sport selection, for sex discrimination.

VANOC presented all kinds of arguments to this effect—that the IOC and VANOC were at the forefront of women's equality, and women ski jumpers could just not understand how this

equality worked. They had been misinformed. But none of this equality posturing matters to the argument at hand, which boils down to two issues. One: Is VANOC a government organization, and/or does it deliver an essential government service? Two: If it is a government organization and/or does deliver an essential government service, then it is subject to the Charter. All that need be shown at this point is that discrimination against women has occurred. For all the bleating about how VANOC and the IOC are committed to equality, arguing that disallowing one sex from an Olympic event did not discriminate against that sex is a hard sell.

The arguments used by both sides were complex—as the judge recognized after the final summation of arguments, which is why we have not yet received her decision. Because the Canadian Charter has only existed for twenty-seven years, Charter case law is still determining the limits of what is and isn't "government" and what is and isn't "government activity." It still is a rather grey area.

VANOC cited the Stoffman case to demonstrate that, as an organizing committee of an Olympic Games it was not a government organization. In Stoffman, the Supreme Court of Canada decided that, while the Vancouver General Hospital set up by government, funded by government, had members of its board appointed by the government, and adhered to all kinds of government policy, its employees were not protected under the Charter in terms of age discrimination, and therefore, they had to retire at age sixty-five.

While VANOC acknowledged that they had many strong partnerships with the municipalities of Vancouver and Whistler, the B.C. government and the federal government which included the funding of hundreds of millions of dollars for the Games, and they had a board of directors that was comprised of only 50% government appointments, private funds were of a far greater nature, the day-to-day running of VANOC was not overseen by government, and most importantly, what

was at issue—the participation of women ski jumpers at the Games—was not the call of any of the above, including VANOC, but solely under the jurisdiction of the IOC, because of the contract VANOC signed soon after the Games were awarded. The IOC had acted upon the recommendation of the Program Commission, who Sieber referred to in his affidavit as “objective experts” though he did not explain what made them objective experts, just as he did not define what “Olympic excellence” actually is and how this excellence would be “diluted” by the presence of women ski jumpers.

VANOC argued that this case clearly paralleled the *Stoffman* decision, and therefore they did not meet the test of being a government organization, nor did they meet the test of having government oversee them in their day-to-day routine. They argued, because of their contract with the IOC, which explicitly stated that the IOC had full jurisdiction over what events would be held at the Games, their relationship, in terms of providing events at the Games, was with the IOC and definitely not any level of government in Canada.

FLYING FIFTEEN’S ARGUMENT:

The women ski jumpers argued another case that went to the Supreme Court of Canada that also concerned the Vancouver General Hospital, but this time the Supreme Court decided that the hospital was under the jurisdiction of the Charter. The *Eldridge* case concerned a pregnant woman who was hearing impaired and went to the hospital to deliver her twins. But the hospital did not have people who could translate in sign language so the woman and her care givers were unable to communicate properly during her delivery and time in care there. In this case the Supreme Court decided that even though the administration of the hospital was not under the

Charter, the health care services it provided on behalf of the government were so essential that they were subject to the Charter.

The ski jumpers argued that it was this scenario that most described the relationship between VANOC and various levels of government. They also argued that the board of directors had ten government appointments and nine private appointments and then together they chose the chair, so its composition slightly favoured government involvement. But the real argument, they say, is quite simple. From the very beginning of the City of Vancouver's bid to host the Games that started nearly a decade ago, it was known that the host city was responsible for "planning, organizing and staging the Games." In the City's bid book they committed themselves to an Olympic Games that would be run adhering to the laws of Canada, particularly the human rights laws. Once Vancouver won the bid and VANOC was formed, VANOC agreed to plan, organize and stage the Games, and given that those Games are in Canada and Canada has a Charter of Rights and Freedoms that disallows a government organization to discriminate when it delivers a government activity, and since planning, organizing and staging the Olympics is a government activity in the same sense that providing health care to a hearing impaired woman is a government activity, they must provide an Olympics that does not discriminate against women. Not holding a ski jumping event for women is clearly in contravention of Section 15 of the Charter, and therefore the Olympics cannot take place in the way they have been planned at this time.

The ski jumper's submitted a 134 page argument showing that VANOC did deliver essential government services and that there was day-to-day routine government involvement in their delivery of them. (Please email me if you want their argument or VANOC's argument sent electronically to you). These arguments were summarized in their Reply Argument that occurred

on the last day of a five day trial when they replied to the arguments VANOC had made. They replied that “The real issue here is whether government has sufficient control over the activities of VANOC to warrant finding that VANOC is part of the apparatus of government.” (Pg. 2, No. S-083619 Vancouver Registry, Supreme Court of British Columbia, Anette Sagen et al v. Vancouver Organizing Committee For The 2010 Olympic and Paralympic Winter Games, Plaintiff’s Reply Argument).

They went on to say that ski jumping at the Olympics was most certainly an activity that was a “benefit of the law” as Section 15 stipulated as VANOC had argued that it was not. The ski jumpers argued that VANOC would turn back the clock on common law equality decisions in Canada by decades if their logic was followed; “...in the present case VANOC *is providing* the benefit in question, but only to men.” (Pg. 13, para 28, *ibid*). The ski jumpers also replied that VANOC may have signed a contract with the IOC, but they also signed many contracts with various levels of government and they must meet those contractual obligations: “...VANOC’s planning, organizing and staging of the discipline of ski jumping arises as a result of VANOC’s contractual obligation in relation to the 2010 Games generally, once the IOC had included the discipline in the 2010 Games. The Plaintiffs seek access to the benefit provided by VANOC’s planning, organizing, and staging of the discipline of ski jumping. VANOC does not assert that this benefit is not being provided, nor does it claim that it is not being provided *under-inclusivity*.”

“To suggest, as VANOC does, that the benefit to be provided is limited to whatever the IOC dictates, would allow the law itself to draw a distinction in treatment...In fact, it would define the limits of the benefits to be provided by the very distinction in treatment complained of, namely that VANOC is not planning, organizing and staging events in the ski jumping discipline that are open to women.

“VANOC’s position cannot hold, given that it is obligated to plan, organize and stage the 2010 Games by virtue of a contract with the Governments. Once this is acknowledged, as it must be, then that benefit is ‘of the law.’” (Pg. 14, para 31-33, *ibid*).

The ski jumpers also attacked VANOC’s constant reassurance that they and the IOC treat women equally. “This case is not about whether the IOC or VANOC treats women well in general. Generally speaking, our governments treat women well. That has not immunized them against findings that they have violated gender equality rights in specific cases.

“Not surprisingly, VANOC cites no authority where general good behaviour or good intentions with respect to gender issues were taken into account in determining whether there was discrimination in a specific instance. Section (15) and its equivalent human rights standards define the right of individuals, not of women as a class. Global records of good and bad behaviour have no bearing on such individual rights.”
(Pg. 16, para 38-39, *ibid*).

The ski jumpers continued on this theme when they attacked Walter Sieber’s affidavit that looked specifically at how the IOC’s Programme Commission determined what “Olympic excellence” actually is. “...Mr. Sieber’s second affidavit does not say that the Programme Commission considered even one of the factors raised in the para 160 of the Plaintiff’s submissions [this looked at how far women have come in ski jumping]. Nor does Mr. Sieber say that the Programme Commission considered the impact of women’s barriers to participation, or historical prejudice against them in relation to ski jumping.

“The obvious inference is that the Programme Commission did *not* consider any of these factors. The obvious inference is that the Programme Commission did *not* consider the impact of

barriers to women's participation in ski jumping, or the talents and tireless efforts of these female athletes in the face of overwhelming odds and barriers." (Pg. 17, para 43-44, *ibid*).

Finally, the ski jumpers asked that the judge find the actions of VANOC unconstitutional and that she issue a declaration that says the following:

If VANOC plans, organizes, finances and stage ski jumping events for men in the 2010 Winter Olympic Games, then a failure to do so for women violates their equality rights, as guaranteed in section 15(1) of the *Charter* and is not saved by section 1 [which is the notwithstanding clause].

This declaration would mean that because of the supreme law of Canada, VANOC could not hold a men's ski jumping event without holding a women's event too. If the IOC still refused to hold a women's event, then the men's event would have to be cancelled. The women are not asking for the five events men have when ski jumping and Nordic combined are added together. They are asking for one event on the small hill that would take half a day to complete.

We shall see how the courts will deal with this case, but it has taught us an important lesson whether the Flying Fifteen win their case or not. If they win, it means, in Canada anyway, that the organizing committee of the Olympic Games is considered either a government organization, or delivering such an important government service that the delivery of the service, or both and therefore must be protected under the Charter. This will be a victory for the women ski jumpers, but it is a much larger victory for all human beings because it demonstrates that fundamental rights and freedoms of Canadians cannot be bargained away by an Olympic organizing committee, no matter what their contract with the IOC says.

If the Flying Fifteen lose, everyone everywhere must be aware of what this means. It means, in Canada, but probably even more so in countries that do not have human rights legislation enshrined in their Constitution, or perhaps do not have this kind of Constitution, that a contract between an organizing committee and the IOC can supersede our access to human rights. This

has larger ramifications in terms of civil rights, the right to express one's opinion, especially if it is critical of the Games, and the right to display artwork or signs of protest in organizing committees. But there are larger considerations I believe we need to think about in terms of true equality for women during the Olympic Games, and what we want the real legacy of the Games to be.

After I covered the ski jumping trial in Vancouver, I was on a panel organized around the city's Violence Against Women Awareness Week. I was on the panel with two other women, both of whom were former prostitutes. They too had serious concerns about women's equality during the Games because they said that many men will come to Vancouver and therefore many men will be looking for prostitutes. This is a given in their world. They spoke out, as did many women in the audience, about the stereotypes that men will be looking for because Vancouver is situated on Canada's West Coast. "They will want Asian and Aboriginal girls," they told me. "Not women—girls." These women also say that because Vancouver is a port, it is a place to which trafficked girls from all over the world are delivered to. They have no faith that the RCMP will be looking for pimps who bring in girls at the border, and so they have started a campaign entitled "Buying Sex Is Not A Sport." They have buttons for people to wear, t-shirts, posters and placards. As Georgina said (I am not using last names), who is a member of the Coast Salish First Nation, and one of the former prostitutes, "If prostitution is the oldest sport in the world, why does my language have no word for it?"

These women do not want to see yet another generation of vulnerable young females on the street. The street is a very dangerous place to be for a woman or girl, and the places one is taken once one leaves the street can be much more dangerous.

The Native women present said that they did not want the Olympics, and neither did most other people in their communities. “We are not against the athletes, but we are against the Games” they said. They also said their chiefs decided to go for the Games because they could make money from them, but they consider these men to be sell-outs. All of the women felt that there are so many far more pressing and critical issues in Vancouver that need funds directed to them, including real programs that will keep the generations after them off the streets, out of reach of pimps, and therefore, far less likely to become drug addicts—a condition which forces them to be prostitutes.

I think about how relatively few dollars it would take to really engage disenfranchised young people, most of whom are First Nations and female, who end up in Vancouver’s East End in a downward spiral that has meant an early and often gruesome death for so many of them. Instead of building monuments as VANOC has, what would have happened if this kind of energy and commitment had gone into real change, both on the reserves where many of the inner-city First Nation youth have come from, and in the urban environment in which they now survive?

I had not thought about, until that night, how committed these women must be to finding real alternatives for young females because most of their friends have been reduced to DNA in the soil of the “Pickton Farm” in Coquitlam outside of Vancouver. They know that the legal system that was supposed to investigate the disappearance of dozens of prostitutes from the eastside did nothing for years and years until 2002 when finally police start digging for remains on the Pickton Farm. I cannot imagine how it must feel to know how much money is being spent on Olympic security for instance, when their own right to security and the right to security of so many of their friends and colleagues on the street was so utterly non-existent for all of these years. And now, not only do they still not have the right to “security of the person” as the

Canadian Constitution guarantees in the Charter of Rights and Freedoms, but their friends who are still on the street are going to be treated like excess garbage, as so many street people in the past have been at other Olympic Games.

These women know that the Olympics will further increase the risk sex workers face. In their eyes billions of dollars have been poured into a festival where people see how quickly they can slide or glide over ice or snow—just one more weird thing white people do. But there is still no money or will to create real cultural and societal changes so their daughters and granddaughters do not also end up on the street.