

MINISTRY OF LABOUR

**MEETING NOTE**

Cliff #: 56618

Date: October 25, 2018

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

**DATE OF MEETING:** October 29, 2018, in the Minister's Office at the Legislature

**ATTENDEES:** Minister Bains, Michael Cheevers, Karen Cooling, Trevor Hughes and representatives from the Canadian Football League Players' Association (CFLPA), the National Hockey League Players' Association (NHLPA) and the National Basketball Players' Association (NBPA)

**ISSUE:** To discuss workers' compensation coverage for professional athletes

**BACKGROUND:**

The CFLPA was established in 1965, and has since that time represented the professional football players in the Canadian Football League with the objective of establishing fair and reasonable working conditions for the players.

The NHLPA is the union for professional hockey players in the National Hockey League. Created in 1967, the union negotiates and enforces fair terms and conditions of employment for NHL players.

The NBPA is a labour union that represents basketball players in the National Basketball Association. It was founded in 1954, making it the oldest trade union of the four major North American professional sports leagues.

While the Ministry has been advised that representatives from these three associations will be attending the meeting with the Minister, the names of those who will be attending have not been provided.

**DISCUSSION:**

The associations have indicated that they would like to discuss the issue of workers' compensation coverage for professional athletes. It is expected that they will speak in support of a submission that the CFLPA made to the Minister in June 2018 that sought the Minister's support for extending workers' compensation coverage to professional football players, and that they will call for having coverage also include other professional athletes.

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.

In its submission, the CFLPA requested the following three specific actions:

1. That government 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. That 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. That the Minister of Labour 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 its members 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 his 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, but the Supreme Court refused to hear the appeal. It should also be noted that this issue may take on some particular urgency for the CFLPA since its current collective agreement expires in 2019.

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**SUGGESTED RESPONSE/KEY MESSAGING:**

- I appreciate the three associations – the NHLPA, the NBPA and the CFLPA – taking the time to share their views about the rights and protections of professional athletes whose injuries arise out of playing professional basketball, hockey or football.

- As you may know, as Minister of Labour, I have been mandated to review and develop options with WorkSafeBC to increase compliance with health and safety laws. I am committed to making sure BC workplaces are the safest in the country.
- With respect to your specific proposal to expand the scope of workers' compensation coverage to include professional athletes who are currently exempted, this is a matter that WorkSafeBC could address by policy. The associations are encouraged to contact WorkSafeBC directly on this issue.

- s.13,s.17

- Given that the treatment and rehabilitation of injured professional athletes is an issue with national - and potentially international – significance, my suggestion would be that the three associations raise this issue with all Canadian jurisdictions at the same time.
- With respect to your concern about the extent to which the public health system is being used by team owners to provide care and rehabilitation to injured players, I will be raising this issue with my colleague, the Minister of Health.

**ATTACHMENTS:** *Submission to the BC Minister of Labour for Extending Workers' Compensation Coverage to Professional Football Players, Canadian Football League Players' Association*

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**Submission to the BC Minister of Labour for  
Extending Workers' Compensation Coverage to Professional Football Players**

**Introduction**

Since taking office in July 2017, the Minister of Labour has stressed the importance of workplace health and safety protections as well as the systems of oversight, regulation setting and worker benefits, all included within the responsibility and mandate of Worksafe BC.

Whether it is the work done through safety training, the resources deployed to accident prevention, the research initiated into understanding occupational hazards and disease or the systems of care and support provided to injured workers and their families, BC's legislative and regulatory measures are designed to ensure that within every workplace in the province, every worker has access to the same protections and benefits when it comes to the work they do for a living.

Both the Minister and the Board of WorkSafeBC acknowledge that maintaining those protections and benefits is an evolving process. New industries emerge, new work processes are developed, new occupational hazards are identified, and new norms develop in the public's demand for what constitutes fair coverage and protection for workers. The Board of WorkSafeBC has taken some initial steps to begin reviewing its policies to ensure that those policies are both relevant and fair. The Minister has suggested that legislative changes are also possible in the near future. Both changes, whether through revisions to existing regulations and policies or the re-drafting of current legislation to adapt to changing workplace realities, align with the call from many quarters throughout the province that meaningful health and safety protections are essential building blocks of a modern economy.

Professional football players have an active and direct interest in seeing improvements in both the scope and coverage provided under BC's current system of workplace health and safety protections. In this submission to the Minister of Labour, the organization that represents

professional football players, the Canadian Football League Players' Association (CFLPA), will make the case that the current exclusion of professional football players from coverage under BC's system of workers' compensation regulation, protections and benefits unfairly restricts professional football players from the standard protections available in every workplace and allows the employer of these players to sidestep their full responsibility for the care and safety of their employees. Moreover, by failing to address these gaps in coverage, the province's public healthcare system becomes the default source of care for many injured players.

### **What is the CFLPA**

The CFLPA was established in 1965 to represent professional football players in the Canadian Football League (CFL). In that capacity, the CFLPA is the recognized bargaining representative for all professional football players in the CFL. The CFLPA has a signed collective agreement with the CFL. The CFLPA's status is in accordance with provincial labour relations legislation and fulfills the requirements of representation and dispute resolution that are standard parts of existing legislation.

The agreement between the CFL and the CFLPA 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. The current agreement expires in 2019.

Our current membership covers over 600 players. There are provisions in the agreement to ensure a minimum number of Canadian players are employed by each team. As well, the agreement sets out minimum salary and benefit levels for players based on the position they play as well as their status and tenure in the league. The collective agreement also allows individual players to negotiate additional bonuses and benefits directly with team owners. Many of those additional items reflect the individual player's performance or the team's interest in keeping the player for more than a single season.

There is a common misperception that CFL players are highly paid for the work they do. While a few players are able, through direct negotiation of additional bonuses and benefits with team owners, to receive salaries in excess of \$100,000 per year, the vast majority of CFL players earn

relatively modest incomes playing in the League. In 2017, the average salary of all players in the CFL was \$84,995. This included salary and bonuses paid to the top players. The current collective agreement set the minimum salary for a Canadian college draft player at \$53,000 per year for 2017. The average minimum salary of all players in 2017 was \$65,048.

It's also important to note that players in the CFL do not have long careers in the League. Currently, the average career of a CFL player is just under 3 years: 2.9 years. This relatively short tenure reflects a number of factors, but certainly the impact of injury during the time playing in the league is a major contributing factor.

### **Current Gaps in the Rights and Protections of Players**

It has long been assumed by policy makers and legislators at the provincial level that the health and safety of professional football players was something that had to be managed by individual players and the teams that employed them. This assumption was anchored to the belief that where injuries arise out of playing professional football, the individual player could sue his team and/or the League for the damages caused by that injury. This assumption is often cited by WorkSafeBC and other provincial worker compensation boards as a justification for policies that exclude professional football players and their teams from provincial regulation even though the fundamental principle of all worker compensation systems in Canada is that workers give up the right to sue their employer for work-related injuries and in return employers establish a no-fault insurance system to provide for workplace injuries.

As well, it has also been assumed that when an individual player was injured during a game or season, the player's team would provide sufficient care and rehabilitation. The level of care and all the expenses associated with a player's rehabilitation were assumed to be provided entirely by the team.

Both assumptions have been proven wrong and the consequence for injured players has been onerous. On the long-held belief that players could sue their team and/or the League for injuries that arose from playing professional football, a BC Supreme Court decision in 2016 (Bruce vs. Cohon, 2016 BCSC419) 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. An attempt to appeal that ruling was made to the Supreme Court of Canada, however, the Court refused to hear the appeal which means the lower court's decision stands.

The effect of that court decision places professional football players in British Columbia and Canada in the intolerable position of having to do what no other workers must do: negotiate with their employer for provisions of workplace health and safety standards and protections. For example, it is not only standard practice, but a requirement under the Workers' Compensation Act, that a workplace with 20 or more employees must establish a workplace safety committee comprised of equal representation from the employer and employees. However, for professional football players, the only input they have when it comes to establishing the rules, protocols and standards for safety in the CFL is through an eleven-person safety committee where a player representative accounts for only one of the eleven members on that committee. The other members are either appointed by team management or the League office. And regardless of what the recommendations are from that committee, those recommendations are non-binding and subject to final review by team owners who can accept or reject those recommendations without any forum for appeal by players.

On the second assumption, that a player's team would be entirely responsible for the care and rehabilitation of an injured player, the reality is that most injured Canadian players are forced to rely on the public health care system. When a player is injured during a game or the regular season, current coverage provisions ensure that the player has access to team-supplied care and rehabilitation for the year after the injury occurred. However, not all injuries are resolved within that year. In some cases, the injury is career-ending. In others, the rehabilitation period extends beyond the one-year coverage provisions. In both cases, as the injured player then becomes responsible for their own care and rehabilitation, Canadian players are forced to turn to the public health care system to find the additional care needed. Even worse, injured American players are left on their own to pay for their care. This reality does not take into account the team's use of the provincial health care system to avoid large medical expenses incurred within the one-year window of a player's injury.



From a public policy perspective, the failure of these two assumptions creates a serious inequity for CFL players. Because of the court ruling in BC, players can't look to the courts to provide a remedy when their injuries are no longer covered by team-supplied medical care and rehabilitation. Moreover, the BC court's view that collective bargaining is the venue for resolving this problem means that CFL players must not only negotiate the health and safety status of their work, they must also negotiate the amount of care and coverage that their employer provides for what are, de-facto, work-related injuries. Making matters worse, the employers'—the Canadian Football League—refusal to acknowledge their responsibility for care of players whose injuries extend beyond the current provisions means that taxpayers—through the publicly-funded healthcare system—end up subsidizing the CFL's unwillingness to take full responsibility for the care and rehabilitation of players who are their employees.

### **Measures Needed to Address These Problems**

As outlined previously, one of the basic challenges for the CFLPA is building awareness and support among policy makers, legislators, key decisions makers and the broader public about the current gaps that exist when it comes to player safety in the CFL. In addition, our association is working on several fronts to ensure that when players are injured, there is a system of care and rehabilitation for those players that is not only fair and comprehensive, but also requires team owners and the CFL to accept their full responsibility as employers for the safety and health of those they employ.

Our specific appeal to the BC Minister of Labour is threefold:

1. The CFLPA asks the Minister to support our call for greater responsibility by team management and owners for all of their employees when it comes to workplace health and safety. The history of workers' compensation policy and legislation in BC—and Canada for that matter—has been to expand the scope of coverage to include workers and workplaces that had previously been excluded. Examples of those changes in BC would included the coverage extended to farm workers, various professional groups, workplace interns and professional entertainers. In each one of these examples, the shift in public policy arose from concerns that regardless of the workplace, the health and safety of workers was a sound public policy to advance. It's worth noting that while professional

football players are excluded from coverage under current WCB policy, coaches, trainers, football support staff and referees are not. At the very least, players see this distinction as both arbitrary and discriminatory.

2. The CFLPA is also asking the Minister to work with the Minister of Health 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. Taxpayers should not be expected to subsidize professional football teams by becoming the default provider of care and rehabilitation to injured players.
3. The CFLPA is also asking the Minister to encourage the Board of WorkSafeBC to review its current rationale for excluding professional football players given the recent decisions by both the BC Supreme Court in *Bruce vs. Cohon* and the Supreme Court of Canada's decision to not hear an appeal of the lower court's decision. The CFLPA believes that these court decisions dramatically alter long-held assumptions about how player safety concerns are to be resolved.

In asking for the Minister's support on these three matters the CFLPA acknowledges that the decision to extend coverage to professional football players has a number of challenges.

Obviously, the inherent nature of professional football is one in which injuries on the field are a regular occurrence. The question that policy makers and legislators need to consider is the extent to which team management and owners are taking full responsibility for the injuries that do occur. In other professional sports leagues, for example, workers' compensation equivalent coverage and protection are the norm, not the exception. In the National Football League (NFL) and the National Hockey League (NHL) injured players have access to team-provided full care and rehabilitation as well as income support throughout their return to regular play. Moreover, when professional athletes have access to a high level of team-provided care and rehabilitation there is a stronger push on the part of both players and team owners to develop programs and strategies that keep players healthy and reduce the incidence of injury.

It's important to emphasize that even though there may be some hesitation on the part of policy makers and/or legislators to remove the current exclusion of professional football players from coverage by WorkSafeBC, in the United States, where state mandated workers' compensation protections and benefits have been extended to both the NHL and NFL players, the inclusion of

those players has worked. In effect, team management and owners have taken full responsibility for the care of their players, an outcome that needs to be replicated not just here in BC, but in the other five provinces where CFL teams operate.

The CFLPA believes that the combination of a more thorough review of existing policy gaps when it comes to the coverage provided to professional football players and the greater awareness that this review will spark in the plight of our members will lead to better solutions for players, their teams and the broader public interest.



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