

Class action lawsuit filed against Canadian Hockey League over wages

Suit alleges junior hockey league breaches minimum wage laws. President of league says it ‘will vigorously defend the way our teams operate.’



Chris So / Toronto Star

Former junior hockey player Sam Berg was paid \$50 a game. He's involved in a suit that alleges the Canadian Hockey League breaches minimum wage laws by underpaying its more than 1,300 players.

By: [Robert Cribb](#) Foreign, Published on Mon Oct 20 2014

An unprecedented class action lawsuit striking at the economic foundations of junior hockey in Canada alleges the Canadian Hockey League and its teams “conspired” to force young players into signing contracts that breach minimum wage laws.

A statement of claim filed in a Toronto court Friday and obtained by the Star, seeks \$180 million in outstanding wages, vacation, holiday and overtime pay and employer payroll contributions for thousands of young players given as little as \$35 a week for practices, games, training and travelling that could add up to more than full-time hours.

The league and its teams “conspired and agreed together . . . to act in concert to demand or require that all players sign a contract which the defendants knew was unlawful,” the claim alleges. “Such conduct was high-handed, outrageous, reckless, wanton, deliberate, callous, disgraceful, wilful and in complete disregard for the rights of the (players).”

The allegations have not been proved in court.

David Branch, president of the CHL, said Sunday that he hadn’t yet seen a copy of the lawsuit but said the league “will vigorously defend the way our teams operate.”

“Our position is our players are amateur student athletes and we provide the best playing experience to our 1,300 players. . . It’s important that we defend this because it could have a huge impact on all amateur sport in this country.”

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The CHL, which is the governing body for 60 teams in three regional leagues across Canada and the United States — the Ontario Hockey League (OHL), Western Hockey League (WHL) and Quebec Major Junior Hockey League (QMHL) — is the primary training and development ground for the National Hockey League.

Players typically range in age from 16 to 20 and must all sign standardized contracts detailing almost identical terms.

Payment is fixed depending on the age of players and the league in which they play. In the Ontario Hockey League (OHL), for example, players are paid between \$50 and \$120 a week for what could be up to 65 hours of work with no provisions for overtime, vacation or holiday pay, the statement of claim says.

The league’s teams are “unjustly enriched” with “hundreds of millions of dollars in revenues annually” based on the services provided by their young players, the claim alleges.

The class action seeks an order requiring the leagues to “disgorge all profits that the (players) generated as a result of benefitting from breaches” of minimum wage legislation.

Sam Berg, the 18-year-old son of former Toronto Maple Leaf and long-time NHL player Bill Berg, is the representative plaintiff named in the claim.

“I believe that we’ve got a really big complaint with the way the players are treated across the league,” said the former OHL player in an interview. “I just really want to help. I know when I was in this situation I would have appreciated someone being there for me.”

Berg says his teammates and friends talk about their role in metaphor: “A lot of us see it like OHL players are used like racing greyhounds. (The league and team owners) use us until they can’t anymore and then kick us to the side.”

Berg signed with the OHL’s Niagara IceDogs in 2013 at a weekly pay of \$50 for what amounted to between 32 and 44 hours a week during September and October of last year, the statement claims.

After being sent down to play in Junior B hockey, a shoulder injury ended his career.

He later learned his contract — mandatory for playing in the league — was never forwarded to the OHL for approval while he was playing with the IceDogs, the statement claims.

It was later revised by the league, the statement alleges.

“Knowing that Sam was injured and could not play, the OHL approved the contract but reduced his tuition package from four years to half a year,” it alleges.

His father, Bill Berg, said: “I feel like I let my son down.”

“It was me that brokered this deal with the IceDogs in good faith. It was important to my wife and I that he get his education. They agreed to a four-year scholarship once he played a single game in the league. We assumed the contract was guaranteed.”

Marty Williamson, coach and general manager of the IceDogs, says Berg was the one who breached the contract by not showing up for training camp this fall.

“He quit. He didn’t fulfil his contract to play for us. It’s a guaranteed contract as long as you play for the hockey team. You can’t just quit and not show up.”

Sam Berg, now a student at McMaster University, says his injury made playing impossible.

“The reality is that this happened to me and we have to stop it from happening to somebody else. I hope we bring awareness to an issue that has been suppressed by the league. I hope kids that have a passion for the game won’t be exploited for it.”

The statement of claim takes sharp aim at the CHL’s “education package,” which provides scholarship funding to players who register in a recognized college or university program within 18 months of their last game in the league.

Those who choose to extend their hockey careers by signing with professional teams in Europe or North America after their CHL careers, or those that fail to maintain a certain grade point average, lose that funding.

Those restrictions make it “extremely difficult” for players to meet the requirements of the program, the statement claims.

“On average, a teams’ total annual payout for all players on the team is \$30,000 a year toward the education package,” the statement reads. “This amount is equivalent to only four former players per team actually reaping the benefits of the education package.”

The CHL’s Branch denied the allegations in an interview.

“The restrictions around the educational package are not onerous. They’re very clear . . . We have the best scholarship program, we think, in this country, if not North America.”

Last year alone, the OHL and its 20 teams paid out more than \$2 million in scholarship funding, he said.

“When you consider the care and treatment our players receive with our scholarship program, no costs for housing, billeting and expense allowances. I am surprised (by the lawsuit).”

The key legal issue at play in the dispute is whether teenage hockey players are employees in the traditional definition or the equivalent of low-paid interns training for professional positions.

CHL officials have long contended that they are not employees but independent contractors or amateur student athletes who are paid an allowance for their participation in a hockey program.

The statement of claim cites a 2000 legal decision from the Tax Court of Canada that delved into the relationship between a player and a WHL club.

“The court found that the team operated a commercial organization carrying on business for profit and that the players were employees,” the statement of claim reads. “Despite the Tax Court of Canada ruling made some fourteen years ago, the defendants have failed to rewrite the contract or pay wages in accordance with applicable employment standards legislation.”

Toronto lawyer Ted Charney, who filed the statement of claim on behalf of players, says he believes there’s a strong case.

“For goodness sake, at least pay the players minimum wage. Everyone else in the country has to do that. Why don’t they? They’re going to have to deal with this issue head on now.”

There appears to be growing legal opinion in Canada that elite young players in the CHL are, in fact, employees.

In July, Montreal law firm Sylvestre Fafard Painchaud wrote a letter to [Unifor](#), obtained by the Star, advising one of Canada's largest unions that a lawsuit against the CHL was legally viable.

After an analysis of the CHL player payments and working conditions, the firm concluded "the legal status of the junior hockey players with their respective team is certainly one of an employee, pending some exceptions. This likely triggers recourse in remedy for breach of statutory minimum wage provisions, as brought by the Employment Standard Act in Quebec or in Ontario."

The league structure could be found to encompass "possible conspiracies, market restrictions, and abuse of dominance by the CHL and/or the teams. Yet, it remains unfairly detrimental to the economic interests of the junior hockey players," the Montreal firm concluded. "We believe that filing a nationwide class-action lawsuit based on the antitrust provisions of the Competition Act and Canadian provinces' labour legislation regarding minimum wage, would be the best approach."

Unifor (which represents Star journalists among its 300,000 members) did not proceed with a lawsuit.

Instead, Unifor president Jerry Dias says he's pushing the provincial government to establish a task force on junior hockey that will examine the treatment of players.

"There's no question the CHL is violating [minimum wage](#). These are for-profit organizations and there's no rhyme or reason why they should be circumventing the laws on minimum wage."

While the class action names the league and its teams, it could be expanded to name the directors of each club if they do not pay all outstanding wages, the statement reads.

The claim also seeks order restraining the league and its teams from "engaging in any form of reprisal" against players who participate in the suit.