



CHL should pay \$187M for 'illegal' conspiracy, former players say

By [Rick Westhead](#)

Feb. 24, 2015



David Branch, Tara Walton/Toronto Star via Getty Images

Lawyers for former Canadian Hockey League players who are suing the league to force its 60 teams to pay players at least minimum wage filed in court an expansive multi-volume document that details how major-junior hockey had become a juggernaut industry.

The filing in an Ontario court comes roughly five months after former Niagara IceDogs forward Sam Berg and onetime Saint John Sea Dogs player Lukas Walter first filed lawsuits against the CHL, which is the umbrella league over the Ontario, Western and Quebec Major Junior hockey leagues.

While few of the CHL's high-profile stars have complained about compensation - Berg alleges in a deposition that some players have felt threatened not to speak out - other lesser-known players are said to be upset that they receive a pittance while playing for teams that have become multi-million-dollar businesses.

Berg and Walter have asked an Ontario judge to certify their case as a class action. If that happens, hundreds of current and former players could join the lawsuit, without disclosing their names publicly.

The lawsuit could change the face of major-junior hockey across North America. The former players have asked that the CHL be ordered to pay \$187 million (Canadian) to cover overtime, holiday and back pay and punitive damages.

Berg and Walter charge that the CHL's allegedly illegal actions are "callous," "disgraceful," and "high-handed." The league has forced players to sign contracts that call for them to receive stipends below minimum wage, even though CHL teams were told by a Canadian court in 2000 that players are, in fact, employees.

Berg and Walter have asked the court to declare that CHL teams have conspired to compel players to sign contracts that breach employment laws. They have also asked the court to order CHL teams not to intimidate, dismiss or otherwise penalize an employee or player or threaten to do so because they complain, or ask about their rights under the law.

The allegations have not been proven and the CHL has not yet filed a statement of defence.

CHL commissioner David Branch has promised to fight the lawsuit, saying that the league's 1,300 mostly teenaged players are amateur student athletes. "It's important we defend this because it could have a huge impact on all amateur sport in this country," Branch said in October.

Long before the case goes to trial, the legal battle is dividing the hockey world.

On one side, the CHL and its supporters say that if teams are forced to pay minimum wage to players, some clubs that are literally the social bedrock of their communities would be driven out of business.

Moreover, the league says players already receive room and board, receive monthly stipends that act as "walking around money," and qualify for educational scholarships. (Those scholarships, however, are voided if they aren't used within 18 months of a player's last CHL season, or if the player signs a contract with a pro team in the AHL, ECHL or in Europe).

On the other side, Berg, Walter and their supporters say CHL hockey bears little resemblance to the low-cost, nostalgic game many Canadians came to love. Teams are no longer owned and operated as "mom and pop" operations.

The Quebec Remparts, for instance, recently sold for as much as \$25 million, The Hockey News reported, and other teams routinely sell for more than \$8 million. A recent lawsuit showed that former Oshawa Generals president Patricia Campbell was paid \$150,000 during her first year on the job, and player agents say coaches and general managers of CHL teams make some \$200,000 each per year.

Mario Forgione, the former owner of the OHL's Mississauga IceDogs, said in November that CHL teams make millions on the backs of players, but don't do enough to help them transition to a life after hockey.

Other CHL critics scoff at the idea of forcing players to pay for their own equipment. "These are tools of the trade, like workers on a line at a Ford plant," said one NHL player agent, pointed out that room and board wouldn't be necessary if the CHL dropped its player draft and allowed players to play for teams near their family home.

And if some teams are losing money, critics say, the CHL should adopt a revenue sharing system similar to the one the NHL uses that has that league enjoying record revenue.

In Niagara Falls, Ont., Berg's former team, the Niagara IceDogs, attracted between 2,900 and 3,145 fans per game to the Gatorade Garden City Complex during the 2013-14 season, according to court records.

Individual game tickets, Berg said in a deposition, cost about \$20 last season and the team generated about \$2 million in ticket revenue.

By contrast, the 25 players on the IceDogs' roster made a collective \$1,250 per week, or \$416 for each game. "In other words, the team paid fees to 25 players of a total of \$416 to play one game," Berg's deposition reads.

Over the course of a full season, that left the IceDogs with a total team wage of about \$300,000 on revenue of \$2 million from home game attendance alone, Berg said.

Berg said the IceDogs make far more revenue than from ticket sales alone.

This year, the team moved into a bigger arena with a capacity close to 5,000 people. On top of ticket sales, the IceDogs also sold memorabilia in the arena and at a kiosk set up in a St. Catharines, Ont. shopping mall. The IceDogs and other CHL teams also generate revenue from video game licensing income, since player names and likenesses are used in the EA Sports NHL video game franchise.

Then there's concession and broadcast income, and money from corporate sponsorships, Berg said, as well as millions of dollars the NHL gives to the CHL each year to help cover player development costs. In a Sept. 10, 2012, letter to Branch from NHL deputy commissioner Bill Daly, Daly wrote that the NHL would give the CHL \$9.86 million for the 2012-13 season.

It's unclear how much total revenue the IceDogs or the CHL generate in a single season. The CHL has attracted 8.7 million spectators to games during 2013-14, down from 9.1 million in 2011-12, according to hockeyattendance.com.

Berg said he struggled to keep up with schoolwork while he played for the IceDogs, and that the team expected him to be available for team activities while away from the rink - activities that put more cash in team coffers.

"In addition to playing hockey, it was also expected that players attend promotional events," Berg wrote in his affidavit. "I recall attending a few, including caddying a round of golf for some of the corporate sponsors of the IceDogs. On that occasion, myself and several other players were at a golf course for an entire day with various corporate sponsors of the team, carrying their golf clubs while they played 18 holes of golf. That day, we were also asked to sign approximately 100 hockey sticks which I understood the IceDogs would be giving out to sponsors and selling at various auctions and other events for a profit."

In 2000, long before Berg or Walter played in the CHL, the owners of the Brandon Wheat Kings went to court in a fight over employment insurance. At the time, the Tax Court of Canada declared that the relationship between a WHL team and a player was one of employer/employee.

The CHL, however, has virtually ignored that ruling, Berg and Walter charge.

The league until 2013 called players independent contractors.

Two years ago, with the threat of a lawsuit looming thanks to similar efforts in the U.S. by NCAA athletes, Berg and Walter say the CHL quietly redrafted contracts to recast the \$60 weekly fee to some players as an allowance. The league removed all references to players being called "professional athletes" in legal documents.

The CHL redrafted player contracts simply to avoid employment standards laws, Berg and Walter allege.

The newly filed legal documents also assail the CHL's education package, claiming it's too hard for some major-junior players to honour extensive team commitments and also achieve marks that are good enough to get into university.

"Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the players to meet the requirements of the education package, including maintaining a grade point average and enrolment in high school or online courses," the claim said. "While the contracts purport to be academically based, many of the players while playing for a team have already graduated from high school or have already signed contracts with NHL teams."

Shea Theodore, for instance, a 19-year-old defenceman and captain with the Seattle Thunderbirds, has already appeared with the AHL's Norfolk Admirals and signed a three-year, \$925,000 contract with the Anaheim Mighty Ducks.

"When you get that kind of money, that's not an amateur," Toronto player agent Bill Markle told The Toronto Star in a story filed as an exhibit in the case.

Berg and Walter's legal filings also included a WHL news release from September 2014 that said 44 of 131 WHL players set to attend NHL training camps this year had already signed NHL contracts, even though all of 131 players were eligible to return to the major-junior hockey for the season. More evidence, lawyers for the former players say, that at least some CHL players are professionals.

Berg and Walter also said if teams don't agree to pay back wages, and other penalties, they would add begin personally naming team officers and directors in the lawsuit.

[Rick Westhead](#)

TSN Senior Correspondent