

ADDRESSING GENDER INEQUALITY IN SPORTS PARTICIPATION: A COMPARATIVE ANALYSIS OF CANADA AND SPAIN'S APPROACHES

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ABSTRACT

Worldwide, sport participation rates among women lag those of their male counterparts. This Comment analyzes the differing approaches taken by Canada and Spain to addressing gender inequality in sport participation in their respective countries. This Comment then evaluates the strengths and weaknesses of Canada and Spain's approaches. By comparing both approaches, this Comment concludes that Spain's approach is better suited to addressing gender inequality in sport participation. Subsequently, this Comment proposes a framework, styled after Spain's approach, for Canada to adopt to promote gender equality in sport participation. This Comment considers the constitutionality of its proposed framework and, deeming it legally permissible in Canada, concludes with a recommendation for Canada to adopt it.

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Abstract.....	71
Introduction.....	73
I. Background.....	75
A. Canada and Gender Inequality in Sport Participation.....	75
1. Gender Equality Laws in Canada.....	76
2. The Role of Sport Canada in Governing Sport.....	79
3. Sport Canada's Efforts to Address Women's Sport Participation.....	81
B. Spain and Gender Inequality in Sport Participation.....	82
1. Gender Equality Laws in Spain.....	82
2. Spanish Federal Government's Legal Authority Over Domestic Sports.....	84
3. Spain's Legal Efforts to Address Women's Sport Participation.....	84
II. Analysis.....	85
A. Canada's Incentive-Laden, Passive Legal Approach to Addressing Gender Inequality in Sport Participation.....	85
1. Strengths of Canada's Incentive-Laden, Passive Approach.....	86
2. Weaknesses of Canada's Incentive-Laden, Passive Approach.....	88
B. Spain's Mandatory Standards-Oriented, Proactive Legal Approach to Addressing Gender Inequality in Sport Participation.....	91
1. Strengths of Spain's Mandatory Standards, Proactive Approach.....	91
2. Weaknesses of Spain's Mandatory Standards, Proactive Approach.....	93
C. Spain's Approach, While Not Perfect, Better Than Canada's.....	94
D. Proposing a New Spain-Like Framework for Canada.....	95
E. The Constitutionality in Canada of the Proposed Framework.....	97
F. Alternative Interventions Aimed at School-Based Sports Fall Outside of Canadian Federal Government's Scope of Constitutional Authority.....	99
III. Conclusion.....	100

INTRODUCTION

Countries around the world must begin enacting measures to address low rates of sport participation among women compared to their male counterparts. For children, sport participation serves as a conduit to improving physical health, preventing depression, and promoting life satisfaction.¹ For adults, sport participation positively affects physical, social, and psychological health.² Yet, despite the evident benefits of sport participation, studies continue to show that, globally, women participate less frequently in sports than men.³

Some North American studies find that societal attitudes, structural issues, and/or individual factors all play roles in inhibiting women's sport participation.⁴ Like North America, one of the factors influencing low sport participation rates among women in European countries is a lack of access to participate.⁵ The term, "lack of access," refers to problems such as absences of sport programming for women or unavailable facilities to accommodate such programming.⁶ The resulting

¹ Rochelle M. Eime et al., *A Systematic Review of the Psychological and Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health Through Sport*, INT'L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY, Dec. 7, 2013, at 1, 18–19.

² See Marie Høstrup Andersen et al., *The Social and Psychological Health Outcomes of Team Sport Participation in Adults: An Integrative Review of Research*, 47 SCANDINAVIAN J. PUB. HEALTH 832, 843–45 (2019).

³ See Rochelle Eime et al., *Five-Year Changes in Community-Level Sport Participation, and the Role of Gender Strategies*, FRONTIERS SPORTS & ACTIVE LIVING, Oct. 8, 2021, at 1, 2–3 (noting low levels of women's sport participation compared to males in Australia); *Gender Equality and Participation in Sport*, COUNCIL EUR. & EUR. UNION, <https://rm.coe.int/bis-factsheet-gender-equality-sport-participation-en/1680714b90> [<https://perma.cc/BX6U-YWP9>] (noting low levels of women's sport participation compared to males in the European Union); OPHELIA YEUNG & KATHERINE JOHNSTON, *THE PHYSICAL ACTIVITY ECONOMY IN ASIA: MARKET SIZE, PARTICIPATION, BARRIERS, AND OPTIONS TO INCREASE MOVEMENT* 18 (2019), <https://www.adb.org/sites/default/files/institutional-document/633886/adou2020bp-physical-activity-economy-asia.pdf> [<https://perma.cc/LT5E-Y8ZF>] (noting low levels of women's sport participation compared to males in Asia); So Youn Lim et al., *Sport Participation Across National Contexts: A Multilevel Investigation of Individual and Systemic Influences on Adult Sport Participation*, 11 EUR. SPORT MGMT. Q. 197, 198 (2011) (noting low levels of women's sport participation compared to males in North America).

⁴ Kyle A. Rich et al. *Mapping Women's Community Sport Participation to Inform Sport Development Initiatives: A Case Study of Row Ontario*, FRONTIERS SPORTS & ACTIVE LIVING, Apr. 5, 2022, at 1, 2.

⁵ Stacey Emmonds et al., *Youth Sport Participation Trends Across Europe: Implications for Policy and Practice*, 95 RSCH. Q. FOR EXERCISE & SPORT 69, 72 (2024).

⁶ *Do You Know the Factors Influencing Girls' Participation in Sports?*, WOMEN'S SPORTS FOUND., <https://www.womenssportsfoundation.org/do-you-know-the-factors-influencing-girls-participation-in->

low sport participation rates among women is troubling given sedentary living, resulting from insufficient physical activity, deteriorates a person's physical and mental capabilities while also heightening their odds of developing diseases.⁷ Sport, defined as a "game, competition, or activity needing physical effort and skill,"⁸ is a proven solution to improving and maintaining one's physical and mental health.⁹ Accordingly, low sport participation rates among women should be addressed.

Some countries use legal mechanisms to tackle this issue.¹⁰ This Comment specifically compares and analyzes Spain and Canada's differing approaches to addressing gender inequality in sport participation. Spain's approach is best described as "proactive." It recently enacted a revised "Sports Law" that requires all public sports development programs, private sports federations, and professional sports organizations in Spain to adhere to mandatory gender-related requirements.¹¹ Canada, on the other hand, opted to take more of a "passive" approach. Specifically, its strategy to address this issue, overseen by a federal administrative agency (Sport Canada), involves financially incentivizing national and provincial sport governing bodies to promote women's sport participation.¹² This Comment argues that if Canada truly desires to achieve gender equality in sports, it should consult Spain's Sport Law to help more effectively achieve this goal.

Part I of this Comment provides a background of Spain and Canada's legal systems with respect to gender inequality in sport participation. This section begins by providing an overview of Canada's gender equality laws, the role of Sport Canada, and its relevance to

sports/#:~:text=Girls%20have%201.3%20million%20fewer,or%20may%20cost%20more%20money [https://perma.cc/DNC4-CLSM].

⁷ Christer Malm et al., *Physical Activity and Sports—Real Health Benefits: A Review with Insight into the Public Health of Sweden*, 7 SPORTS 127, 130 (2019).

⁸ *Sport*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/sport> [https://perma.cc/4GLP-CDKK].

⁹ Emily R. Shull et al., *Sport Participation, Physical Activity and Sedentary Behavior in the Transition from Middle School to High School*, 23 J. SCI. & MED. SPORT 385, 386–87 (2020); Chiara Fossati et al., *Physical Exercise and Mental Health: The Routes of a Reciprocal Relation*, INT'L J. ENV'T RSCH. & PUB. HEALTH, Nov. 24, 2021, at 1, 1–2.

¹⁰ See Law on Sports ch. 1, arts. IV, V (B.O.E. 2022, 39) (Spain); *Actively Engaged: A Policy on Sport for Women and Girls*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/sport-policies-acts-regulations/policy-actively-engaged-women-girls.html> [https://perma.cc/8YA4-94T2].

¹¹ Law on Sports ch. 1, art. V (B.O.E. 2022, 39) (Spain).

¹² *Working Group on Gender Equity in Sport of the Minister of Science and Sport*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/working-group-gender-equity.html> [https://perma.cc/FRY7-AZM9].

women's sport participation. The section then provides the same with respect to Spain and its Sport Law. Part II of this Comment analyzes the two countries' different approaches to addressing gender inequality in sport participation domestically. Specifically, this Comment assesses the effectiveness of Canada's passive, incentive-laden approach compared to Spain's proactive, requirement-laden approach. Finally, this Comment summarizes each country's approach and recommends which is better suited to meaningfully promote gender equality in sport participation.

I. BACKGROUND

This section provides a general overview of gender inequality in sport participation in both Canada and Spain. The first half focuses on Canada and introduces its gender equality laws, Sport Canada's role in overseeing Canadian amateur sport, and Sport Canada's legal efforts to encourage women's sport participation. The second half focuses on Spain by presenting its gender equality laws, its legal systems' authority over domestic sports, and its legal efforts to encourage women's sport participation. Altogether, this section provides context before critically analyzing both countries' approaches to encouraging gender inequality in sport participation.

A. CANADA AND GENDER INEQUALITY IN SPORT PARTICIPATION

Canada, the second largest country in the world by area and located in North America,¹³ is a democratic nation operating under a primarily common law legal system (save for the province of Quebec operating under civil law).¹⁴ Statutory laws in Canada are created in one of two ways: (1) By a centralized government (either the federal or a provincial/territorial parliament) through the legislative process or (2) via regulations enacted by departments granted authority to do so by Parliament.¹⁵ The Canadian Constitution authorizes the federal

¹³ Canada, BRITANNICA, <https://www.britannica.com/place/Canada> [https://perma.cc/XT9B-BWMS].

¹⁴ DEP'T JUST. CAN., CANADA'S SYSTEM OF JUSTICE 4 (2015), <https://www.justice.gc.ca/eng/csj-sjc/just/img/courten.pdf> [https://perma.cc/XDR2-9K69].

¹⁵ *How New Laws and Regulations are Created*, GOV'T CAN., <https://www.justice.gc.ca/eng/laws-lois/index.html#:~:text=THE%20LEGISLATIVE%20PROCESS&text=Canada's%20legislative%20process%20involves%20all,together%20to%20create%20new%20laws> [https://perma.cc/YE3Y-MP74]; Bora Laskin L. Libr., *Step 2: Primary Sources of Law: Canadian Legislation*, UNIV. TORONTO, <https://library.law.utoronto.ca/step-2-primary-sources-law->

government to make laws dealing with national issues while the provincial/territorial governments possess lawmaking authority over local matters.¹⁶ Beginning with a focus on Canada, this sub-section provides a brief overview of Canada's laws concerning gender equality, the role of Sport Canada as a federal administrative body, and Sport Canada's specific efforts to combat gender inequality in sport participation.

1. Gender Equality Laws in Canada

Both Canadian federal and provincial/territorial governments have enacted laws concerning gender equality—a subject recognized nationally as a human right.¹⁷ On a national level, both the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act (“CHRA”) seek to advance and protect gender equality.¹⁸ On a local level, each province/territory protects gender inequality by prohibiting discrimination through human rights codes.¹⁹

The Canadian Parliament enacted the Canadian Charter of Rights and Freedoms in 1982 as an addition to the Canadian Constitution.²⁰ Section 15 of the Charter provides that every Canadian citizen is entitled to equal treatment before and under the law, irrespective of their gender, race, national/ethnic origin, or membership in another protected class.²¹

canadianlegislation#:~:text=Federal%20Bills%20must%20pass%20three,Legislative%20body%20that%20passed%20it [https://perma.cc/SDV8-LFDJ].

¹⁶ *The Canadian Constitution*, GOV'T CAN., <https://www.justice.gc.ca/eng/csj-sjc/just/05.html#:~:text=Federal%20law%20allows%20territories%20to,private%20matters%20within%20the%20provinces> [https://perma.cc/YPL5-ST79].

¹⁷ *See Canada's Approach to Advancing Human Rights*, GOV'T CAN., https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng [https://perma.cc/PGF5-M872].

¹⁸ *Legal Instruments of Gender Equality*, GOV'T CAN., <https://women-gender-equality.canada.ca/en/transparency/laws-regulations/legal-instruments.html> [https://perma.cc/8S76-CWPJ].

¹⁹ *See generally* Human Rights Code, R.S.O. 1990, c H.19, ss. 1–9 (Can.) [hereinafter Ontario Human Rights Code] (identifying protected grounds for discrimination in Ontario); Human Rights Act, 2010, S.N.L. 2010, c H-13.1, s. 9 (Can.) [hereinafter Newfoundland & Labrador Human Rights Act] (identifying protected grounds for discrimination in Newfoundland and Labrador); Human Rights Code, R.S.B.C. 1996, c H-210, ss. 7–14 (Can.) [hereinafter British Columbia Human Rights Code] (identifying protected grounds for discrimination in British Columbia).

²⁰ *See Guide to the Canadian Charter of Rights and Freedoms*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html> [https://perma.cc/884K-ERAW].

²¹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s. 15(1) (U.K.).

Scholars describe the Charter as an impactful piece of law given its application to both provincial/territorial and federal law-making and governing activities.²² However, the Charter's scope is limited in that it does not apply to private actors,²³ private corporations,²⁴ and, in most cases, non-governmental entities nonetheless created by government.²⁵ In the sporting context, then, the scope of the Charter's protections extends to government-sponsored sports programming, but not to private sporting organizations. Canadian National Sport Organizations (NSOs) entities that oversee their respective sport's amateur programming,²⁶ fall outside of the Charter's authority given their statuses as registered non-profit organizations (i.e., private corporations).²⁷ Thus, the Charter's lack of authority over NSOs limits its scope and ability to protect gender equality in sport participation.

Another piece of federal law protecting gender equality is the CHRA, which was enacted by Parliament in 1977.²⁸ The CHRA prohibits discrimination based on grounds such as race, religion, age, and gender.²⁹ However, the CHRA's scope is limited in that it only protects: (1) those employed by, or receiving services from, the federal government; (2) First Nations governments; and (3) private companies regulated by the federal government.³⁰ Per the Canada Labor Code, federally regulated private

²² F.L. Morton, *The Political Impact of the Canadian Charter of Rights and Freedoms*, 20 CAN. J. POL. SCI. 31, 33 (1987); see Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c 11, s. 32(1) (U.K.).

²³ *Section 32(1) – Application of the Charter*, GOV'T CAN., <https://www.justice.gc.ca/eng/csj-sjc/rfcdlc/ccrf-cddl/check/art321.html> [<https://perma.cc/AV44-8W6G>].

²⁴ *Eldridge v. B.C. (Att'y Gen.)*, [1997] 3 S.C.R. 624, 654–55 (Can.).

²⁵ See *Stoffman v. Vancouver Gen. Hosp.*, [1990] 3 S.C.R. 483, 516 (Can.) (defining non-governmental entities as entities created by government but given freedom of action outside of direct government control).

²⁶ See *National Sport Organizations*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/sport-organizations/national.html> [<https://perma.cc/VQE7-CXHR>]; see *Hockey Canada Annual Report 2021–22*, HOCKEY CAN. (2022), <https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2021-22-hockey-canada-annual-report-e.pdf> [<https://perma.cc/7PLP-3R6C>].

²⁷ See Milena M. Parent et al., *A New Era for Governance Structures and Processes in Canadian National Sport Organizations*, 32 J. SPORT MGMT. 555, 555 (2018).

²⁸ *Federal Gender Equality Laws in Canada*, GOV'T CAN., https://www.international.gc.ca/trade-commerce/gender_equality-egalite_genres/lois_can_gen_eq_laws.aspx?lang=eng [<https://perma.cc/B49U-BQF3>].

²⁹ Canadian Human Rights Act, R.S.C. 1985, c H-6 s. 3(1).

³⁰ *Human Rights in Canada*, CAN. HUM. RTS. COMM'N, <https://www.chrc-ccdp.gc.ca/en/about-human-rights/human-rights-canada> [<https://perma.cc/A229-QELZ>].

companies include air transportation, banks, postal services, and more.³¹ Notably, none of the federally regulated companies include sporting organizations.³² Accordingly, the CHRA is not applicable to protecting gender equality within sporting organizations.

On a local level, Canadian provinces and territories have all enacted their own human rights codes which seek to protect human rights in local activities.³³ For example, the province of Ontario protects gender equality in areas including services, housing, and employment through the Ontario Human Rights Code.³⁴ The Ontario Human Rights Commission, tasked with promoting and protecting human rights within the province,³⁵ notes that the Ontario Human Rights Code also applies to sports organizations and facilities.³⁶ Likewise, the province of Saskatchewan protects gender equality in areas such as the provision of services through the Saskatchewan Human Rights Code.³⁷ Correspondingly, sports programming offered to the public in Saskatchewan is subject to the Saskatchewan Human Rights Code's gender equality protections.³⁸ While the provincial/territorial laws seem to make up for the federal laws' lack of protection for gender equality within sport participation, Canada still lacks a national standard.

³¹ *List of Federally Regulated Industries and Workplaces*, GOV'T OF CAN., <https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html> [https://perma.cc/BG8G-KMVZ].

³² *Id.*

³³ *See generally* Ontario Human Rights Code, R.S.O. 1990, c H.19, ss. 1–9 (Can.) (identifying protected grounds for discrimination in Ontario); Newfoundland & Labrador Human Rights Act, 2010, S.N.L. 2010, c H-13.1, s. 9 (Can.) (identifying protected grounds for discrimination in Newfoundland and Labrador); British Columbia Human Rights Code, R.S.B.C. 1996, c H-210, ss. 7–14 (Can.) (identifying protected grounds for discrimination in British Columbia).

³⁴ Ont. Hum. Rts. at ss. 1–9 (Can.).

³⁵ *Human Rights in Ontario*, ONT. HUM. RTS. COMM'N, <https://www.ohrc.on.ca/en> [https://perma.cc/B6HB-G7Q3].

³⁶ *Fact Sheet #1: The Ontario Human Rights Code*, ONT. HUM. RTS. COMM'N, <https://www.ohrc.on.ca/en/students%E2%80%9999-handouts/fact-sheet-1-ontario-human-rights-code> [https://perma.cc/9P9U-RY8J].

³⁷ Saskatchewan Human Rights Code, R.S.S. 2018, c S.24.2 s. 12(1) (Can.).

³⁸ *Id.*

2. *The Role of Sport Canada in Governing Sport*

Sport Canada is a federal administrative body that arises out of the federal Department of Canadian Heritage.³⁹ Sport Canada acts as an agent of the Canadian government to “enhance opportunities for all Canadians to participate and excel in sport.”⁴⁰ To do so, the Canadian government tasked Sport Canada with allocating federal funds towards high performance athletes for their development,⁴¹ NSOs to support sport participation,⁴² and Canadian communities for hosting national and international sporting events.⁴³ Notably, given Sport Canada’s role as a government entity, it is bound by the gender equality provisions from both the Canadian Charter of Rights and Freedoms as well as the CHRA.⁴⁴

Sport Canada funds high performance Canadian athletes through the Athlete Assistance Program (AAP).⁴⁵ The process for receiving funding involves: (1) NSOs nominating athletes for funding; (2) Sport Canada approving the NSO for funding based on compliance with AAP policies; (3) Sport Canada then allocating cards (used to indicate the number of athletes approved for funding) to eligible NSOs; and (4) NSOs distributing the cards to the qualified/nominated athletes.⁴⁶ As of 2022-23, the funding available to an athlete through the AAP ranged from \$12,720 to \$21,180 for the year.⁴⁷ However, the AAP does not require that NSOs

³⁹ Michael P. Sam, *Building Legitimacy at Sport Canada: Pitfalls of Public Value Creation?*, 77 INT’L REV. ADMIN. SCIS. 757, 763 (2011); *Sport Canada*, ATHLETESCAN, <https://athletescan.ca/sport-canada/> [https://perma.cc/6MDZ-NEM6].

⁴⁰ *Role of Sport Canada*, GOV’T CAN., <https://www.canada.ca/en/canadian-heritage/services/role-sport-canada.html> [https://perma.cc/6E2D-V5H4].

⁴¹ Canadian Heritage, *Athlete Assistance Program*, GOV’T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/athlete-assistance.html> [https://perma.cc/3P5H-VEUW].

⁴² *See Sport Support Program*, GOV’T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/sport-support.html> [https://perma.cc/3TC2-EEM2].

⁴³ *Hosting Program*, GOV’T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/hosting-program.html> [https://perma.cc/6E8T-DZGX].

⁴⁴ *See Morton, supra* note 22; *See CAN. HUM. RTS. COMM’N, supra* note 30.

⁴⁵ Sport Canada, *Policies and Procedures – Athlete Assistance Program*, GOV’T CAN. § 1.1, <https://www.canada.ca/en/canadian-heritage/services/funding/athlete-assistance/policies-procedures.html#a2> [https://perma.cc/64K3-DNTP].

⁴⁶ *Id.* at § 1.2.

⁴⁷ *See 2022-2023 Carding Criteria Nominations Sport Canada Athlete Assistance Program (AAP)*, ALPINE CAN., https://alpinecanada.org/uploads/documents/2022-2023_AAP_CAST_Criteria_DRAFT_V2_aap_comments_updated_May_5%2C_2022.pdf [https://perma.cc/93DF-DSR3].

refrain from gender discrimination in choosing which athletes to nominate.⁴⁸

Through the Sport Support Program (SSP), Sport Canada allocates funding to support the development of the Canadian sport system.⁴⁹ Sport Canada delivers this funding to NSOs, National Multisport Services Organizations, the Canadian Sport Centre, and other national-level, sport-related initiatives for disbursement through their respective systems down to grassroots programming.⁵⁰ The SSP provides funding to organizations for programming that aligns with the goals identified in the Canadian Sport Policy.⁵¹ The Canadian Sport Policy outlines goals of introducing Canadians to sport, promoting both recreational and competitive sport programming, and introducing sport as a means for social and economic development.⁵² Notably, one of the key overall goals behind the Canadian Sport Policy is to increase the number and diversity of Canadians participating in sport.⁵³ While the policy could have defined diversity to include gender diversity, the term is left undefined.⁵⁴

Finally, Sport Canada provides funding to communities to assist them in hosting national and international sporting events through the Hosting Program.⁵⁵ While Sport Canada identifies four different types of sporting events eligible for funding, the agency does not require hosting communities to provide for gender equality at any events as a condition for receiving the funding.⁵⁶ Thus, Sport Canada does not require

⁴⁸ GOV'T CAN., *supra* note 45, at § 2.

⁴⁹ GOV'T CAN., *supra* note 42.

⁵⁰ *See id.*

⁵¹ *Id.*

⁵² *Canadian Sport Policy 2012*, SPORTS INFO. RES. CTR., 3 (2012), https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf [<https://perma.cc/NNQ3-6ZA5>].

⁵³ *Id.*

⁵⁴ *Id.* at 2–4, 6, 8.

⁵⁵ GOV'T CAN., *supra* note 43.

⁵⁶ *See* Canadian Heritage, *International Major Multisport Games – Hosting Program*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/hosting-program/international-major-multisport-games.html> [<https://perma.cc/3AX8-T7HU>]; *see* Canadian Heritage, *International Single Sports Events – Hosting Program*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/hosting-program/international-single-sport-events.html> [<https://perma.cc/Z2X2-LVF9>]; *see also* Canadian Heritage, *International Multisport Games for Aboriginal Peoples and Persons with a Disability – Hosting Program*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/hosting-program/international-multisport-games-aboriginal-disability.html> [<https://perma.cc/ZX2N-VJ3M>]; Canadian Heritage, *Canada Games – Hosting Program*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/hosting-program/canada-games.html> [<https://perma.cc/H77K-2HJ9>].

organizations to try and balance out sporting event applications among women- versus male-centered events.

3. *Sport Canada's Efforts to Address Women's Sport Participation*

Despite the influence wielded by Sport Canada, given its position as the allocator of funding to NSOs, its efforts to promote gender equality in sport are limited. As indicated above, Sport Canada's three distinct types of funding programs do not explicitly mention gender equality within sport.⁵⁷ However, Sport Canada recently announced a new program designed to tackle this very issue.

The Innovation Initiative, a subcomponent of the SSP, seeks to fund organizations testing innovative programming designed to reduce or eliminate barriers to sport participation.⁵⁸ This initiative follows the Canadian government's commitment to achieve gender equity in sport at every level by 2035.⁵⁹ To receive funding, like the SSP in general, eligible organizations must submit applications describing their proposed project and how it seeks to enhance diverse sport participation to receive funding.⁶⁰ In 2021, Sport Canada awarded just under \$200,000 in funding to a municipal soccer club (Guelph Soccer) to assist them in a project aimed at increasing women's sport participation by augmenting the number of female coaches.⁶¹ Since Sport Canada only launched the Innovation Initiative in 2019,⁶² its impact on promoting gender equality in sport long-term is not yet clear.

⁵⁷ See GOV'T CAN., *supra* note 45; see GOV'T CAN., *supra* note 43; see *International Major Multisport Games – Hosting Program*, *supra* note 56; see also *International Single Sports Events – Hosting Program*, *supra* note 55; see *International Multisport Games for Aboriginal Peoples and Persons with a Disability – Hosting Program*, *supra* note 56; *Canada Games – Hosting Program*, *supra* note 56.

⁵⁸ Canadian Heritage, *Innovation Initiative – Sport Support Program*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/innovation-initiative.html> [<https://perma.cc/MQP3-4LME>].

⁵⁹ GOV'T CAN., *supra* note 12.

⁶⁰ GOV'T CAN., *supra* note 58.

⁶¹ Canadian Heritage, *Supporting Gender Equality in Sport*, GOV'T CAN. (July 29, 2021), <https://www.canada.ca/en/canadian-heritage/news/2021/07/supporting-gender-equality-in-sport.html> [<https://perma.cc/Y2XV-LM4N>].

⁶² *Id.*

B. SPAIN AND GENDER INEQUALITY IN SPORT PARTICIPATION

Spain, situated on the Iberian Peninsula in southwestern Europe,⁶³ is a democratic nation headed by a constitutional monarch.⁶⁴ Spain operates under a civil law system.⁶⁵ Both the federal government (Cortes Generales)⁶⁶ and regional governments⁶⁷ in Spain can create laws. The Spanish Constitution authorizes the federal government to make laws regarding subjects such as domestic and foreign policy, civil and military administration, national defense, and even sports.⁶⁸ The Spanish Constitution only granted municipal, provincial, and autonomous community governments the power to legislate in areas affecting their respective interests on a local level.⁶⁹ This subsection highlights Spanish laws broadly concerning gender equality, Spain's legal authority over domestic sports, and its efforts to combat the issue of gender inequality in domestic sport participation.

1. Gender Equality Laws in Spain

Over the last few decades, the Spanish federal government has enacted gender quota laws to promote gender equality across a wide variety of industries.⁷⁰ Most prominent among these laws is the Effective

⁶³ *Geography of Spain*, LA MONCLOA, <https://www.lamoncloa.gob.es/lang/en/espana/historyandculture/geography/Paginas/index.aspx> [https://perma.cc/6CAQ-PCKA].

⁶⁴ *Spain*, EUR. UNION, https://european-union.europa.eu/principles-countries-history/country-profiles/spain_en [https://perma.cc/AF5M-5GRQ].

⁶⁵ *Spain*, LEGALINK § 1, https://www.legalink.ch/xms/files/CROSS_BORDER_QUESTIONNAIRES/CORRUPTION/Spain_Anticorruption_Laws_LEGALINK2013_VENTURA_GARCES_LOPEZ_IBOR.pdf [https://perma.cc/76N9-KD9R].

⁶⁶ *Ordinary Legislative Procedure*, SENADO DE ESPAÑA, <https://www.senado.es/web/conocersenado/temasclave/procedimientosparlamentarios/detalle/index.html?lang=en&id=PROCLEGORDENG> [https://perma.cc/WX9J-JJ99].

⁶⁷ Juan C. Palau & Jose W. Fernandez, *The Spanish Constitution of 1978: Legislative Competence of the Autonomous Communities in Civil Law Matters*, 15 VAND. J. TRANSNAT'L L. 47, 47–48 (1982).

⁶⁸ C.E., B.O.E. n. 311, Dec. 29, 1978, arts. 43.3, 97 (Spain); See Núria Puig et al., *Sport Policy in Spain*, 2 INT'L J. SPORT POL'Y & POL. 381 (2010).

⁶⁹ C.E., B.O.E. n. 311, Dec. 29, 1978, arts. 43.3, 97 (Spain).

⁷⁰ See, e.g., Ashifa Kassam, *Spain Approves Draft law for Gender Quotas in Business and Politics*, GUARDIAN (Mar. 7, 2023, 10:12 PM), <https://www.theguardian.com/world/2023/mar/07/spain-approves-draft-law-gender-quotas-business-politics> [https://perma.cc/8PEP-4JSE]; see C.E., B.O.E. n. 71, Mar. 23, 2007 (Spain).

Equality Act of 2007 (“Equality Act”),⁷¹ which covers political party membership, federal government employment, and boards of directors on government-owned corporations.⁷² Just recently in 2023, Spain passed a new law to extend the Equality Act’s scope to cover large public and private corporations.⁷³

Spain’s federal legislature passed the Equality Act on March 15, 2007.⁷⁴ The Equality Act, covering political party membership, federal government employment, and boards of directors on government-owned corporations, implements gender quotas to promote gender equality.⁷⁵ In each of the aforementioned areas, the Equality Act forces entities to employ or assign no more than 60 percent and no less than 40 percent of positions to either sex.⁷⁶ Thus, political party candidates, federal government employees, and government-owned corporations’ boards of directors must be between 40 and 60 percent women. With respect to political parties, research into the effects of the Equality Act shows that the gender quotas assist in increasing women’s representation in government at the federal, regional, and local levels within Spain.⁷⁷ In contrast, scholars note that the Equality Act fails to meaningfully promote gender equality within government-owned corporations’ boards of directors due to an absence of non-compliance penalties.⁷⁸ Overall, while the increased representation of women in Spanish politics demonstrates the Equality Act is capable of success, its failure to create a penalty for non-compliance seems to curb its effectiveness.

On March 7, 2023, the Spanish federal government officially extended the Equality Act to cover large public and private corporations.⁷⁹ The Equality Act’s extension also comes with a penalty: private corporations who fail to achieve representation of at least 40 percent

⁷¹ *Id.*

⁷² *Id.* at § III.

⁷³ Fernando Heller, *Spain Imposes Wide-Reaching 40% Gender Quota from 2026*, EURACTIV (Mar. 7, 2023), <https://www.euractiv.com/section/politics/news/spain-imposes-wide-reaching-40-gender-quota-from-2026/> [<https://perma.cc/N8QX-5JC6>].

⁷⁴ Tània Verge, *Institutionalising Gender Equality in Spain: From Party Quotas to Electoral Gender Quotas*, 35 W. EUR. POL. 395, 402 (2012).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 410–11; Emanuela Lombardo & Alba Alonso, *Gender Regime Change in Decentralized States: The Case of Spain*, 27 SOC. POL. 449, 454 (2020).

⁷⁸ Ruth M. de Cabo et al., *Do ‘Soft Law’ Board Gender Quotas Work? Evidence from A Natural Experiment*, 37 EUR. MGMT. J. 611, 622 (2019).

⁷⁹ Heller, *supra* note 73.

women in their decision-making bodies by 2026 (2024 for public corporations) will incur financial penalties ranging anywhere from \$300,000 to 2 percent of the corporations' assets.⁸⁰ With these new penalties for non-compliance, the potential of the Equality Act's gender quota mandates may finally be realized.

2. *Spanish Federal Government's Legal Authority Over Domestic Sports*

The Spanish Constitution authorizes the federal government to legislate on domestic sport policy.⁸¹ Specifically, Article 43.3 of the Spanish Constitution authorizes the federal government to promote health education, physical education, and sports.⁸² Under this power, the Spanish government, through the Sport Law, has conferred upon its citizens a right to engage in sport.⁸³ This provision also makes the Spanish government responsible for ensuring that its citizens are able to exercise their right to sport participation—thus giving the Spanish federal government power to enact sport policy.⁸⁴ Under the Constitution, the Spanish federal government is broadly authorized to regulate domestic sport organizations given their operations inevitably intertwine with Spanish citizens' rights to sport participation.

3. *Spain's Legal Efforts to Address Women's Sport Participation*

On December 22, 2022, the Spanish federal government officially enacted Ley 39/2022 ("Sport Law").⁸⁵ The Sport Law emphasizes recognizing and addressing gender inequality in sport participation.⁸⁶ To achieve this objective, the Sport Law requires domestic sport organizations to proactively develop policies addressing gender inequality

⁸⁰ *The Government Gives Companies Until 2026 to Have Joint Management*, EFECOMUNICA (Mar. 7, 2023), <https://efe.com/espana/2023-03-07/el-consejo-de-ministros-aprueba-este-martes-el-anteproyecto-de-ley-de-paridad/> [<https://perma.cc/NXU4-S9KX>].

⁸¹ C.E., B.O.E. n. 311, Dec. 29, 1978, arts. 43.3, 97 (Spain).

⁸² *Id.*

⁸³ Law on Sports ch. 1, art. 2 (B.O.E. 2022, 39) (Spain).

⁸⁴ Puig et al., *supra* note 68, at 382.

⁸⁵ Eduardo Oliver & Carlos Camero, *An Overview of Spain's New Sports Law*, LAWINSPO (Jan. 26, 2023), https://www.lawinsport.com/topics/item/an-overview-of-spain-s-new-sports-law#_Toc125631157 [<https://perma.cc/MFX4-A3PJ>].

⁸⁶ Emil Edisonov, *New Sports Law Published*, CURELL SUÑOL (Jan. 5, 2023), <https://curell.com/en/new-sports-law-published/> [<https://perma.cc/J44W-Y6BL>].

in sport participation and provide increased programming for women to participate.⁸⁷ Article 5 of the Sport Law further commits the government to build more sports facilities and increase opportunities in sports for women.⁸⁸ Thus, Spain's Sport Law commits both the government and domestic sporting organizations to implement proactive measures aimed at eliminating gender inequality in sport participation. Since the Spanish federal government only recently passed this law, its impact on the Spanish sports industry remains to be seen. However, given Spain's reputation as a world-leader in advocating for gender equality,⁸⁹ it is a safe bet that Spain will ensure the Sport Law's gender equality-related provisions realize their potential.

II. ANALYSIS

This part begins by analyzing the strengths and weaknesses of Canada's passive, incentive-laden legal approach to addressing gender inequality in sport participation. Next, the analysis centers on Spain's proactive, standard-laden legal approach. This part then analyzes both countries' approaches to formulate an opinion on which is more effectively suited to address gender inequality in sport participation.

A. CANADA'S INCENTIVE-LADEN, PASSIVE LEGAL APPROACH TO ADDRESSING GENDER INEQUALITY IN SPORT PARTICIPATION

Canada's approach to addressing gender inequality in sport participation manifests itself through a federal administrative agency: Sport Canada.⁹⁰ Sport Canada seeks to improve women's sport participation by offering financial incentives to sport organizations to adopt innovative strategies aimed at accomplishing this objective.⁹¹ This

⁸⁷ Stephen F. Ross & Maria Josefa García Cirac, *Promoting Female Sporting Opportunities Without Title IX: The Spanish Experience*, 33 MARQ. SPORTS L. REV. 607, 633–34 (2022).

⁸⁸ Law on Sports, art. V (B.O.E. 2022, 314) (Spain).

⁸⁹ *Gender Equality Index 2023*, EUR. INST. GENDER EQUAL., <https://eige.europa.eu/gender-equality-index/2022/country/ES#:~:text=With%2074.6%20out%20of%20100,points%20above%20the%20EU's%20score> [<https://perma.cc/LG2W-JK9S>]; Ana Garcia Valdivia, *Spain is Now in the World's Top 10 For Gender Equality – This Is How Progress Happened*, FORBES (Dec. 20, 2019, 08:32 AM), <https://www.forbes.com/sites/anagarciavaldivia/2019/12/20/spain-enters-the-worlds-top-10-for-gender-equality/?sh=29985e2d6f52> [<https://perma.cc/5D4M-6ENR>]; EQUILEAP, GENDER EQUALITY GLOBAL REPORT & RANKING 31 (2023), https://equileap.com/wp-content/uploads/2023/03/Equileap_Global_Report_2023.pdf [<https://perma.cc/6H2Q-M4Y5>].

⁹⁰ GOV'T CAN., *supra* note 40; GOV'T CAN., *supra* note 58.

⁹¹ GOV'T CAN., *supra* note 58.

section evaluates the strengths and weaknesses of Sport Canada's approach to addressing gender inequality in sport participation.

1. Strengths of Canada's Incentive-Laden, Passive Approach

Sport Canada's use of financial incentives to induce behaviors is one of the main strengths of Canada's approach to addressing gender inequality in sport participation. Scholars note that financial incentives have a notable, positive effect on influencing adoption of specified behaviors.⁹² Specifically, financial incentives influence individuals to adopt targeted behaviors that the incentives are designed to achieve.⁹³ Sport Canada's Innovation Initiative seeks to improve gender equality in sport participation.⁹⁴ The financial incentives offered as part of this program are aimed at encouraging sport organizations nationwide to devise and adopt programs designed to address this issue.⁹⁵ Thus, Sport Canada's use of financial incentives to induce behavior should, theoretically, induce sport organizations throughout the country to promote gender equality in sport participation.

Financially incentivizing sport organizations to address gender inequality in sport participation can also lead organizations to realize further motivations to continue the targeted behavior.⁹⁶ Scholars support the idea that a financial incentive may induce initial changes in behavior which may lead individuals to discover additional, alternative motivations influencing them to continue to engage accordingly long-term.⁹⁷ Applying this theory to Sport Canada's Innovation Initiative, financial incentives

⁹² See e.g., Emma L. Giles et al., *The Effectiveness of Financial Incentives for Health Behaviour Change: Systematic Review and Meta-Analysis*, 9 PLOS ONE 1, 14 (2014); see Thabo Mabogoane & Firoz Patel, *Recognising Behaviour That Increases Learning: The Possible Role of Incentives in the Teaching Profession*, 24 PERSPS. EDUC. 127, 137–38 (2006); see also Florian H. Schneider et al., *Financial Incentives for Vaccination Do Not Have Negative Unintended Consequences*, 613 NATURE 526, 532 (2023); Nadja Zeiske et al., *The Effects of a Financial Incentive on Motives and Intentions to Commute to Work with Public Transport in the Short and Long Term*, 78 J. ENV'T PSYCH. 1, 2 (2021).

⁹³ Lini Kuang et al., *Spillover Effects of Financial Incentives on Non-Incentivized User Engagement: Evidence from an Online Knowledge Exchange Platform*, 36 J. MGMT. INFO. SYS. 289, 294 (2019).

⁹⁴ GOV'T CAN., *supra* note 58.

⁹⁵ *Id.*

⁹⁶ Zeiske et al., *supra* note 92.

⁹⁷ Satoshi Fujii & Ryuichi Kitamura, *What Does a One-Month Free Bus Ticket do to Habitual Drivers? An Experimental Analysis of Habit and Attitude Change*, 30 TRANSP. 81, 82–84 (2003); John Thøgersen, *Promoting Public Transport as a Subscription Service: Effects of a Free Month Travel Card*, 16 TRANSP. POL'Y 335, 335–37 (2009).

may induce an initial change in behavior among sport organizations through a desire to receive the funding. Once sport organizations begin implementing a program that improves gender equality in sports participation, their motives will shift from relying on financial incentives to relying on alternative reasons for supporting gender equality long-term. Given that women have considerably fewer opportunities available to access sport programs,⁹⁸ it is entirely plausible that organizations will realize increased memberships and revenues by opening themselves up to an underserved market. Thus, doing so will create an alternative motivation that will lead organizations to continue providing equal sport opportunities to women long-term.

Following from this last point, several scholars are currently calling on governments to adopt financial incentives to address gender participation in the workforce.⁹⁹ These financial incentives include subsidies and grants, tax incentives, and public procurement incentives.¹⁰⁰ Subsidies and grants may include wage or credit subsidies.¹⁰¹ For example, Jordan's government-sponsored wage subsidies for female graduates increased women's employment rates.¹⁰² Meanwhile, in Nigeria and Uganda, government-sponsored credit subsidies helped raise the amount of women-owned businesses.¹⁰³ Tax incentives may be represented via tax deductions, credits, exclusions, or referrals.¹⁰⁴ Malaysia recently employed such incentives in an attempt to augment the number of women in the country's workforce.¹⁰⁵ Ultimately, Sport Canada's approach could

⁹⁸ WOMEN'S SPORTS FOUND., *supra* note 6.

⁹⁹ Hania Kronfol et al., *Women at Work: How Can Investment Incentives Be Used to Enhance Economic Opportunities for Women?*, WORLD BANK GRP. 5 (July 2019), <http://documents.worldbank.org/curated/en/970491562785360610/Women-at-Work-How-Can-Investment-Incentives-be-Used-to-Enhance-Economic-Opportunities-for-Women> [<https://perma.cc/3ER8-ZWGY>]; Cecile Fruman, *Incentivizing Equality: Investment-Led Development As a Win-Win For All*, WORLD BANK BLOGS (Mar. 22, 2017), <https://blogs.worldbank.org/psd/incentivizing-equality-investment-led-development-win-win-all#:~:text=Incentives%20such%20as%20in%20kind,or%20start%20their%20own%20businesses> [<https://perma.cc/M9RC-HYGZ>].

¹⁰⁰ Kronfol et al., *supra* note 99, at 6.

¹⁰¹ *Id.* at 9, 11.

¹⁰² Matthew Groh et al., *Soft Skills or Hard Cash? The Impact of Training and Wage Subsidy Programs on Female Youth Employment in Jordan*, in 62 IMPACT EVALUATION SERIES 2 (2012) [<https://perma.cc/UG7H-48YF>].

¹⁰³ THE WORLD BANK, *Gender Equality and Development*, in WORLD DEVELOPMENT REPORT 28 (2012) [<https://perma.cc/J9R8-27HU>].

¹⁰⁴ Kronfol et al., *supra* note 99, at 14.

¹⁰⁵ PM Announces New Measures to Optimise on Malaysian Graduate and Women Talent, TALENTCORP (May 29, 2012), <https://www.talentcorp.com.my/resources/press-releases/pm->

potentially change sport organizations' behavior to prioritize promoting gender equality in sport participation.

2. Weaknesses of Canada's Incentive-Laden, Passive Approach

On the other hand, Sport Canada's approach may adversely affect sport organizations that are already engaged in promoting gender equality in sport participation. Many scholars and academics criticize the use of financial incentives to induce behavior because such incentives may undermine pre-existing intrinsic motivation to engage in the desired behavior.¹⁰⁶ Intrinsic motivation refers to engaging in behavior for self-satisfaction—that is, the individual finds the behavior inherently enjoyable, morally right, and/or personally meaningful.¹⁰⁷ By introducing financial incentives to those who are already intrinsically motivated to engage in the desired behavior, academics note that financial incentives may displace intrinsic motivations; this effect is termed “motivational crowding-out.”¹⁰⁸ As a result, scholars conclude that the long-term influence of financial incentives may become ineffective.¹⁰⁹ By introducing financial incentives, then, Sport Canada may end up achieving the opposite of its desired objective. Many notable Canadian NSOs have already committed to improving gender equality in sport participation.¹¹⁰

announces-new-measures-to-optimise-on-malaysian-graduate-and-women-talent/
[https://perma.cc/XHZ6-DSMA]; Jamny Rosli, *Minister: One-Year Tax Break for Women Rejoining Workforce*, MALAYMAIL (Nov. 26, 2018),
https://www.malaymail.com/news/malaysia/2018/11/26/minister-one-year-tax-break-for-women-rejoining-workforce/1697183 [https://perma.cc/E2SS-S2FD].

¹⁰⁶ Edward L. Deci et al., *A Meta-Analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation*, 125 PSYCH. BULL. 627, 627 (1999); Bruno S. Frey, *How Intrinsic Motivation is Crowded Out and In*, 6 RATIONALITY & SOC'Y 334, 335–37 (1994); Sander van der Linden, *Intrinsic Motivation and Pro-Environmental Behaviour*, 5 NATURE CLIMATE CHANGE 612, 613 (2015).

¹⁰⁷ See generally Linda Steg et al., *Intrinsic Motivation, Norms and Environmental Behaviour: The Dynamics of Overarching Goals*, 9 INT'L REV. OF ENV'T & RES. ECON., 179, 183 (2015); Ellen van der Werff et al., *It is a Moral Issue: The Relationship Between Environmental Self-Identity, Obligation-Based Intrinsic Motivation and Pro-Environmental Behavior*, 23 GLOB. ENV'T CHANGE 1258, 1259 (2013); Leonie A. Venhoeven et al., *Why Going Green Feels Good*, 71 J. ENV'T PSYCH. 1, 1 (2020).

¹⁰⁸ Jan Willem Bolderdijk & Linda Steg, *Promoting Sustainable Consumption: The Risks of Using Financial Incentives*, in HANDBOOK OF RESEARCH ON SUSTAINABLE CONSUMPTION 328 (Lucia A. Reisch & John Thøgersen eds., 2015); Uri Gneezy et al., *When and Why Incentives (Don't) Work to Modify Behavior*, 25 J. ECON. PERSP. 191, 192–193 (2011).

¹⁰⁹ van der Linden, *supra* note 106, at 612–13; Gneezy et al., *supra* note 108, at 191, 204.

¹¹⁰ See *Hockey is Hers*, HOCKEY CAN. FOUND., https://www.hockeycanada.ca/en-ca/corporate/foundation/hockey-is-hers [https://perma.cc/N2MT-ZNAE]; *GE Appliances and*

These commitments evince pre-existing intrinsic motivations to address gender inequality in sport participation. Thus, in line with academics' opinions about financial incentives' effects on intrinsic motivations, Sport Canada's Innovation Initiative may impair the promotion of gender equality in sport participation.

Notably, the introduction of financial incentives to promote gender equality in sport participation can lead to adverse behavioral outcomes resulting from "motivational crowding-out."¹¹¹ Firstly, scholars note that "motivational crowding-out" may lead to reduced engagement and a game-like behavior among those to whom the financial incentives are targeted.¹¹² The reduced engagement outcome implies that, by financially incentivizing a desired activity, less people will actually desire to engage in that activity.¹¹³ In the context of Sport Canada's Innovation Initiative, then, using financial incentives to induce NSOs to adopt strategies to increase gender equality in sport participation may actually result in less NSOs engaging in this desired behavior—an outcome that is contrary to Sport Canada's goals.¹¹⁴ The targets of the financial incentives may also seek to "game" the system by playing hard to get when it comes to the desired behavior in an effort to increase the amount of offered funding.¹¹⁵ Relevant to Sport Canada, this theory posits that NSOs may refrain from engaging in the Innovation Initiative's desired behavior out of a belief that, if Sport Canada is truly committed to addressing gender equality in sport participation and offering financial incentives to do so, the amount of money awarded may increase if they refrain from engaging. Certainly then, "motivational crowding-out" can lead to adverse impacts that may actually work against achieving the desired behavior that the financial incentives seek to induce.

Even if the argument that financial incentives work is accepted, Sport Canada's lack of financial penalties for sport organizations that do

Canada Soccer Invite Athletes from Girls Soccer Teams to 'See Them, Be Them', CAN. SOCCER (June 23, 2023), <https://canadasoccer.com/news/ge-appliances-and-canada-soccer-invite-athletes-from-girls-soccer-teams-to-see-them-be-them/> [<https://perma.cc/G64W-48AB>]; *Canada Basketball Launches Mad Love to Recognize Girls and Women on International Women's Day and Beyond*, CAN. BASKETBALL (Mar. 8, 2021), <https://www.basketball.ca/news/madlove> [<https://perma.cc/69M2-CAK7>].

¹¹¹ Kristen Underhill, *Money That Costs Too Much: Regulating Financial Incentives*, 94 IND. L.J. 1109, 1130 (2019).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See SPORTS INFO. RSCH. CTR., *supra* note 52.

¹¹⁵ Wendelin Schnedler & Christoph Vanberg, *Playing 'Hard to Get': An Economic Rationale for Crowding Out of Intrinsically Motivated Behavior*, 68 EUR. ECON. REV. 106, 106–110 (2014).

not engage in promoting gender equality in sport participation inhibits its ability to create meaningful change. Scholars note that financial penalties can incentivize organizations to engage in certain desired behaviors.¹¹⁶ Indeed, associating certain behaviors with a financial punishment can deter undesirable behavior.¹¹⁷ However, in Sport Canada's case, NSOs face no punishments for failing to promote gender equality in sport participation.¹¹⁸ The Innovation Initiative only offers financial incentives to those applying for funding; it does not affect those who choose not to apply.¹¹⁹ Sport Canada does not affirmatively direct NSOs or grassroots sports organizations to promote gender equality in sport participation; in fact, the eligibility criteria to apply for Sport Canada's funding programs does not even require an NSO or other entity to demonstrate efforts to promote gender equality.¹²⁰ Thus, the only effort exhibited by Sport Canada to address gender inequality in sport participation is an optional financial incentive through the Innovation Initiative that fails to influence any domestic sport organizations to comply with the desired behavior.¹²¹ There is nothing preventing sport organizations from simply ignoring the Innovation Initiative and disregarding any efforts to promote gender equality in sport participation. Accordingly, Sport Canada's efforts to address gender inequality in sport participation are limited—denoting a significant weakness on its part in its efforts to rectify this issue.

¹¹⁶ See generally Emma L. Giles et al., *Acceptability of Financial Incentives and Penalties for Encouraging Uptake of Healthy Behaviours: Focus Groups*, 15 BMC PUB. HEALTH 1, 1–2 (2015).

¹¹⁷ Robert Cooter, *Expressive Law and Economics*, 27 J. LEGAL STUD. 585, 607–08 (1998); Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 207–09 (1968).

¹¹⁸ See, e.g., Sport Canada, *Policies and Procedures – Athlete Assistance Program*, GOV'T CAN. § 11.1, <https://www.canada.ca/en/canadian-heritage/services/funding/athlete-assistance/policies-procedures.html#a13> [<https://perma.cc/32BE-Z56E>] (lacking any inclusion in the policies and procedures of any penalties to NSOs for failing to promote gender inequality in sport participation); *Sport Funding Framework*, GOV'T CAN., <https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html#a1> [<https://perma.cc/XN5J-2VP6>] (lacking any requirements that NSOs engage in promoting gender equality in sport participation to be eligible to receive federal funding); GOV'T CAN., *supra* note 56 (lacking any requirements that recipient organizations must promote gender equality in sport participation to receive funding).

¹¹⁹ GOV'T CAN., *supra* note 58.

¹²⁰ GOV'T CAN., *supra* note 41; GOV'T CAN., *supra* note 42; GOV'T CAN., *supra* note 43.

¹²¹ GOV'T CAN., *supra* note 58.

B. SPAIN'S MANDATORY STANDARDS-ORIENTED, PROACTIVE
LEGAL APPROACH TO ADDRESSING GENDER INEQUALITY IN
SPORT PARTICIPATION

Spain's approach to addressing gender inequality in sport participation is represented through Article V of Spain's Sport Law.¹²² The Spanish government aims to increase women's participation in sport by mandating all domestic sport organizations proactively develop policies addressing gender inequality in sport participation, increase sport programming opportunities for women, and ensure equal access to sport facilities for males and women.¹²³ This section assesses the strengths and weaknesses of Spain's proactive, standard-laden legal approach to addressing gender inequality in sport participation.

1. Strengths of Spain's Mandatory Standards, Proactive Approach

One of the primary strengths of Spain's approach to addressing gender inequality in sport participation is its ability to conform behavior in a prescribed manner.¹²⁴ Specifically, requiring entities to adhere to mandatory legal standards permits legislators to shape the way in which individuals and/or corporations must behave.¹²⁵ Corporations are subject to many types of mandatory legal standards to which they must conform in everyday life such as processes on financial information disclosure and board of director compositions.¹²⁶ Mandatory legal standards imposed upon corporations by a legislature are important because they can ensure positive corporate performance.¹²⁷ Applying these findings to Spain's Sport Law, requiring domestic sport organizations to adhere to mandatory legal standards concerning gender inequality in sport participation can ensure that such organizations are actively doing their part to resolve this issue. For example, by legally mandating domestic sport organizations to

¹²² Law on Sports, art. V (B.O.E. 2022, 314) (Spain).

¹²³ Ross & García Cirac, *supra* note 87, at 611; Law on Sports, art. V (B.O.E. 2022, 314) (Spain).

¹²⁴ Melvin Aron Eisenberg, *The Structure of Corporation Law*, 89 COLUM. L. REV. 1461, 1461 (1989) (describing how regulations requiring entities to adhere to mandatory legal standards facilitates conforming behavior in a prescribed manner).

¹²⁵ Margaret Ryznar & Karen E. Woody, *A Framework on Mandating Versus Incentivizing Corporate Social Responsibility*, 98 MARQ. L. REV. 1667, 1669 (2015).

¹²⁶ Richard M. Buxbaum, *Facilitative and Mandatory Rules in the Corporation Law(s) of the United States*, 50 AM. J. COMPAR. L. 249, 255 (2002).

¹²⁷ Valentina Bruno & Stijn Claessens, *Corporate Governance and Regulation: Can There be Too Much of a Good Thing?*, 19 J. FIN. INTERMEDIATION 461, 480–481 (2010).

provide equal access among men and women to sporting facilities, Spain is removing from organizations the ability to reduce women's access to sport participation opportunities—a noted factor in the global discrepancy between men's and women's sport participation rates.¹²⁸

The Spanish Sport Law also legally mandates domestic sport organizations draft policies addressing gender inequality in sport.¹²⁹ By doing so, Spain guides the performance of domestic sport organizations to ensure that at least part of their operations are focused on addressing gender inequality in sport participation.¹³⁰ Ultimately, the mandatory legal requirements placed upon domestic sports organizations by the Spanish Sport Law removes the option for such organizations to simply choose to ignore addressing gender inequality in sport participation.

For proof of the effectiveness of mandatory legal requirements in increasing women's sport participation, one need look no further than the United States and its Title IX legislation.¹³¹ Title IX is an American law, enacted in 1972, that bars gender discrimination by educational institutions receiving federal funding.¹³² With respect to post-secondary institutions receiving federal funding, Title IX legally mandates schools provide equal opportunity among men and women when it comes to athletic programs.¹³³ The legally mandated equal opportunity requires that schools offer female athletes equal sport participation opportunities, athletic scholarships, and benefits as their male counterparts.¹³⁴ The legally mandated requirements placed upon American post-secondary institutions have resulted in massive gains for women's college sport participation; prior to Title IX, female college athletes represented less than sixteen percent of all college athletes but, as of 2019-20, they represented 44 percent of all college athletes.¹³⁵ Thus, legally mandated

¹²⁸ Law on Sports, art. V (B.O.E. 2022, 314) (Spain); WOMEN'S SPORTS FOUND., *supra* note 6.

¹²⁹ Law on Sports, art. V (B.O.E. 2022, 314) (Spain).

¹³⁰ See Buxbaum, *supra* note 126.

¹³¹ See generally Ellen J. Staurowsky, *Title IX and College Sport: The Long Painful Path to Compliance and Reform*, 14 MARQ. SPORTS L. REV. 95 (2003).

¹³² *Id.* at 98–99.

¹³³ U.S. DEP'T EDUC., TITLE IX AND ATHLETIC OPPORTUNITIES IN COLLEGES AND UNIVERSITIES 2 (Feb. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-higher-ed-athletic-resource-202302.pdf> [<https://perma.cc/L7GA-SYAV>].

¹³⁴ *Id.*

¹³⁵ NAT'L WOMEN'S L. CTR., QUICK FACTS ABOUT TITLE IX AND ATHLETICS 2 (June 21, 2022), <https://nwlc.org/resource/quick-facts-about-title-ix-and-athletics/#:~:text=Women%20and%20girls%20are%20interested%20in%20playing%20sports!&text=Before%20Title%20IX%2C%20fewer%20than,percent%20of%20all%20NCAA%20athlete> s [<https://perma.cc/S33M-J9BS>].

requirements set by legislatures can measurably impact gender inequality in sport participation.

Another prominent strength of Spain's approach is its ability to hold domestic sports organizations legally accountable for their corporate social responsibility.¹³⁶ The theory of corporate social responsibility posits that organizations are responsible for aligning their business operations with societal interests, goals, and values.¹³⁷ However, in practice, business organizations seemingly struggle to remain socially responsible when they are self-regulated (i.e., acting on their own without any laws to which they must comply).¹³⁸ In response to this issue, scholars argue the government should regulate corporate social responsibility to ensure that organizations are held accountable to operate in a socially responsible manner.¹³⁹ In Spain, gender equality is unquestionably a notable societal value given its appearance in the Spanish Constitution.¹⁴⁰ As indicated, academic scholarship supports the proposition that self-regulated, domestic sport organizations will struggle to act in a socially responsible manner and promote gender equality.¹⁴¹ Spain's Sport Law meets the need recognized by scholars for regulation of corporate social responsibility to ensure organizations operate in a manner that does not contradict societal interests, goals, and values.¹⁴² All told, Spain's Sport Law ensures that domestic sport organizations operate in a manner compliant with gender equality.

2. *Weaknesses of Spain's Mandatory Standards, Proactive Approach*

The major flaw in Spain's approach is that it does not penalize sports organizations that fail to comply with the Sport Law. Indeed, scholars recognize that corporate regulations are only effective if

¹³⁶ Mallika Tamvada, *Corporate Social Responsibility and Accountability: A New Theoretical Foundation for Regulating CSR*, 5 INT'L J. CORP. SOC. RESP. 1, 11–12 (2020).

¹³⁷ See David L. Engel, *An Approach to Corporate Social Responsibility*, 32 STAN. L. REV. 1, 5–8 (1979).

¹³⁸ Susan M. Hart, *Self-Regulation, Corporate Social Responsibility, and the Business Case: Do They Work in Achieving Workplace Equality and Safety?*, 92 J. BUS. ETHICS 585, 597 (2010).

¹³⁹ See Thomas McNerney, *Putting Regulation Before Responsibility: Towards Binding Norms of Corporate Social Responsibility*, 40 CORNELL INT'L L.J. 171, 175 (2007).

¹⁴⁰ C.E., B.O.E. n. 311, Dec. 29, 1978 (Spain).

¹⁴¹ See Hart, *supra* note 138.

¹⁴² See McNerney, *supra* note 139.

corporations are carefully monitored and penalized for breaches.¹⁴³ Often, corporate regulations are ineffectively enforced because violators conceal their non-compliance, making it difficult for regulators to catch and punish violations.¹⁴⁴ With respect to attaching meaningful penalties, scholars also note that legal mechanisms for non-compliance, such as imposing financial penalties, are an effective means for ensuring corporate adherence to regulations.¹⁴⁵ Spain's Sport Law, however, lacks a mechanism for carefully monitoring sport organizations' adherence to its mandatory standards regarding gender equality in sport participation.¹⁴⁶ The Sport Law does not designate any particular government bodies or officials to monitor sport organizations' compliance.¹⁴⁷ Spain's Sport Law also lacks any legal penalties for non-compliance with its provisions.¹⁴⁸ In essence, there is nothing to prevent domestic Spanish sport organizations from simply choosing not to abide by the provisions contained in the Sport Law. All told, while Spain's approach lays a good foundation for guiding sport organizations towards addressing gender equality in sport participation, its failure to provide any enforcement mechanisms to ensure compliance severely limits its effectiveness.

C. SPAIN'S APPROACH, WHILE NOT PERFECT, BETTER THAN CANADA'S

Ultimately, while Spain's approach is not quite perfect, it is better suited to address gender inequality in sport participation than Canada's. As described earlier in this section, Canada's approach invites sport organizations to apply for financial funding to operate programs promoting gender equality in sport.¹⁴⁹ This is voluntary for sport organizations and they are free to ignore it and continue operating as they always have.¹⁵⁰ However, the most glaring issue with Canada's approach is the risk it poses to displace some sport organizations' pre-existing

¹⁴³ Alex Proimos, *Strengthening Corporate Governance Regulations*, 6 J. INV. COMPLIANCE 75 (2005).

¹⁴⁴ Daniel T. Ostas, *Cooperate, Comply, or Evade? A Corporate Executive's Social Responsibilities with Regard to Law*, 41 AM. BUS. L.J. 559, 567 (2004).

¹⁴⁵ E Wymeersch, *The Enforcement of Corporate Governance Codes*, 6 J. CORP. L. STUD. 113, 137–38 (2006).

¹⁴⁶ See Law on Sports, art. V (B.O.E. 2022, 314) (Spain).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ GOV'T CAN., *supra* note 58.

¹⁵⁰ *Id.*

intrinsic motivations to address gender inequality in sport participation with material, financially-dependent motivations to do so.¹⁵¹ By using financial rewards to encourage sport organizations to promote gender equality, Canada is forced to continue furnishing such rewards—a strategy that will not be effective long-term.¹⁵² Meanwhile, Spain's Sport Law presents a more effective approach to addressing gender inequality in sport participation because its mandatory regulations serve to conform domestic sport organizations' behavior towards addressing this issue.¹⁵³ Despite Spain's failure to provide enforcement mechanisms that ensure adherence to the Sport Law, its proactive approach more effectively addresses gender inequality in sport participation than Canada's passive approach does.

D. PROPOSING A NEW SPAIN-LIKE FRAMEWORK FOR CANADA

This Comment next proposes a new framework for Canada to adopt that builds off Spain's mandatory standards approach while addressing its shortcomings. This proposed framework suggests formulating mandatory standards regarding gender equality in sport participation to which Canadian NSOs must adhere. It then posits that Sport Canada should be charged with the authority to monitor compliance. Finally, the framework would implement meaningful penalties applicable to NSOs who fail to comply with the mandatory standards. In so doing, this framework better positions Canada to meaningfully effect change in promoting gender equality in sport participation.

First, Canada should adopt legislation that requires Canadian NSOs to adhere to mandatory standards aimed at promoting gender equality in sport participation. As noted previously, mandatory standards are an effective legal means to govern corporations' behavior.¹⁵⁴ Thus, Canada can conform NSOs' behavior to align with addressing gender inequality in sport participation by binding them to mandatory standards through law. Specifically, this Comment proposes provisions requiring NSOs to develop policies addressing gender inequality in participation in their respective sports, implement internal regulation of their provincial members to conform with the NSOs' national-level policies, and ensure national-level programming is equally accessible to women. By binding

¹⁵¹ See Bolderdijk & Steg, *supra* note 108; see Gneezy et al., *supra* note 108.

¹⁵² van der Linden, *supra* note 106; Gneezy et al., *supra* note 108, at 204.

¹⁵³ See Eisenberg, *supra* note 124; see Ryznar & Woody, *supra* note 125.

¹⁵⁴ Ryznar & Woody, *supra* note 125, at 1690–93.

NSOs to mandatory standards, Canada can effect change through these governing bodies to all levels of their respective sports.¹⁵⁵ Thus, employing mandatory standards that NSOs must adhere to will enable Canada to meaningfully change disparate sport participation rates between men and women.

Canada should also empower Sport Canada with the authority to monitor NSOs' compliance with the above-mentioned proposed provisions. This Comment previously discussed the importance of carefully monitoring regulations that corporations (i.e., sport organizations) must comply with to ensure the law's objectives are realized.¹⁵⁶ Sport Canada is perfectly situated to monitor NSOs' compliance with these mandatory standards given its role as a federal administrative agency dedicated to governing Canadian amateur sport.¹⁵⁷ As such, the proposed mandatory standards are better situated to maximize their effectiveness by empowering Sport Canada to ensure NSOs are adhering to them.

Finally, Canada must also implement meaningful penalties that NSOs are subjected to for non-compliance with the proposed mandatory standards. Penalizing non-compliance is another step aimed at encouraging high degrees of compliance among NSOs.¹⁵⁸ Scholars note that government imposition of financial penalties for non-compliance can successfully deter non-compliance when they are so costly that it does not make financial sense to avoid compliance.¹⁵⁹ To determine the amount of a financial penalty, scholars warn of the need for balance; a penalty should be large enough to deter misconduct but must not be too large that it exceeds a corporation's ability to pay it, given the ripple effects this can have on its innocent stakeholders.¹⁶⁰

¹⁵⁵ See Lisa M. Kikulis et al., *Toward an Understanding of the Role of Agency and Choice in the Changing Structure of Canada's National Sport Organizations*, 9 J. SPORT MGMT. 135, 135–39 (1995) (discussing how change at the NSO level can have widespread impact on all levels of the NSO's respective sport); Matthew Dowling et al., *The Modernization of Policy-Making Processes in National Sport Organizations: A Case Study of Athletics Canada*, 1 J. AMATEUR SPORT 78, 86 (2015) (demonstrating how NSOs' conduct reverberates all the way down to grassroots).

¹⁵⁶ See generally Proimos, *supra* note 143.

¹⁵⁷ Kikulis et al., *supra* note 155, at 136.

¹⁵⁸ See Proimos, *supra* note 143.

¹⁵⁹ See Roger D. Blair & Thomas Knight, *Compliance with Corporate Policy: An Economic Approach*, 34 MANAGERIAL & DECISION ECON. 529, 530–32 (2013).

¹⁶⁰ Christine Parker, *The "Compliance" Trap: The Moral Message in Responsive Regulatory Enforcement*, 40 L. & Soc'y Rev. 591, 591–93 (2006).

With respect to this Comment's proposed framework, the financial penalties should not be a fine, but rather Sport Canada should withhold federal funding from non-complying NSOs. A potential penalty of withheld federal funding effectively deters non-compliance with this Comment's proposed framework because Canadian NSOs rely heavily on federal funding to finance their operations.¹⁶¹ In fact, Canada is already using financial penalties in the form of withheld federal funds to deter NSOs from recent conduct that violates principles of good governance, accountability, and safe sport.¹⁶² Hence, NSO non-compliance penalties involving withheld federal funding could serve as an effective deterrent to NSOs violating this Comment's proposed framework—increasing its degree of effectiveness as law.¹⁶³ Further, Sport Canada is already responsible for overseeing the distribution of federal funding to NSOs.¹⁶⁴ Thus, Sport Canada is already well-positioned to both monitor compliance with the proposed framework and oversee the imposition of penalties for non-compliance.

E. THE CONSTITUTIONALITY IN CANADA OF THE PROPOSED FRAMEWORK

The new framework proposed for Canada to address gender inequality in sport participation is constitutionally permissible under the federal constitution. Section 15 of the Canadian Charter of Rights and Freedoms guarantees equal treatment to Canadian citizens before, and under, the law regardless of their gender.¹⁶⁵ However, the Charter's protection does not extend to private corporations; thus the proposed framework need not conform itself to Section 15 since it applies to NSOs (i.e., private non-profit corporations).¹⁶⁶ Hence, the proposed framework

¹⁶¹ Devin Heroux, *Canada's sport organizations fear funding shortfall caused by pandemic disruption*, CBC, <https://www.cbc.ca/sports/olympics/canada-sport-organizations-funding-shortfall-government-funding-1.5556115> [<https://perma.cc/T93C-JGWY>].

¹⁶² Kerry Gillespie, *Canada's National Sport Organizations Are Facing a Reckoning. Here's What Can Be Done to Create Change*, TORONTO STAR (Oct. 21, 2022), https://www.thestar.com/sports/amateur/canada-s-national-sport-organizations-are-facing-a-reckoning-here-s-what-can-be-done/article_3d1358fc-e0bf-54d6-8273-14557228f3b9.html [<https://perma.cc/6SJT-K9D7>].

¹⁶³ See Proimos, *supra* note 143.

¹⁶⁴ Lucie Thibault, *Canada: An Evolving Sport System*, in SPORT POLICY SYSTEMS AND SPORT FEDERATIONS 65, 70–71 (Jeroen Scheerder, Annick Willem & Elien Claes eds., 2017).

¹⁶⁵ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s. 15 (1) (U.K.).

¹⁶⁶ See *Eldridge v. B.C. (Att'y Gen.)*, [1997] 3 S.C.R. 624 (Can.).

need not concern itself with questions regarding its constitutionality since the Charter does not apply.

Even if NSOs were amenable to the Charter's scope, given that they are funded by taxpayer dollars and governed by Sport Canada, the framework still does not violate Section 15.¹⁶⁷ Section 15(1) provides that every Canadian citizen is entitled to the right to be free from discrimination based on categories such as gender.¹⁶⁸ To determine whether a law violates Section 15(1), the Canadian Supreme Court (Canada's highest court) adopted a three-part test that poses the following questions: (1) Does the law create a distinction based on an enumerated ground?; (2) Can the government establish that the distinction qualifies as an affirmative action-type measure under Section 15(2)?; and (3) Is the distinction discriminatory?¹⁶⁹

First, the proposed framework creates a distinction based on an enumerated ground within the Charter. Section 15(1) lists gender as an enumerated ground.¹⁷⁰ This Comment's proposed framework creates a distinction based on gender by focusing on improving domestic women's sport participation rates. Accordingly, the framework clearly distinguishes based upon an enumerated ground.

However, the proposed framework's distinction very likely qualifies as an affirmative action-type measure permissible under Section 15(2) of the Charter. Section 15(2) of the Charter permits laws creating distinctions based on an enumerated ground within Section 15(1) if its purpose is to improve the condition of disadvantaged groups.¹⁷¹ This is exactly what the proposed framework seeks to accomplish—improving the conditions of the historically disadvantaged group of female sport participants. Female sport participants are a disadvantaged group because, for hundreds of years, their participation opportunities were limited based on the social constructions attached to their gender.¹⁷² Even today, only 18 percent of Canadian women aged sixteen to sixty-three are involved in

¹⁶⁷ GOV'T CAN., *supra* note 26; GOV'T CAN., *supra* note 40.

¹⁶⁸ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s. 15 (1) (U.K.).

¹⁶⁹ *Law v. Canada*, [1999] 1 S.C.R. 497 (Can.).

¹⁷⁰ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s. 15 (1) (U.K.).

¹⁷¹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act, 1982, c 11, s. 15 (2) (U.K.).

¹⁷² Tabitha de Bruin, *The History of Canadian Women in Sport*, CAN. ENCYCLOPEDIA, <https://www.thecanadianencyclopedia.ca/en/article/the-history-of-canadian-women-in-sport> [<https://perma.cc/88PZ-79J2>].

sport.¹⁷³ The more prominent factors reported by women in response to their low participation rates have been lack of access and poor quality of opportunities.¹⁷⁴ The proposed framework seeks to ameliorate the condition of historically disadvantaged women in the sporting context by seeking to induce NSOs to increase women's sport participation opportunities within their respective sports—addressing the concerns regarding lack of access and quality of opportunities. Considering the historical disadvantages faced by women in the Canadian sporting environment and the proposed framework's objective to address that problem, Section 15(2)'s exception for affirmative action-type measures likely applies here.

Since the proposed framework likely qualifies for Section 15(2)'s exception for affirmative action-type measures, the third prong of the test to determine whether Section 15(1) has been violated need not be reached. In summary, the proposed framework poses no constitutional problems with Section 15 of the Canadian Charter of Rights and Freedoms.

F. ALTERNATIVE INTERVENTIONS AIMED AT SCHOOL-BASED SPORTS FALL OUTSIDE OF CANADIAN FEDERAL GOVERNMENT'S SCOPE OF CONSTITUTIONAL AUTHORITY

While alternative interventions targeted at school-based sports (i.e., requiring gender equality in school sport participation) may also help address low sport participation rates among women, any legislation in this context is outside of the Canadian federal government's constitutional authority. Youth sport participation either occurs through club sports (i.e., private organizations) or school-based sports.¹⁷⁵ Section 93 of the Canadian Constitution authorizes the provinces to legislate concerning matters of education—thus leaving this subject matter outside the realm of the federal government's authority.¹⁷⁶ Therefore, although school-based sports may be another area in which low sport participation rates among women can be addressed, the Canadian federal government lacks

¹⁷³ CATHERINE SABISTON, *THE RALLY REPORT: ENCOURAGING ACTION TO IMPROVE SPORT FOR WOMEN AND GIRLS* 8 (June 2020), https://womenandsport.ca/wp-content/uploads/2020/06/Canadian-Women-Sport_The-Rally-Report.pdf [<https://perma.cc/9VD3-82YM>].

¹⁷⁴ *Id.* at 13–14.

¹⁷⁵ *High School Coach vs. The Club Coach*, SPORT INFO. RES. CTR. (Aug. 28, 2014), <https://sirc.ca/blog/high-school-coach-vs-the-club-coach/>.

¹⁷⁶ Constitution Act, 1867, 30 & 31 Vict., c 3, s. 93 (U.K.), *reprinted in* R.S.C. 1985, app II, no 5 (Can.).

constitutional power to legislate on this issue because it falls within the provinces' domain of power over education.

Canada's division of powers concerning education contrasts with those of Spain where the latter's federal government is vested with authority over this subject matter. Article 27 of the Spanish Constitution both recognizes Spanish citizens' right to education while also conferring power over educational administration to the federal government.¹⁷⁷ Despite a shift in Spain over the last several decades to delegate education-related legislation to the autonomous community governments, the federal government still retains supervisory power over education policy.¹⁷⁸ Hence, the organization of Spain's constitution allows the Spanish federal government to enact legislation directed at addressing low rates of women's sport participation in school-based sports.¹⁷⁹ By contrast, the Canadian federal government is limited by the Canadian Constitution and can only address low women's sports participation rates by regulating club sports and NSO-organized sports.¹⁸⁰ Ultimately, then, the Canadian Constitution limits the Canadian federal government's constitutional powers to address this problem beyond the above-proposed framework.

III. CONCLUSION

In finality, Canada can address low rates of women's sport participation by adopting the framework proposed in this Comment styled after Spain's approach. Spain's proactive approach, outlined in its Sport Law, consists of mandatory standards that domestic sport organizations must adhere to.¹⁸¹ Meanwhile, Canada's passive approach financially incentivizes sport organizations to fund innovative solutions to the problem.¹⁸² Spain's approach to addressing gender inequality in sport participation is more effective because it outright seeks to conform organizations' behavior to address the issue.¹⁸³ Comparatively, Canada's approach is a weaker means of addressing this issue because it relies on

¹⁷⁷ C.E., B.O.E. n. 311, Dec. 29, 1978 (Spain).

¹⁷⁸ *Education*, LA MONCLOA, <https://www.lamoncloa.gob.es/lang/en/espana/stpv/spaintoday2015/education/Paginas/index.aspx> [https://perma.cc/LM4Y-ALYF].

¹⁷⁹ C.E., B.O.E. n. 311, Dec. 29, 1978 (Spain).

¹⁸⁰ See Constitution Act, 1867, 30 & 31 Vict., c 3, s. 93 (U.K.), reprinted in R.S.C. 1985, app II, no 5 (Can.).

¹⁸¹ Ross & García Cirac, *supra* note 87; Law on Sports, art. V (B.O.E. 2022, 314) (Spain).

¹⁸² GOV'T CAN., *supra* note 58.

¹⁸³ See Eisenberg, *supra* note 124, at 1469; Ryznar & Woody, *supra* note 125, at 1668, 1694.

the voluntary engagement of sport organizations and fails to punish organizations that choose not to engage.¹⁸⁴

To improve Canada's ability to address low sport participation rates among women, this Comment designed a framework that would require NSOs to adopt mandatory standards aimed at promoting gender equality in sport participation, assign Sport Canada to monitor NSO compliance, and create penalties for non-compliance. The mandatory standards that NSOs would have to adhere will conform organizational behavior and permeate down throughout their members.¹⁸⁵ Assigning Sport Canada with responsibility to monitor compliance, and devising penalties for NSOs who fail to comply, will further ensure that the objectives of this proposed framework are realized (i.e., promoting gender equality in sport participation).¹⁸⁶ Thus, the framework that this Comment proposes, styled after Spain's Sport Law, can facilitate Canada's efforts to meaningfully encourage gender equality in sport participation.

¹⁸⁴ GOV'T CAN., *supra* note 58.

¹⁸⁵ See Ryznar & Woody, *supra* note 125; Kikulis et al., *supra* note 155, at 136–38; Dowling et al., *supra* note 155, at 90.

¹⁸⁶ See generally Proimos, *supra* note 143.