

MINISTRY OF LABOUR  
**INFORMATION NOTE**

Cliff #: 55649

Date: June 18, 2018

**PREPARED FOR:** Honourable Harry Bains, Minister

**ISSUE:** Submission by the Canadian Football League Players' Association (CFLPA) for Extending Workers' Compensation Coverage to Professional Football Players.

**BACKGROUND:**

Section 2 (1) of the *Workers Compensation Act* (WCA) provides that the workers' compensation provisions apply to all employers and workers in British Columbia except employers or workers exempted by order of WorkSafeBC.

By a longstanding order, WorkSafeBC exempts professional sports competitors or athletes from workers' compensation. For the exemption to apply, the professional sports competitor or athlete must be competing in a sport entailing physical activity, the existence of rules governing how the sport is played, and competition, whether among teams or individuals. This exemption does not apply to non-competing workers of a sports team such as coaches, management, trainers or other support staff.

The CLPFA requests three specific actions in their submission:

1. Expand the scope of WorkSafeBC coverage to include players within the CFLPA who are currently exempted. The CFLPA considers that the current distinction which exempts football players but covers coaches, trainers, football support staff and referees is arbitrary and discriminatory.
2. The Minister of Labour and the Minister of Health work together to determine the extent to which BC's public health care system is being used by team owners to provide care and rehabilitation to injured players whose care should be provided fully by their employer. The CFLPA maintains that taxpayers should not be expected to subsidize professional football teams by becoming the default provider of care and rehabilitation to injured players.
3. The Minister of Labour to encourage the WorkSafeBC Board of Directors to review its current rationale for excluding professional football players. The CFLPA believes that recent court decisions alter long-held assumptions about how player safety concerns are to be resolved.

The CFLPA states in its submission that it should not have to be treated differently from other workers who do not have to bargain health and safety and injury compensation with their employers. The submission notes that a BC Supreme Court decision in 2016 ruled that because the collective agreement between the CFLPA and the CFL included provisions for arbitrating disputes between a player and their team, the proper venue for resolving questions about players' injuries was through collective bargaining, not through the court system. The CFLPA attempted to appeal that ruling to the Supreme Court of Canada, however, the Supreme Court refused to hear the appeal.

The CFLPA was established in 1965 to represent professional football players in the Canadian Football League (CFL). The CFLPA's current membership covers over 600 players and is the recognized bargaining representative for all professional football players in the CFL. The CFLPA has a signed collective agreement with the CFL that expires in 2019. The agreement details several provisions that govern issues like salary, benefits and other work-related conditions. It also includes, as required by both federal and provincial labour legislation, a system for resolving grievances that may arise during the term of the agreement.

#### **DISCUSSION:**

s.13,s.17

#### Other Canadian Jurisdictions

s.13,s.16,s.17

s.13,s.16,s.17

**CONSIDERATIONS:**

s.13,s.17

s.13,s.17

Prepared by: Peter Rogers, Senior Policy Advisor, Policy and Legislation Branch  
Telephone: 778 974-2175

Reviewed by			
Dir: Michael Tanner	ED: John Blakely	DM: Trevor Hughes	Min:

MINISTRY OF LABOUR

**MEETING NOTE**

Cliff #: 55629

Date: June 18, 2018

**PREPARED FOR:** Honourable Harry Bains, Minister of Labour

**DATE AND TIME OF MEETING:** 2:30 – 3:00, June 24, 2018 (Location Kamloops TBC)

**ATTENDEES:** Minister Bains, Michael Cheevers, Trevor Hughes, and Barbara Nederpel of the Kamloops & District Labour Council (KDLC)

**ISSUE(S):** To discuss employment standards and major junior hockey players

**BACKGROUND:**

The KDLC works to advance the economic and social welfare of workers and promotes social justice and human rights. A member of the BC Federation of Labour and the Canadian Labour Congress, it represents 13,000 unionized workers in the Kamloops area.

Ms. Nederpel, a health care worker and vice-president of the Hospital Employees' Union, has been President of the KDLC since 2015. She was the NDP candidate for Kamloops-North Thompson in the May 2017 provincial election.

**DISCUSSION:**

In February 2016, the Employment Standards Regulation (Regulation) was amended to add an exclusion from the *Employment Standards Act* (ESA) for a player on a major junior ice hockey team. The exclusion is only available if the player is entitled to receive a scholarship for post-secondary education.

The exclusion captures players on the six BC-based teams in the Western Hockey League (WHL). Even before the ESA exclusion, it has been the WHL's position that its players are amateur athletes, not employees. As such, they are not paid a salary or wage but, instead, receive a modest monthly stipend and are reimbursed for all expenses. Players are also eligible to receive a one-year scholarship to a post-secondary institution of their choice for every year they play. The WHL requested the exemption because it believes that any determination by the Employment Standards Branch or ruling by the Court that players are employees would likely threaten both individual teams' financial viability and the existence of the league as a whole.

In June 2017, a class action lawsuit against the WHL was certified. The lawsuit, which includes players and former players from BC-based teams, contends that the players should be classified as employees, not amateur athletes, and asks for back wages, overtime, and vacation pay. In May 2018, the Alberta Court of Appeal dismissed various appeals calling for changes to the suit and ruled that the lawsuit could proceed.

In February 2018, the KDLC wrote the Minister, requesting that government review the status of major junior hockey players and reinstate them under all provisions of the ESA. Amongst other arguments, the KDLC claims that, by being exempted from the ESA, the players are denied basic rights afforded to all other British Columbians.

The British Columbia Law Institute (BCLI) publicly released its consultation report for improvement to the ESA for feedback on June 18. The report includes a tentative recommendation that, with regard to existing exclusions (including major junior hockey players), government should undertake a systematic review to determine whether they continue to be justified.

**SUGGESTED RESPONSE/KEY MESSAGING:**

- I appreciate you bringing the KDLC's concerns about players in the WHL to my attention.
- I am working to fulfill the commitments made by our government and laid out in my mandate letter from the Premier, which includes updating employment standards to ensure they are applied evenly and enforced.
- Please be assured the KDLC's concerns and suggestions with regard to the WHL players have been noted and will be taken into account as I work to fulfill the mandate.
- It may interest you to know that the BCLI has been conducting an independent review of employment standards, with the goal of making recommendations for reform of the ESA.
- The BCLI has now released its consultation report for public feedback -- responses are due by August 31 -- which includes a tentative recommendation that all existing exclusions under the ESA undergo a systematic review by government to determine whether they continue to be justified.
- I encourage KDLC to participate in the BCLI's consultation process by bringing to its attention any concerns it may have with existing employment standards in the province.

**ATTACHMENTS:** February 27, 2018 letter from the Labour Council

DM Contact: Trevor Hughes, Deputy Minister, (778) 974-2189

Prepared by: Jennifer Webb, Senior Policy Analyst, Labour Policy and Legislation

Reviewed by			
Dir:	ED:	ADM:	DM:

Kamloops and District Labour Council  
PO Box 369, Mn Stn  
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Barbara Nederpel  
President  
Patricia Skalozub  
Treasurer

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February 27, 2018

The Honourable Harry Bains, M.L.A.  
Minister of Labour  
Room 342 Parliament Buildings  
Victoria, BC V8V 1X4

[harry.bains.MLA@leg.bc.ca](mailto:harry.bains.MLA@leg.bc.ca)

Dear Minister Bains,

The Kamloops and District Labour Council respectfully asks that your government address the serious issue in which BC Major Junior hockey players are exempted from the Employment Standards Act (ESA). The 2016 Order in Council, signed by your BC Liberal predecessor, Minister Shirley Bond, was quietly enacted with minimal consultation and with the influence of heavy lobbying by Western Hockey League teams' owners.

As I am sure you are aware, a class action lawsuit was launched in 2014 against the Western Hockey League, the Ontario Hockey League and the Quebec Junior Major Hockey League, claiming non-compliance with minimum wage standards in three jurisdictions: Alberta, Ontario and Quebec. Despite the fact that the players do not attend school full-time, owners have labelled them "student athletes," claiming that they should not be treated as employees.

Major Junior hockey players, however, work anywhere from 45 to 65 hours per week, both on the ice in games and practice, but also in mandatory community service dictated by the team owners. In response to the class action lawsuit, team owners refused to pay players' salaries and now only reimburse for "expenses." Players are not allowed to seek any other employment, and they are not fully covered for medical expenses, even in cases where they sustain injuries as a result of playing hockey. And if it is a career ending injury, they have no WorkSafe protections in which to support them.



Moreover, players have been required to give up their rights to their own images; team owners sell player images to video games, hockey cards and jerseys and none of the proceeds are shared with the players.

In return for living away from home at a young age, with strict schedules and major responsibilities, intense physical expectations and high injury risk, players are provided hockey equipment needed to perform their duties and possibly education funding. However, that funding comes with considerable restrictions and a \$5,000 a year cap, and as a result, 64% of Major Junior hockey players finish their careers with no post-secondary education funding at all.

Only a small proportion—1.8%—of Junior hockey players go on to play in the NHL. These drafted, high salaried, “professional” players are regularly sent back to the Junior league for ongoing development while enjoying financial security. They end up playing along side, with the same obligations and expectations, as the undrafted players that the league owners claim are “student athletes” and receive little to no compensation.

Club owners stand behind business models that claim to be precarious at best and yet this for-profit industry brings in over \$500 million in revenue each year. The 2019 World’s Junior Ice Hockey Championship will be held in BC next year and already, 70% of the \$2,000 ticket packages have sold bringing in \$130 million, not including any TV deal or merchandising. Meanwhile, the players receive very little to nothing in return for providing the very entertainment the industry is built on.

It is important to note that the governments of Ontario, Quebec and Alberta, provinces covering 2/3rds of the hockey clubs in league, have so far rejected any changes to Employment Standards.

The result of the decision by your predecessor and her government to deny these players coverage under the Employment Standards Act is that these players are being denied basic rights afforded by all other British Columbians. And at the time of that action, the BC NDP Labour Critic, Shane Simpson vehemently opposed the Order.

*"How is it that the B.C. government thought it was okay to do this when they were more than aware that there are court cases going on elsewhere in the country on this very specific question," Simpson said. "And I have seen nothing that suggests that they had a serious analysis of the financial situation of these teams and what could be a consequence if they had to start paying kids \$10.85 an hour."*

Mr. Simpson also questioned the political influence of some WHL team owners, who are prominent B.C. businessmen and notable financial B.C. Liberal backers: Tom Gaglardi of the Kamloops Blazers; Graham Lee of the Victoria Royals; and Ron Toigo of the Vancouver Giants. Together, the three men, through their companies, have donated \$160,550 to the B.C. Liberals in the past five years.

In the ministerial mandate letter you received from Premier Horgan on July 18, 2017, you are asked to

- *Update Employment Standards to reflect the changing nature of workplaces and ensure they are applied evenly and enforced.*

Given that mandate, we ask that your government review the plight of Major Junior hockey players in our province and reinstate them under all of the provisions of the Employment Standards Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Barb Nederpel', with a stylized, cursive script.

Barb Nederpel, President  
Kamloops & District Labour Council

C. The Honourable John Horgan, M.L.A., Premier of British Columbia  
C. Trevor Hughes, Deputy Minister of Labour