

Submission to the Review of the IPC Classification Code and International Standards,  
November 2007

By:

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## **I. Introduction**

1. The Canadian Blind Sports Association, (CBSA), is pleased to respond to the review of the IPC Classification Code and International Standards, November 2007, (the Code), which is being conducted by the Classification Committee (Committee) of the International Paralympic Committee, (IPC). We have elected to submit our comments in the form of a written brief rather than submitting them on the supplied Excel Spreadsheet. Simply put, our comments are too extensive for inclusion in a spreadsheet of this type. We have extensive reasons to support many of our comments and we did not want to have our feedback misunderstood as a result of our failure to provide sufficient detail to the Committee.
2. CBSA also recognizes that the Committee will be receiving submissions from multiple sources. We don't believe it is our role to write sample provisions for the Committee to avoid restricting the Committee's ability to ensure that the writing of the document is consistent and that the ideas of all stakeholders are fairly considered.

## **II. The IPC Classification Code**

### **A. International Classification in the Paralympic Movement, (Code, Section 2)**

3. CBSA agrees with the objective set out in section 2.1.2 that the classification system is designed to determine the eligibility of athletes to compete and to group athletes into classes for fair and equitable competition. It also supports the wording of section 2.2.4 of the Code which provides:

“2.2.4 The Code establishes a consistent policy on Classification, specifically as it relates to:

- Ensuring accountability and principles of fair play
- The protection of the rights of all Athletes and Classifiers
- The Evaluation of Athletes
- The allocation of Sport Classes and Sport Class Status
- Protests and Appeals.”

4. These provisions, when read together, suggest that the eligibility to compete in a specific class should be determined by the classification system alone without the use or intervention of other equipment or devices. The rules of some International Federations, (IFs) which require athletes to wear darkening goggles, to ensure that totally blind athletes are in fact totally blind while they are competing, calls into question whether the classification system promotes fair and equitable competition since those IFs which promote the use of the goggles don't put complete trust in the classification system itself to properly classify athletes. Likewise, the use of darkened goggles because some athletes have light perception and others do not, is not related to any evidence based research that there is an advantage to an athlete

who has light perception over one who does not. The classification system should be designed to prevent cheating—the very reason why some sports require individuals to wear goggles. If there are concerns that cheating is not being adequately prevented to determine an athlete’s eligibility to compete in a specific class, the classification system itself or the classification rules for specific IFs should be redesigned, rather than eliminating cheating by requiring athletes to wear additional equipment to prevent it.

5. The classification system should also separate into different classes, individuals who have a significant difference in functional ability, not rely on equipment to artificially make athletes the same. This can be accomplished by modifying the provisions in section 2.2 to take this reasoning into account or by adding a provision elsewhere in the Code to ban the use of darkening goggles or other similar equipment. The only exception that should be available to such a provision is where all athletes are required to wear eyeshades irrespective of their sight class such as in the sport of Goalball. In this sport, even athletes without a vision impairment would be required to wear eyeshades to conform to the rules of the sport as it was originally designed.
6. Section 2.1.1 provides that “Classification is undertaken to ensure that an Athlete’s impairment is relevant to sport performance, and to ensure that the Athlete competes equitably (sic) with other Athletes. “ We are not sure that this statement is sufficiently enabling to allow for consideration to be given in research into the development of a classification system for athletes who are visually impaired/blind, of the impact of date, time, and type of onset of vision impairment which ultimately has an impact on sport performance.
7. The Canadian Sport for Life and Long Term Athlete Development Model<sup>1</sup> Expert Group thoroughly discusses the importance of development of Physical Literacy (prior to the adolescent growth spurt) as a key factor in ability to perform to the best of one’s ability.

“Physical Literacy is the mastering of fundamental movement skills and fundamental sport skills that permit a child to read their environment and make appropriate decisions, allowing them to move confidently and with control in a wide range of physical activity situations. It supports long-term participation and performance to the best of one’s ability.

Physical Literacy is the cornerstone of both participation and excellence in physical activity and sport. Ideally, physical literacy is developed prior to the adolescent

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<sup>1</sup> *Canadian Sport for Life*. Retrieved September 30 from <http://canadiansportforlife.ca/learn-about-canadian-sport-life/cs4l-organization>

growth spurt. It has been adopted as the foundation of the Sport for Life concept in Canada.”<sup>2</sup>

8. The Expert Group further outlines the need for a child’s brain to be mature enough (nerve cells able to make the connections) and a child’s body being ready (muscles strong enough) for a child to learn the fundamental movement skills.<sup>3</sup> They also discuss optimum times for learning skills.

9. A further document discusses athletes with a disability “No Accidental Champions,”

“As they mature to adulthood, children and youth pass through a series of developmental stages that affect the development of their physical, mental, cognitive and emotional capacities they use to participate in physical activity and sport. This fact holds true for persons with and without disabilities, though the rate and extent of development may vary depending on the type of disability.”<sup>4</sup>

10. For children who are born with no or limited vision, there can be a significant impact on the time when the brain is mature enough for motor learning, as well as the body (muscles) are ready.

11. Ferrell<sup>5</sup> outlines a number of ways early vision impairment impacts acquisition of motor skills in the infant. These include lack of or impaired hand staring (beginning awareness of self) and lack of incentive to turn to sound (beginning head/body movement) to name two of a number of early movement milestones which are affected by lack of vision stimulus. She notes the presence in visually

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<sup>2</sup> Canadian Sport for Life, “*What is Physical Literacy*” Retrieved September 30, 2013 from <http://canadiansportforlife.ca/what-physical-literacy-0>

<sup>3</sup> Canadian Sport for Life “More about Fundamental Skills” Retrieved September 30, 2013 from <http://canadiansportforlife.ca/physical-literacy/more-about-fundamental-skills>

<sup>4</sup> Higgs, C., Bluehardt, M., Balyi, I., Way, R., Jurbala, P., Legg, D., *No Accidental Champions: Long-Term Athlete Development for Athletes with Disabilities, 2<sup>nd</sup> Edition*, Published by Canadian Sport Centres. Available at <http://canadiansportforlife.ca/sites/default/files/flipbooks/noaccidental2/NoAccidentalChampions.html#/2/>, Page 9

<sup>5</sup> Ferrell, K.M. (2011). *Reach Out and Teach: Helping your Child Who is Visually Impaired Learn and Grow*. New York, NY: AFB Press

impaired infants of low trunk and abdominal muscle tone (core) affecting balance as a result of insufficient motivation to and experience at pushing up on their hands and arms when on their tummy. Not only is motivation to move impacted, so is learning by watching.

“The most noticeable delay in development for visually impaired children is in motor areas. Since vision is a motivating sense, many of the motor milestones (e.g., head control, erect posture, reach, locomotion) may fail to occur when expected.”<sup>6</sup>

12. Lieberman, Ponchillia, and Ponchillia note poor balance and head balance due to little or no incentive to lift the head and look around. Protective reactions (when falling) can also be impacted. Anthony (in Lieberman, Ponchillia, and Ponchillia) also outlines how a compromised optical righting reflex (typical at 2 months) impacts the development of neck trunk and upper extremity muscles.<sup>7</sup>
13. Motor development is impacted by the impact on other domains such as concept development, emerging comprehension and object permanence. Babies do not know initially that an object exists unless they are in direct sensory contact with the object. Lacking vision – the way objects come and go seems by magic. “Object permanence is usually the first measure of intelligence and is a visual skill”.<sup>8</sup> Object constancy, cause and effect and object permanence all impact motor skill acquisition from infancy through development of physical literacy. This is in strong contrast to the incidental learning of children who are sighted.
14. “Cause-effect events provide the next problem area since vision is required to observe “what happens when...” ...Concept development may be the most critical cognitive area for young visually impaired children, since such concepts will form the basis for all further cognitive growth.”<sup>9</sup>
15. Ferrell, as well as Lieberman, Ponchillia, and Ponchillia also note poor balance and head balance - due to little or no incentive to lift the head and look around. Poor static balance, dynamic balance, protective reactions (when falling), and poor sitting

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<sup>6</sup> Bishop, V.E, (1996) *Preschool Children with Visual Impairments*, for Texas School for the Blind and Visually Impaired. Retrieved from <http://www.tsbvi.edu/curriculum-a-publications/3/1069-preschool-children-with-visual-impairments-by-virginia-bishop>

<sup>7</sup> Lieberman, L.J, Ponchillia P.E, & Ponchillia, S.V (2013) *Physical Education and Sports for People with Visual Impairments and Deafblindness: Foundations of Instruction*, New York, NY: AFB Press

<sup>8</sup> Bishop, V.E, (1996)

<sup>9</sup> Bishop, V.E, (1996)

positions are also all noted. These all have the result of delaying development of Physical Literacy in the child who is blind or visually impaired.

16. In *Physical Education and Sports for People with Visual Impairments and Deafblindness: Foundations of Instruction*, Anthony references and expands on Brambring who outlined the primary functions of vision in acquisition of motor skills being:

- Providing an incentive to move
- Allowing simultaneous and precise perception of the visible environment and the relationships of the objects within it
- Serving a protective function by enabling anticipation of dangerous situations
- Enabling control of movement by tracking its performance
- Providing feedback to perfect motor performance based on monitoring the quality of executed movements
- Obtaining social feedback from seeing others' facial expressions or body language that invite or discourage movement
- Observation of others that encourages imitation of movement<sup>10</sup>

17. This is a small sample of the information available on the impact of early low vision on early motor development. Low or no vision continues to have an impact on motor development and performance through development of fundamental movement skills, physical literacy, and sport performance. Differences between athletes who have lost their vision after acquiring their sport skills, and athletes who never had vision or typical vision can be apparent. It is hypothesized that, putting together what we know about development of Physical Literacy, and about motor development in infants and children who are blind or visually impaired, athletes who have developed physical literacy (before the onset of the growth spurt – at the optimum stage of growth and development) and with vision, would be at an advantage in high performance sport over athletes who had limited or no vision at birth or in their early years when physical literacy should be developing. This could certainly result in differences in “in competition” activity limitations impacting performance.

18. While we do not know exactly how or if this would be incorporated into a classification system, a comprehensive literature review should be completed and appropriate research done. We do not have the answer at this point, but the code needs to enable the discussion, research, and exploration to occur.

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<sup>10</sup> Lieberman, L.J, Ponchillia P.E, & Ponchillia, S.V (2013): Chapter 6. Anthony, T, Movement and Play in Early Childhood Development, p.165



## **B. Classification Master List (Code, Section 2.6)**

19. Section 2.6.1 of the Code sets out what the Master List of athletes shall contain. This provision provides:

“To assist in the process of classification, IFs shall maintain a Classification Master List of Athletes, which should include, at the very minimum the Athlete’s name, country, Sport Class and Sport Class Status. The Classification Master List should identify Athletes that enter international competitions.”

20. There is no provision anywhere in section 2.6 of the Code to ensure that the information on the Master List is collected and stored securely to prevent unauthorized access. CBSA respectfully submits that access to this Master List should not be available to the public. This is because this kind of disclosure of an athlete’s disability may prejudice the athlete in other aspects of their life such as when they are applying for a job even after their athletic career has ended. In many countries, an athlete has a choice about whether they self identify that they have a disability when they are applying for employment. Publishing the Master List to the general public could interfere with an athlete’s ability to exercise their choice on what they choose to disclose.
21. CBSA does understand the need for various competitors, coaches and IPC members to have access to the Master List for the purpose of filing protests, pointing out incorrect information concerning an athlete’s sport class status, etc. This can be provided by putting the Master List on a password protected website which would be accessible to the groups mentioned above. Once an athlete has retired from competition, all of their information should be removed from the Master List and all of the medical documentation that the IFs have collected about an athlete should be destroyed or returned to the athlete.
22. While some people may suggest this information is already online after the results of competitions are published, this difficulty can be dealt with by only publishing the results by classification without defining the meaning of the various classes in the results themselves. That way, an employer or other entity wishing to discriminate on the basis of disability will have to pursue the issue much more vigorously, thereby increasing the likelihood that such discrimination would ultimately be discovered.

## **C. Duties of Classifiers (Code Section 3)**

23. CBSA submits that the words “general qualifications” should be added to Section 3.1.1 of the Code between the words “duties” and “responsibilities”. This will make it clear that general qualification standards for classifiers will be set in the Code and not within the rules of each IF. The benefit of this approach is to ensure that classifiers are trained to the same consistent standards irrespective of the sport for which they are providing classification services. To the extent that each sport needs

to have different qualification standards for their classifiers, the Code should require each IF to put those qualification standards in their classification rules. The qualifications must include medical qualifications, functional qualifications (a profession which has the ability to assess how an impairment affects a person in their daily life) and sports technical qualifications specific to the sport for which the athlete is seeking to be classified.

24. CBSA submits that the word “should” in clause 3.3.3 should be changed to “shall”. This will ensure that the classifier or classifiers at a competition cannot be compromised by having their duties as a classifier encroached upon by any other responsibilities. In addition, the Head of Classification and the Chief Classifier should not be permitted to be members of a classification panel to ensure that an athlete will have access to impartial adjudicators if a protest is made. Similarly, the Classification Director or Chief Classifier should not be sitting on any classification panel where they lack the qualifications to classify an athlete with a specific impairment at first instance. While CBSA acknowledges that this imposes a financial burden on some smaller sports, this burden is definitely outweighed by ensuring that all classifications are conducted fairly with the athletes’ rights being fully protected.
25. Finally, CBSA submits that a classifier should have a specified amount of experience performing classifications before they can become a Chief Classifier. This could be specified as classifying at a specified number of competitions of a certain level, number of athletes classified, etc. While CBSA acknowledges that this additional requirement will impose a financial burden on some smaller sports, this burden on the sports system is definitely outweighed by ensuring that all classifications are conducted fairly with the athletes’ rights being fully protected.

#### **D. Sport Class Changes, (Code Section 6.4)**

26. The language of Section 6.4 is confusing. This provision states: “6.4.1 IFs shall state clearly the consequences and procedures relating to sport class changes on results, records, rankings and allocated medals.”
27. On one interpretation of this provision, its wording contradicts the purposes of the Code as set out in section 2.1. If the wording of section 2.1 is considered when interpreting this section of the Code, an athlete would be disqualified from the competition if her/his sport class changes if a successful protest or appeal is lodged after the competition has concluded. If the competition has not been held yet, the athlete should be permitted to compete in her/his new class if s/he remains eligible to compete or declared ineligible if s/he doesn’t satisfy the requirements of Section 5 of the Code and the corresponding IF rules. Section 7 of the Code could be combined with Section 6 to group these sorts of issues better.
28. Another possible interpretation of this provision would be to leave this issue exclusively in the hands of the IF which promotes the possibility of inconsistent results. This could create public relations and other related problems for the

Paralympic movement since there is no clear method for the public to understand why their favorite athletes are not competing in the class they were expected to compete in. The Code should be providing more guidance to IFs in this important area.

29. Further clarity on the consequences and procedures relating to Sport Class Changes should be outlined somewhere in the Code or in a best practice. There are a number of considerations to be undertaken as changes could result from everything from misrepresentation to an error on the part of the system. This should be thoroughly explored.

## **E. Protests and Appeals, (Code Section 8)**

30. CBSA submits that an additional provision should be added to this section of the Code which would require a party to exhaust all of their protest remedies before commencing an appeal. The failure to do so shall result in their appeal being dismissed. This will prevent a party from initiating a multiplicity of proceedings which could put an undue burden on the classification system during a competition. Similarly, the time period for commencing an appeal should be suspended from running until the parties have received the decision on the related protest that was lodged. These stipulations all need to be included either in this Code, the International Standards: Protests and Appeals or in the Board of Appeal on Classification Rules found in the IPC Handbook. This must be done to prevent an athlete's right of appeal from being lost. This will require consequential amendments to clause 11 of the BAC Rules to increase the 24 hour appeal period in appropriate cases and to extend the general 15 day appeal period referred to throughout these rules. While CBSA would prefer these requirements be included in the Code itself for the purposes of clarity and intelligibility, it has no objection to the Committee including them in the Standard on Protests and Appeals. However, since these rights are important, spelling them out in multiple places may not be inappropriate.
31. CBSA questions why only the parties are to be advised of the results of any protest or appeal which has been lodged as expressed in section 8.3.1 of the Code. There is an educational value to the sports system as a whole for the results of a protest or appeal to be shared publicly. The sharing of these results may eliminate future protests and appeals based on the same grounds and/or provide guidance to panels who are considering similar issues on future protests or appeals. Athlete privacy can be protected by publishing protest and appeal decisions by number such as 2013/01 and following, and removing the names of any athletes involved before sharing them publicly. The parties should have access to an unredacted copy of the decision.
32. While some people may suggest that because of the low numbers involved in the sport, publishing the decisions with names removed may not protect athletes

sufficiently. Those in the know and with specific knowledge of the Paralympic sports system will always be aware of individual athletes who may be involved with specific protests. By removing the names, the athlete's identity is being protected from public disclosure just as the identity of a child is protected in criminal proceedings in many countries.

## **F. Failure to Attend an Evaluation (Code Sections 9.2 and 9.3)**

33. CBSA has a number of concerns with these provisions. First, the provisions should not provide for athletes to bring medical documentation with them to the evaluation. This documentation should be provided to the Chief Classifier well in advance of the competition to ensure that no further documentation is required before the athlete is classified at the competition. This will minimize the likelihood that a classification will not be completed thereby preventing a sport class from being awarded. It would be unfortunate for both the member nation and their athlete if they were unable to compete in circumstances that they did not know that the classifier required additional documentation for the first time at a competition site.
34. If invasive tests have to be performed, it may not be possible to have them performed in time by a licensed practitioner in the country where the competition is to be held. Cost of the testing may also be a factor since it would have to be borne privately. Since these tests are medical procedures being requested by a third party, there is a very real possibility that they may not be covered under a medical insurance plan.
35. A provision needs to be added to this portion of the Code to require IFs to indicate what clothing and equipment athletes are required to bring to be successfully classified. This will prevent challenges from athletes who were unaware of what was required of them.

## **G. Non Co-Operation (Code Section 10)**

36. An equally important issue is a failure of the athlete to comply with the requests of the classifier in order to complete the classification process. The reasons for these failures need to be explored more fully in the Code. There may, in some instances, be valid reasons why an athlete will refuse to complete a classification procedure. For example, in the area of vision impairment, there is a possibility that the athlete may have to undergo invasive procedures to complete the process. One such invasive procedure is the introduction of eye drops into the eye so that the classifier may properly visualize the athlete's eye condition. These sorts of invasive procedures may, in theory, result in the introduction of substances into an athlete's body that contravene WADA requirements and may therefore compromise an athlete's ability to compete. The drops themselves

may also trigger allergic reactions in some cases. The following safeguards must be added to the code:

- i. No classifier shall perform an invasive procedure on any athlete without the athlete's informed written consent. The consent process must be completed by the classifier and the consent shall not be coerced. CBSA has prepared a document that may be of assistance to vision classifiers for this purpose. We attach this for the Committee as an additional resource.
- ii. It is the obligation of the classifier to ensure that any drugs, eye drops or other substances introduced into the athlete's body during the classification process do not contravene WADA requirements. The classifier shall seal the bottle that was used to administer the drugs or eye drops until such time as the competition has been concluded so that the athlete may refer to it in the event of a positive drug test against them.
- iii. The onus should be on the athlete to ensure that any allergies to medications are fully disclosed to the classifier before a classification is undertaken. This can be achieved through disclosure in the medical documentation previously provided by the athlete's treating physician. If an allergy does exist, it is up to a classifier to offer reasonable alternatives to the athlete that would allow the classification process to be properly completed.

37. In other case is where an athlete fundamentally refuses to complete the process for an invalid reason, The Code should treat these sorts of refusals much more harshly than the category of refusals discussed above. In this second category, it is reasonable to treat the athlete as non co-operative. Where invasive procedures have to be performed, the athlete should only be regarded as unco-operative if other resources are available to complete the classification without affecting the athlete's allergies or ability to comply with WADA requirements, and, in the opinion of the panel, the athlete's decision not to consent to the procedure was unreasonable in the circumstances. Unreasonable behaviour in this regard should be determined based on the actions of a reasonable medical patient faced with the prospect of undergoing the same procedure as the athlete.

#### **H. Intentional Misrepresentation of Skills and/or Abilities (Code, section 11)**

38. These provisions should make it clear that the onus of proving that an athlete is intentionally misrepresenting their skills or abilities rests on the classifier. The standard of proof should be on the balance of probabilities. These two requirements must be added to this section to protect both athletes and classifiers.

39. If a finding of intentional misrepresentation is made by a classifier, there should be a hearing held before the Chief Classifier to ensure that all of the relevant information was considered by the original classifier and that the athlete has an opportunity to

contest the finding that was made before an impartial adjudicator that is familiar with the classification process. Further appeals and protests should be available under the protest and appeal standards.

40. Section 11.4 needs to be tightened up to disallow an athlete who has been found to have intentionally misrepresented their skills or abilities from being classified by any IF for the two year period. Otherwise, an athlete found guilty of misrepresentation can simply change sports and not suffer the adverse consequences mentioned in this section. Life time bans should be imposed by all IFs if the athlete is found guilty of misrepresentation for a second time.

#### **I. Support Personnel (Code Section 12)**

41. The same submissions which CBSA have made under Section 11 of the Code apply to these provisions as well.

#### **J. Penalties (Code Section 13)**

42. CBSA supports the general proposition that penalties imposed on athletes and support personnel should be disclosed. However, these disclosures should be limited to those committing infractions under sections 11 and 12 of the Code. There may be valid reasons why an athlete cannot complete a classification process and they should not face punishment either publicly or privately for this.
43. The other issue to consider is how broadly this information should be published. A finding that an athlete or support person has intentionally misrepresented or counseled someone to intentionally misrepresent their skills or abilities may have consequences for them that go beyond the sports arena. While this information may be useful for a potential future employer to discover regarding a potential employee's character, is it appropriate for the sports system to exact its revenge for such a breach of a classification code indefinitely where the person is employed outside the sports system? CBSA urges the Committee to carefully consider this issue.

#### **K. Education and Awareness (Code Section 15)**

44. CBSA submits that the following additional bullet points be added to clause 15.1.1 of the Code:
- Intentional Misrepresentation
  - Athlete support personnel rights and responsibilities
45. An additional point should be added to clause 15.1 of the Code requiring IPC to establish best practices in this area.

46. The word “should” in clause 15.2.2 should be changed to “shall” to impose a strict obligation that all research concerning the establishment of classification rules shall be evidence based and ethical.
47. Finally, research should also include specialties that are most relevant to each category of impairment. For example, vision classification should be based on medical criteria relating to a number of parameters of or components of the vision system, functional vision assessment, Physical Literacy development research, motor learning factors, long term athlete development model application, sports specific assessment and other factors.

#### **L. Roles and Responsibilities of the IPC (Code Section 16)**

48. Section 16.1.1 should be amended to impose an obligation on the IPC to review and consult with its membership on the Code at a maximum every four years. This will ensure that the Code remains relevant to changes in technology, research and other factors that may affect the proper classification of athletes. Shorter review periods should also be permissible at the discretion of the IPC.
49. The IPC should also be required to provide classification education to National Paralympic Committees and IFs. This education should relate both to existing practices and for new changes to the Code that IPC has adopted. This education can be conducted either by holding education sessions, publishing best practices or both.
50. Clause 16.1.5 should be modified to allow the IPC to have the ability to review an IF’s Code compliance and to recommend timelines for the IF to become code compliant before the other sanctions are imposed.
51. Clause 16.2.1 should be modified to hold IFs to the same review schedule as the IPC to ensure that classification rules remain compliant with changes to the Code.

#### **M. Acceptance, Implementation, Compliance and Modifications (Code Section 17)**

52. It is unreasonable for the IPC to set a specific firm date in clauses 17.3.1 or 17.3.2 for all IFs and the IPC itself to become code compliant and implement the Code given the amount of research that still has to be done. Instead, clause 17.4.1 should be amended to require the IPC and individual IFs to report annually on the progress they have made to become code compliant. All IFs should report this information to both their members and to the IPC itself.

#### **N. Glossary, (Code, Appendix 2)**

53. The definition of Athlete Support Personnel should be broadened to include a sighted guide and a field of play assistant. These individuals will be of considerable assistance to those athletes with more severe levels of impairment.

54. The definition of Classification Master List should be changed in accordance with CBSA's submissions on Section 2.6 of the Code, above.

55. Finally, we also note that there are many terms which are defined in the Glossary which are not used in the Code itself. These should be updated and moved to the front of the document so that terms are defined before they are viewed in the text of the document itself.

## **O. Governing Law**

56. The Code currently does not contain a governing law provision which would provide a mechanism for interpretation of its provisions and for resolving disputes between two or more affected parties. CBSA has no preference as to which IPC member's law shall be the governing law under the Code. We merely wish to identify that the laws of one country need to be selected to ensure that the provisions of the Code are interpreted consistently no matter where competitions are held. It is suggested that the choice of law provision, once worded, be included as clause 18.3 of the Code with the remainder of section 18 being numbered sequentially thereafter.

## **P. Accessibility of the Code**

57. In preparing the revised Code, the Committee needs to keep in mind that the audience of the Code has changed since its last release. In addition to athletes with physical disabilities and vision impairments, the Paralympic movement now includes athletes with intellectual disabilities. Either the Code itself or any documents the Committee chooses to produce to explain the Code's provisions must be written in plain language to ensure that they are understandable by all athletes involved in the Paralympic movement. Obligations are imposed on athletes throughout the Code. These obligations must be understood by all athletes to ensure that actions of classifiers are not challenged on appeal due to allegations that an athlete was unable to understand or comply with her/his obligations.

58. Accessibility of the Code is also important for athletes with vision impairments. In addition to producing the final document in pdf, the document should be made available in HTML format so that it is accessible to people who are blind or partially sighted on smart phones and other mobile devices. Currently, it is not always possible for people who are blind or partially sighted to read pdf publications on these devices. This is especially so if the pdf is stored in image format. Providing an HTML document will ensure that it is accessible by all athletes, irrespective of the device they use to access the provisions of the Code.

59. The presentation of numbering of the provisions of the Code is very confusing for those individuals who access it using speech technology because it contains extraneous information. For example, Section 10.2 which deals with the failure of an athlete to co-operate during the classification process, is spoken using both the



Jaws and System Access screen readers as 10.2 52B, with the text following immediately thereafter as the next set of characters. CBSA requests that this extraneous information be removed and adequate spacing be provided between the provision number and the start of the text. This will eliminate a number of mispronunciations and distractions for the reader resulting from the inclusion of extraneous information. While these additional characters may cause the Code to be more visually attractive, they create both a significant annoyance and a barrier to access for athletes who are blind. It is quite acceptable to number the provisions as was done in the International Standards: Protests and Appeals, since this document read much better with the screen readers mentioned above.

### **III. International Standard on Athlete Evaluation**

#### **Q. Accessibility of Rules, (International Standard on Athlete Evaluation, Sect. 2.6)**

60. The term “easily accessible format” needs to be defined. At a minimum, the rules should be legible and understandable to all athletes irrespective of their disability. For athletes who have vision impairments, this may require the IPC to make these rules available in Braille, large print, HTML and other formats so that they are readable by people with vision impairments, irrespective of whether they own computer technology or not. Other disability groups may have additional needs. It is beyond the expertise of CBSA to comment on what those needs might be.

#### **R. National Level Classifications, (International Standard on Athlete Evaluation, section 2.8)**

61. CBSA strongly supports the requirement that an athlete should be classified nationally before they attend an international competition. However, the IPC must be prepared to certify more internationally trained classifiers to allow this to happen effectively, and to allow international classifiers to ensure appropriate training of national classifiers. In Canada, for example, the IPC has only allowed two vision classifiers to be internationally certified for the entire country. Given Canada’s geographic size and the need to provide classification services in two official languages, it is extremely difficult for Canadian athletes who are blind or partially sighted to receive a classification before competing internationally. French Canadian athletes currently cannot be classified in their own language. Our federal government requires us to provide these sorts of services in both official languages within Canada. This is independent of what the IPC may require internationally.

62. Since athletes who have a national classification will often wish to compete internationally, training standards of national classifiers must strictly follow international classification training standards. As such, the IPC and IFs need to make this training available to more people.

## **S. Sport Class Status, (International Standard on Athlete Evaluation, Section 3)**

63. In section 3.3.3, CBSA proposes that an option for classifiers be added to allow for a review of a classification of an athlete by a specified date. That way, the athlete's classification may be treated as stable for the intervening review period, subject to any protests or appeals that may be filed. This additional option for classifiers will add more stability to the classification process and will remove additional stresses from athletes who will not have to be classified as often before their competitions start.
64. In addition with respect to R and C classifications, the IPC needs to ensure that these designations are assigned consistently when an individual has a fluctuating impairment, such as athletes who have albinism. The classification standards themselves also need to allow for some fluctuation in cases like these where an athlete's level of vision may fluctuate for reasons that are beyond an athlete's control.
65. CBSA also urges the Committee to include a "classification incomplete" category to address those situations where additional medical testing is required but is not available at the competition site. While the athlete would not be able to compete in these circumstances, the athlete would avoid the stigma of being found to be not eligible and have to overcome that barrier in future classifications. The athlete would also have the ability to protest or appeal the need for the additional medical documentation if s/he determined the request for it to be unreasonable.

## **T. Pre Competition Tasks, (International Standard on Athlete Evaluation, Section 5)**

66. CBSA submits that the words, "or their designate" be added to sections 5.3.2, 5.4.1 and 5.6.1 to the Standard on Athlete Evaluation. This would allow classifiers to delegate their duties to another classifier if the workload so requires. In order to maintain consistency though, the work of the delegate should be reviewed by the Chief Classifier before any decisions are made to request further documentation from an athlete or before declaring an athlete ineligible to compete.

## **U. Athlete Presentation, (International Standard on Athlete Evaluation Section 6)**

67. CBSA re-iterates the same points it made in relation to Sections 9 and 10 of the Code, above. Medical documentation relating to an athlete's sport class should be provided to the Chief Classifier or her/his designate well in advance of the competition so that it may be reviewed for completeness.
68. CBSA submits that section 6.1.3 should be amended to require the athlete to bring a representative who is generally familiar with the athlete's medical condition and

capabilities such as a coach, support person or team manager. Leaving it to the NPC to appoint someone to attend with the athlete opens the process up to the potential for cheating since the representative may or may not know if the athlete is misrepresenting their impairment or abilities to the classification panel.

69. CBSA submits that changes should be made to 6.2.3 of the Standard on Athlete Evaluation regarding the use of invasive procedures by the classifier. It has already made detailed submissions on this issue in its commentary on Sections 9 and 10 of the Code, above. The classifier must be required to provide additional options when performing a test or procedure if the invasion of bodily integrity is required to complete a classification where the athlete has an allergy or other medical condition which prevents the completion of the classification based on the classifier's preferred choice of procedure.
70. In the Classification Process Briefing described in section 6.3, the classifier should be required to again remind the athlete that it is improper to misrepresent their skills or abilities and the consequences for the athlete if they do so. This will give the athlete one last opportunity to ask any questions about this important area before they go through the classification process.
71. Section 6.4 of the Standard on Athlete Evaluation should be modified to also protect the classifier from liability in the event of an athlete's injury or death due to a medical or drug reaction associated with the classification process. Failure to provide this kind of indemnities for classifiers may restrict the number of individuals who may wish to become involved in assisting the Paralympic community in this important area.
72. A further amendment is required to section 6.4 of the Standard on Athlete Evaluation to allow the video to be reviewed as part of a classification protest or appeal process. That way, the panel hearing the appeal or protest will have access to the best evidence available when adjudicating on the protest or appeal.

## **V. Athlete Assessment (International Standard on Athlete Evaluation, section 7)**

73. CBSA requests that the words "in that competition" be added to clause 7.6.2. The current wording of the provision suggests that an athlete may be ineligible to compete forever. This is an unfair result especially if the athlete's impairment is degenerative or if an athlete has an unstable impairment such as albinism. In this case, the athlete should receive a classification of not eligible and confirmed but should be urged to provide medical documentation of a change in impairment, when available, which would be reviewed. If the documented change in impairment was determined to be sufficient, the athlete would be permitted to enter classification again.

74. CBSA submits that all references to first appearance in section 7 should be changed to finals. This is because athletes may exert a different level of effort in finals than they would during the heats of an event. The same applies to the entirety of section 9 entitled First Appearances.

## **IV. International Standard: Protests and Appeals**

### **W. General Comments**

75. CBSA repeats its submissions made under Section 8 of the Code, above. In addition, CBSA submits that the organization of this standard may be improved by moving the section on protests in exceptional circumstances from section 19 to the end of section 5 of this standard.

### **X. Protest (International Standard: Protest and Appeals Section 1)**

76. CBSA is generally happy with the definition of the term “protest”. However, the final words of the definition suggest by the sport class of the athlete being “resolved” that the decision on a protest is final. This is not always the case. Athletes do and should have a right of appeal if the classification process as defined elsewhere in the Code and in the accompanying standards is not followed or if procedural errors are made during the process. A better choice of words for the ending of the definition would be “and adjudicated upon.” That way, the protest panel will be required to make a decision on the validity of the protest while the athlete will better understand that they have a right of appeal under certain limited circumstances.

### **Y. General Principles for Handling Protests, (International Standard: Protests and Appeals Section 2)**

77. CBSA submits that section 2.2 of this standard should be amended to require that all protests be submitted in writing using the English language. This will make it much easier for the protest committee and/or the appeal panel to know exactly what issues are to be considered when adjudicating on the protest. While this issue is dealt with in Section 6.2.4 of the standard, CBSA submits that it would be better placed here.

78. CBSA strongly disagrees with the wording of Section 2.7 of this standard. Under no circumstances should a classifier who is involved in a decision which has been protested be involved as part of the panel adjudicating on the protest. This creates a significant potential for both structural bias and a reasonable apprehension of bias in the process. It also calls into question the fairness and integrity of the protest process generally. Such an approach could, if exposed, create significant public relations difficulties for the IPC at a time when the IPC is attempting to grow the popularity of the movement. The same comments also apply with Section 6.3.2 of this Standard which deals with the same issue.

## **Z. Protest Opportunities, (Standard: Protest and Appeals, Section 4)**

79. CBSA submits that under section 4.3.2, a designation of review with a date as CBSA recommended be added earlier in these submissions, should be treated in the same fashion as a confirmed classification during the period between the date the classification was issued and the review date. This is because the classification panel has determined that the athlete does not need to be reclassified during the review period. All rights of protest should be the same for these categories of athlete classification. CBSA re-emphasizes the need to allow for a review with a date category to deal with deteriorating ability or where the impairment is unstable. All of these comments apply equally to section 4.5 of this standard.
80. CBSA also believes that a category of 'incomplete' needs to be added to Sections 4.3 and 4.5. An incomplete status should not be eligible for protest or appeal unless a procedural error has been committed resulting in the finding that the classification was incomplete.

### **AA. Protest Procedures During Competitions**

81. CBSA submits that the Chief Classifier may potentially be in conflict of interest if s/he files a protest under section 6.2.1 and is the person receiving protests under section 6.2.2. The Standard must require the Chief Classifier for the competition to designate another appropriately qualified classifier to carry out the responsibilities of a Chief Classifier in the event the original Chief Classifier has protested the classification of a particular athlete.
82. CBSA submits that under section 6.2.4 of the standard which allows for the admission of other evidence, video evidence apart from that taken during the classification process and other evidence from social media should only be admitted on a protest or appeal with leave of the panel hearing the protest or appeal. That way, the opposing party will have an opportunity to challenge the reliability, materiality or admissibility of that evidence before it is reviewed by the protest or appeal panel. It may, in certain circumstances, be necessary for the parties to call expert evidence on the admissibility of video or other forms of photographic evidence on matters as to whether the video has been tampered with, how the frame rates of the video capture may affect how an athlete's performance is shown on the video screen, the effect of camera angles, etc. The Committee itself may need to seek expert advice on these issues before agreeing to allow such evidence on protests and appeals at all.
83. Section 6.3.3 of this standard should be amended to allow the protest panel to receive all evidence provided with a protest, keeping in mind the comments which CBSA has made concerning section 6.2.4 above.
84. Section 6.3.4 of this standard is also problematic. While the panel should be able to seek the advice of appropriate medical and sports experts in adjudicating upon a

protest, the parties should also have the opportunity to ask questions of the experts being used and when necessary, to challenge the qualifications of the experts to render any opinions they have on the subject of the protest. Experts need to be fair, impartial and qualified to give the opinions they are giving. They should not be permitted to act as an advocate for a particular athlete, country or for their own academic or professional interests. It must be remembered that the athlete or support personnel do not have the authority to question the classifiers on the protest panel in this way—just the experts that the panel of classifiers may retain to assist them in making their decision.

## **BB. Missing Provisions**

85. CBSA is concerned that this Standard does not outline anywhere what the standard and burden of proof is on protests to determine which party will be successful. There are two schools of thought which CBSA has been wrestling with on this issue. The first is that classification protests are based primarily on disagreements concerning the interpretation of medical, functional and sports performance information—all of which is evaluated by experts at first instance. Experts viewing the same body of information, acting reasonably, may disagree with each other. Both conclusions may be acknowledged by other experts as being reasonable or acceptable but may be viewed as wrong in their own opinion. Proponents of this line of thinking would support that in order to overturn a decision of a classification panel, the party filing the protest has the onus of proving that the decision made by the classification panel was unreasonable. That way, the adjudicating party will not have to decide which expert or experts are “correct”. While this standard of proof is higher than the traditional balance of probabilities standard of proof, it will force the parties to think carefully about filing a protest where the conduct of experts in their field is at issue. Procedural errors, by their very nature, will almost always be classified as unreasonable errors since they affect the fairness of the process itself.
86. The other school of thought suggests that where a sport class of ‘not eligible’ is made by the first panel, the second panel should be able to determine if the result is correct. In that instance, the second panel should not be able to access the findings of the first panel. In such a case, the first decision should be treated as a nullity. This though would diminish the value of the first set of classifiers’ work without explicitly pointing out that the first panel’s decision was wrong.
87. CBSA supports the first set of arguments since it adds additional accountability for classifiers to get the decision correct at first instance and requires classifiers to consider their own opinions when making decisions. It also exposes their process to review and scrutiny by other similarly qualified people. It also prevents decisions from being overturned based merely on differing opinions. This is important since classification of athletes is an art where factors are being weighed, rather than a science which is based on empirical information alone.

88. In cases where an athlete is deemed not to be eligible by the first panel, the second panel should be the last avenue of protest available of the athlete. However, these athletes should retain their appeal remedies. This approach would recognize that the athlete has already been reviewed twice and additional reviews may unduly tax the classification system.

### **CC. Appeal Jurisdiction: International Standard: Protests and Appeals, Section 11)**

89. Section 11.2 should be amended to require the appeal body to remit the decision back to a differently constituted classification panel to determine a sport class status for an athlete if the panel hearing the appeal decides that the appeal should be allowed. These concerns are dealt with in part in section 15 of this standard. However, there is no requirement that a differently constituted classification panel be created to make a decision in accordance with the appeal panel's instructions.

### **DD. Appeal Submission (Standard on Protests and Appeals Section 12)**

90. CBSA submits that there should be time limits for submitting appeals. The Committee should consider the same time periods as set out in the Board of Appeal on Classification Rules as set forth in the IPC Handbook unless the interests of justice require that an appeal period be extended. This means that the time period for launching an appeal would be fifteen days from which the decision being appealed was made or from the date of decision on the protest. A provision should be added to the rule to extend the time for filing an appeal in circumstances where evidence is uncovered to suggest that an athlete has misrepresented their skills or abilities during a competition or if it is in the interests of justice to extend the time for filing an appeal. . The Appeal Panel should be given the task of determining whether the extension should be granted on the facts of each case.

91. If an athlete believes that there is new information resulting in them being eligible to compete in a different sport class, they can and should be able to apply to be reclassified after providing the new information to a classification panel. Appeal tribunals can only decide appeals by considering the same information that was before the classification panel at first instance unless leave is granted by the panel to consider additional evidence, otherwise known as fresh evidence.

## **V. International Standard: Classifier Certification and Training**

### **EE. General Comments**

92. One of the most important issues that the new standard needs to address is the disparity in the availability of trained classifiers in all parts of the world. Developing countries have a massive shortage of classifiers which makes it difficult for these countries to identify potential talent. Even in the developed world, there are shortages of trained classifiers. In Canada, for example, there are only two

internationally certified vision classifiers for the entire country while Europe appears to have a much larger number of certified vision classifiers. These disparities must be addressed by the IPC and individual IFS if the Code and accompanying standards are to be implemented and enforced correctly.

#### **FF. Classification Personnel, (International Standard: Classifier Certification and Training Section 1)**

93. Section 1.3 of this standard should be amended to require the Chief Classifier to sign off on the allocation of a sport class to a particular athlete. This will permit an additional level of scrutiny of the classification panel's work and should serve to eliminate some protests and appeals. It will also provide an opportunity for the Chief Classifier to identify potential deficiencies in the training of the classifiers at a competition and provide an opportunity for any deficiencies to be corrected without an athlete's rights being prejudiced.
94. CBSA submits that the types of personnel who may be eligible to sit on classification panels as defined in section 1.6 should be broadened to include specialists in teaching athletes with a vision impairment. These may include teachers of the visually impaired, rehabilitation teachers or orientation and mobility instructors. These categories of individuals are best-suited to comment on how an athlete's vision impairment has affected them in performing activities of daily living. Physiotherapists and occupational therapists would not have the necessary qualifications or experience to make these kinds of assessments in the vision impairment context.

#### **GG. Classifier Certification (International Standard: Classifier Certification and Training Section 2)**

95. CBSA would like to see an additional category added as section 2.4.4 called a Classifier Educator or Classifier Level 3. This individual should have significant experience as a Chief Classifier. S/he should then be given responsibility for running classifier certification courses for IFS. This individual may also assist national organizations with training national classifiers, thereby building additional capacity within the sports system.

#### **HH. Assessing Competencies (International Standard: Classifier Certification and Training section 3)**

96. CBSA has a number of concerns with section 3.5 of this standard. In particular, CBSA is concerned that classifiers may be selected to sit on protest panels solely because they need to retain their certification rather than because they are the best person for the job in a particular case. Merit should never be discounted as the primary reason for selecting a classifier to sit on a protest panel.
97. Next, are appropriate mechanisms put in place to track:



- a) the number of hours a certified classifier spends on classification related activities,
- b) The number of athletes a classifier has classified during the certification period;
- c) The number of athletes a classifier has classified which have been protested or appealed, (nowhere is it mentioned whether the protests or appeals are successful which too is an important criteria), and
- d) Number of athletes who have been deemed ineligible to compete.

98. The IPC should build specific monitoring criteria into this standard to ensure that these lofty but important goals are measurable and achievable for all classifiers. Mechanisms also need to be put in place to ensure that classifiers have experience in classifying athletes who turn out not to be eligible or athletes who protest the sport class that is ultimately given to them.

## **JJ. Responsibilities and Duties of Classification Personnel (International Standard: Classifier Certification and Training Section 5)**

99. CBSA requests that Section 5 of this standard be amended to allow the head of classification to delegate certain tasks to administrative personnel under her/his supervision. Such tasks would include those tasks related to creating and updating the databases described in section 5.2, organizing the classification venues at competitions and other tasks generally assigned to administrative personnel. No tasks should be assigned to administrative personnel which require the exercise of clinical judgment or any other matter relevant to the assignment of a sport class to an athlete. A similar approach should be taken to allow chief classifiers under section 5.4 to delegate administrative duties to administrative personnel under their supervision for a particular competition.

100. Finally, CBSA questions why only trainees are required not to have any other duties assigned to them by their country of origin at a competition. This should be a requirement for all classifiers to ensure complete separation of the classification system from team loyalties.

## **KK. Classifier Code of Conduct (International Standard: Classifier Certification and Training Section 6)**

101. One issue that is not covered off in section 6.1.1 concerns the provision of medical advice concerning a condition that a classifier may discover when evaluating an athlete which may not be known to the athlete her/himself. CBSA submits that an onus should be put on the classifier to inform the athlete about any medical conditions they discover which may require treatment and to suggest a referral to an individual licensed in the country where the classification takes place or in the athlete's home country so that the athlete can be treated appropriately. Classifiers should not be asked or required to provide treatment in a country where they are not licensed to provide medical services. By taking this approach,

classifiers will still be complying with their Hippocratic Oath, treating an athlete as a person and with dignity and maintaining their professional integrity.

102. Section 6.2 of the policy should be amended to add all traditional forms of discrimination such as age, gender, sexual orientation, race, religion, disability or economic status. Codifying these requirements will only serve to ensure that the classification process is fair for everybody involved.

## **VI. Conclusion**

103. CBSA thanks the Classification Committee of the IPC for considering these comments. We look forward to reviewing the next edition of the Classification Code and applicable international standards during the next round of consultations.

All of which is respectfully submitted:

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President, Canadian Blind Sports Association

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