

February 1, 2018

OREGON 79TH OREGON LEGISLATIVE ASSEMBLY

RE: HOUSE BILL 4093

By way of introduction we are the WORLD ASSOCIATION ICEHOCKEY PLAYERS UNION (“WAIPU”) *North American Division* and as such, respectfully ask that you read in full this and the supporting documents attached hereto, prior to and in consideration of the proposed, above-noted House Bill.

WAIPU and all its members are together in writing this request for a full review of the proposed *HOUSE BILL 4093*. WAIPU wants to provide your board with this much-needed information to assist you in order to move forward and be fully-informed when it comes time to make a decision so your board can better serve the best interest of the **employees** of the *Portland Winter Hawks*, as well as the taxpayers of the state Oregon and the team.

It is our belief that the application by the professional icehockey team, *Portland Winter Hawks*, should be held to the highest standard of proof to show that the players of the club are NOT **employees** and have never been considered employees or professional players by the Team or the league at any time. We also ask the Team to demonstrate how the Team considers the players do not meet the standard test to qualify as an employee under *The Employment Standards Act, 2000* (“ESA”).

WAIPU and its members also request the Team to show proof that players are “*student amateur athletes*” This proof should come in the form of a list of players who are registered, full-time students enrolled in full time courses while attending an academic facility *full-time*. This list should be accompanied with an official receipt from the academic facility.

The league and the teams have referred to and entered into contracts with third parties calling their players **PROFESSIONAL icehockey players** for decades.

Only after hearing of the One Hundred & Eighty-seven Million (\$187M) Dollar class-action lawsuit against the teams and league, did the league and teams then attempt to try and change the contracts to avoid any legal ramification(s) of those contracts. (See attached, *Hockey Canada bi-laws*).

After decades of systematically contaminating players/employees from being eligible for NCAA scholarships by classifying players as *professionals and/or major junior players*, in their very own agreements.

One can safely assume that after decades, the league and teams have conspired to restrict the education of its (*junior*) icehockey players to the NCAA as players move to other

leagues, all for the sole purpose of maintaining the top talented players in the Canadian Hockey League (“CHL”) for the sake of financial greed and profit at a greater sacrifice to the young players in the CHL. There can be no denying that if the top, talented players were to go to the NCAA, the league would not only lose at the box office, but also risk the loss of a Seventy-nine Million (\$79M) Dollar agreement with the CHL and the National Hockey League (“NHL”). (*See attached NHL & CHL agreement*).

The league now wants its major(*junior*) icehockey players to be refereed to as “*student, amateur athletes*” in order to avoid paying legal wages.

Now faced with a class-action lawsuits and no reasonable defence (considering the league has lost two previous Canadian court rulings classifying players as employees of the clubs), the league and teams are now shamefully attempting to contract out of ESA laws by instructing its owners to no longer to issue T4 Slips in Canada and USA tax Form 1099, in a memo to its owners. (*See copy of Branch league memo attached*) Stating as follows:

“7. Clubs should no longer take and remit deduction commencing with the 2013-2014 hockey season if that has been there practice and T4 will be issued only for the portion of the 2012-2012 season relating to payments made in a calendar year of 2013. For payments relating to the 2013-2014 season, the clubs will no longer take or remit deductions, make remittances or issue T4 (U.S tax form 1099) or any other government forms to the players for the reimbursements or their room and board. Clubs do not need to specifically notify CRA that they are no longer withholding and remitting deductions with respect to the players.”

This type of conduct should not be condoned or rewarded (inasmuch as it would also become “*precedent*” within the enactments of ESA laws), by any level of government.

The *employees* of these teams have rights and should not be bullied or be in fear of reprisal to speak out for such blatant disregard for the employment laws of each country.

The One Hundred, Eighty-seven Million (\$187M) Dollar class-action lawsuit has been certified in Canada and a judge in Canada stated that the lawsuit can proceed with the following, including a conspiracy clause:

Justice Hall certified all of the causes of action pleaded by the plaintiffs, including: (1) breach of contract; (2) breach of contractual duties of honesty, good faith, and fair dealing; (3) breach of employment standards legislation; (4) negligence; (5) conspiracy; and (6) waiver of tort.

THE AMATEUR ATHLETE/AMATEUR LEAGUE ARGUMENT

The teams argue that the players and the leagues are one hundred (“100%”) percent *amateur*”; that the players on the teams are "*student amateur athletes*", therefore, not *professionals* and should not be considered employees. We disagree with this statement.

The facts are undeniable. As seen in the attached documents, the Team has **Professional players** as we speak now playing games for Portland that have and signed NHL-Pro contract in excess of \$12,799,998 and receiving **\$1,307,500** in signing bonuses; along with **\$840,000** in minor salaries.

As well, contracts have additional performance bonuses of \$3,250, 000; coming to a grand total of **\$17,357,498**. (*see attached Portland CHL NHL contracts player wages*)

With Seventeen Million (\$17M) Dollars in salaries and bonuses how can any league, team, employer or level of government truly considered these employees “*amateur, student athletes*” with that type of income and signed professional (NHL) contracts?

PORTLAND REVENUES

Via the Canadian courts, Portland finances have been disclosed. In accordance to Form 1120 filed by the Portland Winter hawks, they paid \$382,568 in “compensation of officers” and \$1,737,330 in salaries and wages. All told, \$771,409 was paid in rent and \$1,671,881 went to “other deductions,” for which there is no explanation provided.

Total deductions added up to \$5,607,710.

Surely a \$5.6M business with \$1.6M in miscellaneous expenses can find a way to trim an extra \$350K for salaries for the employees/players that the fans and TV audience pay to see.

FEAR AND INTIMIDATION

The league and teams have conducted media propoganda built around fear and intimidation. The league and teams’ public statements of teams folding, going bankrupt and players’ benefits being cut (*if in fact the class action certification was successful*) are empty, bogus threats and bullying tactics used to create intimidation and fear and public sympathy into the players, their families and fans of the CHL

Under oath, and by way of the Affidavit of **Ron Robinson**, Commissioner of the Western Hockey League (“WHL”), deposed as follows:

“110. I anticipate that the result of certification would be that the teams and the league would have to re-examine and reduce the benefits offered to players beginning next season, in order to responsibly plan for this contingent liability. I also anticipate that the certification would result in the loss of the majority of our teams, who owners simply cannot shoulder the burden of the contingent liability of this lawsuit on top of annual losses or near break –even results. The size of the league would shrink, as would the opportunities available to talented young hockey players both from hockey development and educational standpoint.”

However, what is of greater concern is the fact that within weeks after Mr. Robison’s deposition, he then issued a public statement on March 8, 2017 to the city of Nanaimo, BC, that if Nanaimo were to borrow One Hundred Million (\$100M) Dollars to build a new arena, the WHL would fully commit to a team in Nanaimo, BC.

“The WHL remains fully committed to delivering a WHL franchise to Nanaimo, either through relocation or expansion, and will move forward to obtain the necessary final approvals should the residents of the City of Nanaimo vote in favour of a new events centre,”

The city was then informed of the pending class action and the taxpayers of Nanaimo saw through the smoke and voted “No” in a referendum to borrowing \$100M of their hard-earned tax dollars to build an arena for a league that cannot pay its employees and (*further to that*) might not even be a league. What is one to believe: the under-oath statement that the league will lose its teams; or the public statement basically proposing a, don’t worry, “*build it and we will come*” scenario, no matter what?

These kinds of reckless statements by a league official, which clearly does not have the best interest of the taxpayers, government officials or respect of the laws, should not be condoned or become *precedent*. To ask the taxpayers to incur that amount of debt to secure a team that might not be there is incredibly audacious to say the least.

To date no teams have folded. As a matter of fact, expansion of the league has been talked about. In a sister city in Washington State, teams have been lobbying to have Forty-four Million (\$44M”) Dollars in renovations done to its arena. However, there too, the government of Washington State has rightfully said “No”. Why would teams request millions of dollars if they were going out of business?

OPTIONS

The Team and league have other options to create additional revenue(s) or cut costs to come in under budget.

1. NHL agreement that now pays the league 79.6 Million can be redone to better reflect the tens of millions of dollars each year the NHL saves by having a monopoly on CHL, which allows the NHL owners to profit off the restrict trade of players and a 60 team farm system for mere peanuts in payment back to the clubs.
2. Stop bringing in imported players from EU or Canada.
3. Select players from local areas, this one business model change would save each team over 300K a year in expenses. (However, the league would not do that as they have their drafts that make millions off the backs and images of players).
4. Cut back on *staff* salary.
5. Ask level of government for tax relief that would of set the expenses of paying wages.
6. Have revenue sharing with other teams.
7. Cut down on travel costs – more local and regional games.
8. Better deals with CHL and USA hockey on International Ice Hockey Federation (“IIHF”) events that generate well over Two Hundred Million (\$200M) Dollars a year in revenues.
9. In this particular case, cut the arena lease agreement in half to enable paying the players. The state would be better off collecting taxes and not altering ESA laws.

I am not here to run the league, however, there are more options available to team owners who franchise, selling in the area of Twenty-five Million (\$25M) *plus* Dollars, than to just say they cannot pay the Three Hundred & Fifty Thousand (\$350K) Dollars a year in salaries or I am shutting down and walking away from a franchise that is worth millions. No one would do that. The threat of closing down or moving is not an option there is nowhere else for these teams to go, especially one with a long, rich history as does Portland.

CONCLUSION

There is no denying that the business of hockey and ice hockey teams are important to their communities and to the players/employees within them. However, the successes they achieve should not blind the owners, the legislature, the public, and the players/employees themselves from the fact that there are labor law standards, which (*by law*) must be respected and adhered to.

On behalf of the players, past, present and future, of the *Portland Winter Hawks*, WAIPU and its members, therefore, respectfully request that **House Bill 4093**, as currently drafted, **not be passed** insofar as it attempts to limit the teams' obligations to pay their players a minimum wage. But instead enforce the code as it is stands today.

These players put in long, hard hours, risking their own physical health and harm via potential and real injuries in this very physical sport to themselves, so that their teams and owners may gain profits in various revenues. The players do not receive holiday pay;

time off (unless on the “Disabled List” to recover from a related sports injury incurred); or insurance (LTD) benefits in case of injury. The attempts to exclude ice hockey teams players from **minimum wage obligations** and to exclude minors from the ESA is illegal and should not be condoned by this Legislative Assembly’s decision on the matter. A very cruel and dangerous precedent would evolve.

QUESTION:

- Level of play of CHL is “Major Junior” not “Junior”, there is a clear difference between those two levels of play your bill says “Junior”. (*see Major Junior Hawks’ education fund*);
- Have you asked to see the full books of the clubs all including **shell companies**?
- By passing this bill is the board prepared to have the teams pay the back-pay owed to the players/employees?
- Why did the Hawks wait fifteen (15) years after the Canada Revenue Agency’s (“CRA”) court ruling to ask for changes when a judge informed the league the only way to be exempt would be to obtain changes to the ESA (*see attached McCrimmon court ruling*).

WAIPU and its members ask that you review these documents and also review this video documentary, **especially starting at the 37: 30 mark** to the very end and into the credits. (*see link below: hockey night mare in Canada*)

https://www.youtube.com/watch?v=Uw5_Q_fKBs0

This issue is not solely about wages its about the employees right to a fair wage and other protections under the ESA. If you can honestly say to your self after watching the video that you would condone such treatment in a work place for your own son or daughter of the bullying, intimidation, mental abuse then I would respectfully say we throw away the rule book and let chaos reign. This is the norm, not the exception in the business of hockey and it is why players not only need the protection under the ESA for wages but also an arms-length body that has the players health and safety in hand and at top of mind.

OTHER CONCERNS:

Despite a Court order by the Honorable Justice Hall to turn over all financial records of the Portland Winter Hawks, it has been widely reported the that the team has refused to honor the Canadian court order.

Its very own league has fined the Portland team \$250,000 along with draft picks for alleged, illegal payments to players and also suspended their coach for a year.

As you can see, the pattern here is a *failure to obey*, not only courts, but also league policy.

In closing at this time, we ask that you allow WAIPU and the players' voices to be heard to express the concerns about this House Bill. We would respectfully request to do this by video or teleconferencing in order to save costs (*travel*) and time for all concerned in this matter.

Yours truly,

Sandra Slater
President WAIPU