

How the IAAF framed the debate in order to defeat Caster Semanya's challenge to the DSD Regulations

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Caster Semenya is a woman

When I was older, in 2009, I got an opportunity to represent my country. I was 18 and it was my first professional race – the 800 meters in Berlin. It was the IAAF World Championships. I won the gold. My first professional race and I won gold. I was the best in the world.

But people did not celebrate that. That is not what they said about me. They said that I was a man. That I had an advantage. That my testosterone was too high.

Caster Semenya

The Telegraph

The same could not be said of Jozwik, who said in Rio that she was glad to be “the first European, the second white” to cross the line. Or of Italy’s Elisa Cusma, who declared 10 years ago, when the Semenya controversy first broke: “For me, she is not a woman. She is a man.” Semenya largely kept her counsel as Nakaayi took her world title on Monday, merely tweeting the opaque sentiment: “If you don’t sacrifice for what you want, what you want becomes the sacrifice.”

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Caster Semenya’s lawyers send information request to the IAAF

Dewey & LeBoeuf LLP, which is providing advice to Caster Semenya on her human rights and rights as an athlete, has sent a request for information to the International Association of Athletics Federations (IAAF), after it revealed it had undertaken gender tests on the South African runner.

“We have sent a letter to the IAAF requesting a number of things”, said Jeffrey Kessler, co-Chairman of the Sports Litigation Department at Dewey & LeBoeuf. “We have yet to receive a response”. The law

firm has not commenced litigation.

Dewey & LeBoeuf said it had been retained by Semenya ‘at the recommendation of the Minister of Sports and Recreation South Africa [Rev. Makhenkesi Stofile]’ in a 17 September press release. The South African government has asked the United Nations (UN) to investigate if Semenya has been treated in line with UN protocols on gender equality. The African National Congress has set up a group to ensure ‘Caster and her family are

afforded redress by all those who violated her rights during and in the aftermath of her gender testing’, read a 5 October press release.

Athletics South Africa – which has already lost sponsor Nedbank after it denied that tests had been held in South Africa to protect Semenya’s privacy – has launched an inquiry into how it handled the situation. The IAAF will not make a final decision based on the results of the tests until the IAAF Council meeting on November 20-21.

1 May 2019

574. The statistics [...] supports the existence of a performance advantage for which no other explanation has been established. That performance advantage may not be of the order of 10-12% but it is sufficient to enable those athletes consistently to beat women who do not have 46 XY DSD. In the majority Panel's opinion, it is not a performance advantage that could fairly be characterised as marginal or minimal.
575. The majority of the Panel, therefore, concludes that it is satisfied that androgen sensitive female athletes with 46 XY DSD enjoy a significant performance advantage over other female athletes without such DSD, and that this advantage is attributable to their exposure to levels of circulating testosterone in the adult male range.

580. On this basis, the majority of the Panel accepts that the IAAF has discharged its burden of establishing that regulations governing the ability of female athletes with 46XY DSD to participate in certain events are necessary to maintain fair competition in female athletics by ensuring that female athletes who do not enjoy the significant performance advantage caused by exposure to levels of circulating testosterone in the adult male range do not have to compete against female athletes who do enjoy that performance advantage.



599. In the majority of the Panel's view, requiring 46 XY DSD athletes to take oral contraceptives to lower testosterone in order to compete in the female category in Restricted Events at International Competitions is not, of itself, disproportionate. In the circumstances, the majority of the Panel is of the view that, on the present evidence, the side effects that may be experienced by such athletes [...] as a result of taking an oral contraceptive do not outweigh the need to give effect to the DSD Regulations in order to attain the legitimate objective of protecting and facilitating fair competition in the female category.





Chris Mosier

An XX athlete legally taking testosterone competing against XY male athletes. Testosterone provides XX athletes with a massive boost due to low baseline levels, which is why it has been successful as a doping agent in female sport

Mack Beggs

XX athlete permitted to take testosterone, which provides him with a huge boost due to his XX physiology. Unlike DSD athletes, both have something new they didn't have before



“What we can say most generally is that for decades, DSD athletes have been an issue at the highest levels of sport. The CAS Panel had the specifics. There are several reasons the errors in the first Bermon Study weren’t an issue at the end of the day. One was the data on the historical impacts of DSD athletes. These data are what they are, and they are devastating. They certainly affected the weight of the case.”



322. Dr. Bermon went on to explain how performance data demonstrate that female athletes with 46 XY DSD are *“hugely over-represented”* in top performances across various athletics events. For instance:

- [...]
- [...]
- [...]
- [...]
- [...].



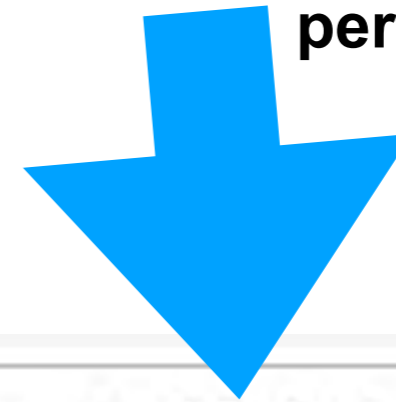
The IAAF also has evidence that reducing testosterone levels in athletes with DSDs reduces their performance. *“There’s another category of evidence”,* argues Taylor. *“I cannot tell people about this because it identifies athletes. But what it is, is evidence from the field. And evidence from the field is overwhelming. The results are incredible. Absolutely unbelievable. And any court that sees them will not be in any doubt.”*

Medical and Ethical Concerns Regarding Women With Hyperandrogenism and Elite Sport

Peter Sonksen, Malcolm A. Ferguson-Smith, L. Dawn Bavington, Richard I. G. Holt, David A. Cowan, Don H. Catlin, Bruce Kidd, Georgiann Davis, Paul Davis, Lisa Edwards, and Anne Tamar-Mattis

athletes with 46,XY DSD hyperandrogenism. The unnecessary surgical and medical procedures in each case raise serious ethical concerns, given that they were deemed necessary for eligibility purposes. For despite receiving a diagnosis that their condition carried no health risk, each athlete underwent a partial clitoridectomy with a bilateral gonadectomy, followed by a deferred feminizing vaginoplasty and estrogen replacement therapy in order to continue competing in the women's category. **Indeed, that all four athletes agreed to these procedures appears inconsistent with clinical practice whereby many women with 5 α -reductase deficiency choose to retain their gonads and decide against medical intervention.** The additional feminizing procedures are particularly alarming. The removal of gonads and clitoral mutilation for the purposes of eligibility in the women's category is unethical. Fur-

The IAAF initially denied that surgery had been performed on four young athletes. This 2013 study shows that such surgery was performed...



Molecular Diagnosis of 5 α -Reductase Deficiency in 4 Elite Young Female Athletes Through Hormonal Screening for Hyperandrogenism

Patrick Fénichel, Françoise Paris, Pascal Philibert, Sylvie Hiéronimus, Laura Gaspari, Jean-Yves Kurzenne, Patrick Chevallier, **Stéphane Bermon**, Nicolas Chevalier, and Charles Sultan

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.

Medical professionals warned in 2013 that the IAAF's practices in this area are unethical





They said that I could return to the track provided I went for surgery or else I would not be allowed to run again.



"I wish I had died in their hands, because then they would have been held accountable and punished for their action."

A recent documentary showed that athletes have been medically harmed by these procedures



"I had no choice. They said I could only compete again if I did what they told me to do, so I consented."



"This patient has gone without any hormones whatsoever for years, which, of course, has an impact. Not only on her skeletal system, but also on her general well-being and her psyche."

• Observational data reported by Bermon of performances of DSD athletes (i) before the Hyperandrogenism Regulations were in place, i.e., when their testosterone levels were in the normal male range; and (ii) while the Hyperandrogenism Regulations were in place (2011 to 2015), when their testosterone levels were suppressed to below 10 nmol/L, show an average drop in performance of 5.7%, which (as any elite athlete will tell you) is enormous. You assert that this evidence 'appears to be based on athletes whose ability to endogenously produce testosterone has been removed' (by surgical removal of their gonads). As I explained to you, however, that is not true in all of the cases reported, and in any event the issue is the degree of performance advantage conferred by the higher levels of endogenous testosterone, not the mechanism behind the drop in testosterone levels.

The IAAF confirms that some of the evidence regarding a drop in performance was based on the four young athletes



Androgens and athletic performance of elite female athletes

Stéphane Bermon

Androgens

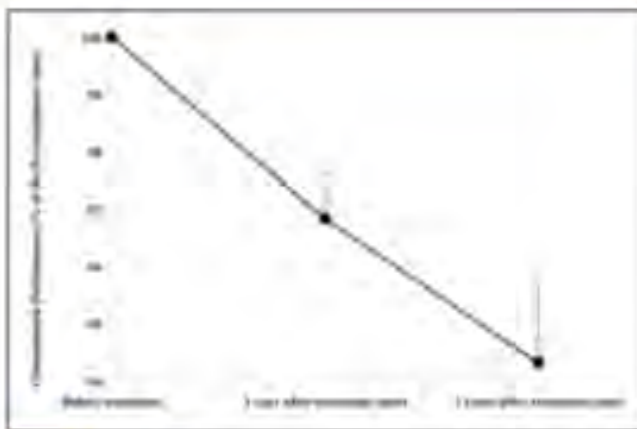


FIGURE 1. Evolution of seasonal best performances in three female distance runners, with a hyperandrogenic disorder of sex development condition, before and after reducing their serum testosterone level to the normal female range. Results are given as mean and standard error of the mean.



A 2017 Opinion Paper from Dr. Stéphane Bermon used the performance times of three of the four medically harmed athletes to show that 'reduction' in endogenous testosterone makes athletes get slower... one athlete not included **BECAUSE SHE GOT FASTER!**

FAIL



COURTROOM / SALLE D'AUDIENCE NO.3

**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 of Ontario Human Rights Code	Scheduled - 1 day
Applicant	INTERNATIONAL OLYMPIC COMMITTEE	Ronald G. Slaght, Q.C. Chris Kinnear Hunter LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
Respondent	HUMAN RIGHTS TRIBUNAL OF ONTARIO	Margaret Leighton James Schneider SOCIAL JUSTICE TRIBUNAL ONTARIO
Respondent	KRISTEN WORLEY	Bridia Campbell HUMAN RIGHTS LEGAL SUPPORT CENTRE
Respondents	ONTARIO CYCLING ASSOCIATION, CYCLING CANADA and UNION CYCLISTE INTERNATIONALE	Not participating

SUCCESS



References...



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1. 'I wanted to be a Soldier' by Caster Semenya:

<http://projects.theplayertribune.com/caster-semenya-gender-rights/p/1>

2. 'A skilful poker player never shows their hand'. An explanation of how the IAAF framed the debate at the CAS in order to defeat Caster Semenya's challenge to the DSD Regulations:

<https://www.sportsintegrityinitiative.com/a-skilful-poker-player-never-shows-their-hand/>

3. 'How the IAAF fails to ensure human rights'. A film by Annet Negesa:

<https://youtu.be/Af4ClrCL3D0>

4. 'Androgens and athletic performance of elite female athletes' by Dr. Stéphane Bermon. The paper proving that the IAAF used performance data from three of four medically damaged athletes to support the DSD Regulations:

<https://www.sportsintegrityinitiative.com/wp-content/uploads/2017/07/bermon-current-opinion-2017.pdf>

5. 'Questions remain over IAAF Differences of Sex Development Regulations':

<https://www.sportsintegrityinitiative.com/questions-remain-iaaf-differences-sex-development-regulations/>

6. 'IAAF response to article on its Differences of Sex Development Regulations':

<https://www.sportsintegrityinitiative.com/iaaf-response-article-differences-sex-development-regulations/>