

Class Actions

Legal teamwork helps score \$30-million settlement in junior hockey class actions

By **John Schofield**

(May 26, 2020, 11:55 AM EDT) -- A recent \$30-million settlement in three class action lawsuits involving the Canadian Hockey League (CHL) and former players marks the end of a hard-fought, five-year legal battle in three provinces that required close co-operation by three law firms amid a rapidly shifting legislative landscape, said one of the lead lawyers.

"It was the first case in my career where the clients were effectively legislated out of their class action," said Ted Charney, senior partner at Toronto-based Charney Lawyers. "That's one of the most extraordinary facets of these cases — this experience of being the recipient of a legislative decision in almost every province of the country."



Ted Charney, Charney Lawyers

One by one, provincial governments enacted special provisions that exempted junior hockey players from employment standards legislation, said Charney. As a result, the Quebec Major Junior Hockey League (QMJHL), the Ontario Hockey League (OHL) and the Western Hockey League (WHL) succeeded in capping the class and preventing the case from going forward into future seasons.

"Sometimes they had to wait until a new government came into power," he told *The Lawyer's Daily*. "But eventually they got their way."

The CHL is an umbrella organization that represents the three, Canada-based major junior hockey leagues.

Announced late on May 15, the settlement — which Charney said was hammered out in a mediation session lasting two days and two nights — has yet to be approved by courts in Ontario, Quebec and Alberta. If finalized, he estimated it could benefit 3,500 to 4,000 players who played in the CHL leagues from approximately 2012 to 2018. The size of individual payouts will depend, in part, on the number of full seasons and half seasons they played in the leagues during the class period.

The three CHL employment class actions, *Berg v. Ontario Hockey League*, *Walter v. Western Hockey League* and *Walter v. Quebec Major Junior Hockey League Inc.*, were originally launched in late 2014, claiming that major junior hockey players in the CHL are employees subject to applicable employment standards legislation, including minimum wage.

The CHL contended that the players are student athletes and the OHL, WHL and QMJHL are development leagues. Lisa K. Talbot, a partner with Torys LLP, which represented the CHL throughout the proceedings, declined to comment pending court approvals of the settlement.

"Everyone thought it was in their best interests to come to a settlement," said Charney, "although we certainly had our share of battles."

Litigation in the class actions was made significantly more complicated by the fact they were being fought in three provinces. If possible, Charney advised, litigating in more than one jurisdiction should be avoided because of the duplication of work, the lack of efficiency and the opportunity for defendants to take "multiple kicks at the can" in certification motions and interlocutory motions.

Charney said the settlement could not have been achieved — or the actions advanced as far as they were — without strong support from two other firms: Toronto-based Goldblatt Partners LLP and Savonitto & Ass. Inc. of Montreal. "It was very much a team effort," he added. "I couldn't have done this without them."

It helps to be fighting for a cause you believe in. "If you're litigating class actions as counsel, it's extremely rewarding to be part of a cause that's being advanced by your clients," he observed. "We all believed that this was a worthy cause."

In a news release, the two players who initiated the class actions echoed that feeling.

"We launched these class actions to fight for the rights of the players and to make a positive change, and we're proud of what these lawsuits and this settlement have achieved," said Sam Berg and Lukas Walter. "While we can't do anything about the legislative amendments exempting players from employment standards legislation across the country, this settlement will put millions of dollars into the pockets of the hardworking players and will make a real difference in their lives."

While the settlement will not benefit future players, Charney said he believes that the public attention the class actions generated may have helped motivate the CHL to introduce programs that have enhanced the players' experience.



André Nowakowski, Miller Thomson LLP

André Nowakowski, a sports and entertainment lawyer with Miller Thomson LLP who also specializes in labour and employment law, said that sensing the right time for a settlement is always an intriguing exercise. "I think sometimes a win-win is evident when nobody's happy," he told *The Lawyer's Daily*. "It seems trite to say, but it's often the case." He said it was a significant achievement for the law firms advancing the class actions to get them certified in three provinces — but there was clearly no way of predicting that the legislative environment would shift under their feet.

He added, however, that provincial labour laws are replete with special provisions specifically aimed at certain workers, ranging from dentists and lawyers to transit workers.

"It's hard to see what goes into the policy-making in these cases, but it's obviously something that got somebody's attention," he said of the junior hockey provisions in provincial employment laws.

Charney agreed that the Canadian class actions bore some resemblance to previous and ongoing class actions being waged in the United States against the National Collegiate Athletic Association (NCAA) and minor league baseball. "But the kinds of revenues the NCAA brings in are so fantastic and so huge," he noted, "that the issues have taken on much more prominence there than here."

If you have any information, story ideas or news tips for The Lawyer's Daily please contact John Schofield at john.schofield@lexisnexis.ca or call (905) 415-5891.

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