

## Duff: Toronto lawyer says CHL lawsuit is cut-and-dried issue



Spitfires assistant coach D.J. Smith, left, Bob Boughner talk to their team during a time out during a playoff game in 2009. (TYLER BROWNBRIDGE/The Windsor Star)



[Bob Duff](#)

Oct 20, 2014 - 5:45 PM EDT

Last Updated: Oct 21, 2014 - 6:47 AM EDT

A Toronto lawyer feels the outcome of a \$180-million, class-action suit against the Canadian Hockey League will come down to one very cut-and-dried issue.

“What this case is really about is, ‘Are they employees?’” Ted Charney said of CHL players. “And the beauty of this case is that there’s only one real issue to be decided by the court, which makes it ideally suited for a class action.

“There’s one common issue, common to all the players and if the court rules them to be employees, then the teams have to pick it up to minimum wages.

“I think it’s as simple as that.”

The class-action suit that could cause the major junior hockey empire to crumble and cease to operate as it currently exists was brought forth by Charney Lawyers, who commenced it on behalf of all current and some former players in the Ontario Hockey League, Western Hockey League and Quebec Major Junior Hockey League, the three CHL member leagues.

The lawsuit seeks compensation to the players for their back wages, overtime pay, holiday pay and vacation pay which should have been paid to them while they played in one or more of the leagues.

The defendants are the Canadian Hockey League, which operates the three major junior hockey leagues and all of the 60 teams in those leagues, including the OHL’s Windsor Spitfires, who signed the standard form league contracts with the players and paid them only a weekly fee, as low as \$35 per week that was not based on hours worked. The class action is for breach of statute, conspiracy and waiver of tort. The Spitfires didn’t return calls Monday for comment to The Star.

The allegations in the statement of claim include that the players are really employees who provide services to the team in accordance with the standard player contract signed by all players. The average player spends 35-40 hours of his time each week on team business but earns a fee between \$35-120 per week.

Those figures are below the Canadian minimum wage. If the court decides that the players are employees, then the fee violates minimum wage legislation in every province and state where the teams play hockey.

The allegations have not been proven in court.

Dave Branch, president of the CHL and commissioner of the OHL, disputes the notion that major junior hockey players are employees.

“The bottom line is, based on the tenor of their arguments, is the fact that we believe that our players are amateur student athletes,” Branch said.

Charney scoffed at any suggestion that major junior players are student athletes and instead called it the CHL’s latest attempt to avoid admitting its players comprise a workforce employed by the member teams.

“I’m really surprised to hear that, because I’m reading the contract that all three teams use, the standard player form that’s approved by all the leagues for every player,” Charney said citing a copy of an OHL contract from December 2013 in his possession. “The way the contract reads, it’s expressly acknowledged and agreed that the relationship between the OHL and its players is that of an independent contractor.

“What I think is going on here is that the leagues have finally realized that the independent contractor angle isn’t going to work. I don’t think these players are actually in business for themselves.

“They’ve come up with a new way of casting the relationship, which is the way the NCAA has been casting it for years. The NCAA calls all of its athletes ‘student athletes.’ There’s one fundamental difference. At least in the NCAA, the players are playing for a university.

“I don’t see how these players are playing for a university or how they are going to be student athletes. I don’t see the CHL as an educational body. There’s professional hockey players who have gone back down to play in this league. They’re not exactly student athletes.

“But I can understand that if you want to avoid paying minimum wage, you have to characterize the relationship as something other than employer/employee.”

Branch argued that these allegations were splitting hairs on the term student athlete and insisted that 98 per cent of CHL players are enrolled in school.

“I don’t think we’re misrepresenting the position that our players are amateur student athletes,” Branch said. “Yes, we have some players that aren’t attending by reason of graduating high school and are focusing purely and solely on their hockey.

“Every player in our league is currently enrolled in school, or has been enrolled in school and will be re-enrolling, should we say, going forward in all likelihood.”

The CHL president also felt that the emphasis on monies paid to players completely overlooks the other benefits players gain free of charge from the three major junior leagues.

In fact, he stated that at governors meetings approximately a decade ago, the idea of significantly increasing the weekly stipend offered to players was considered before it was decided to invest into the welfare of the players in other manners.

“Going back I want to say some 10 years ago, we challenged ourselves, ‘What do we do here for the players?’” Branch recalled. “‘Put another \$100 or \$200 a week in their jeans?’

“The feeling was that we were not sure that was the best thing to do to a teenager and particularly took the view that we should invest in their development not only as a player, but as a person.”

Branch pointed to the many facets offered to CHL players beyond their weekly pay as examples of how much the three leagues spend on them.

“Our scholarship program is second to none in our view in North America,” Branch said. “The OHL alone last year expended in excess of \$2 million on education for our players. CHL-wide we had 579 players playing on scholarship, an in excess of \$6 million commitment across the country.

“That’s a significant investment and then you look at the drug education and anti-doping program we put into place for the benefit of our players. You look at the concussion management program that we have in place. We’ve just announced a new program with the Canadian Mental Health Association.

“And of course all of their out-of-pocket expenses are covered, as is the payment of equipment, billeting and travel costs. I think hockey parents will tell you the cost of equipment these days is not insignificant.”

At the OHL governors meetings in August, the board moved to improve its education package and institute a reimbursement package offered to players, who can now garner up to \$470 per month for incidentals such as gas, food and clothing.

The league also extended the opportunity to utilize its education package for up to 18 months after a player’s overage season ended, regardless of whether the player skates in the league that season. As well, players who sign American Hockey League contracts are no longer exempt from partaking in the education package.

“We are investing in the player experience and working toward helping them grow as players and people as well,” Branch said.

The representative plaintiff for the suit is Sam Berg. The son of former Toronto Maple Leafs forward Bill Berg, the younger Berg played eight games for the Niagara IceDogs during the 2013-14 OHL season, but saw his hockey career ended by a shoulder injury. Other players have an opportunity to register to be part of the class action on the law firm’s website.

Depending upon which Canadian province or U.S. state where they played in the CHL, players as far back as 2008 are eligible to partake in the class-action suit, opening up to the possibility of tens of thousands of potential plaintiffs.

Charney indicated that of the players they’ve spoken to so far, the response toward the idea of the suit has been overwhelmingly supportive.

“I don’t know whether the players that are actually playing in the league have thought about it much, because they’re following their dreams,” Charney said. “But from the players who no longer play, it’s been unanimous in terms of all the ones that we’ve spoken to that they should have at least been compensated by minimum wage.

“I think it really starts to hit home when players realize that they’re not going to make it to the NHL. But also, I think it will hit home when people and families understand the dynamics of this — that they’re receiving \$35-50 a week for 35-40 hours a week for the benefit of these teams whose product is the players.

“The product isn’t getting paid but the teams sure are.”

The next step in the process will be getting a certification motion approved in court that will allow the suit to proceed as a class action.

Charney indicated it could take between six months to a year before the suit gets to a certification hearing.