

THE RIGHTS OF INDIVIDUALS
IN AMATEUR SPORTS (HOCKEY)

I.

ABSTRACT
AND
SUMMARY OF RECOMMENDATIONS

In this inquiry, we have taken as our starting point, three simple but fundamental assumptions:

- i. that every young citizen, who so desires, should be provided with the fullest possible opportunity to participate in amateur hockey -- within a context of reasonable rules, regulations, and organizational structures;*
- ii. that individuals who do participate in amateur hockey should enjoy roughly the same basic rights and freedoms of choice and action as those enjoyed by individuals in other segments of society; and*
- iii. that individuals in amateur hockey, like individuals anywhere, should never be denied the right to natural justice.*

We realized, of course, that to plan for maximum participation in a group activity such as hockey is almost inevitably to plan for the bureaucratization of that activity and for increases in formal structures and controls.

Nevertheless, we took the position that, the need for structure and control notwithstanding, the right of the individual hockey player to enjoy reasonable freedoms to choose his place of play, his place of work, with whom he plays, for whom he works, and the conditions under which he works or

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plays should be as much his right as it is the right of any other member of society.

We took the further position that the right to natural justice -- the right to seek fair treatment in a court of law, without fear of reprisal -- should be as much the right of a hockey player as it is of any other citizen.

So, in fact, our study became an inquiry into an extremely subtle and difficult matter: whether or not that desirable but delicate balance between the needs of the organization (the hockey system) to impose "reasonable" structures and controls upon its members and the rights of individual members (hockey players) to enjoy "reasonable" freedoms of choice and action was, in fact, being achieved.

And we asked: Are the structures and regulations governing amateur hockey in Alberta "reasonable"? Do individuals who play amateur hockey enjoy "reasonable" rights and freedoms? And when individuals feel that their rights and freedoms are being unreasonably limited, can they seek justice in some objective review tribunal and/or in the courts -- without fear of reprisal?

Our answers to these questions were not entirely unequivocal. For we found significant differences between the ways in which the Canadian Amateur Hockey Association and its Provincial affiliates express their regulations and by-laws and the ways in which these regulations and by-laws are, in fact, interpreted and applied. We also found significant differences between league and team regulations governing purely amateur players and those governing amateurs-en route-to-the-professionals -- let us call them "pre-professionals".*

Hence, our findings can best be summarized in three parts -- those pertaining to the Association(s), those pertaining to purely amateur hockey, and those pertaining to pre-professional hockey.

*The term "pre-professional", as we shall use it here, is difficult to define with precision. It refers, in general, to the "A" classification of players at the advanced levels of amateur play. The Tier One or Major Junior "A" leagues are the best examples. But these are not all. The long arm of professionalism extends much further.

With respect to the Canadian Amateur Hockey Association and its Alberta affiliates we found:

- i. *that in declaring itself the final and absolute authority in the establishment of hockey policy and in the control of hockey players, the Association has attempted to remove itself from public accountability and to deny the possibility of external arbitration and review mechanisms;*
- ii. *that in many of its by-laws and regulations, the Association does, in fact, impose invalid restraints upon the rights and freedoms of individuals;*
- iii. *that in its assignment of powers and duties, the Association vests in individuals and committees far more discretionary power over other individuals than any free society should tolerate; and*
- iv. *that by its prohibitions against appeals to the courts and its specifications of the sanctions to be applied if and when individuals do appeal to the courts, the Association, in fact, denies hockey players their rights to natural justice.*

With respect to the lower and purely amateur levels of hockey in Alberta, we found:

- i. *that vigorous efforts are being made by literally hundreds of volunteer coaches and promoters to expand opportunities in hockey; and*
- ii. *that, with few notable exceptions, these promoters attempt to maintain, through "reasonable" regulations, a fairly balanced level of play and to allow individuals "reasonable" freedoms of choice and action.*

With respect to the more advanced, pre-professional leagues and teams, we found that operators do impose unreasonable and invalid restraints upon individuals and, in fact, do conspire, through contracts with players and agreements among themselves, to enslave individuals and deprive them of virtually all freedom of choice and action. We judged the following to be particularly offensive:

- i. *the practice of entering into formal contracts with infants;*

- ii. *unreasonably restraining and one-sided contracts which deny individuals the right to bargain or transfer but which, instead, assign to the league or team the right to sell or trade individuals;*
- iii. *contracts which indenture players in the name of so-called "development costs"; and*
- iv. *conspiracies among teams and leagues, such as the Protected Player Agreement, which limit the individual's freedom of choice and, in fact, make it possible for the system to treat the individual as a slave.*

We believe that, no matter how noble its intentions, any voluntary association of citizens, formed for the purpose of promoting a public good, should not be allowed to seize and maintain the kind of power that the Amateur Hockey Association has seized and maintained -- to the exclusion of all external appeal or review mechanisms. For it appears to be its quest for power that has prompted the Association to adopt regulations which impose unreasonable constraints upon individual freedoms.

We further believe that, although the lower, purely amateur levels of hockey appear to operate within a reasonable framework of regulations, some mechanism is needed to deal with the few appeals and conflicts that do arise.

Finally, we believe that the constraints upon the individual rights of hockey players at the upper, pre-professional levels of amateur hockey are so serious as to cry out for immediate and drastic action. At this level, the amateur hockey system is little different from a slave market -- in which the promoters and dealers have taken all power unto themselves and have reduced the status of the individual to the point where he has become a pawn of the system.

Accordingly, we recommend:

That the Government of the Province of Alberta enact legislation which would provide:

1. *That an amateur sport (or hockey) ombudsman or commission be established with duties and powers which, inter alia, would include:*
 - (a) *the continuing evaluation of conditions in amateur sports in the Province of Alberta;*
 - (b) *the initiation and enforcement of legislation, as required;*
 - (c) *the power to demand from every amateur sports association, league or team any information that is deemed necessary to carry out the objects of the legislation;*
 - (d) *the adjudication of disputes and alleged injustices by and between amateur sport associations, teams and players.**
2. *That contracts, agreements, or arrangements between infants and amateur sport teams or associations be prohibited.*
3. *That any agreement or arrangement between a player and an amateur sport team or association, restricting, in any way, the freedom of the player to play or negotiate with a team and/or association of his choice, be declared invalid.*
4. *That agreements or arrangements between or among amateur sport teams and/or associations, restricting in any way the freedom of a player to play with a team or association of his choice be prohibited.*
5. *That no sale or trade of a player participating in any amateur sport be considered valid without the written consent of the player.*
6. *That no amateur sport team or association be entitled to claim or receive any reimbursement or compensation for costs expended in developing players' skills in any amateur sport.*

*The occasional dispute that develops between youthful players or their parents and officials of purely amateur leagues over matters of transfer and the like could be readily dealt with by this kind of external review tribunal.

The events, the circumstances, and the conditions which have led us to these recommendations are described and analyzed in full in the report to follow.

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II.

BACKGROUND

THE SUBSTANCE AND THE PURPOSE OF THE STUDY

Over 25,000 Albertans are registered players in the Alberta Amateur Hockey Association. An even larger number play the game with equal vigor and enthusiasm, but do not register with the Association until or unless their teams show promise of qualifying in provincial play-offs. So it may be assumed that roughly 50,000 people participate actively in organized hockey in this province.

Of this group, only a small fraction of one percent play on teams from which they hope to graduate directly to professional play; and only half of that small fraction actually play at the professional level.

So, at first glance, one might assume that for more than 99% of all participants, hockey is essentially a game or a sport -- a healthful, recreational activity whose basic purposes are: to provide enjoyment, to foster sportsmanship, and to contribute to the development of robust bodies, minds and spirits.

But hockey is more than that; it is also Canada's national sport. And no doubt there are hundreds, indeed thousands, of young Albertans, who, along with their parents, hope that they may be able to achieve stardom in

their country's national sport. (See Appendix B) The way one does this, they discover, is to fight one's way to the top of the ranks in the amateur hockey system. So the competition is keen. For this level of success calls for skill. It calls for ambition and dedication. And for singlemindedness of purpose.

It calls also, it has been alleged, *for a willingness to knuckle under to "the system"*.

This allegation has been based upon an observation that, not unlike other human enterprises, hockey, as it has flourished, has spawned a host of organizations -- complex, intricately-related sets of organizations. And that with these organizations have come bureaucracies, rules, and regulations -- and corresponding prohibitions, limitations on opportunity, and restrictions on freedom of choice.

In amateur sports, one would think that the ideal ought to be *the maximum in opportunities to participate with a minimum of restriction on freedom of choice*. But that ideal, the organizers claim, needs to be dampened somewhat with the realization that as participation increases, so does the need for structure, for organization, and for procedural guidelines.

Whether and how this ideal of opportunity and freedom can be reconciled with the competing need for bureaucratic control is essentially the question addressed in this report.

A STORY: SOME PRELIMINARY POINTS TO PONDER

How does the person fare in the world of organized hockey? How is he treated as an individual? As a would-be participant? Or as an aspirant to professional status?

The following case story is illustrative of the kinds of problems that the individual can encounter.