

# Kristen Worley's case & what it means for sport & human diversity

SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT  
COURTROOM 3 – OSGOODE HALL

MONDAY, FEBRUARY 29, 2016 COMMENCING AT 10:00 AM

THE HONOURABLE JUSTICES SACHS, THORBURN AND LeMAY

CASE NUMBER	PARTIES	COUNSEL
I. DC-15-517-JR	Judicial Review – <i>Ontario Human Rights Code</i>	<b>Scheduled - 1 day</b>
Applicant	INTERNATIONAL OLYMPIC COMMITTEE	Ronald G. Slaght, Q.C. Chris Kinnear Hunter LENCZNER SLAGHT ROYCE SM GRIFFIN LLP
Respondent	HUMAN RIGHTS TRIBUNAL OF ONTARIO	Margaret Leighton James Schneider SOCIAL JUSTICE TRIBUNAL ONTARIO
Respondent	KRISTEN WORLEY	Brenda Cuthbert HUMAN RIGHTS LEGAL SU CENTRE
Respondent	ONTARIO CYCLING ASSOCIATION, CYCLING CANADA and UNION CYCLYTE INTERNATIONALE	Not participating



Andy Brown, Editor  
The Sports Integrity Initiative



THE SPORTS  
INTEGRITY  
INITIATIVE

Kristen Worley, Founder  
Human Diversity in Sport  
Foundation



# 2011: Hyperandrogenism Regulations

It is also known from experience that there are rare cases of young females competing in Athletics today who are affected by hyperandrogenism which, if the condition remains undiagnosed or neglected, can pose a risk to health. Despite the rarity of such cases, their emergence from time to time at the highest level of women's competition in Athletics has proved to be controversial since the individuals concerned often display masculine traits and have an uncommon athletic capacity in relation to their fellow female competitors.

In addition, the IAAF Medical Manager may initiate a confidential investigation of any female athlete if he has reasonable grounds for believing that a case of hyperandrogenism may exist. The IAAF Medical Manager's reasonable grounds for belief in a case may be derived from any reliable source, including:

5. Are there any family members with fertility problems/childless marriages?

6. Was the mother virilised during pregnancy?

7. Ethnic background (Caucasian, African, Asian, etc.)

#### Birth history

8. Birth weight (kg)

9. Birth length (cm)

10. Ambiguous genitalia at birth?

a. If so, describe.

b. Hospital records from neonatal period?

c. Name of hospital

#### Pubertal history

11. Age at start of :

a. pubic hair:

b. breast buds:

c. acne:

d. deepening of voice:

e. menstruation (menarche)



## IAAF REGULATIONS GOVERNING ELIGIBILITY OF FEMALES WITH HYPERANDROGENISM TO COMPETE IN WOMEN'S COMPETITION

In force as from 1<sup>st</sup> May 2011

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS

**NOTE: Testosterone limits are only applicable to female athletes, NOT males...**

# Mythbusters 1: This is a gender eligibility issue



- 1: Natural testosterone is NOT a determinant of gender**
- 2: Testosterone is NOT exclusively a male hormone**
- 3: Testosterone IS required by males & females to maintain ordinary health**
- 4: XX females require LOWER LEVELS of testosterone to maintain health**
- 5: XY males require HIGHER LEVELS of testosterone in order to maintain health**
- 6: XY females CANNOT PRODUCE testosterone**
- 7: Kristen has been MEDICALLY HARMED by regulations limiting the amount of testosterone she needs...**

# Mythbusters 2: Natural testosterone produces an unfair performance advantage

- NO scientific evidence that elevated testosterone results in an unfair advantage
- 2003 Stockholm Consensus began myth that natural testosterone levels determine female athletic performance
- Myth continues... Unpublicised WADA Physician Guidelines, Transgender Athletes, October 2017:

Since testosterone is the critical factor influencing performance in sports, it is important that the criteria for the granting of a TUE ensure that both transgender male and transgender female athletes have physiological androgen exposure within the range of the non-transgender male and non-transgender female athletes with whom they compete.

their bodies cannot process testosterone!

**TAURUSTAG**  
The Dietary Supplement that

**TAURUSTAG!** Just the name is enough to get blood pumping through the glutes. **TAURUSTAG!** is the latest product from the scientists at PecTech Industries (incorporating Associated Livestock Recycling Facilities Inc).

**TAURUSTAG!** is more than just another workout supplement. Previous supplements merely gave the body more energy, more hydration or more testicles. But **TAURUSTAG!** is the real deal. It incorporates Sherephanium®, a hormone synthesised from tiger adrenal gland. Regular dosage of **TAURUSTAG!** will give you:

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- 58% louder "RaaAARR" as you pump weights.
- 61% more petitions for divorce from battered wives.

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"ARRGH! Who are you looking at, worm?! I will crush you! CRUUUSH YOU!!!"  
Mad Chesterman, Illinois

"Before taking **TAURUSTAG!** My neck measured a puny 26 inches. Now I have to use a fire hose as a neck tie."  
Curl Rip, Texas

"When the police finally arrested me for assaulting that wolf, it took fifteen of them to tazer me to the ground."  
Yendon Arthurs, Washington.

**TAURUSTAG!** is easy to administer - a simple injection into the groin every morning, then mix as a nutritious shake for lunch.

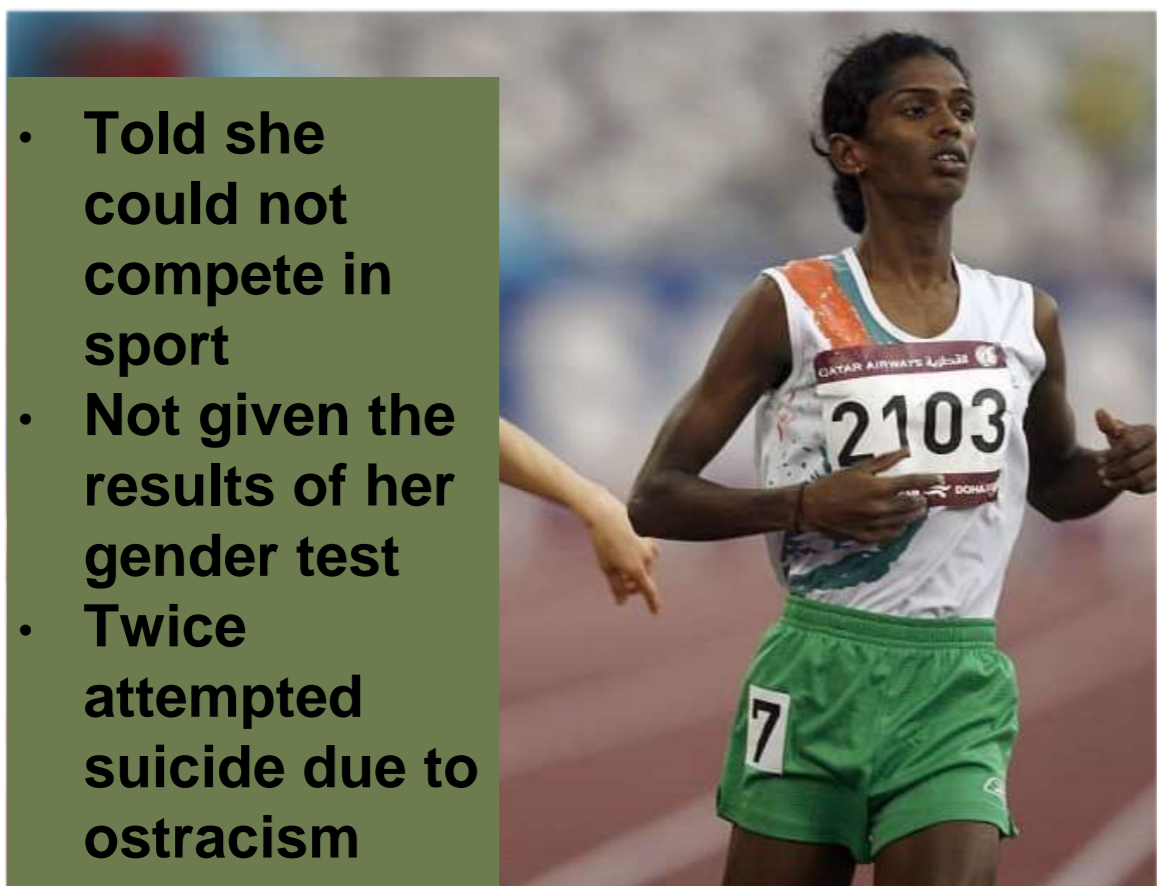
This is the myth that sport wants you to believe!



- Insensitive to testosterone
- Sanctioned due to 'performance advantage' from natural testosterone



- Insensitive to testosterone
- 'Disqualified for an advantage she did not have'



- Told she could not compete in sport
- Not given the results of her gender test
- Twice attempted suicide due to ostracism



- May have an advantage due to high testosterone levels
- Has yet to be shown that advantage is greater than that enjoyed by, e.g., Steffi Graff or Lindsay Vonn over rivals

# The 'XX Supermen'

- XX females who transition to become XX males allowed to take testosterone to bring them up to what sport considers to be the 'male' level
- XX androgen receptors more receptive to testosterone
- 'XX Supermen' are now outperforming XY men
- Sport allows 'XX supermen' to enjoy significant advantage due to higher amounts of testosterone than their physiology requires



# Kristen's Case

## Statement of the Stockholm consensus on sex reassignment in sports

On 28 October 2003, an ad-hoc committee convened by the IOC Medical Commission met in Stockholm to discuss and issue recommendations on the participation of individuals who have undergone sex reassignment (male to female and converse) in sport.

The group recommends that individuals undergoing sex reassignment from male to female after puberty (and the converse) be eligible for participation in female or male competitions, respectively, under the following conditions:

- ❑ Surgical anatomical changes have been completed, including external genitalia changes and gonadectomy
- ❑ Legal recognition of their assigned sex has been conferred by the appropriate official authorities
- ❑ Hormonal therapy appropriate for the assigned sex has been administered in a verifiable manner and for a sufficient length of time to minimise gender-related advantages in sport competitions.

## Explanatory note to the recommendation on sex reassignment and sports

The increasing number of cases of sex reassignment has also come to affect sport. Although individuals who undergo sex reassignment usually have personal problems that make sports competition an unlikely activity for them, there are some for whom the participation in sport is important. Thus, the question has been raised whether specific requirements for their participation in sport can be introduced, and what any such requirements should be.

Arne Ljungqvist  
IOC Medical Committee Chairman

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WADA TUE  
Guidelines,  
Transgender  
Athletes,  
March 2016



# Kristen's TUE

- Kristen's TUE took ten months to grant
- The amount of testosterone mandated would need to have been doubled or tripled to maintain normal health
- At 9.6 nmol/ L, Worley enters spontaneous menopause & complete androgen deprivation
- Worley endured complete muscle atrophy (failure of muscle development and recovery), making sport impossible
- TUE team was led by a cardiologist
- Kristen was asked why she was interested in competing by the team assessing her

**CCES** Canadian Centre for Ethics in Sport  
Centre canadien pour l'éthique dans le sport

[www.cces.ca](http://www.cces.ca) September 4, 2009

Promoteur  
éthical sport  
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l'éthique dans  
le sport  
au Canada

**CONFIDENTIAL**

Kristen Worley  
6-2402 Queen Street, East  
Toronto, ON  
M1N 1A2

Dear Kristen,

The Canadian Centre for Ethics in Sport (CCES) Therapeutic Use Exemption Committee (TUEC) has approved your Therapeutic Use Exemption (TUE) application. This TUE approval is granted in accordance with the TUE rules of the Canadian Anti-Doping Program.

Prescribed Medication	Dose	Frequency	Route of Administration
Testosterone	40 mg	Once daily	oral

**Duration of Treatment:** life-time **Expiry Date:** 04/09/2010

For a renewal of this application you are asked to submit the following at least 30 days prior to the expiry of your current TUE approval:

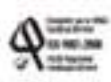
- A new CCES TUE application form;
- A clinical update from your treating physicians;
- Measurements of androgen levels – total and biologically available testosterone – every two months. Copies of all clinical reports and laboratory work must be included.

Please submit a new Therapeutic Use Exemption application form to the CCES if:

- Your prescribed medication changes; or
- Your prescribed dosage changes.

300-955 rue Green Valley Dr.  
Ottawa ON Canada K2C 3V4  
Télé: +1 613 521 3340  
+1 800 672 7775  
Fax: +1 613 521 3134  
Email: info@cces.ca

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SII Focus 24th February 2016

## Transgender Guidelines: an attempt to 'dead cat' debate on gender



### Trans people being allowed to compete against women in the Olympics (999 Posts)

MNHQ have commented on this thread.

OhShutUpThomas Sun 24-Jan-16 09:37:32

[Add message](#) | [Report](#)

The Olympics are now allowing men who have taken hormones for 12 months compete against women.

It is NOT transphobic to say that this is grossly unfair and a huge violation of women's rights.

Women who have trained all their lives cannot be expected to compete against people with male bodies and who will be allowed roughly 4 times the normal female testosterone levels.

It's not on. We can't stand for it.

Please get behind this mumsnet. Someone needs to take a stand.

It's NOT transphobic to state that this is unfair. It really isn't.

[Bookmark](#)

*who may be psychologically vulnerable*". The Hyperandrogenism Regulations include a chapter specifically devoted to "*Confidential management of cases*" and require that notification of cases to the IAAF must be done "*in strict confidence to the IAAF Medical Manager (a physician), either directly or via her National Federation's team doctor or other supervising physician*". There have been over 30 cases to date under the Hyperandrogenism Regulations. No one outside the IAAF knows the identity, nationality or any personal information of any of those athletes. The IAAF has never leaked any confidential information about any hyperandrogenism cases, whether under the Hyperandrogenism Regulations or otherwise. Any breach of the confidentiality provisions would be a breach of the IAAF Code of Ethics, resulting in significant sanctions against the perpetrator.

...And the Fun & Games began...

# A horror story...

- Four young female athletes (18, 20, 20 and 21) forced to have surgery ahead of London 2012
- IAAF initially denied that this had happened
- Athletes forced to have feminine remodelling surgery on their genitalia
- All now subject to the same health complications to those suffered by Worley

In contrast to the tendency to request gender change, our 4 athletes wished to maintain their female identity and had many questions about menstruation, sexual activity, and child-bearing. Although leaving male gonads in SDRD5A2 patients carries no health risk, each athlete was informed that gonadectomy would most likely decrease their performance level but allow them to continue elite sport in the female category. We thus proposed a partial clitoridectomy with a bilateral gonadectomy, followed by a deferred feminizing vaginoplasty and estrogen replacement therapy, to which the 4 athletes agreed after informed consent on surgical and medical procedures. Sports authorities then allowed them to continue competing in the female category 1 year after gonadectomy.

The screenshot shows the Oxford Academic website for the Journal of Clinical Endocrinology & Metabolism (JCEM). The page features the journal's logo, navigation links (Issues, More Content, Submit, Purchase, Advertise, About), and a search bar. The main article is titled "Molecular Diagnosis of 5α-Reductase Deficiency in 4 Elite Young Female Athletes Through Hormonal Screening for Hyperandrogenism" and is authored by Patrick Fénelon, Françoise Paris, Pascal Philibert, Sylvie Hiéronimus, Laura Gaspari, Jean-Yves Kurzenne, Patrick Chevallier, Stéphane Bermon, Nicolas Chevalier, and Charles Sultan. The article is published in Volume 98, Issue 6, on June 1, 2013, with pages E1055-E1059. The DOI is https://doi.org/10.1210/jc.2012-3893. The page also includes a thumbnail of the journal cover and an "Article Contents" link.

## TRANSGENDER ATHLETES

# The myth continues.

Since testosterone is the critical factor influencing performance in sports, it is important that the criteria for the granting of a TUE ensure that both transgender male and transgender female athletes have physiological androgen exposure within the range of the non-transgender male and non-transgender female athletes with whom they compete.

Levels of circulating testosterone and their influence on muscle mass and strength generally exhibit considerable inter-individual variability in males and females. In transgender athletes, physical outcomes are further influenced by the duration and the type of treatment (hormones and/or surgical).

### 8. References

1. International Olympic Committee. Model Transgender Rules for International Federations. 2017. (in process)

© WADA- World Anti-Doping Program

Version 1.0

October 2017

This Guideline is reviewed annually to determine whether revisions to the Prohibited List or new medical practices or standards warrant revisions to the document. If no changes are deemed warranted in the course of this annual review, the existing version remains in force.

1

11. **DISPUTE:** The Athlete accepts that any dispute arising from regulations of ITU, which cannot be settled by its existing appeal procedure, as set out in the ITU Competition Rules, shall be settled finally by the Court of Arbitration for Sport (CAS), to the exclusion of recourse to ordinary courts. The applicable law in relation to the interpretation of this agreement and any such disputes shall be the law of the Canton de Vaud, Switzerland.

- WADA's TUE Physician Guidelines on Transgender Athletes reassert myths began under the IOC's Stockholm Consensus in 2003



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# Thank You! (& References)

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- ❖ Worley's case opens the courts to athlete human rights cases:  
[https:// tinyurl.com/ PTG2017Worley](https://tinyurl.com/PTG2017Worley)
- ❖ Four young athletes forced to have surgery ahead of London 2012:  
[https:// tinyurl.com/ PTG2017London2012surgery](https://tinyurl.com/PTG2017London2012surgery)
- ❖ IOC's 2003 Stockholm Consensus:  
[https:// tinyurl.com/ PTG2017Stockholm](https://tinyurl.com/PTG2017Stockholm)
- ❖ Arne Ljungqvist's comments on the Stockholm Consensus:  
[https:// tinyurl.com/ 2017PTGStockholmComments](https://tinyurl.com/2017PTGStockholmComments)
- ❖ WADA's TUE Physician Guidelines for Transgender Athletes:  
[https:// tinyurl.com/ PTG2017WADAguidelines](https://tinyurl.com/PTG2017WADAguidelines)
- ❖ IAAF's 2011 Hyperandrogenism Regulations:  
[https:// tinyurl.com/ PTG2017Hyperandrogenism](https://tinyurl.com/PTG2017Hyperandrogenism)