

The system has moved, at all levels, to establish rules, by-laws, and regulations to meet such needs for guidelines. The CAHA has developed rules-of-play which are in use in all branch associations. The CAHA has also adopted a constitution and a set of by-laws which set for itself and its affiliates certain authorities for the administration of the system and the control of its members. The AAHA, in turn, has adopted certain extensions to the CAHA guidelines to establish its specific position in Alberta. Next, local Associations have set regulations governing individuals' places of play, team affiliations, and so on. And finally, teams have adopted such devices as contracts, team regulations, and so on to further control the behavior of the individual player.

The individual player, as a result, finds himself under the control of a multi-layered bureaucracy -- his team, his local or zone Association, the AAHA, and the CAHA. Each of these agencies has set for the individual certain rules and guidelines. And each has certain powers that it may exercise over the individual as circumstances warrant.

This condition prompts two questions:

1. Are the formal controls (rules, regulations, contracts, etc.) reasonable? Do they allow appropriate rights and freedoms for the individual?
2. Are the residual powers which are vested in officials reasonable? Are the opportunities for the exercise of discretionary justice appropriate? Are such powers, in fact, exercised with proper discretion?

These are the questions to be addressed in the next section.

## IV.

## ANALYSIS

## THE INDIVIDUAL VS. THE SYSTEM: THE CRITICAL ISSUES

Having examined the ways in which the hockey system structures itself and establishes regulations for the conduct of its activities, we turn now to the question which is central to this inquiry: Do these structures and regulations tend to deny appropriate rights and freedoms to the individuals who work or seek recreation in the system.

As a point of departure, it may be noted that insights into the rights and freedoms that any organization is likely to afford its members can be gleaned from five major sources: (1) the scope and the extent of the *powers* that the organization claims for itself; (2) the type and tightness of the *regularized constraints* that it imposes upon its members; (3) the type and severity of the *sanctions* it employs to enforce its regulations; (4) the amount of *discretionary judicial power* it vests in its officials; and (5) the *appeal mechanisms* that it provides or tolerates.

This classification system is useful, for our purposes, merely as a device for alerting us to the matters to be examined -- not as a device for organizing our materials and findings.

For it will be recalled that our preliminary examination of the issues revealed that these differ from level to level in the system. Specifically, three levels identified themselves as discrete, special cases, from the perspective of our inquiry:

- i. *the formal association level* -- which is the Canadian Amateur Hockey Association and its affiliated provincial branches;
- ii. *the pre-professional league and team level* -- which includes the Major Junior A or Tier One junior organization, the Junior A leagues, to some extent the Junior B leagues, and to a much lesser extent and in a more informal way, the A levels of the pre-junior leagues; and
- iii. *the purely amateur level* -- which includes all of the pre-junior teams and leagues.

Because each of our specific findings relates rather exclusively to one or another of these levels or segments of the system, we present our analysis of each level, in turn.

With respect to each issue considered, we shall first present the facts of the situation in simple, objective style. Then, in our commentary or critique of the situation, we shall, either by drawing upon legal precedent and opinion (to the extent that such are available) or, by analogy, attempt to demonstrate the validity or morality of the situation under review.

A. RE: THE CANADIAN AMATEUR HOCKEY ASSOCIATION AND ITS AFFILIATED BRANCHES

ISSUE #1: THE CLAIM TO FINAL AND COMPLETE POWER: The Amateur Hockey Association is, in reality, a self-established super-organization made up of a network of lesser but also self-established organizations whose alleged purpose is simply to promote the game of hockey at the amateur level. Yet the CAHA claims (By-Law #10, Article 2) that it should be and indeed is the sole and supreme authority in the governance of minor hockey in Canada.

*Consider an analogy: Assume that the Canadian Medical Association, a similar self-established organization (the purpose, in this case, being the promotion of health rather than hockey) were to declare itself the sole and supreme authority in the governance of the health care system. Would such a declaration be tolerated? Not very likely. Indeed, though Medical Associations*

*have never dared to go quite that far, they have, on occasion, attempted to increase their powers in health care policy and management. And, on every occasion, their attempts have been resisted by the people and by governments.*

*Just as health care is too important to be left to the doctors, just as wars are too important to be left to the generals, so also may hockey be too important to be left to the athletes and promoters.*

ISSUE #2: THE CLAIM TO MONOPOLISTIC POWER: The CAHA states (Articles 72, 73) that the scope of its power is without limit. Indeed, (By-Law #2) it claims that, if and when any branch of the Association should become non-operational, by reason of a suspension, the Association has the sole right to "move in" on the territory so vacated and take over such hockey as is being played.

*Again, consider an analogy. Assume that the Calgary Chapter of a labour union (simply a voluntary association of workmen) were to break away or be suspended from the National Association (similarly, a voluntary association of local associations). Now assume that the National Office were to attempt to move in and take over labour affairs in the Calgary territory.*

*Would the Local Chapter, broken away or not, suspended or not, tolerate such a move? Highly unlikely. Indeed, head offices of labour unions have, on occasion, attempted to do that very thing. And the resulting confrontations have been downright ugly.*

*Democratic peoples typically do not allow such accumulations of power as this By-Law of the CAHA prescribes. For democratic people suspect that power may corrupt. And they suspect that absolute power may lead to absolute corruption.*

ISSUE #3: INTERNAL APPEALS: By-Law #10, Section (c) of the CAHA specifies:

"(c) In the event of any dispute, difference or question regarding any matter of any kind arising at any time, but only where there is specifically provided elsewhere in the constitution, by-laws, regulations or rules the right to an appeal from any decision made under the Rules, Regulations, or By-laws of CAHA or of any Branch, then the following shall be the recourse available to any member or individual dissatisfied with any such decision:

- (i) Such member or individual may appeal firstly to the league in question, and if dissatisfied with the decision of such league,
- (ii) Such member or individual may then appeal to the Branch in question, and if dissatisfied with the decision of such Branch,
- (iii) Such member or individual may then appeal to the Board of Directors."

Section (d) of the same by-law states:

"(d) The decision of the Board of Directors on such matters brought before it, and on any other matter brought before it, is absolutely final and binding on such member or individual concerned, and on C.A.H.A., and there is no further appeal from such decision. Such decision is not capable of being overruled except by further decision of the Board of Directors, such further decision to be made by the Board of Directors only, in its sole and absolute discretion."

Though we do not quarrel with the idea of an "internal tribunal" to hear preliminary disputes, we suggest that *the appeal system outlined here is objectionable on at least three counts: first, in its claim to finality; second, in its failure to specify what, in this instance, is due process; and third, in its potential for delay and tediousness. It could be drawn-out as long as the officials wished. To a hockey player whose team is scheduled to play on a specific day, time is of the essence. And justice delayed is justice denied!*

ISSUE #4: EXTERNAL APPEALS: By-Law #10, Section (g) and Section (h) of the CAHA deals with the matter of appeals as follows:

"(g) Any recourse to the Courts of any jurisdiction by any member or individual, before all the rights of appeal and all the rights and remedies of the Constitution and By-laws of the Association shall have been exhausted, shall be deemed to be a violation and breach of these By-laws, and a violation and breach of the Board of Directors decisions, and shall result in the automatic, indefinite suspension of such member or individual from all CAHA and Branch sponsored or organized activities and games, as specifically set out in By-law 2 herein.

(h) If any recourse to the Courts of any jurisdiction is taken by any member or individual after all the rights of appeal (if any) and all the rights and remedies of the Constitution and By-laws of the Association shall have been exhausted, then the taking of such recourse by such member or individual shall, of itself, be deemed to be a violation and breach of these By-laws and shall result in automatic, indefinite suspension as aforesaid, *provided always* that if the Court in question (or any Court appealed to from the Court in question) makes a finding of fact that CAHA or its Board of Directors, or the Branch in question or the League in question, as the case may be, has, with regard to the matter brought to the Court, acted in bad faith, or has not complied with the rules of natural justice, or has acted in violation of the By-laws, Rules or Regulations as the case may be, then in that event such suspension shall be immediately removed, but in the absence of such finding of fact the said suspension shall continue."

*These two clauses together constitute a very strong denial of natural justice.*

*Section (g), must be condemned not only for its intimidating tone, but also, and more indictably, because it provides for a specific punishment for any individual who dares to exercise his right to seek justice in a court of law.*

*Section (h) is equally, if not more offensive. What it really threatens is that, if an individual, after jumping through all the hoops specified by the Association, then decides to appeal to the court of last appeal (the law of the land), and if that individual again loses his case, then he will remain automatically and indefinitely suspended from hockey.*

*What this really means is this: unless the individual is absolutely sure of his case before he appeals to the courts, he runs the risk of permanent suspension from hockey -- a clear case of double jeopardy.*

*These procedures are in no way consistent with our society's concept of natural justice.*

*The right to justice is every man's right. These by-laws would suggest that the Canadian Amateur Hockey Association has no comprehension of or appreciation for the concept of natural justice. They suggest further that the CAHA holds this country's institutions of justice virtually in contempt. And they indicate clearly that the Association will resort to threat, intimidation, and punishment to deny its youthful members the right to seek justice in the way that other citizens of society do.*

*B. RE: THE PRE-PROFESSIONAL TEAMS AND LEAGUES*

*ISSUE #1: DISCRETIONARY JUSTICE: Clause 8 of the Alberta Junior A Hockey League's Standard-Form Contract says in part: "the club may from time to time, during the continuance of this contract establish rules governing the conduct ... of the player and such rules shall form a part of this contract as fully as any herein written. For violation of such rules ... the club may impose a reasonable fine upon the player ...".*

*This clause assigns excessive discretionary power to the owner: it gives no hint as to what rules the player might later have imposed on him and it gives no hint as to the amount of the "reasonable fine" which might be levied for failure to obey rules -- be they reasonable or unreasonable.*

*An analogy: Assume an employer offers to a prospective employee a contract of employment. He tells the prospective employee, however, that there are certain undisclosed strings attached to the job -- certain rules of*

*conduct and performance which will be made known only after the contract has been signed. He informs the employee further, that failure to obey these rules will result in certain reductions in pay, the amount of which will also be disclosed only after a contract is signed.*

*Would any sane individual sign such a contract? Not likely. Unless he were so desperate for the position that he were willing to run any risk to get it. (One cannot but wonder if young hockey players may be driven to such levels of desperation.)*

*The power of discretionary justice is always a disturbing thing. For it is always one-sided. Hence, it is just as likely to be the administration of injustice as it is to be the administration of justice. This is the kind of justice that prevails in so-called "total institutions" -- of which prisons and mental institutions are probably the best examples. In such institutions, one party (the warden) is all powerful and the other party (the prisoner) is almost completely lacking in power and the means or opportunity to appeal.*

*Why should authorities in the hockey world expect or want to extract from their employees such powers of discretionary justice? Is it because these youthful human resources are so potentially valuable that their sponsors would rather "own" them than "deal with" them like human beings?*

*Whatever the reason, we doubt if any human being should ever hold such discretionary power over another.*

*ISSUE #2: CONTRACTS: The Standard-Form Contract, which must be signed by every player in the Alberta Junior A League, is a legal instrument which attempts to impose on the individual three major constraints:*

- i. Clause 3, Club Option to Renew, assigns to the club the sole right, without any negotiation with the boy, to renew or not to renew the contract for a second and third year.*