

GENDER, ATHLETES'
RIGHTS, AND THE COURT
OF ARBITRATION FOR
SPORT

Emerald Studies in Sport and Gender
Series Editor: Helen Jefferson Lenskyj,
University of Toronto, Canada

Editorial Board: Doug Booth, University of Otago, New Zealand; Jayne Caudwell, Bournemouth University, UK; Delia Douglas, University of British Columbia, Canada; Janice Forsyth, University of Western Ontario, Canada; Tara Magdalinski, Swinburne University of Technology, Australia; Jaime Schultz, Pennsylvania State University, USA; Heather Sykes, University of Toronto, Canada; Beccy Watson, Leeds Beckett University, UK.

Emerald Studies in Sport and Gender promotes research on two important and related areas within sport studies: women and gender. The concept of gender is included in the series title in order to problematize traditional binary thinking that classifies individuals as male or female, rather than looking at the full gender spectrum. In sport contexts, this is a particularly relevant and controversial issue, for example, in the case of transgender athletes and female athletes with hyperandrogenism. The concept of sport is interpreted broadly to include activities ranging from physical recreation to high-performance sport.

The interdisciplinary nature of the series will encompass social and cultural history and philosophy as well as sociological analyses of contemporary issues. Since any analysis of sport and gender has political implications and advocacy applications, learning from history is essential.

Contributors to the series are encouraged to develop an intersectional analysis where appropriate, by examining how multiple identities, including gender, sexuality, ethnicity, social class and ability, intersect to shape the sport experiences of women and men who are Indigenous, racialized, members of ethnic minorities, LGBTQ, working class, or disabled.

We welcome submissions from both early career and more established researchers.

GENDER, ATHLETES' RIGHTS, AND THE COURT OF ARBITRATION FOR SPORT

BY

HELEN JEFFERSON LENSKEYJ

University of Toronto, Canada



United Kingdom – North America – Japan
India – Malaysia – China

Emerald Publishing Limited
Howard House, Wagon Lane, Bingley BD16 1WA, UK

First edition 2018

Copyright © 2018 Emerald Publishing Limited

Reprints and permissions service

Contact: permissions@emeraldinsight.com

No part of this book may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without either the prior written permission of the publisher or a licence permitting restricted copying issued in the UK by The Copyright Licensing Agency and in the USA by The Copyright Clearance Center. Any opinions expressed in the chapters are those of the authors. Whilst Emerald makes every effort to ensure the quality and accuracy of its content, Emerald makes no representation implied or otherwise, as to the chapters' suitability and application and disclaims any warranties, express or implied, to their use.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-78754-240-2 (Print)

ISBN: 978-1-78743-753-1 (Online)

ISBN: 978-1-78743-969-6 (Epub)



Certificate Number 1985
ISO 14001

ISOQAR certified
Management System,
awarded to Emerald
for adherence to
Environmental
standard
ISO 14001:2004.



INVESTOR IN PEOPLE

ACKNOWLEDGEMENTS

Thanks to social media, a Twitter post several years ago first drew my attention to the potential shortcomings of the Court of Arbitration for Sport (CAS). Following up on comments praising CAS decisions, this post raised a key question: has justice been sacrificed in the interests of speed and efficiency? And so, when my colleague Stephen Wagg invited me to contribute to the *Journal of Criminological Research Policy and Practice* special issue on sport, crime and deviance, I started researching sport exceptionalism, sports law, and CAS. I soon discovered that these topics warranted deeper investigation, resulting in this book. Coincidentally, around the same time, Stephen Wagg and Philippa Grand, Publisher and Head of Social Sciences, Emerald Group Publishing had been discussing a possible book series on gender and sport. I now have the privilege of editing this series, together with a team of accomplished sport scholars, and I am delighted that this volume is the first publication in the series.

Conversations about these issues, online and/or in person, with colleagues and friends Daryl Adair, Janaka Biyanwila, Andrew Byrnes, Nikki Dryden, Janice Forsyth, Kevin Lindgren, Jason Mazanov, Stephen Wagg, Kristen Worley, and many others were invaluable, as were the comments from anonymous reviewers. I am also grateful to the small but growing number of legal scholars, sports lawyers, sociologists, historians, and scientists who have critically examined

issues of athletes' rights and sports law, and whose work has inspired this project. Thanks to Philippa Grand, Rachel Ward, and the editorial team at Emerald Publishing for their commitment to the project. My partner Liz Green provided her usual valuable feedback and expert proofreading. As always, I thank Liz and my children for their love and support.

Note: An earlier version of some sections of the book appeared in the article 'Sport exceptionalism and the Court of Arbitration for Sport', *Journal of Criminological Research Policy and Practice* 4(1), 2018, 5–17.

CONTENTS

<i>Acknowledgements</i>	v
<i>List of Abbreviations</i>	ix
Introduction	1
PART I	
1. Sports Law and the Court of Arbitration for Sport	13
2. CAS and Sport Exceptionalism	41
PART II	
3. The War on Doping	71
4. Doping, Genes, and Gender	115
Conclusion	159
<i>CAS Awards</i>	165
<i>Swiss Federal Tribunal Awards</i>	167
<i>Bibliography</i>	169
<i>Index</i>	203

LIST OF ABBREVIATIONS

ABP	Athlete Biological Passport
ADR	Alternate Dispute Resolution
AHD	Ad Hoc Division
AIS	androgen insensitivity syndrome
AOC	Australian Olympic Committee
ASADA	Australian Sports Anti-Doping Authority
BOA	British Olympic Association
CAS	Court of Arbitration for Sport
CCES	Canadian Centre for Ethics in Sport
DSD	disorders of sexual development
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
FEI	Fédération Equestre Internationale (equestrian)
FIFA	Fédération Internationale de Football Association
FIG	Fédération Internationale de Gymnastique
FINA	Fédération Internationale de Natation (swimming)
FIS	Fédération Internationale de Ski
FISA	International Rowing Federation
FIVB	Fédération International de Volleyball
HRTO	Human Rights Tribunal of Ontario

IAAF	International Association of Athletics Federations
ICAS	International Council of Arbitration for Sport
ICF	International Canoe Federation
IF	international federation
IOC	International Olympic Committee
IPC	International Paralympic Committee
ISLJ	International Sports Law Centre
ISU	International Skating Union
ITA	Independent Testing Authority
IWF	International Weightlifting Federation
JADCO	Jamaica Anti-Doping Commission
NADO	National Anti-Doping Organizations (Institute of)
NOC	National Olympic Committee
OCA	Ontario Cycling Association
OHA	Ontario Hockey Association
PCOS	polycystic ovary syndrome
PILA	Private International Law Act
ROC	Russian Olympic Committee
RUSADA	Russian Anti-Doping Agency
SFT	Swiss Federal Tribunal
SGB	sports governing body
TAS	Tribunal Arbitral du Sport
T/E	testosterone/epitestosterone ratio
TUE	therapeutic use exemption
UCI	Union Cycliste Internationale
UEFA	Union of European Football Associations
UKAD	United Kingdom Anti-Doping

UN	United Nations
USOC	United States Olympic Committee
VANOC	Vancouver Organizing Committee
WADA	World Anti-Doping Agency
WPA	World Players Association