

But in any case, it strikes us as an incredible affront to human dignity and civil liberties.

Though the term, Protected Player List, apparently means a list of players who are "protected" for each team against the offers or attractions of others -- the list might better be called a "Conscription List" or indeed, a "slave list"! For what the list in effect does is deny the individual the right to seek his own employment, to choose his own employer, or to negotiate the conditions of employment.

Consider an analogy: Assume that 100 girls are about to graduate from a nursing school and are looking forward with anticipation to the search for their first professional positions. Now assume that upon graduation, they are told that the administrators of all Western Canadian hospitals -- to avoid all the troubles of recruitment and selection -- have gotten together and agreed which nurses should be hired by which hospitals, and which should not be hired at all.

Imagine the furor that such an event would create! Yet it is not at all dissimilar to the employment practices which appear to operate in hockey.

C. RE: THE LOWER LEVELS AND PURELY AMATEUR LEAGUES AND TEAMS.

ISSUE #1: BENCH-WARMING, SUSPENSION AND EXPULSION: The player, on any hockey team, can be sanctioned at any one of three levels, by any one of three individuals. His coach can bench him for any reason. His league official can suspend him for "ungentlemanly conduct". His provincial Association can expell him for more serious misdemeanors.

Such sanctions as these are considered to be quite reasonable -- provided that they are fairly and justly applied.

One might, however, question the insistence of the system that it be the sole and final disciplinarian of its members.

ISSUE #2: LIMITS ON MOVEMENT AND CHOICE OF TEAM: All players in the AHA must sign player cards which identify them with specific teams. As these cards are used by team and league officials, however, they tend to take on the qualities of contracts. For these officials tend to rule that since an individual has been so identified with a particular team, he may not transfer to another team without a "release" from his former team, approved by league officials. Releases are usually granted, of course, to accommodate family moves. But they are sometimes refused -- "for the good of hockey" -- the good of hockey, in this case, being reasonably balanced teams and a minimum of bribery and other undesirable practices in the competition for players.

The legality of the imposition of such contractual restraints upon infants is, of course, a matter for the courts to decide. In terms of purely legal principles, the validity of an infant contract depends upon whether it was, as a whole, beneficial to the infant at the time that it was entered into. This principle, however, has greater reference to formal contracts discussed earlier; the "player card" which is, at best, a pseudo-contract, does not appear to be the critical issue in the right of infants to transfer from one hockey club to the other.

Rulings of the system prohibiting the transfer of infant players from one team to another have been challenged in the Alberta Supreme Court. And injunctions have been granted restraining the Association from exercising such control. The courts have held the rights of the boy to be more important than the regulations of the Association.

We believe that the various Leagues' motives in this matter are completely worthy and beyond reproach.

SUMMARY

We recognized, at the outset, that any organization, if it is to bring appropriate order to the activity under its jurisdiction, simply must develop regulations to guide the behavior of its members. But we also contended that all individuals -- be they hockey players or otherwise -- deserve certain undeniable freedoms and rights, including the right to seek natural justice.

And we asked: Has a reasonable balance between these two competing forces been achieved in amateur hockey? More specifically, we asked: Are the regulations and limitations on individual freedoms in amateur hockey "reasonable"? Or, to turn the question around: Do individuals who play amateur hockey enjoy "reasonable" rights and freedoms?

We found the posture and practices of the formal organization -- the Canadian Amateur Hockey Association and its Provincial affiliates -- to be reprehensible on the following grounds:

- i. its claim to absolute, monopolistic power;
- ii. the inadequacy and clumsiness of its internal appeal mechanism;
- iii. its arrogant rejection of the possibility of an external tribunal;
- iv. its assignment of excessive discretionary power to individuals and committees; and
- v. its prohibitions -- accompanied by rather drastic sanctions -- against individuals seeking justice in the courts.

We found the actions of the pre-professional leagues and teams to be indictable on the following grounds:

- i. their claim -- and its formalization in contracts -- of excessive discretionary power over players;
- ii. their restraining and one-sided contracts through which they hold further unreasonable powers over players;
- iii. their invalid practice of indenturing players in the name of so-called development costs; and
- iv. the conspiracies they enter with each other, such as the Protected Player Agreement, which strips players of all remaining freedoms.

Finally, though we could find little to criticize in the purely amateur segment of the system, we did note cases of arbitrary and unreasonably firm enforcements of regulations -- to the injustice of the individuals involved.

RECOMMENDATIONS

We believe that some of these findings are so serious that they demand immediate and drastic action. Specifically, we believe that the following conditions and practices must be eliminated from amateur hockey:

- i. the supremacy of 'the system' in the establishment and implementation of hockey policy and control mechanisms;
- ii. the lack of appropriate, objective, external review, arbitration and appeal mechanisms;
- iii. the practice of entering into agreements with infants;
- iv. contractual arrangements which deny the individual the right to transfer and market his skills -- and which, instead, assign to the team or league the right to trade or sell him;
- v. contractual arrangements which indenture individuals in the name of so-called "development costs";
- vi. agreements or conspiracies among teams, such as the "Protected Player Agreement", which conspire to limit the individual's freedom to choose and/or to market his skills.

Accordingly, we recommend:

That the Government of the Province of Alberta enact legislation calculated to provide the fullest opportunity to participate in amateur sports (hockey), within the most reasonable framework of rules and regulations, and with a minimum of restrictions upon individual rights and freedoms.

More specifically, we recommend:

1. *That an amateur sport (or hockey) ombudsman or commission be established with duties and powers which, inter alia, would include:

 - (a) *the evaluation of conditions in amateur sports in the Province of Alberta;*
 - (b) *the initiation and enforcement of legislation;*
 - (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 agreements or arrangements between players and amateur sport teams or associations, restricting in any way the freedom of a player to participate 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.*

*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.

5. *That no sale or trade of a player participating in any amateur sport be 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 amateur sport.*

The corrective measures that we have recommended may appear drastic. For this we make no apology. For we believe that one of the primary responsibilities of any government is to guarantee reasonable rights and freedoms for all members of society -- including hockey players. We believe, correspondingly, that one of the tasks of government is to monitor, check, and if need be, curtail the powers of organizations that exercise unreasonable restraints upon the rights of individuals.

In the case we have examined here, the need for action is clear.

The retaining system was also exposed in court as a device to assist implementation of a successful player transfer system, which is negotiated between the management of two clubs. A player could be retained with or without pay while the clubs arranged a financial trade agreement (a club must pay for a player which it receives as a transfer from another club). Therefore the retaining club may delay proceedings to obtain the best transfer offer, at the player's expense! The only opportunity available to the player is to appeal to the Association (which is beyond the League in the hierarchy) to have the transfer fee established by the retaining club reduced.

Mr. Justice Wilberforce concluded that the contrived retention and transfer system existing then was an unjustifiable restraint of trade. He added that the combined system was not acting in the general interest of the game. *"The system is an employers' system, set up in an industry where the employers have succeeded in establishing a united monolithic front all over the world, and where it is clear that for the purpose of negotiation the employers are vastly more organized than the employees."* He further added, *"... that it cannot be within the powers of associations such as these to commit their members to action which is against public policy."*

APPENDIX A-2

BLACKLER V NEW ZEALAND RUGBY FOOTBALL LEAGUE (INC.)
(1968) NZLR 547-573 - Supreme Court of New Zealand
(Appellate Division)

(Before North, P. and McCarthy, J.,
Turner, J. dissenting)

- B R I E F -

The Plaintiff, Mr. Blackler, former amateur rugby player in New Zealand, now resides in Australia. His desire to pursue his sport as a profession in Australia has met opposition from the New Zealand Association which administers the amateur sport in that country. Mr. Blackler, having failed in his efforts to get a clearance from his own league, initiated suit against the Association in which he sought a declaration that, inter alia, refusal of the league to grant a clearance was illegal and void as being beyond the powers of the league and as being an unlawful restraint of his right to seek employment.

There are no professional players in New Zealand and "no contracts exist for the payment of wages and for a term of employment between the player and his club. League football is conducted on an amateur basis; In fact, the same can be said about most sports in New Zealand and undoubtedly the desire of the league is to maintain this position and to develop the game to a high standard in the interests of and for the benefit of the players -- and to the country as a whole." This code applies to all players, whether in the league or transferred to another league overseas. A team will not transfer a player but the player can request a transfer if he makes the request in writing.