

September 23, 2014

Victor Montagliani and Peter Montopoli  
Canadian Soccer Association  
237 Metcalfe Street  
Ottawa, Ontario K2P 1R2  
c/o Kelly Santini LLP

Joseph S. Blatter  
Fédération Internationale de Football Association ("FIFA")  
FIFA-Strasse 20,  
P.O. Box 8044 Zurich, Switzerland  
c/o Legal@FIFA.org

**RE: FINAL NOTICE BEFORE PLAYERS ARE FORCED TO INITIATE LEGAL ACTION**

Dear Mr. Montagliani, Mr. Montopoli and Mr. Blatter,

As you know, discussion of the 2015 women's World Cup is an early item on the agenda for FIFA's Executive Committee meeting this week. Thus, it seems timely to provide final notice that an international coalition of leading players will initiate legal action against your organizations unless you agree immediately to discussions with us on ways to fix the unacceptable playing conditions proposed for FIFA Women's World Cup Canada 2015.

A draft of the legal brief in support of the lawsuit ready to be filed in a Canadian court is attached.

Litigation is a last resort but one the players will be forced into if you refuse to enter into a good faith dialogue. If you do not contact me by this Friday, September 26th at noon EST, I will assume that you prefer to resolve this matter through the courts rather than cooperation.

Sports organizations are showing greater sensitivity to women's rights as they increasingly appreciate that gender discrimination is not only unlawful but also unacceptable to sponsors and fans. I urge you to show the players and the world that your organizations "get it". All we ask is that you begin a direct dialogue with us now so that legal action can be avoided. Together, I am confident we can agree quickly on how to conduct a World Cup worthy of the extraordinary athletes you will be hosting in Canada.

Sincerely,



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cc: AFC; CAF; CONCACAF; CONMEBOL; OFC; UEFA

# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**PLAYERS ON NATIONAL TEAMS PARTICIPATING IN THE FIFA WOMEN'S WORLD CUP  
CANADA 2015,**

**Applicants**

**-and-**

**CANADIAN SOCCER ASSOCIATION ("CSA")**

**FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION ("FIFA")**

**Respondents**

**SCHEDULE A TO THE APPLICATION**

**Facts and Law Supporting the National Team Players' Application**

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## INTRODUCTION

*Discrimination of any kind against a...private person or group of people on account of...gender...is strictly prohibited and punishable by suspension or expulsion.*

[Article 5.2](#), Canadian Soccer Association (CSA) By-Laws (2013); [Article 3](#), Fédération Internationale de Football Association (FIFA) Statutes (2014).

1. The words above are noble in their intent but utterly meaningless unless accompanied by action. With the decision to hold the FIFA Women's World Cup Canada 2015 soccer tournament on artificial turf as opposed to natural grass, CSA and FIFA have failed to abide by their own rules and have engaged in discrimination against female players.
2. Notwithstanding their rhetoric decrying gender discrimination, CSA and FIFA propose that next summer's World Cup – the preeminent event in women's soccer – take place on literally unequal playing fields. Instead of the natural grass surfaces on which all prior men's and women's World Cups have been played, and that are already slated to be used for the 2018 and 2022 men's tournaments, CSA and FIFA have directed that the upcoming women's tournament be played on artificial turf. This inequity will occur throughout the World Cup and will culminate when the final is played at a site whose artificial turf has been widely criticized as substandard.
3. CSA and FIFA's decision to hold the tournament on artificial turf is inherently discriminatory and injures an elite group of female athletes in three significant ways: (1) by forcing them to compete on a surface that fundamentally alters the way the game is played, (2) by subjecting them to unique and serious risks of injury, and (3) by devaluing their dignity, state of mind and self-respect as a result of requiring them to play on a second-class surface before tens of thousands of stadium specators and a global broadcast audience.
4. This differential treatment constitutes a violation of section 1 of the *Ontario Human Rights Code*.
5. In 2013, in response to concerns over the proposed use of artificial turf at the women's World Cup, FIFA authorized a study of "elite female players' opinions on preferred playing surfaces for major tournaments." The survey promised that the players' views "would be taken into account for future tournaments," thereby misleading players into believing that World Cup organizers would be responsive to their opposition to artificial turf. The results demonstrated "strong agreement that all matches at a major tournament should be played on natural turf." But women's World Cup organizers ignored the very opinions they had solicited. Moreover, organizers never informed the players that the views they solicited with assurances of action would, in fact, be disregarded.
6. The callous treatment of the world's best female players on Canadian soil stands in stark contrast to CSA's solicitude toward the Canadian men's National Team. When asked why the Canadian men would not be playing even qualifying matches for their most

recent World Cup on any surface other than grass, CSA's General Secretary reportedly stated that for men "it has to be grass...our [men's] coaching staff and players prefer grass. There's a preference for that." ([Canadian Soccer News](#), Jan. 30, 2012.)

7. CSA and FIFA – two organizations, according to published reports, with a history of demeaning treatment of women – are individually and jointly responsible for singling out the women's event for adverse treatment. Ontario's Human Rights Code was enacted, and this Tribunal established, to deter and rectify such discrimination.
8. For many participants, this quadrennial tournament represents a once-in-a-lifetime opportunity. It is also a singular showcase for Canada. After failing to be awarded the 2011 women's World Cup, CSA was determined to obtain the 2015 event as part of its larger plan to become a frontrunner for hosting the 2026 men's World Cup.
9. But an eye on future prizes does not excuse shirking present responsibilities. There are several feasible ways for CSA and FIFA to organize next year's matches consistent with the Human Rights Code. Readily achievable solutions include simply moving the games to existing grass fields within a host city already designated by CSA or installing temporary grass fields that cost a small fraction of the budget for the tournament (as was successfully done for the 1994 men's World Cup).
10. The participants in World Cup Canada 2015 want and deserve pitches worthy of their games, contests that captivated fans around the globe at the 2011 World Cup and 2012 Olympics. CSA (which calls one of the world's wealthiest countries home) and FIFA (with its over \$1.4 billion in reserves) are plainly able to organize a discrimination-free tournament with match conditions that obey Ontario law and treat the invited participants – and the games themselves – with the dignity and respect they deserve.

### STATEMENT OF FACTS

#### **The Parties**

11. The Applicants are among the world's best female soccer players. They play on national teams which have qualified for the FIFA Women's World Cup Canada 2015 tournament or which remain eligible to qualify. Two of the Applicants are the FIFA 2013 Player of the Year Nadine Angerer of Germany and the FIFA 2012 Player of the Year Abby Wambach of the United States. Applicants also include, among others, Samantha Kerr and Caitlin Foord of Australia; Fabiana Da Silva Simões of Brazil; Katherine Alvarado and Diana Saenz of Costa Rica; Camille Abily and Elise Bussaglia of France; Yuki Ogimi of Japan; Jackie Acevedo and Teresa Noyola of Mexico; Abby Erceg and Hannah Wilkinson of New Zealand; Ji So Yun of South Korea; Verónica Boquete of Spain; and Alexandra Morgan and Heather O'Reilly of the United States.
12. In addition to the Applicants above, the overwhelming majority of tournament participants have registered their support for natural grass fields by signing petitions, through social media or in response to the 2013 FIFA survey. Players from certain national teams want to serve as named applicants but fear retribution from their national

federations. Several coaches, including reigning FIFA Coach of the Year Silvia Neid of Germany, have denounced the proposed use of artificial turf in the World Cup. Neid said, “[a] World Cup on artificial turf is a no-go. It’s just not possible. We’ll be turned into guinea pigs. It’s a completely different game on that surface. FIFA has to make sure that we play on proper fields. Or what would you say, if our men’s team would have to play on sand in Brazil?” ([Coworker.org](#); [The Equalizer](#), Aug. 5, 2014.)

13. The Respondents are the Canadian Soccer Association (CSA) and the Fédération Internationale de Football Association (FIFA).
14. CSA is the national organization, based in Ontario, which oversees the growth, development and governance of soccer in Canada, in partnership with its provincial members.
15. From its headquarters in Ottawa, CSA formulated and submitted its bid to FIFA, seeking to host the 2015 women’s World Cup. CSA then chose the official Host Cities for the tournament games (including one site in Ottawa) and established a National Organising Committee in Ottawa to oversee tournament preparations. The President of CSA (Victor Montagliani) is the Chair of the National Organising Committee and resides in Ottawa. The General Secretary of CSA (Peter Montopoli) is a member of the Committee and Chief Executive Officer for FIFA Women’s World Cup Canada 2015. He also resides in Ottawa. CSA’s Technical Office is in Toronto.
16. FIFA is the international governing body of soccer. FIFA has organized and run the men’s World Cup since 1930 and the women’s World Cup since 1991. FIFA’s annual revenues topped \$1.3 billion in 2013 and it reportedly enjoys cash reserves of more than \$1.4 billion. FIFA officials have made numerous visits to Ontario to plan the 2015 World Cup with CSA.
17. Together, CSA and FIFA are responsible for organizing and hosting the FIFA Women’s World Cup Canada 2015.

## **Jurisdiction**

18. The Human Rights Tribunal of Ontario has jurisdiction over this matter because of the fundamental role the Ontario-based CSA is playing in the discrimination that will occur throughout next year’s World Cup. CSA conducted planning activities and made the proposal to use artificial turf instead of real grass for the women’s World Cup from its headquarters in Ontario. Furthermore, the National Organising Committee for the World Cup is also located in Ottawa and Ottawa’s TD Place Stadium is one of the locations for the 2015 World Cup matches where CSA and FIFA intend to use artificial turf.
19. The series of discriminatory acts by CSA and FIFA will culminate in June 2015 with the commencement of the World Cup.
20. The Respondents are also responsible for misleading the Applicants and others opposed to artificial turf into believing that their opposition to artificial turf in the World Cup would be acted upon.

## **The Importance of Soccer Generally and the 2015 Women's World Cup in Particular**

21. Soccer is the world's most popular sport. The FIFA World Cup is soccer's preeminent event. The women's World Cup is the largest women's sporting event in the world. More than 125 nations are participating in qualifying matches to secure one of 24 spots in next year's World Cup. Tatjana Haenni, FIFA's deputy director of women's football competitions, describes it as the "most important" international competition for women. According to Haenni, "the world will be watching." CSA Secretary Montopoli likewise says, "[t]he FIFA Women's World Cup is a world-class competition that offers the best in football from around the globe. It is important that Canada produces a world-class stage for this competition." Tournament organizers have selected the slogan "To a Greater Goal" for the 2015 World Cup. CSA President Montalgiani has explained: "For sport, for women, for Canada: those are three qualities that highlight our ambitions in hosting a successful FIFA Women's World Cup...Our Official Slogan serves a dual purpose for the sport and for humanity. It represents the best of on-field performance and a unique victory for all, beginning with girls and women." ([The Globe and Mail](#), Aug. 17, 2013; [FIFA](#), Mar. 21, 2013; [Forbes](#), Sep. 14, 2014.)

## **The Critical Role of the Field of Play and the Risks Posed by Plastic Pitches**

22. As one male international footballer has put it, "the most important thing in soccer is the field." The outsized role of the field results from soccer's unique attributes; compared with Canadian or American football, soccer players wear little in the way of protective clothing. In soccer, unlike baseball or rugby, there is sustained interaction between the ball and the playing surface. The role of the field in soccer is more analogous to the ice in hockey, and the artificial turf proposal for the women's World Cup is akin to forcing elite female hockey players to compete and skate on soft, slushy ice, while the men play on a pristine rink – except that the soccer discrimination is arguably even more dangerous. In hockey, unlike soccer, the players wear extensive protective gear. ([Tampa Bay Times](#), Jul. 3, 2014.)
23. FIFA itself has long recognized the centrality of field conditions to the game of soccer. Publications such as FIFA Quality Concept for Football Turf, the FIFA Handbook of Field Requirements and the FIFA Handbook of Field Test Methods offer hundreds of pages of information and opinion about various aspects of soccer field playing surfaces.
24. FIFA has also recognized that field considerations with regard to elite soccer players, such as those who will participate in the women's World Cup, differ from the perspective of non-elite players. The results of the 2013 survey of top female players were conclusive: a clear majority of the 190 athletes questioned believed that artificial turf altered and degraded competition. 77% of them agreed that all matches at a major tournament should be played on natural turf; only 8% disagreed. Furthermore, 80% of the athletes admitted they were less likely to attempt slide tackles on artificial turf than on grass.
25. Earlier this year, FIFA's own magazine noted that "non-grass pitches are widely regarded as deeply problematic" and quoted an observation from a leading soccer reporter that the

“clear view” of elite soccer players is that artificial turf fields are unacceptable. ([FIFA](#), Mar. 14, 2014.)

26. Elite players have refused to play on plastic pitches, including the specific ones currently proposed for next year’s World Cup. As FIFA Weekly reported: “International sides and prestigious visiting club teams like Manchester United routinely refuse to play on artificial surfaces, insisting on grass overlays.” FIFA admits that Vancouver’s BC Place – selected for the World Cup final – is “particularly controversial” and has detailed the refusal of multiple elite male players to participate in club matches at the site. ([FIFA](#), Mar. 14, 2014.)
27. Other publications have provided similar reports of male players boycotting artificial turf fields generally and CSA’s selected final’s field in particular. And players for the Canadian national teams – male and female, current and former – have repeatedly decried soccer on artificial turf and stated a strong preference for playing on grass. As CSA’s first official Ambassador to the World Cup, Kara Lang, has stated: “No soccer player prefers FieldTurf. It pales in comparison to a well-manicured grass pitch and takes some getting used to.” ([Canadian Soccer News](#), Aug. 25, 2013; [espnW](#), Jun. 6, 2013; [The Equalizer](#), Sep. 12, 2014; [The Province](#), Aug. 31, 2014; [The 11: Canada’s Online Soccer Magazine](#), Jul. 31, 2013; [World Soccer Talk](#), Aug. 13, 2014.)
28. One key reason the players’ overwhelmingly prefer grass is that artificial turf changes the way the game was meant to be played. The ball bounces and rolls differently, and the hard artificial surface requires players to play more tentatively. Fan-favorite slide tackles and diving headers (such as the Robin van Persie swan dive which was the signature moment of the 2014 men’s World Cup), will be noticeably absent from a World Cup played on artificial turf. ([The Globe and Mail](#), Sep. 28, 2006.)
29. The players’ perceptions about the drawbacks and risks of elite soccer on artificial turf are also well-founded. Turf exposes players to injuries that do not exist on natural grass, such as skin lesions, abrasions and lacerations. The pictures below show turf injuries suffered by professional women players. Sydney Leroux of the United States and Samantha Kerr of Australia reportedly suffered these injuries on FieldTurf, the same surface that will be used in four out of the six World Cup venues. Nadine Angerer of Germany also suffered an abrasion on a synthetic surface.

## Artificial Turf Abrasions

Sydney Leroux  
United States



April 14, 2013

Twitter: [@sydneyleroux](#)

Samantha Kerr  
Australia



May 12, 2013

Twitter: [@samkerr1](#)

Nadine Angerer  
Germany



January 24, 2014

Twitter: [@NAngerer](#)

30. In addition, artificial turf is uniquely vulnerable to degradation upon installation as a result of the effects of weathering, brushing and painting. CSA's site choice for the finals is particularly susceptible to such adverse effects as it is in use more than 200 days a year according to a report published in 2013. This type of use makes artificial turf an even more dangerous and difficult surface on which to play. ([PavCo.](#))
31. The most reliable scientific research indicates that there is a higher risk of serious injury to lower extremity joints on artificial turf than on natural grass. According to a 2013 article, "reliable biomechanical data suggest that both the torque and strain experienced by lower extremity joints generated by artificial surfaces may be more than those generated by natural grass fields." In a 2010 study on playing surfaces and ACL strain, researchers also discovered that the "natural grass and cleat combination produced less strain in the ACL than any other combination." ([Journal of the American Academy of Orthopedic Surgeons](#), May 2013; [Journal of Biomechanical Engineering](#), Jan. 2010.)
32. Research by the National Football League has corroborated these studies, finding that elite players were more susceptible to injuries on artificial turf – even on the newest artificial surfaces – than on grass. After evaluating over 3,000 knee and ankle sprains, the study found that these types of injuries were 22% more likely to occur on FieldTurf than on grass, a difference the authors called "statistically significant." ([The American Journal of Sports Medicine](#), Oct. 2012.)

### **CSA, FIFA, the World Cup and Natural Grass**

33. In light of artificial turf's actual and perceived safety risks, it is no surprise that CSA and FIFA have ensured that *men's* World Cup tournament games are consistently played on grass. Notably, and despite an outcry from fans in certain cities across Canada, CSA elected to have all of the Canadian men's team's home World Cup qualifying matches for the 2014 World Cup played on grass. According to published reports, the artificial turf at

BC Place and Commonwealth Stadium was the “dealbreaker” leading CSA to forego Canadian men’s games in Vancouver and Edmonton. Nevertheless, CSA has selected both of these very sites to host the actual tournament matches for the women’s World Cup. ([New York Times](#), Feb. 4, 2012.)

34. CSA General Secretary Montopoli’s own comments explaining the decision to give the men exclusively grass surfaces are direct and material evidence of the gender discrimination that necessitates this action. According to a published account, Montopoli stated: “On the men’s side, if we’re talking World Cup qualification matches, then you have to look at the surface that you’re playing on...It has to be grass...I think the other part is our coaching staff and players prefer grass. There’s a preference for that.” ([Canadian Soccer News](#), Jan. 30, 2012.)
35. As for FIFA, it ensured that the just-completed 2014 World Cup in Brazil was staged on grass fields, as was every men’s World Cup since the first World Cup in 1930. FIFA has similarly ensured that the men will play on grass fields for years to come, regardless of any logistical challenges. The 2018 men’s World Cup, in Russia, will be played on grass, despite Russia’s cold and challenging climate. Likewise, the 2022 men’s World Cup, in Qatar, will feature grass surfaces, even though Qatar is a desert country with extreme drought conditions, where temperatures routinely exceed 110 degrees in the summer. ([FIFA](#); [FIFA](#).)
36. The 1994 men’s World Cup exemplifies the lengths to which host countries and FIFA have gone to ensure the men play soccer’s premier event on grass. For that event, FIFA installed a real grass field over the artificial turf of the Pontiac Silverdome in Detroit. FIFA spent over \$2 million dollars on the effort. The Meadowlands laid down 5,400 tons of soil over its AstroTurf to hold a grass overlay. Now, twenty years later, the cost for similar grass fields are relatively inexpensive, with one expert calling the job for Canada “laughably easy.” ([New York Times](#), Jun. 5, 1994; [New York Times](#), Aug. 21, 2014.)

### **CSA’s Past History of Gender Discrimination and Role in the Current Code Violations**

37. CSA’s decision to subject the women participating in the World Cup to a second-class surface appears to be part of a consistent pattern and practice of discrimination within CSA regarding gender equality. CSA has been a male-dominated organization throughout its history. Of the current board, only 3 of the 13 members are women.
38. In 2010, CSA’s treatment of the Canadian women’s national team players resulted in the players retaining legal counsel and considering an action in the Court of Arbitration for Sport. At the center of the Canadian women’s concerns was CSA’s discriminatory treatment of the female players in terms of compensation in comparison to the men’s national team. ([Toronto Star](#), Feb. 9, 2011.)
39. CSA had the power to submit its bid to host the women’s World Cup 2015 on the basis that games would be played on grass. Instead it chose to submit a bid featuring second-rate artificial turf. CSA’s decision constitutes discrimination on the basis of gender.

40. CSA officials have also revealed that one of its principal goals in hosting the women's World Cup is to enhance Canada's odds of obtaining the 2026 men's World Cup or, as CSA President Montagliani publicly describes it, "the *big* World Cup." (emphasis added) Earlier this year, CSA General Secretary Montopoli declared: "After we've completed 2015 we will have hosted every FIFA competition there is of international standard except for the men's World Cup, so obviously that would be the one we would want to see if we can secure for Canada."

### **FIFA's Past History of Discrimination and Role in the Current Code Violations**

41. FIFA is an organization dominated by men and has a self-described "macho" culture. FIFA's governing Executive Committee is run by President Sepp Blatter; all seven FIFA Vice Presidents are men; and fifteen of the sixteen elected members of the Executive Committee are men. Until last year, FIFA had never had a woman serve on its executive board. Furthermore, one year ago, when Blatter announced Moya Dodd's candidacy to serve as the first woman in FIFA's history on its executive board, he boasted that she was "a good looking candidate." ([The Guardian](#), Aug. 5, 2014; [CBC Sports](#), May 29, 2013.)
42. FIFA's Blatter has a long history of denigrating female participation in world soccer. In 2004, Blatter urged women players to play in "tighter shorts," explaining that "female players are pretty" and could "play in more feminine clothes like they do in volleyball." ([BBC](#), Jan. 16, 2004.)
43. More recently, Blatter explained to reporters on August 5, 2014, during the Women's U20 World Cup in Canada, "Football is very macho. It's so difficult to accept [women] in the game. Not playing the game, but in the governance." In comments posted on FIFA's website, Blatter further explained that "it is still not easy for women to hold positions of power within FIFA." A September 2014 *Sports Illustrated* article entitled, "With Women's World Cup on Horizon, Sexism Remains Part of FIFA Culture," detailed additional examples of sexism and discrimination within FIFA's leadership. The article also quotes from the latest issue of the official FIFA magazine, which featured a profile on Blatter including the following sentence: "Football is a simple game that only becomes complicated once you attempt to explain the active and passive offside rules to your wife." ([The Guardian](#), Aug. 5, 2014; [FIFA](#), Aug. 5, 2014; [Sports Illustrated](#), Sep. 12, 2014.)
44. In 2013, FIFA conducted the above-mentioned survey of elite women soccer players regarding preferences for turf or grass. When initiating the study, FIFA indicated that it was assessing whether turf or grass would ultimately be used for the women's World Cup, and that FIFA and CSA would take into consideration the women players' responses in determining choice of field surface. Yet after receiving the study's results, FIFA and CSA made the discriminatory decision that the women's preferences for grass would not be accommodated, as male players' preferences had always been.

## GOVERNING LAW

45. Section One of the Ontario Human Rights Code establishes that “every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.” As this Tribunal has held, “the right to participate...in athletic activity without discrimination is guaranteed by s. 1 of the Human Rights Code.” *Blainey v. Ontario Hockey Association*, (1986) 54 Or. (2d) 513. CSA and its organization of the 2015 women’s World Cup clearly falls within the Code, as “soccer competitions are a ‘service’ within meaning of Section 1 of the Code.” See *Casselman v. Ontario Soccer Association* (1993), 23 CHRR D/397, 407 (Ont. Bd. Of Inquiry). The Code recognizes “the dignity and worth of every person” and “provide[s] for equal rights and opportunities without discrimination that is contrary to law.” *Blainey v. Ontario Hockey Association*, (1986) 54 Or. (2d) 513.
46. Moreover, the facilities where the matches for the women’s World Cup will be played must be provided free from discrimination. Yet, as noted above, the use of artificial turf – an inferior playing surface – for the matches for the 2015 women’s World Cup, in lieu of grass as for the men’s games, constitutes gender discrimination.
47. In the human rights context, the complainant need only make out a *prima facie* case of discrimination, “one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent[.]” *Ontario (Human Rights Commission) v. Simpson Sears*, 1985 18 (SCC), [1985] 2 S.C.R. 536 (*O’Malley*). It is sufficient for the discrimination to have been only one of the factors on which the respondent’s decision was based. *Bernatchez v. Innue of Unamen Shipu (Council)*, 2006 CHRT 37, para. 14; *Holden v. Canadian National Railway Co.* (1991), 14 C.H.R.R. D/12, para. 7 (F.C.A.)
48. Where a *prima facie* case of discrimination is made, the Supreme Court imposes three requirements that a respondent must prove to justify its conduct: (1) it adopted its policy for a purpose or goal that is rationally connected to the function being performed; (2) it adopted its policy in good faith, in the belief that it is necessary to the fulfillment of the purpose or goal; and (3) the policy it adopted is reasonably necessary to accomplish its purpose or goal, in the sense that it is impossible to accommodate claimant without incurring undue hardship. *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees’ Union*, 1999 652 (SCC), [1999] 3 S.C.R. 3 (“*Meiorin*”), para. 54; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 646 (SCC), [1999] 3 S.C.R. 868 (“*Grismer*”), para. 20.
49. A directly on-point decision is *Hawkins obo Beacon Hill Little League Major Girls Softball Team - 2005 v. Little League Canada (No. 2)*, 2009 BCHRT 12 (“*Hawkins*”). There the BC Human Rights Tribunal applied the above standards to a gender discrimination claim brought by a girls’ softball team based on an ostensibly neutral policy decision under which boys’ teams received travel funding for tournament play, while girls’ teams did not. The Tribunal found that the girls’ team made out a *prima facie*

claim, and then determined that Little League failed to meet its burden of establishing a bona fide and reasonable justification for its policy under the *Meiorin/Grismer* test.

50. The Tribunal also rejected Little League's contention that providing travel funding for the girls' teams would cause the League "undue hardship" just because it would have a financial cost, stating: "Doing what it could from a financial perspective' is not a relevant test. Little League was required to adduce proof that it would have incurred undue hardship but for the Policy." *Hawkins*, para. 377. Because the League had a yearly budgetary surplus and had significantly subsidized baseball tournament travel for boys' teams, the Tribunal issued an award of damages and an injunction prohibiting the League from maintaining its discriminatory and demeaning policy restricting travel funds with girls' softball teams. *Hawkins*, paras. 380, 393.
51. Furthermore, Canada has signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women. According to the Ontario Human Rights Commission's Policy on Preventing Sexual and Gender-Based Harassment, "Canada has agreed to uphold the values and rights guaranteed in [the Convention.]" "In Ontario," the Policy continues, "the Ontario Human Rights Commission has a special responsibility to help Canada fulfill its international human rights commitments."
52. Article 10 of the Convention requires signatories to provide to women "the same Opportunities to participate actively in sports and physical education."
53. Article 13 of the Convention requires signatories to ensure women possess the "same right[.]...to participate in recreational activities, sports and all aspects of cultural life."

#### LEGAL VIOLATIONS: CSA AND FIFA ARE INDIVIDUALLY AND JOINTLY LIABLE

54. CSA's original bid identified seven "Candidate Bid Cities"; of those seven cities, CSA was aware that five had existing soccer stadiums with artificial turf pitches and that a sixth had plans for a stadium with an artificial turf pitch. In a series of discriminatory decisions CSA has continued to take steps toward forcing women players to compete on artificial turf in the 2015 women's World Cup, rather than the grass pitch afforded male players. And yet CSA continues to insinuate that FIFA alone bears responsibility for the failure to stage the tournament on natural grass. When asked about the possibility of installing grass fields, President Montagliani answered that "[t]hose are things that are in the bailiwick of FIFA." ([Washington Post](#), Sep. 4, 2014.)
55. Likewise, FIFA points its finger back toward Canada. With the 2015 World Cup on the horizon, players had expected that organizers would take into account the views they expressed through the March 2013 survey. After FIFA and CSA decided to ignore the players' responses to that survey and to proceed with plans that the 2015 World Cup be played on turf, FIFA now claims that the responsibility for the playing surface rests entirely with CSA. In a September 4, 2014 statement, a FIFA spokesperson indicated that it was the National Organising Committee, not FIFA, that wanted artificial turf. According to the statement, FIFA was only responsible for asking that all the fields have the same surface, not that they be turf.

56. From CSA's original proposal, to FIFA's and CSA's ongoing refusal to take the players' solicited opinions into account, as well as numerous additional actions, CSA and FIFA's actions together constitute a series and pattern of discriminatory incidents that will culminate when women players are actually forced to play on artificial turf in 2015. Both CSA and FIFA bear responsibility for the discriminatory plan to host the women's World Cup tournament on artificial turf, and therefore CSA and FIFA are individually and jointly liable for violations under the Human Rights Code.

#### LEGAL VIOLATIONS BY CSA

57. CSA has clearly exercised sufficient authority to have committed a violation of the Human Rights Code.

58. CSA has violated the Human Rights Code by forcing women to compete in matches that are entirely different from and inferior to those played on grass. Due to the negative effects that turf has on the ball and play, a game played on turf is necessarily one where players can neither achieve nor demonstrate their full potential as athletes. Women soccer players are legally entitled to the same quality of playing surface as men at the same level of play.

59. Moreover, CSA is violating the Human Rights Code by attempting to force women to play on a surface that is more dangerous than a surface that similarly situated men would be asked to play on.

60. CSA has also violated the Human Rights Code by attempting to compel women to play on a surface that would harm their dignity, feelings and self-respect. It is a violation to force women to accept substandard conditions with the whole world watching and commenting on the fact. This is inherently degrading and injurious to the female players' dignity and sense of self-worth.

61. CSA has violated the Human Rights Code in that the group has only proposed this tournament to be played on artificial surfaces because it is the women's tournament. As one Canadian sports commentator recently put it: "As many have pointed out, there is no way in the world that men would ever be asked to play in fake grass in such an important event, that's such a laughable position it[s] not worth even thinking about." ([Toronto Star](#), Aug. 7, 2014.)

62. CSA cannot show that imposing artificial turf for women's World Cup games advances the stated purpose of the 2015 World Cup of "represent[ing] the best of on-field performance" in furtherance of a "Greater Goal." Still less can it argue that it adopted this policy with an honest and good faith belief that it was necessary to accomplish this purpose. And CSA certainly cannot show that it would be impossible or impose undue hardship to accommodate claimants' requests for the grass playing fields that are provided to male World Cup players. *Meiorin*, para. 54; *Hawkins*, paras. 360-87.

## LEGAL VIOLATIONS BY FIFA

63. FIFA is either directly responsible for the decision to stage the 2015 World Cup on artificial turf or it is permitting that Human Rights Code violation to take place when it could take action to prevent it. As evidenced by FIFA's efforts to ensure grass is used in men's World Cups, it is clear that FIFA does not permit men to play World Cup matches on artificial surfaces.
64. Requiring women to play in a degraded competition, a contest fundamentally different from how the World Cup has always been staged, violates the Human Rights Code.
65. The surfaces on which FIFA has either demanded or permitted the women to play are more dangerous than the surfaces on which men are asked to play. This is unlawful discrimination under the Human Rights Code.
66. Compelling women to play before a worldwide audience under inferior conditions is also harmful to the female athletes' dignity, feelings and self-respect, and therefore violates the Human Rights Code.
67. There is no reasonable justification for forcing women to play on turf. Practical solutions are readily available.
68. FIFA cannot show that imposing artificial turf for women's World Cup games advances the stated purpose of the 2015 World Cup of "represent[ing] the best of on-field performance" in furtherance of a "Greater Goal." Still less can it argue that it adopted this policy with an honest and good faith belief that it was necessary to accomplish this purpose. And FIFA certainly cannot show that it would be impossible or impose undue hardship to accommodate claimants' requests for the grass playing fields that are provided to male World Cup players. *Meiorin*, para. 54; *Hawkins*, paras. 360-87.

## REMEDY SOUGHT

69. The Applicants seek as remedy an Order that the Respondents be prohibited from engaging in discriminatory conduct in the upcoming FIFA Women's World Cup Canada 2015 and be required to take all necessary steps to ensure that the soccer tournament is played on natural grass as opposed to artificial turf surfaces.
70. There are various different ways in which this can be accomplished, including by moving the location of the games to stadiums with grass pitches or by installing grass pitches at the stadiums where the games are to be played.
71. The Applicants are not concerned with how the discrimination-free playing surfaces are achieved, only that it be accomplished.
72. However, to demonstrate the feasibility of the remedy requested, the Applicant's offer the following examples of how this could be achieved with respect to each of the stadiums where the games are proposed to be held.

73. CSA and FIFA are planning to have the World Cup games held at six different venues. The examples differ by venue as follows:

BC Place, Vancouver

74. The turf at BC Place could be replaced with a permanent grass pitch. This permanent grass pitch could be reinforced with synthetic fibers, as was done for the men's World Cup in South Africa in 2010, making it suitable for the variety of events to be held at BC Place in various types of weather. Kentucky or Supina Bluegrass sod would be appropriate surfaces.
75. In the alternative, temporary grass pitches could be installed on top of the existing artificial surface. The temporary field should include a sand-based compatible root zone, with Kentucky Bluegrass, Supina Bluegrass, or Bermuda sod. This type of temporary pitch is in line with what was used at the men's World Cup in the United States in 1994.

Olympic Stadium, Montreal

76. The games scheduled for Olympic Stadium could be moved to Saputo Stadium in Montreal where there is an existing grass field. The capacity of this stadium is in line with others scheduled to be used for the 2015 World Cup. Moving the games to Saputo Stadium would be the most cost efficient way to ensure games are played on a legally sufficient surface.
77. In the alternative, temporary grass pitches could be installed on top of the existing artificial surface at Olympic Stadium. The temporary field should include a sand-based compatible root zone with either Kentucky Bluegrass, Supina Bluegrass, or Bermuda sod.

Moncton Stadium, Moncton

78. Temporary grass pitches could be installed on top of the existing artificial surface at Moncton Stadium. The temporary field should include a sand-based compatible root zone with Kentucky Bluegrass, Supina Bluegrass, or Bermuda sod.

Commonwealth Stadium, Edmonton; TD Place Stadium, Ottawa; Investors Group Field, Winnipeg

79. The turf at these stadiums could be replaced with permanent grass pitches. These permanent grass pitches could be reinforced with synthetic fibers, as was done for the men's World Cup in South Africa in 2010, making it suitable for the variety of events to be held at these venues in the future.
80. In the alternative, temporary grass pitches could be installed on top of the existing artificial surfaces at these stadiums. The temporary fields should include a sand-based compatible root zone with Kentucky Bluegrass, Supina Bluegrass, or Bermuda sod.
81. As a further alternative for any of these stadiums, games could be played at BMO field in Toronto, where there is an existing premium grass surface.

A Monitor to Ensure Timely Compliance

82. The players also request that the Tribunal appoint a monitor to ensure timely and sufficient compliance with the Tribunal's order.

CONCLUSION

83. Both CSA and FIFA have failed to respond to the Applicants' good-faith entreaties for a negotiated resolution. Indeed, absent intervention by this Tribunal, these organizations appear prepared to force the top female soccer players in the world to play their preeminent event under inferior, dangerous and discriminatory conditions. Thus, the Applicants ask this Tribunal to order CSA and FIFA to provide proper, lawful playing surfaces for FIFA Women's World Cup Canada 2015.

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