

MARY ANNE HAGGIE

**“STRONGER, BIGGER, FASTER
- SO IN CHARGE?”
WOMEN SPORT AND THE LAW
THE GENDERING OF SPORT
IN NEW ZEALAND**

LLB(HONS) RESEARCH PAPER
GENDER AND THE LAW (LAWS 539)

LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON

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ABSTRACT

Sport is a highly gendered cultural activity in New Zealand. Men are far more likely than women to reap the financial and social rewards of playing, coaching, or managing sport. The 'gendering' of sport is the result of many factors including the central role of rugby, the influence of a conservative and male-dominated media and stereotypical views about 'feminine' physical activity. New models of sporting practice are needed which are based on standards of fairness and equality.

New Zealand's anti-discrimination laws do not protect the rights of women in sport. First, the club exception (s 44(4)) in the Human Rights Act 1993 allows sports clubs to discriminate against women, both in access to the club and between club members. Second, the sport exception (s 49(1)) in the Human Rights Act 1993 permits discrimination on the basis of 'strength, stamina or physique' which effectively sets a male standard and perpetuates stereotypes about women's physical capabilities. Both exceptions preclude women from having a legal means to challenge discrimination in sport, do not compare favourably with legislation in other jurisdictions, and are potentially a breach of New Zealand's international obligations.

There are a range of Government policies and programmes aimed at increasing the participation of women and girls in sport in New Zealand. However, such policies are have had little impact on the male-dominated sporting industry.

New Zealand women could benefit from an independent voice in sport. Advocacy groups in North America and Australia have been very successful in challenging sports organisations, lobbying governments to introduce law reforms, supporting legal challenges against discrimination, and promoting the advancement of an equitable sports community.

The text of this paper (excluding contents page, footnotes and bibliography) comprises approximately 14930 words.

“STRONGER, BIGGER, FASTER - SO IN CHARGE?”

WOMEN, SPORT AND THE LAW

THE GENDERING OF SPORT IN NEW ZEALAND

Mary Anne Haggie¹

I INTRODUCTION

Throughout history, men have felt the need to prove their biological superiority over women. In sport, this is achieved by men showing that they are stronger, bigger and faster.² In New Zealand, being strong, big and fast in sport turns ‘boys into men’. But it is not only in sport that this appears to matter. The underlying belief of male superiority (even if one is a small, weak and slow man) is apparent in other areas of life such as politics, the law and business. It joins other stereotypical male attributes such as ‘rationality’, ‘logic’ and ‘objectivity’ and it is used as a justification for the inherent right of men to dominate.

This paper highlights the ways in which sport is one of the major cultural institutions by which gender domination and inequality is practised and sanctioned. It shows that despite increasing participation by women and girls in sport, there are considerable differences in the economic and social benefits to be gained from sport between men and women.

Part I describes the increasing field of ‘sport law’ and suggests that legal issues which are relevant to women have largely been ignored by writers in the sport law area. In Part II the situation of women in New Zealand sport is examined, including the background to the increasing participation of women and statistics which still show significant gender disparity between men and women. It also looks at the role of the media, their lack of coverage and sexist reporting of women in sport in New Zealand.

1 The author is ‘sport mad’ and believes that ‘Sports *Are* the Meaning of Life’. She has been involved with sport all her life and currently participates at administrative, coaching and playing levels.

2 See: Lois Bryson “Challenges to Male Hegemony in Sport” in Michael A Messner and Donald F Sabo (eds) *Sport, Men and the Gender Order - Critical Feminist Perspectives* (Human Kinetics Books, Champaign Illinois, 1990) 173, 173-174 [*Sport, Men and the Gender Order*].

Part III explores various models of reform, three from a feminist perspective and one which proposes an integration model of sport. New Zealand law and government policy on women in sport are discussed in Part IV. It concludes that anti-discrimination legislation in New Zealand provides few substantive avenues for sportswomen to challenge sexism and discrimination in sport. Part V looks at other legal and political options for challenge, such as potential breaches of international covenants and the growing range of alternative dispute resolution mechanisms established by sports bodies. Finally, it is proposed that New Zealand women could benefit from an independent advocacy group to promote the advancement of women in sport.

A Characterisation of Sport Law

To lawyers, there is no such thing as 'sport law' as a traditional legal discipline like contract, tort or criminal law. However, all aspects of the traditional disciplines impact on sport and create legal issues. Like other specialist areas such as 'medical law', sport law boundaries are not defined and can refer to any situation where the subject matter of the legal problem is connected to a sporting situation.³ Many writers have indicated that there is increasing work and interest by lawyers in sport law.⁴

The twentieth century marks a revolution in the participation of women and girls in sport. Sportswomen nowadays encounter similar legal issues as sportsmen when signing contracts, forming sporting bodies or dealing with issues such as illegal drugs. But the legal system has also been a prime mechanism by which women's subordinate position in sport has been both supported and maintained, primarily through a range of exclusionary tactics which prohibit or restrict women from playing, coaching or administrating

3 See: Maurice Kelly "The Characterisation of Sports Law" in Legal Research Foundation *The Law of Sport* (Legal Research Foundation, Auckland, 1993) 1; P W David "Sport and the Law - A New Field for Lawyers?" [1992] NZ Recent Law Review 80; Charles Woodhouse "Sport and Law: Role of the Lawyer in Sport Today" [1993] NZLJ 411.

4 David Gendall "New Developments: Increasing Scope for Lawyers in the Sports Arena" (1997) 480 Law Talk 14, 14-17. Gendall reports that a 1997 MRL Research survey found that 77 per cent of law practitioners in New Zealand placed sport law at the top of the list of "new and developing" practice areas.

sport.⁵ Sport law for women often begins with an emphasis on existing laws or on changing laws for two purposes - to create more sports opportunities for women or to bring women's values and perspectives into sports. The third and perhaps more challenging aspect of women and sport law is to expose the ways in which sport (and its legal framework) perpetuates male domination, and to explore new theoretical and practical models which promote equality between men and women both in the sporting arena and elsewhere.

A cursory look at any bookshop or library reveals that most sports books are about men's sports and general texts make only passing references to women. With the emergence of 'sport law' women are again on the margins. For example, an Australian text: *Sports Law A Practical Guide* only refers to women specifically in a small section on pregnancy.⁶ Of course, legal advice is usually sought for issues concerning money, and men's sports are far more likely than women's to generate sums worth fighting about. However, such arguments do not justify omission of the full range of legal issues women encounter in sport. Legal writers have an important role in analysing the inadequacies in existing laws, exposing discrimination and shaping reform.

II THE 'GENDERING' OF SPORT

The gendering of sport takes two major forms. First, it is structural in that males dominate sporting bodies, receive most of the benefits, and exclude or limit women's participation through laws, regulations and policies.⁷ Second, it is ideological in that the 'norms' for sporting endeavour are male so women are judged against male standards or are restricted to sports which do not challenge stereotypical notions of female physical activity. This section begins with the entry of women into sport in the late nineteenth century. Next, it highlights the main areas where gender disparity exists in New Zealand sport today. It also looks at four significant factors in the 'gendering process' - the role of the

5 See: this paper *Part IV Legal and Policy Avenues for Challenge*.

6 Mark Fewell (ed) *Sports Law A Practical Guide* (LBC Information Services, Sydney, 1995) 212-214.

7 See: this paper *Part IV A the sport and club exceptions in the Human Rights Act 1993*.

media, the dominant place of rugby in New Zealand, the control of women's bodies and the effect of homophobia on women's participation in sport.

A *Nineteenth Century Influences*

Women in late nineteenth century New Zealand were not only achieving the vote but were also challenging restrictive Victorian concepts of inherent female weakness and frailty.⁸ Advocates of Darwinism and eugenics such as the founder of Plunket, Dr Truby King, approved of physical exercise for girls in schools (at the expense of academic studies) because it would create healthy mothers of future British stock.⁹ Coney states:¹⁰

This change of heart about female physical activity, even if partly motivated by jingoistic interest in the betterment of the race, opened the way for a dramatic burgeoning of participation in women's sport over the next decades.

Despite achieving franchise, there were few opportunities for women to influence public life and many middle-class women directed their energies towards welfare, education and sporting outlets for women.¹¹ Of course, working-class women were always physically active in the homes of the wealthy, on farms or in factories.¹²

In New Zealand schools, physical education for girls was modelled on the English system where the focus was not on competing but on grace, personal grooming and 'feminine' movement.¹³ Around the same time, team games for boys became more structured and formalised and in 1870, the first game of

8 See: Geraldine Ryan "Muscular Maidens: the Development of Sport and Exercise in Girls' Schools in New Zealand" (1983) MA Thesis - University of Canterbury 59-61.

9 Sandra Coney *Every Girl - A Social History of Women and the YWCA in Auckland* (Auckland YWCA, Auckland, 1986) 161-162. See also: Ruth Fry *It's Different for Daughters: A History of the Curriculum for Girls in New Zealand Schools 1900-1975* (New Zealand Council for Educational Research, Wellington, 1995).

10 Coney, above n 9, 162-163.

11 Coney, above n 9, 170-189.

12 Julie Ellen Batchelor "Girls, Golf and the Gender Gap" (1995) MA Thesis - Recreation and Leisure VUW, 19.

13 John Nauright and Jayne Broomhall "A Woman's Game: The Development of Netball and a Female Sporting Culture in New Zealand, 1906-70" (1994) 11(3) *International Journal of History of Sport* 387, 391-392.

rugby was played in New Zealand.¹⁴ It came with the philosophy of the headmaster of Rugby School in England, Thomas Arnold, who believed that "team games...were character building and... a way to impart the desirable attributes of manly virtue: acceptance of authority, perseverance against the odds, the ability to lead and to win or lose gracefully."¹⁵

Increasing emancipation of women led to a focus on sexuality and gender, and sport was "one of the social institutions of the late 19th century which played a critical role in socialising men to define themselves as biologically superior to women."¹⁶ While the development of modern sport in the Western world can be traced to many factors such as nationalism, class, industrialisation and capitalism, it is also argued that "any explanation of the rise of modern sport that neglects to take into account sexuality and gender is sorely lacking."¹⁷

B Gender Disparity in New Zealand Sport Today

More men than women belong to sports clubs and play competitive sport in New Zealand.¹⁸ More boys than girls play sport and girls are dropping out of sports at greater rates than boys when they leave school.¹⁹ Girls receive less coaching, less playing space and poorer resources for physical activity and sports at New Zealand schools.²⁰

Men make up the majority of coaches, officials, management and administrators in sport, both paid and unpaid.²¹ The Sports Foundation, a private organisation which has an exclusive contract with the Hillary

14 Finlay Macdonald *The Game of Our Lives* (Penguin Books, Auckland, 1996) 8.

15 Macdonald, above n 14, 5.

16 Todd Crosset "Masculinity, Sexuality, and the Development of Early Modern Sport" *Sport, Men and the Gender Order* above n 2, 45, 51.

17 Crosset *Sport, Men and the Gender Order* above n 2, 54.

18 Hillary Commission *Winning Women Resource Manual* (Wellington, 1998) 33-34 [*Winning Women*].

19 *Winning Women* above n 18, 4, 26; See also: Ken Hodge "Sport Participation and Drop-outs in Teenage Girls" (1993) University of Otago, Dunedin.

20 See: B Creighton "Breaking Through in Action" (1992) 25(4) *NZ Journal of Health, Physical Education and Recreation* 7; R Mitchell "Gender Difference is Alive and Well in the Playground" (1992) 25(4) *NZ Journal of Health, Physical Education and Recreation* 13.

21 *Winning Women* above n 18, 4.

Commission to fund and promote high performance sport²² currently has eleven board members, all of whom are male. A 1993 survey of 73 New Zealand sports organisations found that 89 per cent of elected directors, 79 per cent of executive officers and 80 per cent of volunteer administrators were male.²³

A recent study found that organisational bias was the main factor hindering women's advancement in coaching.²⁴ The report lists 26 barriers, the most significant of which were the success of male networking, lack of support from administrators, biased coach selection processes, financial considerations, organisational preferences for male coaches, and work and time commitments. The reports states: "Half of the barriers relate to gender issues, and ... these ... were perceived to be large obstacles to their career."²⁵

Few sportswomen can expect to earn a living out of their chosen sport whereas men's earnings have increased substantially in the last few years. With more professionalism in sport, many sportsmen, but only one woman, have joined the New Zealand 'rich list'.²⁶ Sports organisations do not publicise information about payments to players. However, it is widely known that in sports such as rugby and cricket, where the administrations of the men's and women's sports have been amalgamated, the women in the national teams receive small daily payments whereas the men (apart from the Maori team) have high-paying contracts or salaries.

New Zealand taxpayers pay considerably more for sports injuries for males than females. In 1998, the Accident Rehabilitation and Compensation Insurance Corporation paid out \$29.8million in claims for male sport injuries and

22 Hillary Commission *Hillary Commission Today (Summary of 1998 Annual Report)* (Wellington, 1998) 32 [1998 Annual Report].

23 J Cameron "Women - The Missing Ingredient" in *Conference Papers - Women in Action Conference Wellington 1993* (The Conference Company, Auckland, 1993) 3.

24 Hillary Commission *Women in Coaching - Research Project Summary Report Analysis and Action* (Wellington, 1999) 5-7 [Women in Coaching].

25 *Women in Coaching* above n 24, 7.

26 The only sportswoman on the 'rich list' is Marnie McGuire (golf). Sportsmen include: Bruce Farr (yachting), Chris Dickson (yachting), Sir Bob Charles (golf), Graham Henry (rugby), Cody Forsyth (polo), Jonah Lomu (rugby), Aaron Slight (motorcycling), Simon Crafar (motorcycling), Marc Ellis (rugby), Sean Marks (basketball). "Rich get richer - but slower" *New Zealand Herald*, Auckland, New Zealand, 16 July 1999, A1.

\$10million for women.²⁷ Sportsmen accounted for 71 per cent of the new claims in 1998.²⁸

Concerns about increasing reports of sexual harassment in New Zealand sport led the Hillary Commission to produce a policy and procedures manual on harassment for sports organisations.²⁹ American research has found that male athletes at universities are more likely to be reported for sexual assault than other male students.³⁰ No similar research has been conducted in New Zealand, but some serious cases of sexual assault by coaches on athletes have led to convictions³¹ and it is argued that "[t]he few cases which have ended up in court...could be the tip of the iceberg in terms of cases of misuse and abuse."³²

C Media

The amount of media coverage of women's sport is actually decreasing in New Zealand. In 1992, a study of six newspapers³³ showed that 12.4 per cent of sports news was devoted to women's sport, but by 1996, an update of the research found that the coverage in the same newspapers had reduced to 4.4 per cent.³⁴ Australian³⁵ and United States of America (US)³⁶ research show similar

27 Accident Rehabilitation and Compensation Corporation, *The 1998 ARCIC Injury Statistics Publication* (Wellington, 1998) 98.

28 *The 1998 ARCIC Injury Statistics Publication* above n 27, 95.

29 Hillary Commission *Harassment-Free Sport 1999 - Policy and Procedures for Positive Sport* (Wellington, 1999).

30 See: T Crosset, J Benedict and M McDonald "Male Student-Athletes Reported for Sexual Assault: A Survey of Campus Police Departments and Judicial Affairs Offices" [1995] *Journal of Sport and Social Issues* 126; M Koss and J Gaines "The Prediction of Sexual Aggression by Athletic Participation and Fraternity Affiliation" (1993) 8(1) *Journal of Interpersonal Violence*, 94.

31 See for example: *R v Lee* (10 October 1996) unreported, Court of Appeal, CA 145/96; *Williams v R* (5 September 1996) unreported, Court of Appeal, CA 252/96; *R v W* (4 June 1993) unreported, Court of Appeal, CA 87/93.

32 Tracy Molloy and Maria Shand "The Coach and the Female Athlete" in *Conference Papers - 8th Annual ANZSLA Conference* (1998) 19.

33 J McGregor and P Melville "The Invisible Face of Women's Sport in the New Zealand Press" (1992) 2(4) *Australian Journal of Leisure and Recreation* 18-27.

34 J McGregor and S Fountain "Gender Equity in Retreat: the Declining Representation of Women's Sports in the New Zealand Print Media" (1997) 112 *Metro Magazine*, Auckland, New Zealand, 38-43.

35 Janine Mikoza *Inching Forward* (Womensport Australia, Deakin, 1997).

36 Feminist Majority Foundation Taskforce on Women and Sport "Women Athletes in the Media". (1995) *Empowering Women in Sport*, The Empowering Women Series, 4-5 at <<http://www.feminist.org/research/sports2/html> [Feminist Majority].

results. Sports reporting, probably more than any other branch of the media, is dominated by male reporters and male sports. For example, Radio Sport, a station launched in 1997, currently has no women sports broadcasters.

Netball receives proportionately more media attention than any other women's sport. Netball's success may be because it has been viewed as an appropriately 'feminine' game and therefore "it ...does not pose a threat to the gender order in the ways that many other sports do, such as women's rugby or soccer."³⁷ Being traditionally a women-only game, netball is one of the few sports described by the media on its own terms, rather than being the 'female version' of the male sport, such as 'women's rugby' and 'women's cricket'.

The media may argue that they are merely reflecting public interest and that women's sport, like other minor male sports, is less exciting and less susceptible to media coverage. However, many competitive sports attract considerably more participants and spectators than is reflected by the media coverage.³⁸ It is also apparent that the media can create public interest in a sport, as illustrated by the 'beat up' of the America's Cup. Arguably, watching yachts zigzag across the sea has limited spectator appeal, except for those most closely involved. Yachting is also financially inaccessible to most New Zealanders. However, in the last decade the media, backed by powerful corporate interests, have created and massaged wide public appeal in yachting.

But lack of coverage is not the only issue. When the South African netball team toured New Zealand earlier this year, Irene Van Dyk, the captain, was interviewed by Martin Devlin on Radio Sport.³⁹ The first question Devlin asked her was: "Are you a sex symbol in South Africa?" Later he asked: "Is playing the Australian netball team harder than giving birth?" Devlin's focus on Van Dyk's appearance, sexual appeal to men and her family commitments is typical of many interviews of sportswomen.

37 Nauright and Broomhall, above n 13, 404.

38 The top ten *competitive adult* sports in NZ are (from 1-10): touch football (172250 participants), golf (141440), netball (114480), rugby union (104463), cricket (81623), outdoor bowls (77452), indoor bowls (58512), tennis (53892), basketball (49830), soccer (49343). Hillary Commission *1996 Sport and Physical Activity Survey* (Wellington, 1996).

39 "Martin Devlin Sporting Breakfast" (Radio Sport, broadcast, 12 June 1999).

The media's portrayal of sportswomen's appearance, social life or relationships is at the expense of their skills and achievements. Being romantically linked to a well-known sportsman will always attract media attention. Many sports reporters do not understand the rules, tactics or team positions in some women's sports. The Hillary Commission has provided media training to sportswomen but note that "without significant policy initiatives to tackle the sexism of sports news within newsrooms, the training of sportswomen to become media savvy will have minimal effects only in improving the invisibility of sportswomen in newspaper coverage."⁴⁰

Sexualisation of sportswomen by the media has led many elite players to conform to 'feminine' standards and they are often rewarded with greater media attention and better or bigger sponsorship deals. It is also suggested that "self-sexualisation of female athletes is in many ways motivated by the fear that women's intrusion into the masculine realm of sports is associated with lesbianism."⁴¹

Where women do succeed at world-class levels, they are rarely mentioned in the media. One of New Zealand's most successful international golfers, Marnie McGuire, has only recently been 'discovered'. Sports where women's results are improving faster than men's, such as long-distance running and swimming, are not considered newsworthy. Bryson argues that when significant performances by women are ignored by the media, this is "not merely a passive and inadvertent act" but a dynamic and deliberate process of exclusion.⁴²

The invisibility of sportswomen's achievements is perhaps most blatant when sports awards are distributed. For example, the current search for a New Zealand 'Sports Champion of the Century'⁴³ invites the public to vote for one person from a list of nominees for each decade. When the decade winners are elected, a panel of media and sports personalities will decide the overall winner.

40 *Winning Women* above n 18, 37. See also: this paper *Part IV B 2* - the media programme may be better directed at the media.

41 Note "Cheering on Women and Girls in Sports: Using Title IX to Fight Gender Role Oppression" (1997) 110 Harv L Rev 1627, 1632 ["Cheering on Women and Girls"]. See also: this paper *Part II F* on Homophobia in Sport.

42 Lois Bryson "Sport and the Maintenance of Masculine Hegemony" (1987) 10(4) *Women's Studies International Forum* 349, 355.

43 Sponsored by ALAC (Alcohol Liquor Advisory Council) and the Halberg Trust.

Nominees prior to 1950 are inductees in the Sports Hall of Fame and after 1950, the Halberg Trust's 'Sportsman of the Year' automatically becomes the nominee. To date, five decades have been decided and there have been no female winners.⁴⁴ However, three of the decades had no female nominees and the other two had one in each. Out of 51 nominees up to 1959, only four have been women.⁴⁵

Clearly, a sportswoman has little chance of becoming a decade or an overall winner. The entire process is sexist and discriminatory. It fails to recognise that the decision-makers of sports awards were historically male dominated and focussed. It perpetuates this inequality in its own selection panel which has seven men and two women,⁴⁶ and a decision-making procedure which systemically disadvantages women by ignoring the historic and continuing invisibility of women's achievements in sport.

The media is a powerful force in the trivialisation, sexualisation and invisibility of sportswomen.⁴⁷ In general, the sports media in New Zealand are neither required nor appear interested in improving their coverage of women. Factors such as increasing professionalism and 'pay' television are likely to make the situation worse for women as 'money talks' in the media as much as it does elsewhere.

D The Dominant Position of Rugby

Rugby is widely recognised and seldom challenged as New Zealand's 'national game.' Because of rugby's dominance and success, it attracts huge sponsorship and funding. It receives more media coverage than any other sport, male or female. In the week of 4 September to 10 September 1999, there were

44 Decade winners (as at 1 October 1999): 1900-1909: 1905 All Blacks; 1910-1919: Anthony Wilding; 1920-1929: George Nepia; 1930-1939: Jack Lovelock; 1940-1949: Bert Sutcliffe.

45 1900-1909: Kathleen Nunneley (tennis); 1930-1939: Jean Batten (aviation); 1950-1959: Yvette Williams (athletics), Phillipa Gould (swimming).

46 Centennial Academy Panel: Dave Gerrard, Bruce Cameron, Iain Galloway, Charlotte Gendall, Don Neely, Ron Palenski, Joseph Romanos, Norma Williams, Bernie Wood.

47 "Cheering on Women and Girls" above n 41, 1630-1632.

16 New Zealand television programmes on rugby,⁴⁸ three of which were not actual games but comment *about* rugby.⁴⁹ It is said that “[g]ood at the game or lousy, infatuated or bored rigid by it, male or female, rugby is too all-pervasive, too ubiquitous to have been avoided...In rugby, New Zealanders have seen themselves.”⁵⁰ Rugby inspires passions of colossal proportions - arguably the closest New Zealand got to civil war this century was the Springbok Tour in 1981, where the subject was apartheid, but the context was the game of rugby.⁵¹

More than any other sport, rugby is seen as synonymous with traditional concepts of masculinity.⁵² Rugby creates ‘real men’, strengthens male bonds and its inherent aggression is considered a valuable trait of manhood.⁵³ Since sport in New Zealand is so overwhelmingly dominated by rugby and rugby is essentially about men (despite women now playing the game) it is not surprising that women’s sports are not celebrated publicly. But in other countries where rugby does not feature so prominently, the ‘national game’ is still a male, not a female sport. So Australia has cricket, England and Europe have soccer and North America has grid-iron or baseball. The determinative factor is that the ‘national’ sport is a male sport, not which form it takes.

E Bodies

Sport extends the physical capabilities of the human body and the benefits to women can include: better health and fitness, improved self-esteem and confidence, increased social contacts, the opportunity to learn leadership and management skills, employment and sometimes income. However, sport has also become an area where women’s outward appearance and sexuality is often

48 New Zealand Listener, Auckland, New Zealand, 4-10 September 1999.

49 TV One: *The Tight 5, Legends of the All Blacks*; Sky Sport: *Rugby: Reunion*.

50 MacDonald, above n 14, 1.

51 Trevor Richards *Dancing on Our Bones New Zealand, South Africa, Rugby and Racism* (Bridget Williams Books, Wellington, 1999) 4.

52 See: Jock Phillips “Rugby, War and the Mythology of the New Zealand Male” (1984) *NZ Journal of History* 18; Shona Thompson “Feminism and Rugby” (1993) 24 *NZ Journal of Physical Education* 1.

53 See: Jayne Francis “What is Barbaric Behaviour” [1997] *NZLJ* 121, 122; Lynne Star “Macho and His Brothers: Passion and Resistance in Sports Discourse” (1993) 26 *Sites* 54; Steven J Jackson “Beauty and the Beast: A Critical Look at Sports Violence” (1993) 26(4) *NZ Journal of Physical Education* 9, 12-13.

perceived by sports organisations, the media, wider society and sometimes themselves as more important than their participation, health benefits or achievements.

The intervention in and regulation of women's bodies in sport is pervasive. While it has been proven that there is no biological reason why women should not compete in any sport at all,⁵⁴ women's strength, height and weight have been used as legal justification for discrimination. Women have been prevented from either competing in certain sports, such as boxing, weightlifting, marathon and decathlon, or restricted to women-only events.

Sportsmen are praised for being muscular, strong and even heavy, and their good looks (or lack of them) are not seen as relevant to their selection or performance. The same characteristics in women become the subject of comment and derision - their muscular, strong bodies are criticised for being 'unnatural' and indicative of their loss of 'femininity'.⁵⁵

One of the most bizarre aspects of the Olympics is the gender testing of all female athletes.⁵⁶ It has been widely criticised by sportswomen who find it humiliating and degrading but continues despite the fact that only one male has ever been found to be impersonating a woman.⁵⁷ The underlying principle is that male sport is the standard by which all sportspeople should be judged:⁵⁸

Sex tests examine the athlete not to see if she might be a woman ingesting drugs to become a man, but rather because she might be a biological male trying to pass as a female. In either case the image of the female athlete as imposter and the assumption that athletic superiority is rooted in male biology remains undisturbed.

54 See: K Dyer *Catching Up the Men: Women in Sport* (Junction Books, London, 1982); Adrienne Blue *Grace Under Pressure - The Emergence of Women in Sport* (Sidgwick & Jackson, London, 1987).

55 See also: this paper *Part II F* on homophobia in sport.

56 Article 1 - IV, Gender Verification, International Olympic Committee (IOC) Medical Code. The IOC Medical Code must be adhered to by all competitors and parties: Rule 48, The Olympic Charter, 1983, at <http://www.olympic.org/>.

57 Susan Cahn *Coming On Strong Gender and Sexuality in Twentieth Century Women's Sport* (The Free Press, New York, 1994) 263 [*Coming on Strong*].

58 *Coming on Strong* above n 57, 264.

Sport has also contributed to an obsessiveness with thinness and youth. An extreme example is international gymnastics where the expectation by judges (and spectators) is that female competitors will be excessively thin, cute and childlike. The reality is that many suffer from a variety of eating disorders and delayed puberty. Once the inevitable changes in their bodies occur, the gymnasts are swiftly dropped by coaches and selectors and public interest wanes.⁵⁹

Sport is intrinsically about the physical body and the limits to which it can be extended. The expression and institutionalisation of sexist views about the ideal female sporting body distorts and damages the enjoyment of sport for many women. It also acts as a powerful disincentive to those women who do not match the prevailing stereotype from taking up any sporting activity, and reinforces limiting concepts about how women should look and feel in all aspects of their lives.

F Homophobia

Homophobia has been a powerful tool to control women and girls in sport. It exposes deep societal fears that women playing sport inherently disrupts the proper social order and sport is so closely associated with masculinity that when women play, they are blurring the boundaries between sexuality, gender and stereotypical roles in society.⁶⁰

Sports have both explicitly and implicitly imposed a standard of heterosexuality on their participants. The impact on heterosexual women is that their skill, strength and achievement are de-emphasised and their appearance, 'feminine' interests, boyfriends, husbands or children are highlighted.⁶¹ Lesbian sportswomen face outright hostility and are often ridiculed, ostracised or labelled 'mannish' or 'butch' because they reject the conventions of femininity and they are clearly not sexually accessible to men. In the 1980s, Martina Navratilova lost sponsorship deals when she announced she was lesbian. More

59 *Coming on Strong* above n 57, 276. A 1986 US study of female college athletes found that 74 per cent of gymnasts used extreme weight-control methods such as diet pills and laxatives, or suffered bolemia or anorexia.

60 See: *Coming on Strong* above n 57, 185.

61 See also: this paper *Part II C* on the role of the media.

recently, Amelie Mauresmo, a tennis player who openly talks about her lesbian relationship, was criticised for looking 'masculine' and 'butch'. In 1998, Martina Hingis told the German press that since Mauresmo was at the competition with her girlfriend: "Sie ist ein halber Mann (She is a half-man)."⁶²

Following the amalgamation of the Auckland Hockey Association with the Auckland Ladies Hockey Association in 1989, there was a sharp decline in the numbers of women players, coaches and administrators. A study by Margot Edwards found that increased costs impacted more on women, men held the majority of administrative positions and many women felt unsafe using the hockey grounds at night.⁶³ Edwards also found evidence of homophobia "both of the blatant type ... or the 'chilly climate' " which caused many women to drop out of hockey and recommends that "[i]mmediate action should be taken to include discussion of homophobia and safety issues in coaching courses."⁶⁴

Yet many lesbians have found sports to be integral to their identity, and a place of companionship and safety within an otherwise hostile world. In New Zealand, hockey, softball and cricket have attracted proportionately higher numbers of lesbian athletes than other sports. Cahn states:⁶⁵

Paradoxically, the association between masculinity, lesbianism and sport had a positive outcome for some women. The very cultural matrix that produced the perjorative image also created possibility for lesbian affirmation. Sport provided social and psychic space for some lesbians to validate themselves and to build a collective culture.

62 Carol Slezak "Reinforcing Stereotypes about Women's Athletics" Sunday Times, London, England, 14 February 1999 at <http://hit.priv.at/mauresmo/index.html>.

63 Margot Edwards "If the Sky is so Blue How come I am Flying in Cloud? Women in Gendered Sport" in *Conference Papers - Advancing Management of Australian and New Zealand Sport 2nd Annual SMANZ(Inc) Conference Lismore Australia 1996*, 227, 233-237.

64 Edwards, above n 63, 237. See also: this paper *Part III B* which compares the Auckland amalgamation with a similar move in Queensland.

65 Susan K Cahn "From the 'Muscle Moll' to the 'Butch' Ballplayer: Mannishness, Lesbianism and Homophobia in US Women's Sport" (1993) 19(2) *Feminist Studies* 343, 344.

G Summary

While more women and girls are participating in sport, the brief overview presented above shows that male domination in New Zealand sport is alive and well. Two issues are common and alarmingly obvious - the majority of key decision-makers in sport are male and the benefits of sport are enjoyed disproportionately by men. Therefore, the challenge facing the sporting community is how to create a new picture which explicitly aims for equality at all levels of sport. The next section looks at range of models which have been proposed in other sectors and discusses their application to sport in New Zealand.

III MODELS OF REFORM

The creation of new models of sport raises many issues for women. Should they copy successful male structures and patterns of sport, or should they resist them because they are not appropriate to women's experiences and needs? Is gender equity in sport more likely to be achieved by putting energy into separate or amalgamated sports organisations? If women achieve equal partnerships within existing models of sport, will (or should) the cultural norms of that sport be transformed? Such questions reveal the paradoxical nature of women and sport. While it can be creative, liberating and enjoyable for many women to play, coach or administrate sport, the rewards of sport disproportionately favour men.⁶⁶

The following section looks at three models of sport from a feminist perspective and an 'integration' model of sport. The latter model does not necessarily preclude feminist concepts. Rather, it explores the underlying reasons why most sports in New Zealand remain segregated by gender and questions whether these reasons are fair and sustainable.

66 Jennifer Hargreaves "The Promise and Problems of Women's Leisure and Sport" in C Rojek (ed) *Leisure for Leisure* (MacMillan Press Ltd, London, 1989) 131, 140. See also: this paper *Part II B* for description of gender disparity in NZ sport.

A Feminist Models

For many feminists, sport and feminism are incompatible and sport is seen as a "major source of gender divisions and the sportsman is the symbolic focus of male power."⁶⁷ The dominant values of sport - aggression, hierarchy of skill, and competitiveness - and the central focus on the measurement of achievement by scores - the weight lifted, the fastest time, the height jumped - conflict with traditional feminist ideals of cooperation, care and equality. Hall argues:⁶⁸

Female bodies have always been central to feminism, but sporting bodies have not. As a social movement, second-wave feminism has been responsible for raising consciousness about the exploitation and control of women's bodies...sexual harassment and abuse, domestic violence and rape, pornography and advertising, medical interventions and reproductive technology... However, feminists have rarely paid attention to ...the relevance of physicality, or empowerment through physical activity, to feminist politics.

This situation appears to be changing, particularly in North America and Australia. Feminists and women's sport advocacy groups are aligning as increasing numbers of women have become involved in sport. For example, the Canadian Association for the Advancement of Women in Sport (CAAWS) has as one of its five position statements:⁶⁹

3. CAAWS believes that the survival and advancement of women in sport and physical activity is dependent upon feminist empowerment and the feminist community.

In New Zealand, however, feminist voices within sports organisations (and vice versa) are rarely heard. One reason may be that New Zealand does not have any non-public agencies which have been established to promote women's issues in sport.

67 Hargreaves, above n 66, 140.

68 Ann Hall *Feminism and Sporting Bodies - Essays on Theory and Practice* (Human Kinetics, Canada, 1996) 50.

69 Sheila Robertson *The Life and Times of CAAWS* (Canadian Association for the Advancement of Women and Sport and Physical Activity, Ontario, 1994), 20 at <http://www.caaws.ca/>.

The following briefly explains three classical feminist models of reform.⁷⁰ Feminism is about women having choices, so a single model or a combination of models may be appropriate depending on the nature of the sport, the history of women's participation in that sport and the goals women wish to achieve.

1 *Same Treatment*

A same treatment model regards men and women as identical, except for unchangeable biological differences, such as pregnancy in women. The primary goal of a same treatment approach in sport is to give females the same access to sport as males. It is the favoured approach by many governments and involves the use of human rights laws which make discrimination unlawful, and national policies which promote equal sport opportunities for women and girls.

The same treatment approach is essentially liberal and thus does not recognise that inequality is based on the structures and sexist ideology of sports and sports organisations. The fundamentally male character of sport is not challenged and women are expected to conform to 'male' parameters. Another limit of the model is that women may be disadvantaged or stereotyped when their biology is the justification for different treatment.⁷¹

Further, the model treats women as a homogenous group and does not recognise that women experience sport differently from men and from each other. Historical or economic factors which may have prevented women's access are ignored and women of different races, class, age, sexuality or ability are presumed to have the same experiences as white, middle-class, able-bodied heterosexual women.

Same treatment measures could be useful in making sports open their doors to women. However, increasing women's participation does not necessarily equate with achieving equity. Batchelor states: "liberal feminism has resulted in some quantitative increases in women's participation, [but] its

70 This is not an exclusive list of feminist theories and others not discussed include a range of post-modernist and Marxist theories. See: Hilaire Barnett *Introduction to Feminist Jurisprudence* (Cavendish Publishing Ltd, London, 1998) 135-141, 195-207.

71 See: this paper *Part IV A 1 (b)* the sport exception in the Human Rights Act 1993.

acceptance of male values and standards of performance measurement have contributed to a focus on differences between genders rather than the 'multiplicity of experience' within gender groups."⁷²

2 *Difference*

A difference model recognises that women have unique, gender-defined reasons for playing sport, such as cooperation and friendship and an emphasis on the quality of the experience.⁷³ To achieve equality, difference feminists believe the focus should not be on 'gender blindness' as in the same treatment model, but on 'gender recognition'.⁷⁴ An advantage of the difference approach is that it may promote women's leadership, management and coaching skills. Also, sportswomen do not have to compete against men and can participate on their own terms.

Because difference models focus on the advancement of women's particular attributes, they do not actually challenge or threaten male domination in sport. In New Zealand, women-only sports receive less funding and less media coverage. Their administrations tend to conform to rigidly traditional structures and are largely middle-class. Difference models do not question the historical or structural reasons why, in sports where the physiological differences between men and women are largely irrelevant, women do not reach the same level of competence as men. Also, women who may be able or may want to compete against men are not catered for within difference models.

Another criticism of the difference model is that while it purports to value women's unique contributions to sport, it can essentialise those experiences. For example, it is argued that⁷⁵

72 Batchelor, above n 12, 11-12.

73 See: Karla A Henderson and Katherine R Allen "The Ethic of Care: Leisure Possibilities and Constraints for Women" (1992) 14(1) *Journal of Leisure and Society* 97, 99-101; C Gilligan *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, Cambridge Mass., 1982).

74 Janet McLean "Equality and Anti-Discrimination Law: Are They the Same?" in G Huscroft and P Rishworth (eds) *Rights and Freedoms The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993* (Brookers, Wellington, 1995) 263, 268 [*Rights and Freedoms*].

75 "Cheering on Women and Girls" above n 41, 1636.

... sports nurture and reinforce cooperation and relationship skills that women already possess.... they can exhibit these skills to the world and serve as models for an alternative social structure that is built on these qualities. Women can thereby transform the 'ideology of meritocracy' that equates success in sports and beyond, with masculine strength and domination.

This view presupposes that all women who participate in sport have cooperative and relationship skills as their prime values. Any person watching a top-level (and often social) game of netball in New Zealand will quickly observe that the goals of cooperation or relationship building are far from the minds and actions of the competitors. To confine sport for women as a place to reinforce nurturing skills is to devalue women's physical abilities. Of course, difference feminists may reply that competitiveness and aggression displayed by the netballers are not intrinsic to sporting endeavour but are a result of their socialisation in a male-dominated sporting world. This may be true, but it also highlights the problem with both the sameness and difference models - their focus is on what *men* do and whether women are the same or different from them. MacKinnon regards both approaches as essentially legitimising male power.⁷⁶

Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure. Under the difference standard, we are measured according to our lack of correspondence with him, our womanhood judged by our distance from his measure. Gender neutrality is thus simply the male standard.

3 *Radical*

Radical feminism "adopts as its organising focus the problem of the universal dominance of men over women, and women's correlative subordination."⁷⁷ A radical feminist analysis of sport not only challenges the foundations of sport as being male dominated and defined, but also aims to dismantle it.

76 Catherine MacKinnon *Feminism Unmodified* (Harvard University Press, Cambridge Mass., 1987) 34.

77 Barnett, above n 70, 163.

Compared to the same treatment and difference models, a radical approach explicitly and unapologetically focuses on the potential of sport to empower and liberate women from gender stereotypes. It also exposes abuses of women and challenges 'male' standards in sport. Such examples include: The Footscray Women's Circus in Australia, which was formed by survivors of sexual assault and challenges 'victim' stereotypes,⁷⁸ and the 'Queens of the Castle' netball club in London, developed by black, working class women who refuse to follow the rigid rules of netball, so play in flamboyant clothes and provide a supportive network for players and their families.⁷⁹

Also, a radical model is not necessarily prescriptive of how women should participate in sport. Women may be competitive and aggressive or cooperative and nurturing, but the freedom to choose is possible only when subordination of women is eliminated. Radical feminism believes equality is not a special privilege but an issue of power and politics and until men "[t]ake your foot off our necks,"⁸⁰ and equal power is achieved, there can be no free negotiation about how society should be organised.

The criticism of radical feminism is that it places gender at the centre of all social constructions, at the expense of other factors such as race, class, sexuality, disability or age.⁸¹ As occurs in the same treatment and difference models, the experiences of white, middle-class, heterosexual women are considered universal. At a recent conference organised by the Hillary Commission in New Zealand, the keynote speaker, Tina Sloan Green, who co-founded the Black Women in Sport Foundation in the US, said:⁸²

Historically, Black women have not had time to participate in games or sports. It was necessary to work for whatever salary was available, whereas

78 See: Kate Driscoll "Women's Recreation Policy: Playing Around with Social Policy or a New Model of Cultural Action" in *Conference Papers - XIIth International Association for Physical Education and Sport for Girls and Women Congress* (1993) Melbourne 8.

79 Hall, above n 68, 91.

80 MacKinnon, above n 76, 45.

81 See generally: Angela Harris: "Race and Essentialism in Feminist Legal Theory" (1990) 42 *Stan L Rev* 581; Trina Grillo "Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House" (1995) *Berkeley Women's Law Journal* 16.

82 Tina Sloan Green "Leading for the Future" in *Conference Papers - The International Winning Women Workshop September 1999* (Hillary Commission, Wellington, 1999) 14.

non-working hours were spent mothering.....sport will remain a frivolous commodity, one that they will have neither the time nor the energy to pursue.

B An Integration Model

This model is proposed as a new way to restructure sport in New Zealand. However, it does not attempt to be a theoretical model in the classical sense. While it draws on and overlaps with many aspects of the feminist analyses raised above, it primarily seeks a practical way to address gender inequality in New Zealand sport.

The integration model proposes that all sports should be integrated, both at the administrative and playing level of the game, unless there are *unfair disadvantages* to one gender by having a mixed sport. Single sex sport then becomes the exception, not the rule. By the time teenagers reach secondary school, most sports have become sex-segregated and the majority of competitive sports played by adults in New Zealand are organised along single-sex lines. To test the viability of the integration model, it is necessary to evaluate the arguments which support single-sex structures in sport.

1 Physical Differences

Around puberty, boys generally become heavier, stronger and taller than girls and two arguments are put forward for segregation: girls may get harmed in physical contact sports if they play with boys; or girls are disadvantaged because the boys can play harder and faster. The safety argument is linked to the idea that women should be protected and female bodies are more susceptible to injury. Given that women are now participating in many sports which have high levels of physical contact such as boxing and rugby, and men's bodies are just (if not more) vulnerable to injury, this argument cannot be sustained.⁸³

83 Allen Guttman *Women's Sport - A History* (Columbia University Press, New York, 1991) 251-253.

The second part of the physical differences argument is its relevance to success. For example, rugby is a sport where physical size and strength is inherent to the team's achievement and generally, a mixed team would not be able to compete equally with a male-only team. Fairness demands that the sport be separated by gender. The criticism of this argument is that the principle is applied to *all* women when there are many 'exceptionable' women who can compete equally against men and should not be excluded. For example, in 1997 Megan McKenna was banned from playing in a men's soccer team in Palmerston North after a complaint from an opposing losing team. A ruling was sought from Fifa, the international ruling body of soccer, who said "It is absolutely forbidden to allow a mixed team to participate in an official competition."⁸⁴ It was acknowledged by all parties that McKenna, who had played top-level soccer in Canada, had the ability to play in the team.⁸⁵ An opinion from the Human Rights Commission said New Zealand law⁸⁶ did not prohibit her exclusion.⁸⁷

McKenna's case illustrates that when separation of sports is based on physical generalities, unfairness for individuals who do not meet the general standard is the result. There are many light, short males and tall, large females and most sports already allow for size differences in team positions. Also, skill levels or aptitude for sports show wide variations within a sex and it has been proven that the differences *between* sexes are no greater than the differences *within* them.⁸⁸ A subjective application of the physical capabilities rule sets *fairness* as the standard, rather than arbitrary stereotypes about body size. Further, in sports where women usually achieve better results than men because of their physical characteristics, the 'exceptional' man would not be excluded.

84 "Fifa Rules Woman Out of Team" NZ Herald, Auckland, New Zealand, 7 May 1997, 02; "McKenna Case Won't Go Away" Manawatu Evening Standard, Palmerston North, New Zealand, 11 August 1997, 2.

85 See: this paper *Part IV B 1* for the response of the Minister of Sport to McKenna's situation.

86 See: this paper *Part IV A* the exceptions in the Human Rights Act 1993.

87 See: Tracy Molloy "Human Rights Act 1993 Club and Sport Exceptions - Necessary Evils of Unjustified Erosions of the Principle of Non-Discrimination" in *Conference Papers - 7th Annual ANZLA Conference* (1997) 30.

88 See: K Dyer *Catching Up the Men: Women in Sport* (Junction Books, London, 1982); Susan Birrell "The Psychological Dimensions of Female Athletic Participation" in M Boutilier and L San Giovanni (eds) *The Sporting Woman* (Human Kinetics Publishers, Champaign, 1983).

Physical differences are often cited as a reason why women do not perform as competently as men in sport. However, the disparity may be due to historical lack of access to the sport for women, less coaching or lower expectations by both players and officials. Therefore, there needs to be debate about which sports truly require segregation of the sexes in order to produce a *fair* result. For example, until 1977, the New Zealand Racing Conference excluded women from becoming jockeys and when twenty-four year old Linda Jones appealed a ruling in 1976, she was told that she was "too old, married, not strong enough and would be taking away a male jockey's livelihood."⁸⁹ When the racing industry was forced to admit women, it soon became obvious that the gender of the jockey (or the horse) made absolutely no difference to the result. In fact, because women are generally smaller and lighter they may have physical advantages over the 'average' male. In cricket, there are advantages in having fast bowlers, but how relevant is gender to most positions on the field? In soccer, speed is important but so is skill and endurance, qualities which women can develop to similar levels to and often better than men.

The requirement for *fairness* would also mean that where physical differences give men an advantage, they would be excluded from playing in a women's team. Therefore, netball would largely remain a single-sex game. Of course, all codes could be flexible and relax the rules at lower levels of competition just as many indoor netball leagues now allow mixed teams but to promote fairness restrict the numbers of men allowed to play in the team.

2 Tradition

The second reason why sports are sex-segregated is because they have simply evolved that way, even where physical differences are irrelevant or are easily overcome. If the sport was initially formed by men for men and excludes women because of that 'tradition' alone, then women's basic human rights are being breached. As discussed above, the resistance to women jockeys was because the male establishment believed: women should not be part of their industry; married women should not be in paid work; if women are paid for

89 Mary Mountier *Racing Women of New Zealand* (Daphne Brasell Associates Press, Wellington, 1993) 126.

their work, they will be taking money away from males. Women's lack of strength was simply the justification for maintaining a male-only profession.

3 *Equal Outcomes*

A more convincing reason for separation of sports is to ensure women achieve equal success in sports. There is evidence that females experience sport differently from males - two New Zealand studies of schoolchildren show that boys are more likely to be more competitive and enjoy pushing their bodies to the limits; girls prefer the challenge of the game, they enjoy being with their friends and do not like 'over-competitiveness' and 'boys taking over' the game.⁹⁰ In sports where success is valued differently by males and females, this may be a good reason to keep the sports separate. However, it should be explored whether the reasons for the different experiences are inherent to the sport, rather than simply accepting that somehow it is 'natural' for males to dominate.

Also, equal success may not be possible in sports where women have not traditionally participated and thus have developed less competency than men. This may require affirmative action policies, such as women-only teams or targeted coaching and resources for women to improve their performance in the sport.

4 *Integration becomes the 'male' standard*

Perhaps the most important argument for separation of sports by gender is that in practice integration actually becomes assimilation of women into men's sport. Male bodies become the referent and women lose their identity because success is based on male norms. Women are not elected to decision-making

90 Susan Mary Ryall "Girls' Experiences of Playing Cricket: Gender Issues in Participation" (1996) MA Thesis VUW 26-28, 63-66;. Batchelor, above n 12, 118-119; See also: Peter Hastie "Perceptions of Girls about their Participation in Aussie Footy" (1993) 2(1) *Women in Sport and Physical Activity Journal* 31; Aniko Varpalotai "The Hidden Curriculum in Leisure: An Analysis of a Girls' Sport Subculture" (1987) 10(4) *Women's Studies Int Forum* 411.

positions, are passed over as coaches of senior teams⁹¹ and eventually women's participation in the sport declines.

In New Zealand, this is evident where sports administrations of previously sex-segregated sports have amalgamated. Both the national rugby and cricket administrations, which control both men's and women's sport, have no current elected women board members. As discussed earlier,⁹² the amalgamation of the Auckland hockey men's and women's administrations has led to a decline in women's participation at all levels.⁹³ However, a similar amalgamation of hockey in Queensland has been very successful. More men and women are playing hockey and the organisation has flourished in competitions and financially. The difference was that the Queensland amalgamation established principles at the outset for the "protection of the gender equity principles through gender balance clauses written into association constitution rules and regulations."⁹⁴ Clearly, there are very different results when sports organisations are vigilant about sexism, challenge the traditional stereotypes and take practical steps to achieve equality.

IV. LEGAL AND POLICY ARENAS FOR CHALLENGE

The integration model raises many controversial issues which have received little debate in the sporting community. It has elements of the same treatment and difference feminist models by treating people the same if they are the same and differently if they are different. Further, the integration model can encompass radical feminist concepts because the standard of fairness is explicit and sports bodies are always required to ask: 'Will this practice or policy improve outcomes for women?'

It also has the potential to create new sports practices which question the value-base of sports and sporting cultures. For example, in a sport where there are no significant physical advantages in being male or female, it may be necessary to negotiate how the sport will be played - is the goal solely to win or

91 See: "Women Coaches Left Out in Cold" and "Robertson Fobbed Off with Silly Excuses" Sunday Star-Times, Auckland, New Zealand, 25 July 1999, B11.

92 See: this paper *Part II F* - hockey amalgamation referred to in section on homophobia.

93 Edwards, above n 63, 228.

94 Julie Bartlett "Amalgamation of Men's and Women's Sport, Case Study, Queensland Hockey, 3 years on" in *Conference Papers - 8th Annual ANZLA Conference* (1998) 21.

is winning secondary to other factors such as enjoyment and learning new skills? If the goal *is* to win an event, the traditional 'male' approach may not actually be the most competitive and parties could explore alternative methods to achieve the desired result.

Finally, the model does not just seek equality on the field but also in the boardrooms of sports organisations. It requires men to relinquish their monopoly on decision-making in sport and challenges women to move beyond the relatively safe community of women-only sport.

There are serious legal impediments to the integration model being applied in New Zealand and these are discussed in the next section. Given that sport in New Zealand is becoming more male-dominated and most sports organisations have taken few voluntary steps on the advancement of women, it may be time for the government and legislators to take more decisive action.

IV LEGAL AND POLICY AVENUES FOR CHALLENGE

It has been shown that sport is a highly gendered cultural activity in New Zealand and that there is institutionalised bias which affects women's participation, enjoyment and benefits. Various models of sports reform have been discussed. This section examines whether New Zealand's anti-discrimination legislation is effective in addressing gender inequality in sport. It also describes and analyses the policy approach to women and sport in New Zealand government agencies.

A The Human Rights Acts 1993

1 Exceptions

Since the introduction of human rights legislation in New Zealand in 1977,⁹⁵ discrimination on the basis of sex has been unlawful. However, sport

95 Human Rights Commission Act 1977.

has always been one of the main exceptions to the general rule and currently the Human Rights Act 1993 (HRA) has two relevant exceptions.

The first relates to clubs. Section 44 makes it unlawful to discriminate in the provision of goods and services against any person by reason of any of the prohibited grounds⁹⁶ under the Act, but section 44(4) states: "nothing in this section shall apply to access to membership of a club or to the provision of service or facilities to members of a club."⁹⁷

The second exception is section 49(1)⁹⁸ which states that nothing in section 44:

shall prevent the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina, or physique of competitors is relevant.

Section 49(2) states that subsection (1) does not apply in relation to exclusion of coaches, umpires or referees, administration or "sporting activities by persons who have not yet attained the age of 12 years."

2 *Analysis*

There are two broad approaches in the HRA - sameness in treatment and equality of outcome.⁹⁹ The general rule is a same treatment approach and unless otherwise stated, no person is to be treated differently from another by reason of any of the prohibited grounds. The majority of the exceptions are designed to create equality of outcomes, so affirmative action programmes or

96 Human Rights Act 1993, s 21(1) "Prohibited grounds of discrimination" are: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status or sexual orientation.

97 Human Rights Act 1993, s 44 is a revision of s 24 of the Human Rights Commission Act 1977.

98 Human Rights Act 1993, s 49(1) amends s 24(7) of the Human Rights Commission Act 1977 which permitted discrimination against one sex in a sporting event or activity where "persons of one sex generally compete separately from persons of the other."

99 McLean *Rights and Freedoms* above n 74, 265-266

policies are permitted for classes of people who have historically been discriminated against.¹⁰⁰

However, the sporting exceptions under the HRA reflect neither same treatment nor equality of outcome goals. Rather, their inclusion in the HRA has effectively prevented women from challenging most of the incidences of discrimination in sport, whether they be players, umpires, coaches or administrators.

(a) the club exception

The justification for maintaining the club exception is that clubs are private bodies and should not be subject to 'public' law. The division between public and private actions is a central feature of liberal ideology:¹⁰¹

'Public' may be used to denote state activity, the values of the market-place, work, the male domainregulated by law. 'Private' may denote civil society, the values of family,home, women's domain or behaviour unregulated by law'.

This division between public and private has been challenged because it "encourages the repetition in private of male domination in public through the liberal unwillingness to interfere in private affairs."¹⁰² Also the distinction is illusory since the so-called 'private' domain is affected by many regulatory laws in areas such as child protection, domestic violence, sexuality, marriage and divorce laws and it is argued that "the idea that there are two analytically discrete realms is an example of a well-nurtured myth."¹⁰³

In other jurisdictions, a 'club' does not automatically belong to the private sphere of life. In the US, the Courts have imposed a strict test for a club to be viewed as private and therefore entitled to operate discriminatory membership

100 Human Rights Act 1993, ss 58, 73.

101 Katherine O'Donovan *Sexual Divisions in Law* (Weidenfeld & Nicolson, London, 1985) 3.

102 Margaret Davies *Asking the Law Question* (The Law Book Company, Sydney, 1994) 190.

103 Margaret Thornton *Public and Private* (Oxford University Press, Oxford, 1995) 11.

policies.¹⁰⁴ First, the club must be organised for 'specific expressive purposes' and there must be a clear link between that expression and the exclusion of any class of people.¹⁰⁵ Thus, "a private gun club that favours gun control may exclude only those who oppose gun control; it may not use race or gender as a proxy."¹⁰⁶ Second, the club may be protected if it can show it is an "intimate association"¹⁰⁷ and factors taken into account include the club's size, purpose, selection processes and congeniality. Where a club is small, non-commercial and does not recruit members, it may meet the 'intimate association' test. It is said that in the US, "private social clubs with discriminatory membership policies are fast becoming extinct."¹⁰⁸

There is no definition of 'club' in the HRA. In 1994, the Office Solicitor of the Human Rights Commission told an interviewer that "most sporting organisations, including those incorporated under the Incorporated Societies Act 1908, would be considered a club by the Human Rights Commission and hence outside the jurisdiction of the Commission."¹⁰⁹ However, in response to a request this year on the meaning of 'club' in section 44(4) of the Act, the Commission replied:¹¹⁰

it is not possible for the Commission to form an opinion on the meaning of the section in relation to your research. The scope and meaning of club under the Act has not been defined in the context of a complaint to the Commission or decision of the Complaints Review Tribunal.

In Australia, the Sex Discrimination Act 1984 distinguishes between 'clubs' and 'voluntary bodies'. A club can exclude one gender from membership. Voluntary bodies which are not clubs, can discriminate in access

104 See generally: Harvard Note "State Power and Discrimination by Private Clubs: First Amendment Protection for Non-Expressive Associations" (1991) 104 Harv L Rev 1835 ["State Power and Discrimination by Private Clubs"]; Erika M Brown and Stephanie Green "From Private Clubs to Parades: How Accommodating are State Laws?" (1998) 42 NY Law School L Rev 125.

105 *Roberts v United States Jaycees* (1984) 468 US 609.

106 "State Power and Discrimination by Private Clubs" above n 104, 1843.

107 *Bowers v Hardwick* (1986) 478 US 186; *Roberts v United States Jaycees*, above n 105, 619.

108 "State Power and Discrimination by Private Clubs" above n 104, 1835.

109 Molloy, above n 87, 11.

110 Letter from Ann Boyd Legal Officer Human Rights Commission to Maryanne Haggie, 27 August 1999.

to membership and between members.¹¹¹ However, unlike New Zealand law, if a club has mixed membership it cannot discriminate between members¹¹² except under strictly defined conditions which guarantee equivalent benefits to both sexes.¹¹³ In *Corry & Ors v Keparra Country Golf Club*¹¹⁴ the Human Rights Commission held women were discriminated against in the golf club's booking system. The club had linked Saturday bookings for women to the proportion of women in the club. In effect, men could book any time slot but women were only allowed two slots. The Human Rights Commission said that this reduced women's access to Saturday golf. The case became a benchmark for equal treatment of women members in the policies and procedures of Australian sports clubs.¹¹⁵

In 1994, the Australian Law Reform Commission recommended the removal of the club and voluntary bodies exceptions saying: "enough time has passed since the commencement of the Sex Discrimination Act for voluntary bodies to have brought their organisation and structure into line."¹¹⁶

The majority of competitive sporting activities are undertaken in New Zealand within a club setting. Of the adults playing competitive sport in New Zealand, 89 per cent of women and 86 per cent of men belong to a club and in the total adult population, 45 per cent of men and 38 per cent of women belong to some form of sporting club.¹¹⁷ Sports clubs usually operate a monopoly in their sports, the club being the only way a person can compete on any formal level against others playing that particular sport. As such, it is argued that sporting clubs actually operate as 'public' entities and should be distinguished from truly 'private' clubs, the latter being formed for political, cultural or religious reasons.¹¹⁸

111 Sex Discrimination Act 1984 (Cth), s 2, s 39.

112 Sex Discrimination Act 1984 (Cth), s 2, s 25.

113 Sex Discrimination Act 1984 (Cth), s 25(4).

114 (1986) EOC 92-150, 492.

115 Human Rights and Equal Opportunity Commission *Women, Sport and Sex Discrimination - Guidelines on the Provision of the Sex Discrimination Act 1984* (Sydney, 1992) 18.

116 Australian Law Reform Commission *Equality Before the Law: Justice for Women - No 69* (Australian Government Publishing Service, Canberra, 1994) para 3.86, Recommendation 3.13 [ALRC - Report No 69].

117 *Winning Women* above n 18, 33.

118 Molloy, above n 87, 11-12.

Under section 44(4), women can be refused access to membership of a club or be given less privileges or services if they are a member of a mixed club. Of course, it could also be applied in the reverse. However, the Human Rights Commission Review in 1987 admitted that most complaints in this area come from women who are seeking access to all-male clubs or are discriminated against in mixed clubs.¹¹⁹ Examples include women receiving less prize money, having less access to club facilities, being restricted to 'ladies days', being expected to provide catering services for events, or being provided with less skilled coaching. A Human Rights Commission officer said that many enquiries are received but no further action is taken when callers are advised of the exceptions because she thinks that most sports discrimination falls under the exceptions.¹²⁰

In 1987, the Human Rights Commission believed that sports clubs would voluntarily change their membership structures to give access and equal benefits to women members.¹²¹ However, the continued subordinate position of women in sport in New Zealand confirms the view that "[v]oluntary compliance does not work"¹²² and "[i]t is precisely because we cannot rely on attitudes to naturally evolve that we need non-discrimination legislation to at least encourage a change in behaviour."¹²³

The club exception is a major legal barrier to women having equal participation in sport. Clearly it is primarily used to exclude women rather than men from participating in the full range of sporting activity. Clubs effectively have the licence to discriminate without having to justify their decisions to anyone. The club exception should either be removed entirely, or narrowed in a way which is similar to the US approach where clubs can discriminate only for purely 'private' reasons. This reform would also shift the issue into the public

119 Human Rights Commission *Review of the Human Rights Commission Act 1977: A Report to the Minister of Justice* (Human Rights Commission, Wellington, 1987) 35-36 [*HRC Review*].

120 Telephone enquiry to Human Rights Commission 15 July 1999. See also: Human Rights Commission *Annual Report 1998* (Auckland, 1998) 54: From 1 July 1997 to 30 June 1998, 131 enquiries were received on "clubs" and 18 on "sport". Statistics are not available indicating how many of the 331 enquiries under the "sex" grounds are sport-related.

121 *HRC Review* above n 119, 36.

122 Mai Chen "Self-Regulation or State Regulation? Discrimination in Clubs" (1993) 15 NZULR 421, 443.

123 Molloy, above n 87, 8.

arena as clubs would be required to explain and justify their discriminatory practices. Legal reform of the club exception in the HRA will not necessarily create equity in sport, but it is an important step in challenging the sexist practices of conservative sports organisations.

(b) the sport exception

Section 49 of the HRA allows sex discrimination in sports when strength, stamina physique of competitors is relevant. While there are no reported cases on section 49, the Human Rights Commission's view is that the exception is to be applied generally.¹²⁴ So even if an individual woman has the ability to compete against men in a sport, she can be lawfully barred from participating because the 'average' woman does not have the physical capacity to compete with men in that sport. Arguably, the generalised interpretation of section 49 by the Human Rights Commission is in conflict with fundamental concepts of human rights - that such rights attach to *individuals*, irrespective of race, class, gender and so on.¹²⁵ Also, the HRA does not define 'relevant' in relation to section 49, which means that it may be interpreted very broadly by sports organisations. Strength, stamina or physique may be seen as 'relevant' to the success of the team or 'relevant' to stereotypical views about males and females playing sports together.

The exception is not applicable to coaches, referees and umpires, or administrators.¹²⁶ Therefore, a slight female can referee a rugby match. However, a sports club may still refuse access to women officials by using the club exception in section 44(4). The club exception effectively provides a back-up legal means to discriminate against women in those sports where strength, stamina or physique are *not* relevant.

The sport exception may aim for equality of outcome, but as the Australian Sex Discrimination Commissioner said when commenting on the

124 Molloy, above n 87, 22-23.

125 Paul Hunt and Margaret Bedggood "The International Law Dimension of Human Rights in New Zealand" *Rights and Freedoms* above n 74, 37, 40.

126 Human Rights Act 1993, s 49(2).

equivalent Australian provision (section 42 of the Sex Discrimination Act 1984 (Cth)):¹²⁷

The terms strength, stamina and physique were based on assumptions about the capacity of women and men to participate in sporting activities. They served to create an 'elite male' standard. The exemption was generally used to prevent women, rather than men, from using facilities and participating in sport.

The sport exception illustrates many of the issues previously discussed under the integration model. Its initial purpose may have been to protect women from harm but its use has been to exclude women from participating in the sports of their choice. It perpetuates stereotypes about women's physical capabilities and treats women as a homogenous group. Given that it does not advance human rights and that there are other measures to promote equality for women in the HRA,¹²⁸ the sport exception in the HRA should be removed.

(c) other

The HRA can be used where there is sex discrimination in employment,¹²⁹ such as bias in the appointment of paid coaches or administrators, or sexual harassment in any sporting context.¹³⁰ It may also be possible to use the HRA to challenge inequities in funding distributions from public bodies, where funding is allocated to a national sports association but most of the actual funds go to the male division of the sport.¹³¹

However, the HRA cannot be used to challenge the lack of media coverage or sexist reporting of sportswomen because section 44 only applies when the newspaper or television coverage is purchased (such as being refused service at a dairy because of gender) not to the content of the coverage itself.¹³² Further, the Commission does not have any jurisdiction to challenge wider

127 ALRC - Report No 69, above 116, para 3.88.

128 Human Rights Act, s 73. See also: this paper *Part IV A 4*.

129 Human Rights Act 1993, s 22.

130 Human Rights Act 1993, s 62.

131 See: this paper *Part IV C* Bill of Rights.

132 Complaints can be laid with the Press Council or the Broadcasting Standards Authority. There have been no reported cases of discriminatory reporting in sports made to the Broadcasting Standards Authority

issues, such as the male domination of the structures and decision-making of sporting bodies.

3 Schools

The club and sport exceptions under the HRA exclude recourse to the law for most New Zealand sportswomen. However, the situation is not so clear for discrimination against girls in schools. It is also useful to compare the HRA with the US provision, Title IX of the Education Amendment,¹³³ which since 1972 has led to far-reaching changes in the provision of sports by schools and universities.

(a) New Zealand

The HRA can be used to challenge discriminatory sporting practices at co-educational schools.¹³⁴ Section 57 states that it is unlawful for an educational establishment:

- (c) To deny or restrict access to any benefits provided by the establishment, - by reason of any of the prohibited grounds of discrimination.

Also, where students are under 12 years, the section 49(1) strength, stamina or physique exception would not apply and the section 44(4) club exception does not extend to a school. Therefore, most co-educational primary schools are not permitted to deny or restrict access to sports benefits to any pupil on the basis of gender.

In co-educational schools where students are 12 years and older, sports cannot discriminate against one gender unless strength, stamina or physique is relevant.¹³⁵ Also, discrimination is not allowed in sports activities where there is no *competitive* element, even if strength, stamina or physique *are* relevant. This

133 20 USC 1681(a) (1978).

134 Human Rights Act 1993, s 58 allows for single-sex schools.

135 Human Rights Act 1993, s 49(1).

could include learning specific skills such as abseiling or kayaking, recreational use of a swimming pool or equipment and general physical education classes. However, this is a strict reading of the HRA and in practice, the Human Rights Commission looks at the context of each situation - so where a school provides a coach for a boy's team, but no-one is available to coach girls in that sport, then the school may not be seen as *denying or restricting* access to the girls.¹³⁶

The structure of New Zealand school sports differs between sports and between localities. Some sports are run by local clubs, some by the school whose team participates in a local association competition while others are solely school-based. Most schools have a sports coordinator who is responsible for the curriculum and who works with parents, teachers and outside sports bodies to provide sports opportunities for students.

Funding of sports in schools also show wide variation - some are largely self-funding through parent contributions, others get funding from the operation grant and the school provides coaches, equipment, teacher input and facilities. Disparities in school funding between girls' and boys' sports could be restriction of access to a benefit on the grounds of sex under section 57. However, it may be difficult to prove because schools do not have to keep financial records on spending on sports by gender, nor is it a reporting requirement to the Ministry of Education or a reviewable standard of the Education Review Office.¹³⁷

Students may encounter discrimination from the association which organises competitions. A recent example was reported on the Holmes show.¹³⁸ Sarah Hobden, the captain of Te Awamutu College Hockey team and their top goal scorer, had been banned from playing in the national schools' tournament by the New Zealand Hockey Federation because she is female. The Hockey Federation said that they believed equal opportunities meant that schools provided separate teams for boys and girls and the Federation could not "bend the rules" for one person. The school's principal, Tom Robson, responded that not enough girls wanted to play to form a separate team, so

136 Enquiry to Human Rights Commission 24 August 1999.

137 Schools are reviewed against the National Education Guidelines 1993 and the Education Act 1989. See: Education Review Office *Handbook of Contractual Obligations and Undertakings: Schools* (Wellington, 1999).

138 Television One *Holmes* 24 August 1999.

Sarah played in a mixed team. Hobden's mother said: "It's straight out discrimination...we're in the 90s, equal opportunities, where have they gone?"

The legal position was not referred to in the Hobden television item, but the New Zealand Hockey Federation could rely on the section 44(4) club exception in the HRA and lawfully exclude females from the competition. The television item presented New Zealand Hockey Federation's approach as absurd, but they acting lawfully, and the Human Rights Commission, the body which is required "to provide better protection of human rights in New Zealand,"¹³⁹ has no jurisdiction to intervene.

(b) United States of America

In 1972, the US introduced Title IX,¹⁴⁰ which required that all secondary schools, colleges and universities receiving federal funding must provide equal educational opportunities to males and females. It was introduced without specific explanations so its interpretation and application has been largely left to the courts and there have been hundreds of cases, mostly about sport, in virtually all States across America.

Courts have held that regulations prohibiting female student athletes from participating in all-male teams are discriminatory.¹⁴¹ Courts have also held that male students cannot play on female teams if the reason for the all-female team is to achieve equality for both sexes or to redress historical exclusion of females, or if inclusion of males in a contact sport would affect the health or safety of players and displace or intimidate females.¹⁴²

In a significant recent line of cases, the Courts have held that Title IX requires colleges and universities to provide sporting opportunities to women at a level that is "substantially proportionate" to the number of women in the

139 Human Rights Act 1993, Title.

140 Education Amendment Act 1972 20 USC 1681(a) (1978).

141 See generally: Cheryl Schubert-Madsen "Gender Discrimination in Athletics" (1991) 67 North Dakota L Rev 227; Note "Boys Muscling in on Girls' Sports" (1992) 53 Ohio State L J 891.

142 See: *Kleczek v Rhode Island Interscholastic League Institute* (1991) 768 F Supp DRI 951, 955; *Mularadelis v Haldame Cent School Board* (1980) 427 NYS 2d 458 463 NY App Div.

student body.¹⁴³ Previously, educational institutions provided sports based on the relative interests of the student body. Now they must prove that any gender disparities in the provision of sport “are not the product of historic discrimination or stereotyped notions of women’s interest and abilities.”¹⁴⁴ Title IX has also resulted in monetary damages being awarded for sexual harassment of athletes, women coaches receiving equal pay, increases in scholarships for women athletes and Universities establishing programmes which aim for gender equity in sports.¹⁴⁵

Title IX was the beginning of what many believed would be a “revolution in women’s sport.”¹⁴⁶ There have been huge increases in women’s participation¹⁴⁷ and recent international success of US sports teams are being linked to Title IX.¹⁴⁸ Since most Title IX cases have involved women or girls challenging their exclusion from boys or men’s teams, this has sparked widespread debate about what constitutes ‘male’ or ‘female’ sports.

However, there has been also been criticism of Title IX from two opposing sources - women’s sport advocates and the male ‘establishment.’ Advocates of women’s sport have found that while participation for women in sport has increased, the numbers of women coaches and administrators has dramatically fallen. Increased opportunities for coaching and managing women’s sport under Title IX has led to an influx of male coaches for women’s teams.¹⁴⁹ Also, the benefits of Title IX are shown to disproportionately benefit white, middle-class, heterosexual women.¹⁵⁰ This is because they are often in a

143 See: *Cohen v Brown University* (1996) 101 F3d 155 (1st Cir) cert. denied, (1997) 65 USLW 3599, 166; *Kelley v Board of Trustees* (1994) F3d (7th Cir) 265, 270-272; *Roberts v Colorado State Board of Agriculture* (1993) 998 F2d (10th Cir) 825, 828-829.

144 “Cheering on Women and Girls” above n 41, 1640.

145 See: Feminist Majority “Empowering Women in Sports -Title IX Lawsuits and Complaints” above n 36; Timothy Davis and Tonya Parker “Student Athlete Violence Against Women: Defining the Limits of Institutional Responsibility” (1998) 55 Wash & Lee L Rev 55.

146 Cahn *Coming on Strong* above n 57, 250.

147 Cahn *Coming on Strong* above n 57, 259: In intercollegiate sport, numbers of women increased from 16,000 in the early 1970s to more than 160,000 by the late 1980s.

148 The reforms of Title IX were reported as a critical factor in the winning of the World Cup by the USA Soccer team: “Soccer Scores with US Women” Sunday Star-Times, Auckland, New Zealand, 11 July 1999, B8.

149 Guttman, above n 83, 222.

150 Green, above n 82, 12.

better position to challenge discrimination, they are more likely to be heard by authorities and they are the first to receive new benefits. Further, the Department of Education's Office of Civil Rights who are responsible for enforcing Title IX are underfunded and have never actually withdrawn federal funding from schools or colleges that discriminate against women and girls. Finally, Title IX remains a liberal option with a largely redistributive focus - the fundamentally male nature of sport has not been seriously undermined.

Opposition to Title IX came from the male sports establishment who conducted intensive campaigns to repeal the provision when it was first introduced.¹⁵¹ Though unsuccessful, the same groups changed course and conducted takeovers of women's sports organisations. Cahn argues that while women used Title IX to achieve greater control of and participation in sports, "...conservatives within sport organisations, media and corporations dug in their heels trying to preserve sport as they knew it - a profitable industry that, with few exceptions, was governed by men in the interests of men's athletics."¹⁵²

The lobbying and legal challenges against Title IX continue and are typical of backlashes which occur when women are given new rights.¹⁵³ There are persistent calls that women and girls are benefiting from Title IX at the expense of men and boys and many law firms are offering legal advice to schools and universities on how they can lessen the impact of Title IX.¹⁵⁴

(c) Comparison - Human Rights Act 1993 and Title IX

Title IX is designed for US patterns of physical education where small numbers of the student population actually participate in sport.¹⁵⁵ New Zealand

151 This was headed by the National Collegiate Athletic Association (NCAA) which governs male intercollegiate sport.

152 *Coming on Strong* above n 57, 258.

153 See: Carol Smart *Feminism and the Power of Law* (Routledge, London, 1989) 138-159.

154 See: Walter B Connolly and Jeffrey D Adelman "A University's Defense to Title IX Gender Equity in Athletics Lawsuit: Congress Never Intended Gender Equity Based on Student Body Ratios" (1994) 71 *University of Detroit Mercy L Rev* 845.

155 For example in a typical American high school of 2000 students, 12 boys and 12 girls will make the basketball teams - there are few competitive opportunities for the other 100-300 who want to play: Daryl Siedentop "Keynote Speech" *Junior Sport Forum New Zealand 13-14 November 1995* (unpublished) 4-5.

high schools and universities usually make provision for many levels of skill, offer a wide range of sports and attract a significant proportion of the student population at the high school level.

Nevertheless, Title IX has provided a far more effective avenue for legal redress than the HRA. As most cases have resulted in success for women, more are being litigated or settled out of court. The US courts have also developed a Title IX jurisprudence which has gone beyond the liberal approach of most human rights legislation by acknowledging that the intention of Title IX is to achieve equality and this includes redressing past inequities.

In New Zealand, school students can take action under the HRA but there are no reported cases. The differences cannot simply be explained by the fact that the US is a more litigious society. It may be that it is difficult to get to the official complaint level in New Zealand. Certainly, it took some time for this author to persuade the Human Rights Commission Enquiries Officer that a school student would have a legitimate cause to complain under the HRA - her initial reaction was that schools do not have to provide equal sports opportunities to boys and girls if coaches are unavailable and further, the Commission do not have the resources to investigate sports complaints in detail.¹⁵⁶ Since no cases have actually been decided by the Commission, there is no benchmark for an individual student to test the likelihood of success or failure.

Also, many incidences of sports discrimination are situations like Sarah Hobden's, where the sport is run by an outside association which can use the club exception in the HRA. Further, it is not easy to determine one's rights under the HRA in relation to schools - the Human Rights Commission has no booklets or information which deal with this subject.

4 *Removal of the Exceptions in the Human Rights Act 1993*

The arguments for removal of both the club and sport exceptions in the HRA include:

¹⁵⁶ Enquiry to Human Rights Commission 24 August 1999.

- (a) most sports clubs are offering a 'public' service, the club being the only entry into the sport;¹⁵⁷
- (b) the exceptions were included for political expediency and they are no longer necessary to retain;¹⁵⁸
- (c) they do not meet New Zealand international human rights obligations;¹⁵⁹
- (d) discrimination should not be formally allowed in any area, unless a discriminatory policy is the only way to achieve equality for under-represented groups;
- (e) the areas of exception in the HRA are areas which are most pertinent to women and are primarily used to exclude women;¹⁶⁰
- (f) their removal would send a strong message to the sports community that all forms of discrimination against women are unlawful;
- (g) statutory prohibition is necessary because sports organisations are not changing their discriminatory practices voluntarily;¹⁶¹
- (h) women must have legal means to challenge discrimination;
- (i) difficulties in implementing non-discrimination in clubs, such as a lack of resources in the Human Rights Commission, should not outweigh women's rights to equality.¹⁶²

If the sport and club exceptions were removed from the HRA, single-sex sports would still be allowed under section 73(1) "Measures to ensure equality" as long as it is done:

- (a) in good faith for the purpose of assisting or advancing persons or groups of person, being in each case person against whom discrimination in unlawful by virtue of this Part of this Act, and

157 Molloy, above n 87, 11.

158 ARLC - Report No 69, above n 116, para 3.73.

159 See: this paper *Part VA* on breaches of international conventions.

160 ARLC - Report No 69, above n 116, para 3.73.

161 Chen, above n 122, 443-444.

162 Chen, above n 122, 441.

- (b) Those persons or groups need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.

The use of section 73 would allow women and girls to play single-sex sports in order to develop sporting prowess and redress inequality. Single-sex male sports would be permitted only where it can be proved that men are in need of advancement in a particular sport. With the club and sport exceptions removed, an integration model of sport (as discussed earlier)¹⁶³ would become the norm. This would lead to major re-evaluation about how sports in New Zealand are structured and played. It may also reveal that sexism and power are the main reasons why many sports and clubs retain their male-only status.

B Government Policy

It has been shown that there are serious inadequacies in the HRA as a tool to address gender inequities in sport. This section examines the effectiveness of government policies which have been introduced in the last decade to advance the position of women in sport in New Zealand.

1 Office of Tourism and Sport

The Office of Tourism and Sport is a small government agency which acts as a policy body for the government on sporting matters. The current Minister of Sport, Fitness and Leisure, the Hon Murray McCully, and the Minister of Health, the Hon Wyatt Creech made a recent joint policy statement that "increasing participation in physical activity has clear relevance to the Government's overarching goals."¹⁶⁴ One principle states:¹⁶⁵

163 See: this paper *Part III B*.

164 Office of Tourism and Sport, Ministry of Health "Physical Activity - Joint Policy Statement of the Minister of Sport, Fitness and Leisure and the Minister of Health" (Wellington, 1999) 3.

165 Office of Tourism and Sport, above n 164, 2.

All New Zealanders should have opportunities to participate in appropriate physical activity regardless of gender, age, race, socioeconomic status, ability, disability (physical / intellectual) or geographic location.

In 1997, a question was asked in Parliament about the McKenna case discussed earlier.¹⁶⁶ The Hon Murray McCully replied that he could¹⁶⁷

understand FIFA ... applying strict rules for international representative competitions but had difficulty accepting ... their high-handed approach and high-handed intrusion into the enjoyment of social sport. (*McKenna was actually playing in the competitive grade*)

The Chancellor of Massey University, Justice Hugh Williams had written to the Minister about the “incomprehensible ban” and Hon Murray McCully replied that “he understood McKenna was more than competent to play in the team and ‘my personal view is that she should be able to do so.’”¹⁶⁸

Interestingly, the Minister seemed unaware that the Manawatu Football Association could lawfully ban McKenna from playing in the team (whether it was social or elite level) irrespective of Fifa’s rulings, because of the sport and club exceptions in the HRA. If the Minister’s view is that women should not be discriminated against in situations like McKenna’s, then it is New Zealand law which needs amending. It appears hypocritical to blame the sexist rules of international bodies when the real problem is with New Zealand’s lack of commitment to remove such forms of discrimination against women.

2 *The Hillary Commission*

The Hillary Commission for Sport, Fitness and Leisure is responsible for public funding and promotion of sport in New Zealand.¹⁶⁹ The Commission has developed a range of initiatives to encourage more New Zealanders to be

166 See: this paper *Part III B*.

167 (14 August 1997) 562 NZPD 3906-3907.

168 “Heavy-handed footie” NZ Herald, Auckland, New Zealand, 9 August 1997, A11.

169 Sport, Fitness and Leisure Act 1987, s 3. The Hillary Commission is the public funding agency for sport in New Zealand. It is funded by the Government and the New Zealand Lottery Grants Board.

physically active.¹⁷⁰ In its 1997-2000 Strategic Plan, equity is a "guiding principle":¹⁷¹

The Commission believes that sport and active leisure are to be enjoyed by all New Zealanders regardless of their gender, or socio-economic or ethnic background. To focus our resources we will target: people with disabilities, women, young people.

(a) Junior Sport

In 1988, the Commission introduced *KiwiSport* which modifies traditional sports to suit the age and skill levels of 7 - 12 year olds. The focus in *KiwiSport* is on wide participation, enjoyment and development of skills rather than winning and aggression.¹⁷² The Commission believes that "there are no biological differences that affect girls' capacity to play any kind of sport."¹⁷³ While it states that girls should "have a right to a choice of single-sex or mixed teams and competitions"¹⁷⁴ the preference seems to be for mixed sport where possible.¹⁷⁵ The *KiwiSport* programme has had a significant impact on the way sports are played by primary school-age children in New Zealand and is an example of an integration model of sport.

(b) Funding

Despite taking "equity issues into consideration in all ... programme developments,"¹⁷⁶ the Commission's funding criteria does not require national sports bodies to have any gender equity policies or practices (although they

170 Programmes include: *Don't Get Ugly* - fair play campaign; Sports Ambassadors; *Coaches Count*; *Taskforce on Maori Sport and Recreation*; *Moving Through Sport* - programmes for teenagers; *Push Play* - encourages adults to be physically active.

171 Hillary Commission *Moving Through Sport 1997-2000 Strategic Plan* (Wellington, 1997) 6 [*Strategic Plan*].

172 Hillary Commission *Moving Through Sport from Junior to Adult* (Wellington, 1997) 9-10 [*Junior Sport Policy*].

173 *Winning Women* above n 18, 25.

174 *Winning Women* above n 18, 13.

175 *Junior Sport Policy* above n 172, 25.

176 *Strategic Plan* above n 171, 9.

must have a 'drugs policy').¹⁷⁷ In the 1998 financial year, the Commission funded 104 national bodies, many of which control both the male and female divisions of their sport. The Commission does not appear to have any method to ensure that there is equitable distribution of funds between men and women *within* these organisations.

(c) Women

In 1995, the Commission introduced a number of initiatives under the banner *Winning Women* to encourage more women and girls to get into sport and active leisure. The *Winning Women Charter* is based on 'The Brighton Declaration'¹⁷⁸ which was the outcome of an international conference held in the United Kingdom in 1994.¹⁷⁹ New Zealand was a signatory to the Declaration, which states in Part B:

Equity and Equality in Society and Sport

- (a) States are to make every effort to ensure that institutions comply with the UN Declaration of Human Rights and CEDAW.
- (b) Equal opportunity to participate and be involved in sport ... is the right of every woman, regardless of race, colour, language, creed, sexual orientation, age, marital status, disability, political belief or affiliation, national or social origin.
- (c) Resources power and responsibility should be allocated to redress any inequitable balance in the benefits available to women and men.

The Brighton Declaration does not have any legal status and cannot impose sanctions, but asks that all countries and sporting organisations adopt or ratify it within their own constitutions, laws or organisational rules.¹⁸⁰

177 Hillary Commission, NZ Sports Foundation and NZ Olympic Committee *National Funding - Policy and Guidelines* (Wellington, 1999).

178 See: Julie Bracewell "Women in Sport: Introduction to the Brighton Declaration" in Edward Grayson (ed) *Sport and the Law* (2 ed, Butterworths, London, 1994) 443, 445-449.

179 *Women, Sport and the Challenge of Change Conference* United Kingdom, 1994. The conference was organised by the British Sports Council and supported by the International Olympic Committee. Over 280 delegates from 82 countries attended.

180 Bracewell, above n 178, 444.

The Commission states that the *Winning Women Charter* has been adopted by 16 national sporting bodies and claim that "86 per cent of national sports bodies now target women in their strategic planning."¹⁸¹ However, the Commission does not identify these groups nor does it explain how the Charter is being implemented. Sports organisations do not have to report to the Commission on the Charter and there do not appear to be any sanctions for breaches of its principles.

The Commission has received criticism that Maori women are not benefiting from its initiatives:¹⁸²

While the Hillary Commission is trying to develop policies that cater to Maori ... such policies are being implemented in a predominantly non-Maori institution. ... There is a lack of understanding of Maori culture and sometimes an arrogant assumption that the favoured way is the only way.

Wrathall says that many Maori women play sport for "love, companionship and the challenge that their sport created" and the Commission has displayed an "inability to network with Maori or trust them to make their own decisions."¹⁸³

3 Summary

The Government, the Hillary Commission and the Office of Tourism and Sport have expressed their commitment to equity, raised the issues faced by women in sport, undertaken the research and initiated programmes. However, it appears that the situation for women is changing very slowly if at all. For example, the Commission's own research shows that top women coaches were worse off in 1999 than they were in 1992, despite encouragement and promotion of women in coaching by the Commission.¹⁸⁴ Arguably, some of the Commission's policies may be misdirected. For example, it provides media training to sportswomen, when the real problem with the lack of coverage of

181 1998 Annual Report above n 22, 21.

182 Deslea Ann Wrathall "Sports Policy and the Maori Women Athlete" (1995) MA Thesis VUW, 59.

183 Wrathall, above n 182, 50.

184 *Women in Coaching* above n 24.

women in sport is in the structures, values and policies of the media. The lack of tangible improvements for women in sport illustrates the inadequacies of the Government's approach. While promotion of women's participation and achievements is important, these policies will not change the practices of the male-dominated sports industry in New Zealand.

C *Bill of Rights Act*

Section 19(1) of the New Zealand Bill of Rights Act 1990 (BORA) provides:

Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.

It would be very difficult to argue that a sporting club or association is subject to the BORA because section 3 states that it applies only to acts done by the "legislative, executive or judicial branches of government." Also, the section 44(4) club exception in the HRA would be "substantively analogous ... to an express statutory exclusion of section 19 of the Bill of Rights Act."¹⁸⁵

However, it may be possible to argue that section 19 has been breached where a public body, such as the Hillary Commission or a school, has committed an act which amounts to discrimination against women or girls. A cause of action can be taken under the BORA, or it could be grounds to apply for application for judicial review on the ground of illegality,¹⁸⁶ because the action or policy of the public body is inconsistent with the right to freedom from discrimination in the BORA.¹⁸⁷

The difficulty is in proving that the acts done by the bodies are discrimination. McLean says: "There remains some doubt about how to read

185 Chen, above n 122, 434.

186 See: Paul Radich and Richard Best "Section 3 of the Bill of Rights" [1997] NZLJ 251.

187 Rodney Harrison "The Remedial Jurisdiction for Breach of the Bill of Rights" *Rights and Freedoms* above n 74, 438.

the Human Rights Act and the Bill of Rights Act together."¹⁸⁸ Also, she says it is not clear what vision of equality the legislation is trying to achieve. It may be "statistical congruence"¹⁸⁹ - for example where a school provides the boys with hectares of grass fields and the girls with two netball courts.

Alternatively, she argues that the equality provisions may be designed to "break down monopolies that privileged groups have had because of their race, sex, and age on higher socio-economic status and ... health status."¹⁹⁰ If the Hillary Commission provides more funds to male sports than female sports (intentionally or unintentionally), its funding policies are inconsistent with its equity principles and do not "break down the monopolies" of privileged male sports organisations. However, both the school and the Hillary Commission could be protected by the 'genuine justification' provision in section 97 of the HRA.

Until a case is taken, it is unclear how the Courts will interpret these provisions. However, the principle of freedom from discrimination in both the BORA and the HRA should not be dismissed lightly by public bodies.

V OTHER AVENUES FOR CHALLENGE

A United Nations

New Zealanders may be able to take a case to the United Nations. Mai Chen suggests that the club exception in the HRA could be a breach of both the International Covenant of Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁹¹ The sport exception in the HRA can also be challenged.

The relevant sections are:

188 McLean *Rights and Freedoms* above n 74, 277.

189 McLean *Rights and Freedoms* above n 74, 280.

190 McLean *Rights and Freedoms* above n 74, 280-281.

191 Chen, above n 122, 436-440.

1 ICCPR

Article 26

All persons are equal before the law and entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The sport and club exceptions in the HRA do not make women equal before the law as both permit discrimination on the grounds of sex.

2 CEDAW

Article 2

State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and ... undertake:

- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

New Zealand sports organisations are discriminating against women and no measures have been taken by the New Zealand government to abolish the legislative support for that discrimination, being the club and sport exceptions in the HRA.

Article 5

State Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the

superiority of either of the sexes or on stereotyped roles for men and women.

Chen argues that allowing sex discrimination in clubs "reinforces the subordinate stereotype of women as ancillary to men."¹⁹² This is also true of the sport exception in the HRA, which in effect sets the standard for strength, stamina and physique at the average male standard and stereotypes the 'average' women rather than dealing with individual cases.

Further, negative images of sportswomen by the media could require State Parties under Article 5(a) to take measures to address this. New Zealand's most recent report to the CEDAW Committee, *Status of Women in New Zealand 1998 (Status of Women Report)*¹⁹³ agrees that women are negatively portrayed in the media and refers to the roles of the Advertising and Broadcasting Standards Authorities and the Office of Film and Literature Classification. Given that no cases have been taken on sexist sport reporting, it is arguable that these bodies do not amount to 'appropriate measures'.¹⁹⁴

Article 10

State parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (g) the same opportunities to participate actively in sports and physical education

The *Status of Women Report* refers positively to the Hillary Commission's *KiwiSport* programme but also points to research on physical education in schools which showed that harassment by boys was a "major concern" and "boys outnumbered girls on the playing fields and grassed areas, adventure playgrounds were dominated by boys, and boys were far more likely than girls to engage in sporting activities in their playing time."¹⁹⁵

192 Chen, above n 122, 438.

193 Ministry of Women's Affairs *Status of Women in New Zealand 1998* (Wellington, 1998) 9.

194 Ministry of Women's Affairs, above n 193, 18.

195 Ministry of Women's Affairs, above n 193, 35.

Given the sex-segregation of most sports at New Zealand secondary schools, and the ability of outside associations to use the club exception in the HRA to exclude girls from all-male teams, Article 10(g) is being breached.

Article 13

State Parties shall take all appropriate measure to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (c) the right to participate in recreational activities, sports and all aspects of cultural life.

Clearly, the club and sport exceptions in the HRA do not protect this right. The *Status of Women Report* refers to the Hillary Commission's *Winning Women* strategy and school programmes.¹⁹⁶ However, the only reference to the club exception in the HRA states:¹⁹⁷

There are still clubs where women can be excluded or have a reduced role in accordance with the rules or practices of the club. However, in recent years some of these clubs have voluntarily made membership available to women.

This statement is probably a reference to non-sports clubs, such as male business clubs and no mention is made of sports clubs. Further, the *Status of Women Report* does not indicate which clubs have opened membership to women and how many clubs continue to discriminate against women.

Potentially, New Zealand's commitment to IPPCR and CEDAW can be used to challenge discrimination against women in sport in both New Zealand courts of law¹⁹⁸ or in complaints to the United Nations. However, there are difficulties in laying complaints, including the requirement that local remedies have been exhausted and the uncertainty in obtaining a satisfactory result from the international committee.

196 Ministry of Women's Affairs, above n 193, 61.

197 Ministry of Women's Affairs, above n 193, 62.

198 Sir Kenneth Keith "Application of International Human Rights Law in New Zealand" (1997) 32 *Tex Int L Rev* 401, 409-410.

B Alternative Dispute Resolution

Traditionally, there is a reluctance to mix sport and the law¹⁹⁹ and most forms of dispute resolution in sports are outside the formal legal system. Most sports have tribunals or other processes to determine disciplinary cases, rule on drug doping, negotiate player and employment contracts and handle disputes with outside groups.²⁰⁰ It is argued that alternative dispute resolution (ADR) in this area can maintain relationships between parties, is confidential, allows for creative solutions, is cheaper and has a higher success rate than formal legal methods.²⁰¹

1 ADR Organisations in Sport

In addition to internal tribunals, there are independent groups which offer a range of ADR services in Australia and New Zealand:

(a) The Court of Arbitration for Sport (CAS)²⁰²

The CAS was established in 1983 by the International Olympic Committee and in 1994 came under the auspices of the International Council of Arbitration for Sports. Any dispute can be submitted which is "directly or indirectly linked to a sport, be it commercial or relating to the practice and development of sport ... or a dispute following a decision by a sports organisation."²⁰³ Individuals or groups can refer cases and if parties agree, the decisions can be final and binding.²⁰⁴ Some sports organisations have compulsory arbitration clauses in their constitutions or in contracts with players which identify the CAS as the body where disputes will be resolved. An Oceania CAS was formed in 1996 and currently there are eight male arbitrators and one woman arbitrator in this region.

199 Woodhouse, above n 3, 411.

200 David Gendall "Sports Dispute Resolution Reviewed" in *Conference Papers - 8th Annual ANZLA Conference Queenstown 1998* 4-7.

201 Mark Fewell "Sports Dispute Resolution Reviewed - The Australian Experience" in *Conference Papers - 8th Annual ANZLA Conference Queenstown 1998* 2.

202 Court of Arbitration for Sport *Code of Sports-related Arbitration* (Lausanne, 1995).

203 Fewell, above n 201, 6.

204 Fewell, above n 201, 6.

(b) National Sports Dispute Centre

In 1996 an independent non-profit group, the National Sports Dispute Centre (NSDC), was established²⁰⁵ to offer individuals or sports organisations a range of ADR services including tribunals, mediation, arbitration or a referral service. The Board has five members, most are lawyers and all are male.²⁰⁶

Recently, Gendall proposed that a National Assembly for Sports Dispute Resolution (NSD) be set up in New Zealand.²⁰⁷ He states: "Ideally, use of the NSD Tribunal should be compulsory, though, if this was not possible, a two-phase approach providing a voluntary service initially might be contemplated."²⁰⁸

2 Use of ADR to Challenge Sex Discrimination in Sport

The 'rhetoric' of ADR suggests that it is a better way for women to resolve disputes being non-adversarial, able to explore creative solutions and conscious of the importance of maintaining relationships.²⁰⁹ But the developments in sports ADR may inspire little confidence for women and be ineffective as mode of challenging discrimination. First, all the literature on sports ADR focuses on the prime areas where sports dispute arise and the vast majority of these are concerned with male sports and sportsmen. Issues of discrimination against women in coaching or administration, disparity in resources, negative images of sportswomen in the media, exclusion from certain sports and sexual harassment are not mentioned and perhaps not even contemplated by the ADR organisations.

205 It was formed by the Australian and New Zealand Sports Law Association, the Australian Sports Commission and the Confederation of Australian Sport.

206 Fewell, above n 201, 4.

207 Gendall, above n 200, 30.

208 Gendall, above n 200, 36.

209 See generally: Becky Hoover-Herrnstein "Women and Mediation: A Change to Speak and be Heard" (1996) 13 *Mediation Quarterly* 229, 239; Hilary Astor and Christine M Chinkin *Dispute Resolution in Australia* (Butterworths, Sydney, 1992) 39-40; Carrie Menkel-Meadow "The Trouble with the Adversarial System in a Postmodern, Multi-Cultural World" (1996) 38 *William and Mary L R* 5, 33-40.

Second, the current ADR sports organisations are overwhelmingly staffed by male board members and arbitrators and there appears to be no gender equity principles in their appointment procedures. Therefore, it is more likely the ADR groups will nominate men rather than women as mediators, arbitrators or candidates for tribunals. Thirdly, the law of the country where the dispute arises will prevail. An ADR body cannot, therefore, override the club and sport exceptions in the HRA.

Finally, many of the issues women face in sport do not readily fit into the ADR definition of 'dispute'. For example, if a woman is excluded from a sport because of her sex, the 'dispute' does not arise from her relationship with the sporting body. Rather, it arises because *there is no relationship* with the sporting body because of their exclusionary policies.

The current systems of ADR do not appear to be a useful mechanism for women to raise issues of discrimination or gender equity. While ADR is developing as a new way for sportsmen to resolve disputes, it is yet another male-dominated structure women must challenge in seeking positive change from the sporting community.

C Legal and Political Advocacy

There are no private organisations in New Zealand established to work for reform in the area of women's sport. Advocacy groups in Australia, Canada and the US have had considerable success and influence in improving the status of women in sport. Womensport Australia has branches in most States and provides information on women's competitions, produces resources for schools and sports groups, offers legal advice and makes submissions to local and international sports bodies.²¹⁰

In the US, after Billy Jean King organised a boycott to protest against unequal prize moneys for women in professional tennis in 1970, she launched WomenSport Magazine and co-founded the WomenSport Foundation which

²¹⁰ Womensport Australia at <http://www.ausport.gov.au/wspahome.html>.

challenges sexism at all levels of sport.²¹¹ Other US groups include: The Feminist Majority Foundation, the Black Women's Sport Foundation, the Melpomene Institute and the National Organisation of Women. Earlier this year, *Dare to Compete*, an exclusively women's sport television channel was launched. The Canadian Association for Women in Sport and Physical Activity (CAAWS) has built a nationwide network to work towards "an equitable sport community."²¹² Activities include media workshops, lobbying public and private bodies, gender equity programmes and providing legal resources.

The importance of being independent of government agencies is stressed by these groups. CAAWS believes that while they can work in partnership with the government on selected programmes, independence is necessary so as "to avoid being co-opted by the sport system it was committed to changing."²¹³

In New Zealand, there is a lack of independent comment and challenge about the position of women in sport. The Hillary Commission are constrained by public policy and the law. While there may also be room for the Commission to take a more pro-active approach on gender issues, the pressure to do so needs to come from the community.

The role of an independent advocacy group for women in sport in New Zealand could include the following:

- (a) lobbying government to remove the club and sport exceptions in the HRA;
- (b) coordinating legal and political challenges to sports bodies and schools which discriminate against women and girls;
- (c) challenging negative stereotypes and lack of coverage of sportswomen in the media - countering myths about women in sport;
- (d) increasing women's representation in decision-making positions;
- (e) producing information for the sports community on gender equity;

211 *Coming on Strong* above n 57, 252.

212 Sheila Robertson, above n 69, 20.

213 Sheila Robertson, above n 69, 22.

- (f) encouraging schools to introduce integrated sports;
- (g) promoting appointment of women and women's issues within ADR sport organisations;
- (h) supporting education on sport law and gender issues - encouraging law schools to introduce under-graduate papers.²¹⁴

VI CONCLUSION

The impact of sport in New Zealand is both personal and national, it can invoke deep passions and generate millions of dollars. As a central cultural form of expression, sport also reflects and reinforces the inequities of opportunity and reward between men and women which exist in the wider society.

There is a significant gap in the legal protection for New Zealand women in sport. The Human Rights Act 1993 offers no substantial protection against sex discrimination for sportswomen. A first step in improving the status of women and to comply with New Zealand's international obligations would be the removal of the sport and club exceptions in the Human Rights Act. At the very least, this would give women a legal means to combat discrimination and it may also challenge the assumption that sports are a male preserve, unless otherwise stated.

As well as legal reform, strategies are needed at other levels, so that women become key decision-makers in all forms of sport, not just in women's games. Women must get out of 'catch-up' mode and assert their entitlement to sports careers and the accompanying benefits. So instead of watching and worrying while the male sports community equip themselves to deal with professionalism and globalisation of sports, women need to be part of the action and insist the outcomes of these developments benefit women. It is clear that the majority of men who hold the power positions in sport are not going to shift of their own accord.

214 Currently, the University of Canterbury Law School is the only law school teaching sport law.

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