Olympics and Equality Rights: Is VANOC Above the Law?

The Olympic Charter is the governing document of the International Olympic Committees (IOC), setting out its responsibilities and obligations regarding a variety of things such as venues, trademarks and the values of the Olympics. One of the fundamental principles of olympism is that "any form of discrimination with regard to a country of a person on grounds of gender or otherwise is incompatible with belonging to the Olympic movement[1]. Nine female ski jumpers from Norway, Canada, Slovenia, Austria, Germany and the United States believe this principle was breached by the Vancouver Olympic Committee (VANOC) when they excluded women's ski jumping from the official program. The plaintiffs are arguing the following:

The failure to include women's jumping events in the Games is a violation of every woman's right to equal benefit under the law guaranteed by section 15(1) of the Canadian Charter of Rights and Freedoms[2] and, in particular, a violation of the section 15(1) rights of women denied the opportunity to qualify for and participate in ski jumping events at the Games."[3]

In 2005, FIS President Gian Franco Kasper stated that ski jumping is " like jumping down from, let's say, about two meters on the ground about a thousand times a year, which seems not to be appropriate for ladies from a medical point a view."[4] These nine women believe this prevailing stereotype is not helping sporting organizations to change their mind about a possible appearance in the Olympics. A few lawyers at the Vancouver office of Davis LLP have taken up this case, pro bono, for the jumpers.

This is not the first time Olympic ski jumping has made the news in Canada. Earlier in 2008, four mothers complained to the Canadian Human Rights Commission that women's ski jumping should be added to the 2010 Vancouver Olympics.[5] The argument there was very similar: women's ski jumping is not developed enough, is not practiced on three continents and has not staged at least two world championships. Nevertheless, this requirement was taken out of the Olympic Charter in 2007, so it should no longer be considered a justifying argument against the nine women in this case. Perhaps most striking is the group's demand that if women's ski jumping is not added to the Games, there be an injunction to prevent VANOC from staging a men's event.[6] It is not expected that the situation will escalate to this point.

In their statement of defence, VANOC has denied all allegations against them, adding that they were even the wrong party to sue. The statement of claims has

advanced that VANOC told the IOC that it did not want women's ski jumping to be included because of budget constraints, and this declaration would have affected the subsequent vote by the IOC to allow the sport in 2010.[7] It is the IOC that merits the defendants crown in this instance, but the Charter cannot apply to them because they are not a government agent. In Eldridge v. British Columbia (Attorney General)[8], it was asserted that a non-government actor, implementing a government policy or program, is subject to theCharter. On the other hand, if dealing with a private activity, the Charter would not apply.[9]

VANOC is subject to a number of policies drafted by the Government of Canada, including the Sport Canada Policy for Hosting International Events, a policy governing the extent of the government's involvement in the events, such as the Olympic Games.[10] The ski jumping facilities for the 2010 Games in Whistler (the Callaghan Jumps) were entirely funded by the government.[11] Some experts believe relying on a Charter defence will not be successful. Constitutional law professor William Black says the only way to argue is to assert that "VANOC is subject to the charter because it is so closely controlled by government and they're just doing the bidding of the Olympic Committee."[12]

Is there hope that the IOC will change its mind in time for the 2010 Olympics? Unlike other news sports being introduced to the Olympic family, women's ski jumping has neither sex appeal nor the "X-Games factor" that is currently all the rage in international sports.[13] It seems to be penalized for the fact that it is a sport that has been around for generations. While new sports are required to have equality between the sexes, this provision does not apply to old sports, and since women have been ski jumping for over a century, they have been grandfathered out.[14] The International Ski Federation (FIS) has also been sanctioning Junior World Championships since 2006, meaning there is a crop of young women currently competing at a high level. Will they ever get the chance to win a medal for their country? Since the Olympic Charter includes Bylaw 46.1.5, which includes an organizing committee to add events at any time, this could be a possibility.

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[1] International Olympic Committee, "Olympic Charter", online: <http://multimedia.olympic.org/pdf/en_report_122.pdf >
[2] Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. [Charter]
[3] Davis LLP, "Statement of Claims", online: <http://www.davis.ca/publication/Statement-of-Claim-for-Womens-Ski-Jump-lawsuit-against-Vanoc.pdf> at P.5

[4] Ibid. at 19.
[5] Randy Starkman, Ski Jumpers Face an Uphill Battle, Toronto Star, 10 January 2008.
[6] Supra note 2 at 21.
[7] CBC Sports, "Women ski jumpers plead Olympic case" (23 May 2008)
[8]Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624
[9] McKinney v. University of Guelph, [1990] 3 S.C.R. 229
[10] Sport Canada, "Federal Policy for Hosting International Sport Events", online: Heritage Canada <http://www.pch.gc.ca/progs/sc/pol/accueil-host/2008/doc_e.cfm>
[11] Supra note 2 at 4.
[12] The Canadian Press, "Charter Doesn't Apply to Women's Ski Jumping: Vancouver Olympic Organizers" (30 May 2008).
[13] Supra note 4.
[14] Supra note 6.