

## Gender in Olympic Sailing

### Open Events instead of Men's Events

A submission from the International 49er Class Association

#### Purpose or Objective

To ensure women do not face unequal treatment in Olympic sailing amounting to discrimination on the basis of sex.

#### Proposal

To amend regulation 23.1.4 so that each of the four Olympic Events currently designated as “Men’s Events” are renamed as “Open Events.” Further updates to World Sailing documents like Olympic qualification documents and others would need to be amended subsequently, if this regulation is changed. Additionally, Youth Worlds Events, Continental Games Events, and others may wish to update their slates of Events if this precedent passes.

Under regulation 23.1.8 (d), the Board of World Sailing is allowed to change the descriptive names of the Events for the purposes of updating their vision and objectives, among other reasons. Therefore, any vote of council in this matter would be instructive, rather than binding on the Board of World Sailing.

Regulation 23.1.4 Olympic Events and Equipment

<b>Event</b>	<b>Equipment</b>
Open <del>Men's</del> Windsurfing	iQFOiL
Women's Windsurfing	iQFOiL
Open <del>Men's</del> Kite	IKA Formula Kite REGULATIONS
Women's Kite	IKA Formula Kite
Open <del>Men's</del> Dinghy	ILCA 7
Women's Dinghy	ILCA 6
Open <del>Men's</del> Skiff	49er
Women's Skiff	49erFX
Mixed Dinghy	470
Mixed Multihull	Nacra 17

#### Current Position

Regulation 23.1.4 Olympic Events and Equipment

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Men's Windsurfing	iQFOiL
Women's Windsurfing	iQFOiL
Men's Kite	IKA Formula Kite REGULATIONS
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### Reasons

1. Currently sailing has 4 Men's Events, 4 Women's Events, and 2 mixed Events at the Olympics. As such, women can compete in 6 of the 10 Olympic Events, but cannot compete in the 4 Men's Events.

However, in Canada and other countries<sup>1</sup> with similar legal systems like the USA, Australia, New Zealand and Australia there is clear case law stating "females may try out for male teams, irrespective of whether a female team is available, and regardless of the skill level of the female team."<sup>2</sup>

By extension, females would be allowed to compete on male teams or in male competitions, irrespective of whether a female team or competition is available, and regardless of the level of female competition.

Failure to allow females to try out for or compete on male teams or to compete in male competitions would be considered unequal treatment and would amount to discrimination on the basis of sex. Further, refusing such opportunities would amount to denying females the opportunity to be judged on their personal merits, which constitutes differential treatment, and, by definition, discrimination.

2. It should also be mentioned that it has been found that the concept of equal opportunity includes the opportunity to participate and compete at one's own level. This means that simply making both male and female competitions available and preventing females from competing with males simply because a female competitive opportunity is available would be insufficient to satisfy this approach to the concept of equal opportunity.

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<sup>1</sup> Article 14 of the European Convention on Human Rights prohibits discrimination on the basis of sex, as does the New Zealand Human Rights Act (Section 21). In Australia, the Sex Discrimination Act prohibits discrimination on the basis of sex, as is the case in the United States under the Civil Rights Act (1964).

<sup>2</sup> Please see *Blainey v. Ontario Hockey Association*; *Casselman v. Ontario Soccer Association*; and *Pasternak v. Manitoba High School Athletic Association*.

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3. In addition, it has been found that permitting women to compete with men instead of limiting them to compete in female competitions would not have a significant adverse effect on women's 1 Please see *Blainey v. Ontario Hockey Association*; *Casselman v. Ontario Soccer Association*; and *Pasternak v Manitoba High School Athletic Association*. Ottawa | Montreal | Toronto hello@sportlaw.ca | www.sportlaw.ca Our vision is to help you achieve yours Continuous Improvement | Passion | Professional Integrity programs or competitions and that it is not justified to have a rule to protect female programs in such circumstances.
4. There are certain exceptions to the right of females to compete with males, such as where there may be safety considerations that dictate that females should not compete with males, or that the female must only play certain positions (i.e., a punter in football). However, it would not appear that these exceptions are relevant to the sport of sailing.
5. Another point to consider, on the basis of the analysis above, is whether males may compete in female competitions. While not allowing males to compete in female competitions may appear to constitute discrimination, there are exceptions to the general rule prohibiting discrimination on the basis of sex. Those exceptions include reasonable justification and reasonable accommodation. Reasonable justification can include considerations such as safety, public decency, and differences in strength, stamina and physique. Reasonable accommodation can include funding considerations, safety issues, and availability of facilities (washrooms, change rooms).

Overall, there is a three-part test that must be satisfied to demonstrate that a discriminatory rule is justified in the circumstances. That test is as follows:

- The rule, policy or practice was adopted for a purpose or goal that is rationally connected to the function being performed;
- The rule, policy or practice was adopted in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
- The rule, policy or practice is reasonably necessary to accomplish its purpose or goal, in the sense that the organization cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.

The first two parts of the test speak to the reasonable justification for the discriminatory rule, policy or practice.

The third part of the test speaks to the need to take every measure possible, short of undue hardship, to accommodate the individual. In the sport context, differences in strength, stamina and physique are the apparent reasonable justifications for not allowing males to compete in female competitions; in addition, but perhaps not in the sailing context, availability of facilities (i.e., washrooms, change rooms) is also a common justification to maintain an otherwise discriminatory rule because the accommodation may not be reasonable in the circumstances.

6. As it relates to the Olympic Games, the Olympic Charter does not provide a response to the question at issue. Instead, it would appear that the Olympic Charter refers Olympic participation questions to the relevant International Federation, subject to the approval of the IOC's Executive Board.
  7. The above are legal reasons why we should remove the gender restrictions on our Olympic Events. However, relating to the Objectives of World Sailing, it should be core to our philosophy that we are an enabling institution, not a blocking institution. There are any number of reasons a woman may wish to compete in any of the Olympic Events, like getting
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respect enough to break into professional sailing, a dream or challenge they wish to take on, a physique better suiting other equipment, and many more. There is no sporting reason why gender restrictions are necessary in the Events currently designated as Men's, and therefore we should enable those who wish to compete to do so.

8. Finally, it should be noted that a change to Open events will not adversely effect male participants. In the three years since the 49er Class Association has made this change there has been very limited demand for female sailors to race the 49er class, and none have done so in a serious manger. As such, opportunities for men have not been impacted negatively in any way, and positively in a small way is it occasionally has made it easier to find a partner to sail with in an urgent situation.

This policy is simply a name change. Nothing to any scale will change as a result of this name change, except, we will be fully complying with the law and in the rare instance a woman does decide they wish to race the Events currently designated as male, they will be permitted.

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