

GUARDIAN OF AMATEURISM OR LEGAL DEFIANT? THE DICHOTOMOUS NATURE OF NCAA MEN’S ICE HOCKEY REGULATION

*Marc Bianchi**

“To arbitrarily take options away from players is just plain wrong.”¹

INTRODUCTION	166
I. THE NCAA AND ITS PURPOSE	166
A. Creation of the NCAA	166
B. The NCAA Today	168
II. LEAGUE COMPARISON.....	170
A. National Hockey League Teams do not Prefer Major Junior Over College	170
B. NCAA College Hockey.....	172
C. Major Junior Hockey.....	174
1. Who can play Major Junior hockey?	176
2. The Major Junior Season	177
3. Tier II Junior Hockey	178
III. THE PROBLEM AND WHY THE PROBLEM IS UNIQUE TO HOCKEY.....	180
A. NHL Draft and Minor Leagues Compared to NFL and NBA.....	182
B. NHL Draft and Minor Hockey Leagues	183
V. LEGAL PROTECTION OF MINORS.....	184
A. Contractual Rights of Minors	185
VI. MAJOR JUNIOR HOCKEY SHOULD NOT BE CONSIDERED PROFESSIONAL HOCKEY	191

* The author is a third-year law student at Seton Hall University School of Law. Prior to attending law school, the author played NCAA D-I and minor league hockey and has had a life-long passion for the game. The author would like to thank Charles “Dewey” Cole for his contributions to this article. Mr. Cole’s knowledge of legal writing is second only to his knowledge of and passion for the game of hockey. This article surely would not have been published without Mr. Cole’s dedication.

1. Ken Campbell, *Junior-A Leaders Feeling the Freeze*, THE HOCKEY NEWS, Feb. 26, 2008, at 14–15.

166 *Seton Hall Journal of Sports and Entertainment Law* [Vol. 20.1

A. NCAA Determines Amateurism on a Sport by Sport Basis	196
B. Options for Major Junior Players	199
VII. CONCLUSION: SOLUTIONS TO THE PROBLEM	200

INTRODUCTION

National Collegiate Athletic Association (NCAA) distinctions between professional and amateur ice hockey leagues have been incorrectly drawn. These poorly drawn distinctions have resulted in negative externalities borne by naïve adolescents. The NCAA strives to protect the sanctity of sport and the pureness of competition through stringent amateurism requirements. Though idealistic in theory, these requirements fall far short of their lofty ideals when applied to men's Division I ice hockey. To protect the integrity of amateur hockey, the NCAA runs counter to legal principles that protect minors. The policy of the law is to protect a minor against himself, his indiscretions, his immaturity, and against the machinations of other people.² The effect is that the law discourages adults from contracting with minors. The NCAA holds minors responsible for decisions they make as early teens. The effect of NCAA amateur regulations as applied to ice hockey is at odds with accepted principles of law.

Part I of this article explores the history of the NCAA and traces its development to its present state today; Part II explains and compares the hockey leagues and levels of play at issue; Part III explains the problem and why it is unique to the sport of hockey; Part IV reviews legal protection of minors, particularly in the ice hockey context; and Part V argues that the NCAA has wrongly classified certain hockey leagues resulting in adverse consequences for minors. Finally, Part VI offers a solution to the problem.

I. THE NCAA AND ITS PURPOSE

A. *Creation of the NCAA*

The National Collegiate Athletic Association was

2. *Berg v. Traylor*, 56 Cal. Rptr. 3d 140, 146 (Cal. Ct. App. 2007).

originally created to protect the health and safety of collegiate football players.³ President Theodore Roosevelt, who was concerned over the increasing number of football-related injuries and deaths, summoned college athletics leaders to a conference at the White House at the turn of the century to discuss reforms.⁴ On December 28, 1905, sixty-two schools met in New York City and founded the Intercollegiate Athletic Association of the United States as a discussion group and rule-making body.⁵ Five years later in 1910, the IAAUS changed its name to the National Collegiate Athletic Association.⁶

The NCAA has evolved and adapted throughout its 100-plus year existence. The increased popularity of college football led to abuses involving student-athletes.⁷ In response, the NCAA instituted the "Sanity Code," which established guidelines for recruiting and financial aid.⁸ The Sanity Code, however, was short lived due to enforcement issues.⁹ Nonetheless, the Sanity Code raised awareness of the

3. Kay Hawes, *It's Object shall be regulation and supervision: NCAA born from the need to bridge football and higher education*, Nov. 8, 1999, <http://www.ncaa.org/wps/ncaa?ContentID=29238>; Kay Hawes, *Roosevelt's love of sports led to NCAA's birth: President stepped in to save football and assemble first athletics administration*, Nov. 8, 1999 <http://www.ncaa.org/wps/ncaa?ContentID=29237>; see also Joseph N. Crowley, IN THE ARENA: THE NCAA'S FIRST CENTURY (2005), available at http://www.ncaapublications.com/Uploads/PDF/in_the_arenaaeaf7293-fb6f-4938-9b6f-ab04197eb89f.pdf.

4. Hawes, *supra* note 3.

5. *Id.*

6. *Id.*

7. Gary T. Brown, *NCAA Answers Call to Reform: The 'Sanity Code' Leads Association Down Path to Enforcement Program*, Nov. 22, 1999, http://web1.ncaa.org/web_files/NCAANewsArchive/1999/19991122/active/3624n24.html. College football was growing, as evidenced by an increase in membership institutions, an increase in the number of postseason games, and televising the sport. *Id.* In the 1940s there was evidence of professional gambling on college football and basketball games and accompanying claims that gamblers fixed contests. *Id.* Recruiting became more national rather than regional because of advances in air travel. *Id.* Third, the advent of post-season bowl games in football stepped up the competitive intensity for schools to claim a piece of that financial pie. *Id.*

8. *Id.* Five major issues addressed by the Sanity Code were amateurism, institutional responsibility, sound academic standards, financial-aid controls, and recruiting restrictions. *Id.*

9. *Id.* The Sanity Code lacked a way to enforce its rules, and many member institutions felt that it was too restrictive. *Id.* Furthermore, the only penalty for a violation was expulsion from the NCAA. *Id.* Many schools threatened to withdraw from the NCAA if the Sanity Code was adopted. *Id.* As a result, the Sanity Code was repealed at the 1951 NCAA Convention. *Id.* Though the Sanity Code was short-lived

need for more robust governance and regulation that led to the stronger, more unified NCAA that exists today.¹⁰

Originally, NCAA institutions did not give scholarships based on athletic ability.¹¹ Over time, this strict prohibition was repealed and tuition scholarships, but not room and board were permitted.¹² Today, Division I colleges and universities are authorized to provide student-athletes with full tuition scholarships,¹³ including the cost of room and board and incidental costs, such as books and school fees.¹⁴ Thus, NCAA regulations are not set in stone; rather, they are ever evolving and adapting to the changing circumstances of college athletics and the role they play in society. The Sanity Code and the evolution of athletic scholarships are two examples of how the NCAA has evolved and adapted, particularly with regard to college football. Division I men's ice hockey is a sport that is ripe to be revisited by the NCAA in light of changing circumstances surrounding amateur ice hockey.

B. The NCAA Today

Today, the NCAA is a voluntary, membership-led association that consists of more than 1200 colleges and universities divided into three divisions: I, II, and III.¹⁵ In

and did not fix the problems at the time, it paved the way for a 12-point code adopted by the NCAA, and may have led to the growth of the enforcement process the NCAA has today. *Id.*

10. *Id.*

11. See Crowley, *supra* note 3, at 38, 56; See also Brown, *supra* note 7.

12. *Id.*

13. See generally Brown, *supra* note 7; See also Crowley, *supra* note 3. Receiving tuition assistance and room and board is technically a grant in aid; however it is commonly referred to as athletic an scholarship. *Id.*

14. Crowley, *supra* note 3, at 177.

15. *Id.* at 165. Division I programs feature substantial sports sponsorship and scholarship numbers, national as well as regional recruitment and competition, and intra-division scheduling emphasis, attendance considerations, and a presumption of reliance on self-generated financial support. Division II institutions had a regional focus, fewer sports, major institutional funding, and significant numbers of local or in-state student-athletes paying for a large share of the costs of their education. In Division III, the governing philosophy owes much to precepts cherished by the NCAA's founders: no athletic grants-in-aid, no distinctions between student-athletes and other students, and sports programs conducted not for the general public but for the competitors and the campus community. *Id.*; See also NCAA Fact Sheet, http://web1.ncaa.org/cent/mediaKit_FactSheet.jsp, (last visited Jan. 18, 2009); The NCAA does not have Division II hockey; it is divided into Division I and Division III

1997, the NCAA implemented a change in its governing structure to give greater autonomy to each division and more control by member institutions.¹⁶ The goal of the NCAA is to adhere to fundamental values such as respect, fairness, civility, honesty, and responsibility.¹⁷ The NCAA encourages these values not only in athletic participation, but also in activities affecting athletics programs.¹⁸ In its “Principles for Conduct,” the NCAA Manual states that “[i]ntercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student athletes.”¹⁹ The NCAA further stresses that a safe environment shall be provided for student-athletes, that institutions should ensure a positive relationship between players and coaches, and also that the coaches and administrators “exhibit fairness, openness, and honesty in their relationships with student-athletes.”²⁰ Thus, the NCAA’s core values apply not only to games and competition, but also to everything surrounding an athletic program, such as scouting and recruiting.

NCAA Division I athletics are governed by the NCAA Division I Manual (“the Manual”), a lengthy collection of rules and bylaws that govern everything affecting college athletic programs. According to the Manual, the recruiting process involves a balancing of the interests of prospective student-athletes, their educational institutions, and the NCAA’s

levels. See generally <http://www.uscho.com/> (for comprehensive college hockey coverage and commentary, including leagues, rosters, schedules, scores and team sites) (last visited Feb. 14, 2009). See also <http://www.insidecollegehockey.com/INCH.htm> (for comprehensive college hockey coverage and information) (last visited Feb. 14, 2009). While these issues affect both Division I and Division III hockey programs, the impact and implications are more prominent at the Division I level and therefore this article will deal primarily with Division I hockey programs.

16. In *NCAA v. Board of Regents*, the Supreme Court held that the NCAA was not a single entity; rather it was a collection of schools that was controlled by votes of member institutions. 468 U.S. 85, 99 (1984). Though this was an antitrust case, it is noteworthy because the court recognized that the NCAA is not a regulator that controls college athletics from above; instead, power resides in the member institutions that comprise the NCAA. *Id.*

17. NCAA BYLAWS art. 2.4, reprinted in NAT’L COLLEGIATE ATHLETIC ASS’N, 2008–09 NCAA DIVISION I MANUAL (2008), available at http://www.ncaapublications.com/Uploads/PDF/Division_1_Manual_2008-09e9e568a1-c269-4423-9ca5-16d6827c16bc.pdf. [hereinafter NCAA MANUAL].

18. *Id.* at art. 2.4.

19. *Id.* at art. 2.2.

20. *Id.* at art. 2.2.3–5.

member institutions.²¹ Recruiting regulations shall be designed to shield prospective student athletes “from undue pressures that may interfere with the scholastic or athletic interests of the prospective student-athletes or their educational institutions.”²² Furthermore, the NCAA’s goal in designing its eligibility requirements is to assure proper emphasis on educational objectives and “to prevent the exploitation of student athletes.”²³ The NCAA requires that persons employed by member institutions must act with honesty and sportsmanship, and “shall represent the honor and dignity of fair play and the generally high standards associated with wholesome competitive sports.”²⁴ As evidenced by the Manual, at its core the NCAA is an ambassador of wholesome competitive athletics. But in application, the NCAA rules are having the opposite effect on hockey.

II. LEAGUE COMPARISON

A. National Hockey League Teams do not Prefer Major Junior Over College

Major junior hockey has historically been the primary developmental path to a professional hockey career; however, NHL teams are hesitant to direct a player down one path or the other.²⁵ NHL teams prefer that a player has all the necessary information so that he may make the decision that is best for him.²⁶ Players develop differently; some are able to make the jump from major junior hockey to the NHL.²⁷ Others can benefit from four years of college hockey. Both options have benefits, and it is up to the individual to choose

21. *Id.* at art. 2.4.

22. *Id.* at art. 2.11.

23. *Id.* at art. 2.12.

24. *Id.* at art. 10.01.1.

25. Elliot Olshansky, *Picking the Player, Not the Team*, CSTV.com, Jun. 14, 2007, available at <http://www.cstv.com/sports/m-hockey/stories/061607acc.html> (last visited Aug. 25, 2008).

26. *Id.*

27. Notable players that made the jump directly to the NHL from major junior hockey the year after they were drafted include Sidney Crosby, Steven Stamkos, Vincent Lecavalier, Patrick Kane, Jordan Staal, Eric Staal, and Rick Nash. Player statistics can be found by typing in player names at HockeyDB.com, <http://hockeydb.com> (last visited Mar. 6, 2009).

the path that best suits him. The problem is that this decision must be made when the player is barely even a teenager, long before the player knows the course of his development or which path will be best for him.²⁸

Further complicating the situation is the NHL's compensation to major junior teams for players drafted by NHL teams from the major junior ranks.²⁹ Major junior teams receive millions of dollars for player development,³⁰ which make many teams viable. The NCAA and Tier II junior leagues, by contrast, receive nothing for the players they develop.³¹ Therefore, major junior teams have a financial incentive to lure and lock in players at a young age. Oddly enough, the NCAA helps major junior teams accomplish this goal with its unnecessarily restrictive regulations. The NCAA

28. No discussion on NCAA amateurism is complete without addressing sports agents. The NCAA prohibits athletes in all sports from hiring agents to represent or promote them for professional advancement or marketing purposes. NCAA Manual 2008-09, 12.3.1. Major junior, on the other hand, allows players to contract with agents and to engage in promotions. Steve Simmons, *Where are all the Canadians in NCAA hockey?*, TORONTO SUN, (Mar. 15, 2007), available at <http://slam.canoe.ca/Slam/Hockey/NCAA/2007/03/15/3755722-sun.html> (last visited Aug. 25, 2008). Further complicating the situation is that agents may steer young players down the major junior path for the sole purpose of personal financial gain. *Id.* Signing a contract to represent a player secures an agent's financial interest in that player. *Id.* The issue of agents, therefore, weighs heavily in any discussion of the distinction between amateur and professional athletics, especially ice hockey. While agents are a major part of the problem, this article focuses on the NCAA's classification of major junior hockey as professional hockey, leaving the agency issue to be resolved separately.

Recently, an Ohio court ruled that the NCAA rule which "renders a student-athlete ineligible for collegiate competition if he has a lawyer present during contract negotiations [with a professional team], was illegal because it interfered with an athlete's right to legal representation." Alan Schwartz, *N.C.A.A. Ban on Lawyers for Athletes Ruled Illegal*, N.Y. TIMES, Feb 12, 2009, at B1. The ruling spoke only to the NCAA ban against agents that "forbids a lawyer from being present during negotiations or having direct contact with a team," and did not address agents who were not attorneys. *Id.* The attorney-agent distinction remains to be resolved. *Id.* This ruling has the potential of undermining and unraveling NCAA prohibitions on the use of agents by student-athletes. See also Katie Thomas, *Ohio Court Orders N.C.A.A. to Justify Why It's Not in Contempt*, N.Y. TIMES, May 13, 2009 available at <http://www.nytimes.com/2009/05/13/sports/baseball/13ncaa.html>; see also *Baseball Adviser Rule is Reviewed*, USA TODAY, Oct. 15, 2009, at 8C.

29. Campbell, *supra* note 1, at 15.

30. *Id.*; see also Quebec Major Junior Hockey League Administrative Rules, 2008–2009, Rule 2.14.6, available at http://www.lhjm.qc.ca/navcache/getcontents.php?currentpath=/root/Registrariat/Reglements_administratifs_20082009_ENG.pdf.

31. Campbell, *supra* note 1, at 15.

is premised on sportsmanship and the promotion of wholesome, amateur athletics. But in pursuit of these ideals, the NCAA has created a situation that unfairly burdens minors and contradicts accepted legal precepts that protect minors.

B. NCAA College Hockey

Division I hockey teams play considerably fewer games than major junior teams in a slightly shorter season. College hockey teams are generally restricted to thirty-four regular-season games with the possibility of another ten post-season games.³² The college season typically does not exceed fifty games in all.³³ Additionally, college practices do not officially begin until the end of September.³⁴ The puck drops in the college season in early October.³⁵

College hockey teams practice almost every day and typically have off-ice strength training sessions anywhere from three to five times per week depending on the time of the year.³⁶ Colleges and universities employ strength coaches to design and implement high-performance planning cycles for hockey players.³⁷ These programs include sports psychology, exercise physiology, testing, nutrition, goal setting, and monitoring.³⁸ Such rigid year-round training programs drastically transform a player's body throughout his four years.

An example of the physical transformation an individual can achieve is ten-year NHL veteran Mike Grier, who enrolled at Boston University (BU) in the fall of 1996.³⁹ Grier entered college weighing 225 pounds with twenty-five percent body fat; three years later, he made the jump from college directly to the NHL, weighing the same 225 pounds but with five

32. NCAA Manual art. 17.14.5.1; Individual team schedules can be found at <http://www.uscho.com/>; see also <http://www.insidecollegehockey.com/INCH.htm>.

33. NCAA Manual art. 17.14.2.

34. *Id.* at art. 17.14.1–3.

35. *Id.*

36. Interview with Robert Godfrey, Holy Cross Men's Ice Hockey Assistant Coach, in Denver, Colo. (Jan. 2, 2009).

37. *The Training Advantage—College Hockey Molds Complete Players*, THE HOCKEY NEWS, Dec. 1, 2008, at 31.

38. *Id.*

39. *Id.*

percent body fat.⁴⁰ Grier's physical transformation was made possible with the help of BU's strength coach, Mike Boyle, who believes that the forty-game college schedule is conducive to physical improvement.⁴¹ Boyle contends that the NHL-style schedule of major junior hockey does not allow young players the opportunity to do the things necessary to gain weight and strength.⁴² Players who enter college as baby-faced boys with a little extra fat leave as grizzled, bearded men that are finely tuned athletic machines. Such transformations are undeniable over the course of four years. Weight training is only one way that a player benefits from college hockey.

Another benefit of college hockey, as important as rigorous physical training on and off the ice, is the mental and social development that college hockey players experience.⁴³ Balancing classes, homework, travel, games, practices, and social events creates a more complete person. Ultimately, this translates into a better-rounded professional hockey player and, more importantly, a person who is ready for life after hockey. It is not surprising that an increasing number of NHL captains and alternate captains come from college backgrounds.⁴⁴ College hockey puts a great deal of emphasis on leadership by upperclassmen, who serve as mentors for underclassmen. College hockey creates the total package in a player: "not only the physical skills to be an excellent hockey player, but also the education, the ability to 'think,' the social skills and self-confidence that allow college players to take on key leadership roles on their teams."⁴⁵ To further personal development of athletes, many colleges and universities employ sports psychologists. Denver University's Dr. Steve Portenga helps players develop mental toughness through relaxation exercises, concentration, and positive imagery.⁴⁶

40. *Id.*

41. *Id.*

42. *Id.*

43. Larry O'Connor, *Expert Advice—Six Hockey Leaders Discuss College Hockey's Unique Advantages*, THE HOCKEY NEWS, Dec. 1, 2008, at 29 (Larry O'Connor interviewed prominent members of the hockey community. The views quoted here were those of Central Collegiate Hockey Association ("CCHA") Commissioner, Tom Anastos. The CCHA is one of six NCAA D-I men's ice hockey leagues.).

44. *Id.*

45. *Id.*

46. *The Training Advantage — College Hockey Molds Complete Players*, *supra* note

All these aspects combine to make college hockey a good developmental choice for players aspiring to play professional hockey.

The main selling point for college hockey is a free post-secondary education in addition to the opportunity to play professional hockey afterward.⁴⁷ There are currently fifty-eight NCAA D-I men's ice hockey teams divided into six conferences.⁴⁸ College programs are similar to major junior programs in terms of what is provided for the athletes. D-I players are supplied with all equipment needs from head to toe. Ice time for practices and games are provided at the expense of the school, regardless of whether the school owns its own arena. Also, a majority of D-I programs, with the exception of Ivy League schools,⁴⁹ provide full scholarships to hockey players. Such scholarships cover all costs including tuition, room and board, books, fees, and incidental expenses. Therefore, the cost of attendance for a hockey player on a full scholarship is practically nothing. Finally, at the end of four years, college hockey players emerge with a degree.

C. Major Junior Hockey

Major junior hockey began in Canada and is still predominantly a Canadian entity. Three leagues, the Ontario Hockey League ("OHL"), the Western Hockey League ("WHL"), and the Quebec Major Junior Hockey League ("QMJHL"), fall under the umbrella of the Canadian Hockey League ("CHL") and comprise major junior hockey.⁵⁰ The main selling point of major junior hockey, and something that the leagues promote, is that it traditionally was the route to an NHL career. This is evidenced by the QMJHL's brochure

36, at 31.

47. Ryan Kennedy, *College Catch-22 Leads to Defections*, THN.com Blog, Feb. 8, 2008, available at <http://www.thehockeynews.com/articles/13331-THNcom-Blog-College-Catch22-leads-to-defections.html> (last visited Jan. 18, 2009).

48. Information on Division I college hockey can be found at U.S. College Hockey Online, <http://www.uscho.com/standings/?type=d1>; See also Inside College Hockey, <http://www.insidecollegehockey.com/INCH.htm>; NCAA.com, <http://www.ncaa.com/sports/m-hockey/ncaa-m-hockey-body.html>.

49. Ivy League schools do not offer athletic scholarships to their athletes; however, they do use other methods to offer student athletes financial aid. See generally WHAT IS THE IVY LEAGUE? IvyLeagueSports.com, available at <http://www.ivyleaguesports.com/whatisivy/index.asp> (last visited Mar. 6, 2009).

50. Canadian Hockey League Website, <http://www.chl.ca>.

titled *The Fast Track to the NHL*.⁵¹ Since 1969, of the 9126 players drafted by NHL teams, just over fifty percent have been from major junior teams, while only about twenty percent have been from U.S. college or high school teams.⁵² College hockey has rigid eligibility stipulations and educational requirements, such as class attendance and a minimum grade point average.⁵³ Major junior hockey, by contrast, has been likened to a cool uncle who does not care if you even go to class, let alone muddle your way through grade-twelve chemistry.⁵⁴

Major junior hockey is designed to be amateur hockey. The WHL expressly denies that it is a professional hockey league and represents itself as an amateur league.⁵⁵ Players receive a “modest monthly stipend . . . which provides them with spending money that they cannot earn in part-time jobs due to the time commitments of school and hockey.”⁵⁶ The QMJHL limits what a team may provide for a player to the following: “authorized remuneration, room and board fees, school transportation fees, school fees, books and supplies, training and two-way transportation fees between the player’s residence and the arena to attend training sessions.”⁵⁷ Furthermore, the QMJHL limits amounts of weekly stipends as follows: sixteen- and seventeen-year old players are paid \$35 per week, eighteen-year old players are paid \$50 per week, nineteen-year old players are paid \$60 per week, and twenty-year old players can be paid as much as \$150 per week.

51. QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, PAMPHLET, *THE FAST TRACK TO THE NHL* (2005), available at http://www.lhjm.qc.ca/lang_en/index.php?page=1784537843 (last visited Oct. 16, 2009).

52. *NHL Entry Draft Feeding Pool*, NHL Entry Draft, <http://www.nhl.com/ice/page.htm?id=31887> (last visited Oct. 15, 2009).

53. See generally NCAA MANUAL art. 14.01.2. Collegiate student-athletes are required to be full-time students to be eligible for collegiate competition. *Id.*

54. Kennedy, *supra* note 47.

55. WHL Frequently Asked Questions, <http://www.whl.ca/FAQ-p121244> (last visited Feb. 15, 2009). The WHL website presents the question, “*Is the Western Hockey League a professional league?*” Response: “The WHL is an amateur league working in conjunction with the Canadian Hockey League and the Hockey Canada.” *Id.*

56. *Id.*

57. QMJHL Administrative Rules, 2008–2009, available at http://www.lhjm.qc.ca/navcache/getcontents.php?currentpath=/root/Registrariat/Reglements_administratifs_20082009_ENG.pdf. [hereinafter QMJHL Rules] By-Law 3.07.3, at 16–17.

Major junior teams provide all hockey equipment for their players.⁵⁸ For example, the WHL has sponsorship agreements with equipment suppliers that provide head-to-toe equipment for all players during the season.⁵⁹ Major junior players live with billet families in the community in which the team is located.⁶⁰ Billet families are usually given a small stipend to offset increased grocery and energy bills.⁶¹

1. Who can play Major Junior hockey?

CHL regulations require that a player be between the ages of sixteen and twenty to play major junior hockey.⁶² Teams are limited to four sixteen-year-old players and three twenty-year-old players on their rosters.⁶³ Teams are also allowed to call up fifteen-year-old players for as many as five games.⁶⁴ An individual who plays major junior hockey signs a contract with the team for which he plays.⁶⁵ For the most part, the contract between a player and a team is a standard-form agreement with little room for negotiation.⁶⁶ Remuneration and other benefits are set and regulated by the league, which removes the ability of some teams to attract players with salaries and other perks.⁶⁷ The main purpose of the contract

58. Email from Jon Francois Perras, former major junior and Canadian university player and current professional player (Jan. 19, 2009) (on file with author); email from Jon Francois Perras (Apr. 5, 2009) (on file with author); *See also* WHL Frequently Asked Questions, 13. *Why Do All the Players Wear the Same Equipment?*, <http://whl.ca/FAQ-p121244>.

59. WHL Frequently Asked Questions, *supra* note 55, at Question 13.

60. *Id.* at Question 10.

61. Introduction to Billeting with the P.E.I. Rocket, <http://www.peirocket.com/index.php?page=billetFamilies> (last visited Oct. 2, 2009)

62. WHL Frequently Asked Questions, *supra* note 55, at Question 1. The three leagues of the CHL each have their own drafts at which the teams select prospective players. The WHL drafts players as young as 14-years old. About the Bantam Draft, <http://www.whl.ca/?p=121227> (last visited Feb. 15, 2009); *See also* WHL Frequently Asked Questions, *supra* note 55. Being drafted does not itself destroy amateur status; however, it is a step down that path at an age long before such athletes are exposed to the NCAA hockey option.

63. QMJHL Rules, *supra* note 57, By-Laws 3.01.1, 3.01.3, 3.02, at 12–14.

64. Campbell, *supra* note 1.

65. McCrimmon Holdings Ltd., 2000 Can. Tax Ct. LEXIS 2840, *5–*6 (Can. Tax Ct. 2000).

66. *See Generally* McCrimmon Holdings Ltd. *supra* note 65 at *5; *see also* QMJHL Rules, *supra* note 56 at 3.07.3–3.07.4.

67. Typical perks in hockey and other sports include the amount and quality of equipment and apparel a player receives, the quality of an arena and the size and

is to prevent the player from playing for another major junior team.⁶⁸

Participating in one major junior game destroys college eligibility.⁶⁹ Therefore, at the age of fifteen a player could be called up by a major junior team, play one game, and lose his eligibility to play college hockey. A player can also destroy his college eligibility without playing in a major junior game; if a player signs a contract to play for a major junior team, attends one day of training camp, and then decides he does not want to play major junior hockey, he is ineligible to play college hockey.⁷⁰

The unfortunate experience of Gary Nunn illustrates what can happen when a player is not diligent in protecting his amateur status.⁷¹ Nunn, who intended to attend Minnesota State University, Mankato on a full-tuition scholarship, made the mistake of allowing himself to be “cajoled” into signing a letter of intent to play for the Vancouver Giants of the WHL “just in case.”⁷² The Giants told Nunn that the letter of intent would never be submitted to the WHL.⁷³ But the NCAA mysteriously found out about the letter and ruled that he would have to sit out an entire year if he wanted to play college hockey.⁷⁴

2. The Major Junior Season

The three major junior leagues are similarly structured and play similar schedules. The WHL is comprised of twenty-two teams and plays a seventy-two -game regular-season schedule.⁷⁵ The OHL is a twenty-team league that plays a

quality of the locker room, the trainer’s room, and the weight room, and the quality of the team bus.

68. *McCrimmon Holdings Ltd.*, 2000 Can. Tax Ct. LEXIS 2840, at *5–*6.

69. Memorandum from Carolayne Henry, NCAA Division I Student-Athlete Reinstatement Committee, Chair, to NCAA Division I Men’s Ice Hockey Conference Commissioners (Apr. 16, 2003), *available at* http://www1.ncaa.org/membership/enforcement/amateurism/ice_hockey_memo_4_16_03.doc.

70. *Id.*

71. Campbell, *supra* note 1.

72. *Id.*

73. *Id.*

74. *Id.*

75. WHL team schedules are available through the WHL website and viewing individual team pages. *See* <http://whl.ca/stats/schedule.php?view=season>.

sixty-eight game regular-season schedule.⁷⁶ The QMJHL is comprised of eighteen-teams that also play a sixty-eight game regular-season schedule.⁷⁷ The three leagues employ a four-round, best-of-seven-series playoff schedule that has the potential to add another twenty-eight games to a team's season, thus increasing the total number of games played to almost 100.⁷⁸ Major junior training camps get underway at the end of August, and the puck drops on the season in mid-September.⁷⁹ The regular season ends in mid-March, and playoffs run into early May.⁸⁰

Major junior hockey is geared toward developing players for professional hockey. The structure of the season mirrors that of a professional season with an emphasis on maximizing game-time. As compared to college hockey, the greater number of games inevitably results in fewer practices, and less off-ice training and development. Though the structure of junior hockey benefits some players, it is not necessarily the best developmental route for every player who wants to play professional hockey.

3. Tier II Junior Hockey

Tier II junior hockey in North America is another form of amateur hockey. It is distinct from major junior hockey and does not jeopardize NCAA eligibility.⁸¹ There are numerous junior A, B, and C leagues throughout the U.S. and Canada.⁸²

76. OHL team schedules are available through the OHL website and viewing individual team pages. See <http://www.ontariohockeyleague.com/stats/schedule.php?view=season>.

77. QMJHL team schedules are available through the QMJHL website and viewing individual team pages. See http://www.lhjm.qc.ca/lang_en/index.php.

78. See *supra* notes 75-77.

79. *Id.*

80. *Id.*

81. Other options for aspiring college hockey players include playing at their local high school or at a private prep school. The number of players that make the jump from their local high school directly to college hockey has become rather rare. Prep school used to be a major contributor of college hockey players; however, with the growth of alternative routes, such as junior leagues, fewer players are choosing the prep-school route. This is not to say that prep school is obsolete as a route to college hockey as many former prep school players appear on Division I college rosters, only that players are increasingly choosing other options.

82. In North America there are Junior B and Junior C hockey leagues. The difference between Junior A, B, and C is the level of competition and the radius from which the teams are allowed to draw players. Junior A is the most competitive, with

The best junior league in North America is the United States Hockey League (“USHL”), which is centered in the Midwest. The USHL is comparable to major junior hockey in terms of age, level of play, and benefits provided to the players, with the exception that it does not provide its players with a weekly stipend. USHL players are between the ages of sixteen and twenty.⁸³ Players billet with families the same as major junior players, and the league or teams compensate the family for the extra expenses incurred. The USHL consists of twelve teams that play a sixty-game regular-season schedule.⁸⁴ The playoff format is three rounds of best-of-five series that has the potential to add fifteen more games.⁸⁵ The USHL has two drafts, the more pertinent of which drastically differs from major junior drafts. Players eligible for the USHL draft must be sixteen- or seventeen-years old.⁸⁶ The league explicitly prohibits fifteen-year olds from entering the draft.⁸⁷ In addition to the USHL, there are other junior leagues in North America that preserve amateur status.⁸⁸

teams draw from a greater distance and are allowed to “import” a limited number of players from great distances. Junior B and C are progressively more restrictive. While players do emerge from these leagues to play college hockey, these leagues produce such a small fraction of Division I players that it is not necessary to discuss them in any detail. *See generally* Hockey Canada, <http://www.hockeycanada.ca/>; *see also* USA Hockey, <http://www.usahockey.com/>; Canadian Junior Hockey League, <http://cjhllhockey.com/index.html>.

83. *See generally* USHL Draft FAQ, <http://www.ushl.com/draft/faq-futures.cfm> (last visited Feb. 15, 2009).

84. USHL League Schedule, available at <http://www.pointstreak.com/stats/pro/leagueschedule.html?leagueid=49&seasonid=3192> (last visited Jan. 18, 2009).

85. *See generally* USHL 2007-2008 Playoff Schedule, available at <http://www.pointstreak.com/stats/pro/leagueschedule.html?leagueid=49&seasonid=2568> (last visited Jan. 18, 2009).

86. USHL Draft Process, <http://www.ushl.com/centralscouting/USHL-Draft-Process.cfm> (last visited Jan. 18, 2009); *See also* USHL Draft FAQ, *supra* note 83.

87. USHL Draft FAQ, *supra* note 83.

88. Other junior hockey leagues in North America include the North American Hockey League (“NAHL”) and the Eastern Junior Hockey League (“EJHL”). The NAHL is a 20-team league in which teams play a 58-game schedule. *See generally* North American Hockey League Recruiting FAQ, <http://www.nahl.com/players/NAHLRecruitingFAQ.cfm> (last visited Feb. 15, 2009). Tryouts begin in mid-August, and the season runs from mid-September through the end of March. Playoffs may add 14 games at the end of the season and end in early May. *Id.* NAHL games are typically played on the weekends, which allow the athletes to miss as little school as possible. *Id.* NAHL players sign a contract called a tender with the team for which they play. *Id.* Once a player signs a tender with an NAHL team, his playing rights belong to that team, and he may not be recruited by or play for

One of the major goals of junior A hockey in North America is to protect the amateur status of all participants under rules established by, among other groups, the NCAA.⁸⁹

III. THE PROBLEM AND WHY THE PROBLEM IS UNIQUE TO HOCKEY

The dichotomy between protecting amateurism and protecting minors places the NCAA in a delicate situation. In trying to protect the ideals of amateurism, sportsmanship, respect, fairness, and honesty, the NCAA has, in effect, achieved the opposite result when it comes to men's ice hockey. NCAA regulations stipulate that major junior hockey is professional hockey.⁹⁰ As a consequence, the competition between the college teams and major junior teams over players has forged a system that ignores legal principles that protect minors. The NCAA forces minors—some as young as

any other NAHL team. *Id.* NAHL teams provide players with all equipment and travel expenses, including hotels and meals, and all ice time for games and practices. *Id.* NAHL players live with billet families. But, unlike other junior leagues, the players themselves are responsible for paying the billet family an estimated \$300 per month for room and board. *Id.* The EJHL is a similar junior hockey league situated in the northeastern United States. (Information on EJHL teams can be found at <http://www.easternjunior.com/index.php>; EJHL schedules can be found at <http://www.pointstreak.com/framed/prostats/teamschedule.html?teamid=25012&seasonid=2956>. This site only includes league games; in addition to a 45-game league schedule, EJHL teams play a number of non-league games.) EJHL teams play a 60–75-game schedule that includes tournaments throughout the season and playoffs at the end. *Id.* Players billet with host families and, similar to NAHL players, pay a stipend to the family. See Apple Core Housing/Billet Program, <http://www.applecorejunior.com/> (last visited Feb. 15, 2009); Bay State Breakers Host Families/Billet Families, http://www.jrbreakers.com/page.php?page_id=9715 (last visited Feb. 15, 2009); Boston Junior Bruins Billet Families/Housing, <http://www.bostonjuniorbruins.com/billet.html> (last visited Feb. 15, 2009). Canada has comparable junior hockey leagues to the U.S. that preserve amateur status and the opportunity to play college hockey. (There are ten junior A hockey leagues in Canada that fall under the governance of the Canadian Junior Hockey League. The Canadian leagues are divided along provincial lines; Ontario has three leagues, while other provinces have one and some have none. See generally Canadian Junior Hockey League, *supra* note 82).

89. USA Hockey Official Rules: Junior Hockey Edition, *Philosophy of Junior Hockey* at 7, available at http://www.usahockey.com/uploadedFiles/USAHockey/Menu_Officials/Menu_RulesEquipment/Junior%20Rulebook%200709.pdf (last visited Jan. 19, 2009); About the United States Hockey League; <http://www.ushl.com/about/about.cfm> (last visited Jan. 19, 2009); *Philosophy of Junior Hockey*; <http://www.easternjunior.com/about.php> (last visited Jan. 18, 2009).

90. NCAA Manual art. 12.2.3.2.3.

fifteen—to choose one path or the other and erects a barrier between the two paths that completely closes off the other option. Coaches and scouts recruit hockey players as young as fourteen⁹¹ in an attempt to lure them down one path or the other.⁹² This contradicts the precept that minors should be protected from their own imprudence and inexperience. Due to NCAA regulations, minors are held accountable for decisions they make when they are fifteen-years old. The NCAA regulations are wrong, unfair, and contrary to well-settled legal notions of how minors' obligations are to be

91. An example of this is sixteen-year-old Colten St-Clair from Gilbert, Arizona who verbally committed to Colorado College at 14. Paul Shaheen, *Committing at 14 to College*, THE HOCKEY NEWS, Feb. 9, 2009, at 39. St-Clair, who was 5-foot-10 and 180 pounds at the age of sixteen, is not even eligible for the NHL draft until 2011. *Id.*

92. NCAA regulations state that a coach cannot recruit a prospective student athlete ("PSA") until July 1 following the completion of his junior year in high school. NCAA Manual art. 13.1.1. The NCAA does make an exception for ice hockey. An institution may call a PSA once per month after June 15, after the conclusion of the PSA's sophomore year of high school. *Id.* at art. 13.1.3.1.4. An institution is then permitted to make one telephone call per week to a PSA beginning August 1, prior to the PSA's senior year of high school. *Id.* at art. 13.1.3.1.4. Beyond the phone contact, the NCAA allows a PSA to visit colleges and universities at the expense of the institution but not until the start of the athlete's senior year. *Id.* at art. 13.6.2.2.1. A PSA is allowed to visit a college or university before his senior year. But such visits must be conducted at the PSA's own expense. *Id.* at art. 13.7.1. Major junior teams, on the other hand, are not restricted in their contact with prospective players. There are no restrictions on the age at which a team may contact a player or the number of times a team may contact a player. Therefore, while NCAA institutions must wait until a player completes his sophomore year of high school and are restricted still in the frequency of contact with the player, major junior teams get a head start and can limitlessly pursue players as young as 13- or 14-years old.

NCAA regulations are so restrictive with regard to amateurism, particularly as it pertains to ice hockey, that major junior organizations are able to induce players into forfeiting NCAA eligibility unknowingly. The NCAA allows athletes to try out with professional teams and to receive expense paid visits, provided that such visits do not exceed 48 hours and any payment or compensation in connection with the visit is not in excess of actual and necessary expenses. *Id.* at art. 12.2.1.1. Players are drafted by major junior teams as young as 14 and are relentlessly pursued even if they intend to play NCAA hockey. Campbell, *supra* note 1. It is estimated that 85% of bantam-aged players (14-year olds) play major junior games as 15-year olds "basically wiping out their chance to play college hockey." *Id.* Major junior leagues have the advantage of recruiting players at a younger age and not being subject to the same stringent contact regulations that NCAA coaches are. As a result, major junior teams are able to prey upon impressionable minors who have dreams of playing professional hockey. The two options are not equally presented, and it is up to the child to make a decision about his future without hearing the whole story. Forcing such a major decision on imprudent boys who love to play the game and believe they can make it to the NHL is fundamentally unfair. The problem raises issues pertaining to the contractual rights of minors and the voidability of contracts entered into by minors.

treated.

A. *NHL Draft and Minor Leagues Compared to NFL and NBA*

The amateurism issues that plague college-hockey programs are unique to the sport due to the structure of professional hockey and the role that NCAA hockey plays in player development. Both the National Football League (NFL) and the National Basketball Association (NBA) require a specific amount of time to elapse between when a player completes high school and when he is draft eligible.⁹³ The NFL requires a player to complete at least three years of college to be eligible for the entry draft.⁹⁴ Therefore, underclassmen are ineligible for the NFL draft. In the NBA, a player must be at least nineteen-years old, and one NBA season must have elapsed since that player graduated from high school.⁹⁵ The net effect of the NBA's requirements is that most American-born basketball players play at least one season of college basketball. Furthermore, once a player is drafted by an NFL or NBA team, that player forgoes any remaining college eligibility.⁹⁶ The NBA draft is only two rounds, and drafted players usually play for the team that selected them the following season.⁹⁷ NCAA regulations declare a player ineligible for collegiate basketball if he enters the draft and is drafted by a team.⁹⁸ Similarly, once a player enters the NFL draft and is selected by a team, he loses any remaining college eligibility.⁹⁹ Players drafted into the NFL typically play for the team that drafted them the following season.¹⁰⁰ In both basketball and football, the main route to a

93. See ARTICLE X: PLAYER ELIGIBILITY AND NBA DRAFT, http://www.nbpa.com/cba_articles/article-X.php (last visited Jan. 19, 2009); Kevin Bonson, *How the NFL Draft Works*, <http://entertainment.howstuffworks.com/nfl-draft4.htm> (last visited Jan. 19, 2009).

94. See Kevin Bonson, *How the NFL Draft Works* *supra* note 93.

95. ARTICLE X: PLAYER ELIGIBILITY AND NBA DRAFT, *supra* note 93; See also Kennedy, *supra* note 47.

96. NCAA Manual art. 12.2.4.

97. See NBADraft.net, 2008 NBA Draft, http://www.nbadraft.net/nba_draft_history/2008.html (last visited Feb. 15, 2009).

98. NCAA Manual art. 12.2.4.2.1.

99. *Id.* at art. 12.2.4.2.2.

100. Neither the NBA nor the NFL has extensive minor league systems. In football, there is the Canadian Football League and the United Football League. Professional basketball has the NBA Development League whose season runs concurrently with the

professional career is through college. Therefore, the equivalent of major junior hockey does not exist in those sports because competition prior to college is designed to preserve college eligibility.

B. NHL Draft and Minor Hockey Leagues

The drafts of the NHL and minor hockey leagues drastically differ from that of the NBA and NFL. The NHL draft is held in June following the conclusion of the NHL season and the Stanley Cup Playoffs.¹⁰¹ To be eligible for the NHL draft, an individual must be eighteen by September 15 of the draft year and not older than twenty by December 31 of the same year.¹⁰² Unlike basketball and football, eighteen-year-old players from NCAA Division I schools can be drafted and retain their college eligibility so long as they do not play for a professional team or hire an agent.¹⁰³

Another way in which the NHL differs from the NBA and NFL is the well-developed minor-league system. In this respect, the NHL is comparable to professional baseball. There are at least three levels of professional ice hockey in North America. The top level is the NHL, consisting of thirty teams.¹⁰⁴ Below the NHL is the American Hockey League (“AHL”), which consists of twenty-nine teams,¹⁰⁵ each of which is affiliated with an NHL team.¹⁰⁶ Below the AHL, three

NBA season. However none of these leagues are comparable to the tiers and affiliate system that exist in professional hockey. See <http://www.nba.com/dleague/> (last visited Jan. 19, 2009); <http://www.ufl-football.com/> (last visited Mar. 6, 2009); see also <http://www.cfl.ca/> (last visited Mar. 6, 2009). But see Sean Leahy, *Will UFL be able to find a niche as NFL's Minor League?*, USA TODAY, Oct. 15, 2009 available at http://www.usatoday.com/sports/football/2009-10-15-sw-united-football-league_N.htm.

101. NHL Draft History, NHL ENTRY DRAFT, <http://www.nhl.com/futures/drafthistory.html> (last visited Jan. 19, 2009).

102. James Fitzpatrick, *NHL Draft Day Basics: A quick summary of the NHL Entry Draft*, http://procehockey.about.com/cs/prospects/a/nhl_draft_basic.htm (last visited Oct. 23, 2008).

103. NCAA Manual art. 12.3.1. But see *Id.* art. 12.3.2. (stating that “[s]ecuring advice from a lawyer concerning a proposed professional sports contract shall not be considered contracting for representation by an agent... unless the lawyer also represents the individual in negotiations for such a contract”); See also Alan Schwartz *supra* note 28; see also Katie Thomas *supra* note 28.

104. See generally NHL.com.

105. See generally theahl.com.

106. AHL franchises commonly move and affiliations with NHL teams shift. At the time this article was written, the Dallas Stars did not have an AHL affiliate; however,

leagues comprise the AA level: the ECHL,¹⁰⁷ the Central Hockey League, and the International Hockey League. Some teams at the AA level are affiliated with AHL and NHL organizations; others are independent franchises. NHL clubs assign players to AHL, ECHL, and CHL affiliates for development. This affiliation system promotes player development under the control and watchful eye of the parent club.

The AA level is professional hockey. Players typically are paid between \$330 and \$1000 per week depending on age and ability.¹⁰⁸ Players live on their own in housing provided by the team rather than with a billet family.¹⁰⁹ Most players at the AA level are in their twenties, and many have wives and families to support. The season ranges from sixty-four to seventy-two games depending on the league.¹¹⁰ Playoffs add an additional fifteen to twenty-five games. The AA level of minor league hockey is a full-time job, and players are able to make a moderate living.

With the exception of a few elite players, the majority of players selected in the NHL entry draft spend some time developing in the parent club's minor-league system. Unlike football and basketball, where colleges serve as a minor league in which players develop before moving to the NBA or NFL, the NHL has an elaborate system in place through which it develops players.

V. LEGAL PROTECTION OF MINORS

The law is designed to protect minors from their own imprudence, indiscretion, and from the designs and

when this article was published, the Stars had an AHL affiliate in Austin, Texas called the Texas Stars.

107. The ECHL was formerly known as the East Coast Hockey League with the acronym ECHL; however to reflect the nationwide presence of the league, it changed its name to ECHL in 2003. ECHL Frequently Asked Questions, <http://echl.com/faq.shtml>, (last visited Oct. 20, 2009).

108. See CHL-PHPA Collective Bargaining Agreement: Executive Summary, <http://www.phpa.com/en/content/home/about/chl-collective-bargaining-agreement%20/>; See also ECHL-PHPA Collective Bargaining Agreement: Executive Summary, <http://www.phpa.com/en/content/home/about/echl-collective-bargaining-agreement/>.

109. See CHL-PHPA Collective Bargaining Agreement, *supra* note 108.

110. League and team schedules can be found on the following league websites: <http://echl.com/>; <http://www.centralhockeyleague.com/>; <http://www.ihl-hockey.com/>.

mechanisms of others.¹¹¹ The NCAA's classification of major junior hockey as a professional league stands in contradiction to ideals of amateurism and fair play. Rather than protect minors through its regulation, the NCAA forces minors to choose at fifteen or sixteen which path they will select: college or major junior. Options are completely foreclosed based on this decision. The NCAA's classification is also contrary to legal principles designed to protect minors for three reasons. First, the contracts signed by major junior players are voidable at age eighteen. Second, the NCAA has incorrectly and arbitrarily drawn the dividing line in the wrong place on the spectrum of amateur and professional hockey. Third, the NCAA allows athletes to play professionally in one sport and play collegiately in another.

A. Contractual Rights of Minors

Major junior hockey contracts do not bind players under the age of eighteen. The contracts entered into by players are not designed to bind the athlete to play for a particular team. Instead, major junior contracts formalize the arrangement between the player and the team and prevent other teams from poaching players.¹¹² The contract prevents the player from playing for another major junior team, but does not limit where a player may play outside major junior hockey. Therefore, major junior player contracts are for the purpose of leveling competition between teams rather than binding a player to a particular team.¹¹³

From a legal standpoint, the law is designed to shield minors from their own lack of judgment and experience.¹¹⁴ Throughout North America, minors may void contracts after they reach majority.¹¹⁵ An infant is a person under the age of

111. Berg, 56 Cal. Rptr. 3d, at 146.

112. McCrimmon Holdings Ltd., 2000 Can. Tax Ct. LEXIS 2840, at *5-7.

113. The USHL and other junior A hockey leagues have similar structures that do not involve players signing contracts but nonetheless do instill stability and a level playing field so that wealthy teams cannot load up with talent at the expense of weaker teams.

114. Berg, 56 Cal. Rptr. 3d, at 146.

115. RESTATEMENT (SECOND) OF CONTRACTS, § 14 (1981). In Alabama, Nebraska, and Wyoming, the age of majority is 19, and in Mississippi, the age of majority is 21. *Id.* In the remaining 46 states, the age of majority is eighteen. *Id.*

majority, which in most states is eighteen.¹¹⁶ Furthermore, an infant's emancipation does not enhance his capacity to contract.¹¹⁷ Upon reaching majority, a person has the power to void a contract that he entered into as a minor.¹¹⁸ He need

116. RESTATEMENT (SECOND) OF CONTRACTS, § 14(a) (1981); *see also* ALA. CODE §26-1-1 (LexisNexis 2009) (Any person... at the arrival at the age of 19 years, shall be relieved of his disabilities of minority); NE B. REV. STAT. ANN. §43-245 (LexisNexis 2009) (for purposes of the Nebraska Juvenile Code the age of majority is 19); NE B. REV. STAT. ANN. §43-2101 (LexisNexis 2009) (all persons under nineteen years of age are declared to be minors); WYO. STAT. ANN. §12-1-101 (2009) (Upon becoming 18 years of age, an individual reaches the age of majority and as an adult acquires all rights and responsibilities granted or imposed by statute or common law, except as otherwise provided by law.); DEL. CODE ANN. tit. 1, § 701 (2009) (any person who attains the age of 18... shall be deemed to be of full legal age for all purposes whatsoever); MISS. CODE ANN. § 91-7-37 (2008) (The age of 18 years shall be the age of majority of an executor...); MISS. CODE ANN. § 91-20-3 (2009) ("Adult" means an individual who has attained the age of 21 years... "Minor" means an individual who has not attained the age of 21 years.); MISS. CODE ANN. § 93-19-13 (2009) (All persons 18 years of age or older... shall have the capacity to enter into binding contractual relationships affecting personal property. In any legal action founded on a contract entered into by a person 18 years of age or older, the said person may sue in his own name as an adult and be sued in his own name as an adult); N.Y. CIVIL PRACTICE LAW § 105 (Consol. 2009)("infant"... means a person who has not attained the age of 18 years.); N.Y. DOMESTIC RELATIONS LAW § 2 (Consol. 2009) (A "minor" or "infant"... is a person under the age of 18 years.); MASS. ANN. LAWS ch. 4 § 7 (LexisNexis 2009) ("Minor" shall mean any person under eighteen years of age. "Full age" shall mean eighteen years of age or older. "Adult" shall mean any person who has attained the age of eighteen. "Age of majority" shall mean eighteen years of age.); MICH. COMP. LAWS SERV. §722.52 (LexisNexis 2009) (a person who is at least 18 years of age... is an adult of legal age for all purposes whatsoever.); MINN. STAT. § 645.451 (2008). ("Minor" means an individual under the age of 18. "Adult" means an individual 18 years of age or older... "Legal age" or "full age" means 18 years of age or older.); ME. REV. STAT. ANN. tit. 1, § 72 (LexisNexis 2009). ("Adult" means a person who has attained the age of 18 years. "Child or children" means a person who has not attained the age of 18 years. "Full age" means the age of 18 and over. "Infant" means a person who has not attained the age of 18 years.); N.D. CENT. CODE § 14-10-01 (2009) (Minors are persons under 18 years of age.); CONN. GEN. STAT. §1-1d (2008) ("minor", "infant" and "infancy" shall be deemed to refer to a person under the age of 18 years and any person 18 years of age or over shall be an adult for all purposes whatsoever...); *see also* Age of Majority and Accountability Act, R.S.O., ch. A.7, s.1 (Ont. 1990) (Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years.); Age of Majority Act, R.S.A., ch. A-6, s.1 (Alta. 2000). (1 Every person attains the age of majority and ceases to be a minor on attaining the age of 18 years.); Age of Majority Act, R.S.B.C., ch. 7, s.1 (B.C. 1996) ((a) a person reaches the age of majority on becoming age 19...).

117. 7 ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 27.2 (rev. ed. 2002).

118. RESTATEMENT (SECOND) OF CONTRACTS, § 14(c) (1981); *See also* *Bowling v. Sperry*, 133 Ind. App. 692, 694 (Ind. Ct. App. 1962) ("contracts of minors are voidable and may be disaffirmed. . . . All such voidable contracts by a minor... may be avoided at any time during his minority or upon his arrival at full age."); *See also* *Story & Clark*

not take any action until he turns eighteen, and if sued on the contract, he may defend on the ground of infancy.¹¹⁹ When a person voids a contract that he entered into as a minor, it is as if the contract never existed. The right to void his contracts is conferred by law upon a minor for his protection against his own improvidence and the designs of others.¹²⁰ Therefore, though a minor may enter into a contract to play for a major junior team, that contract is not recognized by the law until that player turns eighteen.

In two similar cases from Canada, one involving Wayne Gretzky at the age of fourteen, youth hockey leagues tried to prevent minors from playing for particular teams. In both cases the courts were cautious to protect the rights of minors. In *Gretzky v. Ontario Minor Hockey Association*,¹²¹ Gretzky, age fourteen, and Brian Roraback, age thirteen, moved from their hometowns of Brantford and Brighton, respectively, to Toronto to play for the Toronto Nationals.¹²² Gretzky's hometown team in Brantford and Roraback's team in Brighton were members of the Ontario Minor Hockey Association ("OMHA").¹²³ In an action commenced in the Supreme Court of Ontario, the OMHA sought an injunction to prevent the two boys from playing for the Toronto Nationals.¹²⁴ The court held that such extraordinary relief as an injunction should not be granted.¹²⁵ The court stated that if there were contracts between the boys and the OMHA, they were voidable and not enforceable because the boys were minors.¹²⁶ The court found that there was no mutuality of

Piano Co. v. Davy, 68 Ind. App. 150, 160 (Ind. Ct. App. 1918) ("It is a general rule that the contracts of infants are voidable and may be disaffirmed, and it is not necessary, in order to give effect to such disaffirmance, that the other party be placed in *statu quo*. The infant is not bound to tender back money or property he has received."); *Clark v. Van Court*, 100 Ind. 113, 116 (Ind. 1884) ("A contract made by an infant, although executed, is as to him voidable ... and it may be avoided by him at any time during his minority or on his arrival at full age... without returning, or offering to return the to the other party, the property which was obtained from him under the contract."); *Mullen v. Tucker*, 510 N.E.2d 711, 713 (Ind. Ct. App. 1987) ("In Indiana, as in most states, contracts into which a minor enters are voidable at the minor's option.").

119. See sources cited *supra* note 118.

120. *Berg*, 56 Cal. Rptr. 3d, at 146.

121. 10 O.R.2d 759 (Ont. High Ct. 1975).

122. *Id.* at 2.

123. *Id.*

124. *Id.* at 2-3.

125. *Id.* at 6-7.

126. *Id.* at 7.

rights and obligations between the boys and the OMHA.¹²⁷

In *Boduch v. Harper*,¹²⁸ a minor player sued to prevent the Ontario Hockey Association from dictating where he could play.¹²⁹ Fifteen-year-old Tom Boduch had played for a team known as the Toronto Red Wings for an unspecified number of years.¹³⁰ At the beginning of the 1973 season, Boduch was sent to play for a team affiliated with the Toronto Red Wings called the King City Red Wings.¹³¹ Playing for King City created hardship for Boduch due to increased travel and time commitments.¹³² Boduch's parents decided it was in their son's best interest to play for a team closer to home in Toronto.¹³³ Boduch found a team in Toronto; however, in order to play for it, he had to be released by the Toronto Red Wings.¹³⁴ Boduch sued for his release and the right to play for another team.¹³⁵ The Ontario High Court of Justice found that though no contract existed between Boduch and the Toronto Red Wings, if there had been one, it would have been voidable because of Boduch's age.¹³⁶ The court, however, ruled in favor of the league in the interest of upholding its governing and organizational rules.¹³⁷ Nonetheless, the court held that neither the league nor the team had any legal right with respect to Boduch and that neither had a right to restrain his activity.¹³⁸

In both the *Gretzky* and *Boduch* decisions, the courts explicitly stated that had there been contracts between the minor and the leagues or teams, such contracts were voidable and not enforceable due to the age of the minor.¹³⁹ Thus, a contract entered into by a minor is not enforceable before the minor reaches the age of majority. When the minor does reach the age of majority, he has a decision to make, and the contract may become enforceable.

127. *Id.*

128. 10 O.R.2d 755 (Ont. High Ct. 1974).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

When an individual reaches majority, he must decide whether to disaffirm a contract he entered into as a minor. The minor must act to disaffirm the contract and has a reasonable amount of time to do so after reaching majority.¹⁴⁰ The law treats inaction as affirming the contract.¹⁴¹ If a minor disaffirms the contract within a reasonable time of reaching the age of majority, the contract is not enforceable, and it is treated as if it never existed.¹⁴² Therefore, before or within a reasonable time after reaching majority, major junior players are able to void a contract.¹⁴³ For example, in *Toronto Marlboro Major Junior "A" Hockey Club v. Tonelli*,¹⁴⁴ a minor signed a contract with a major junior team and subsequently attempted to void the contract based on infancy.¹⁴⁵ At the age of seventeen, Tonelli entered into a contract to play for the Toronto Marlboro major junior team, and then attempted to void the contract when he turned eighteen.¹⁴⁶ He played his last game for the Marlboros on his eighteenth birthday.¹⁴⁷ A day later, he sent a letter to the team repudiating his contract.¹⁴⁸ The Toronto Marlboros Hockey Club sued Tonelli for damages for breach of contract.¹⁴⁹ The trial court invalidated the contract on the ground that it was entered into by a minor and was not for his benefit.¹⁵⁰ At the time of the *Tonelli* decision, in Canada, contracts entered into for services could be enforced against a minor if they were for his or her benefit.¹⁵¹ The Toronto Marlboros then appealed the

140. JOHN D. CALAMARI & JOSEPH M. PERILLO, *THE LAW OF CONTRACTS* 310–11 (4th ed. 1998).

141. *Id.*

142. *Id.* at 308.

143. *Id.*

144. 23 O.R.2d 193 (Ont. Ct. App. 1979). John Tonelli went on to an illustrious career in the NHL, playing for the New York Islanders, Calgary Flames, Los Angeles Kings, Chicago Blackhawks, and Quebec Nordiques. He won four consecutive Stanley Cup championships with the New York Islanders between 1980 and 1984 and was a second team all-star in 1982 and 1985. Legends of Hockey: John A. Tonelli, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=11649> (last visited Oct. 2, 2009).

145. 23 O.R.2d 193 (Ont. Ct. App. 1979).

146. *Id.*

147. *Id.*

148. *Id.* at 198–199.

149. *Id.* at 193.

150. *Id.* at 202.

151. *Id.* at 200, 207.

case to the Ontario Court of Appeal.¹⁵² In reaching its decision, the court relied on the rule that contracts entered into by a minor are voidable by the minor unless the contract is for the benefit of the minor.¹⁵³

In his opinion, Judge Robert A. Blair emphasized that in contracting, the parties were not on equal ground, because the contract was clearly disadvantageous to Tonelli when he signed it.¹⁵⁴ Because the contract was not freely negotiated (it was presented on a take-it-or-leave-it basis), there was “no realistic option for Tonelli except to sign the contract.”¹⁵⁵ Even more, the terms of the contract were subject to arbitrary change at the discretion of the team and the league. Judge Blair found that fundamental contractual principles of reciprocity and respect for mutual rights and obligations were ignored by the Marlboros.¹⁵⁶ In the absence of these elements, Judge Blair held that the presumption of fairness in a contract failed.¹⁵⁷ It was the court’s role to protect parties whose bargaining power was weaker than their contracting counterparts.¹⁵⁸

In his opinion in *Tonelli*, Judge John D. Arnup considered the contract as a whole.¹⁵⁹ He looked at more than whether the minor benefited in some way because in almost all contractual relationships both parties benefit, otherwise, they would not have contracted.¹⁶⁰ Judge Arnup properly placed the burden on the party trying to enforce the contract to prove that it was for the benefit of the minor.¹⁶¹ He held that major junior hockey was amateur hockey and that the salary and expenses paid to Tonelli were not intended to represent normal or reasonable income to the player.¹⁶²

Though the *Tonelli* case was decided in 1979, the situation has changed little in terms of the flexibility and negotiations in major junior contracts. Today, major junior contracts are

152. *Id.* at 194.

153. *Id.* at 193.

154. *Id.*

155. *Id.*

156. *Id.* at 205.

157. *Id.* at 211.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 193.

162. *Id.* at 208.

not freely negotiated and are dictated and controlled by the league and subject to change at the league's discretion. This lack of negotiation means that contracts are still presented on a take-it-or-leave-it basis. Major junior contracts today are no more enforceable against a minor than they were thirty years ago. Furthermore, major junior players still receive the same \$35–\$50 per week that Tonelli received over three decades ago. This was not considered income in 1979 and is still not income today.

As illustrated, major junior contracts entered into by minors are voidable before the player reaches the age of eighteen for a variety of reasons, all of which are rooted in the protection of minors. If a player voids his contract at the age of eighteen, it is treated as if it never existed. Because major junior teams and leagues cannot enforce such contracts, the same principle should apply to the NCAA. In effect, the NCAA should also not be able to enforce a major junior contract against a minor. Regardless of the enforceability of the contract, the fact remains that major junior players receive cash for playing hockey in violation of NCAA bylaws. This factor alone however, is not determinative of whether major junior hockey is professional hockey.

VI. MAJOR JUNIOR HOCKEY SHOULD NOT BE CONSIDERED PROFESSIONAL HOCKEY

The distinction between amateur and professional hockey is one of degree, not of kind. Though the NCAA must draw the dividing line between professional and amateur somewhere, it has not chosen the most appropriate place to draw that distinction. To be sure, the NCAA has the right and authority to prevent professional athletes from competing in intercollegiate-athletic competition. Its goal of promoting amateur athletics is a legitimate purpose, and precluding professional athletes from intercollegiate competition is rationally related.¹⁶³ Nonetheless, on the spectrum of levels of hockey, the gap between major junior and junior A is far less than the gap between major junior and professional hockey.

The differences between major junior hockey and junior A hockey (i.e., the USHL) are so slight that there is little reason

163. *Karmanos v. Baker*, 617 F. Supp. 809, 819 (E.D. Mich. 1985).

why one is deemed a professional league and the other an amateur league. Under NCAA rules, a player is ineligible if he is paid for playing his sport, receives salary or reimbursement, or plays for a professional team.¹⁶⁴ Under this bylaw, participating in junior A hockey should render a player ineligible if judged by the same standards as major junior hockey. If the two levels of hockey are compared side by side, the differences are so slight that the NCAA's classification of major junior as professional and junior A as amateur is arbitrary.

Major junior hockey is comparable to the USHL. The level of play in the two leagues is essentially the same; USHL teams play preseason games against major junior teams that are closely contested. The USHL and major junior hockey are basically identical in terms of what is provided to players. Both leagues billet players with families at no cost to the player; provide all necessary equipment, ice time, and travel expenses for players; and make arrangements for players to attend school while playing.

The total cost per player for a season for both major junior and junior A hockey can range from \$10,000 to as high as \$18,000,¹⁶⁵ depending on where the team is located. The cost includes travel, meals, ice time, equipment, and billeting. A team in a larger city understandably spends more on amenities and has higher costs for ice time than a team in a smaller one. Additionally, a team located in a remote location has higher travel costs than a team in close proximity to league foes. Many USHL players that have graduated from

164. NCAA Manual art. 12.1.2(a),(d),(e).

165. These numbers are estimates based on the experiences and knowledge of former USHL and major junior players. Due to concerns over compliance and protection of amateur status, hockey teams at both levels do not publish team budgets or how much is spent per player. Teams cautiously guard their books as many operate on the cusp of professionalism and would rather not be scrutinized. The numbers were deduced by looking at the costs of equipment, the amounts that billet families receive, and other knowledge regarding the operation of an organization. Telephone interview with Jake Schwan, former USHL player and DI collegiate player (Jan. 12, 2009); email from Peter MacArthur, former USHL and DI collegiate player and current professional player (Jan. 18, 2009); email from Jon Paul Testuide former USHL player and current DI collegiate player (Jan. 19, 2009); email from Jon Francois Perras, former major junior and Canadian university player and current professional player (Jan. 19, 2009); email from Jonathan Hobson, former major junior, Canadian university, and professional player (Jan. 2009); email from Phillippe Lacasse, former major junior player and current professional player (Jan. 2009).

high school have part-time jobs to earn spending money. Major junior players, on the other hand, are unable to work during the season and are provided with spending money by the team. Over the course of a thirty-week season (the typical length of a hockey season from September through March), \$35 per week adds up to a little over \$1000. Therefore, both USHL and major junior teams provide their players with \$10,000 to \$17,000 worth of value and as little as \$35 per week provided in major junior hockey is the tipping point at which the NCAA draws the line between professional and amateur hockey. It is the equivalent of a player in the USHL working around six hours per week.¹⁶⁶

Furthermore, a team that pays more for ice time, takes longer road trips, and provides its players with more amenities inevitably spends more per player. Because the players do not pay for these expenses, they receive something of value. The disparity in the amounts that teams spend on players inevitably results in some USHL players receiving greater value in terms of goods, services, and amenities than some major junior players.¹⁶⁷ Under the current NCAA regulations, a major junior team may provide less to a player than a USHL team; however, the fact that \$35 is provided in cash makes the player a professional athlete in the NCAA's eyes. Because similarities between the two leagues are so

166. The minimum wage in Iowa, Wisconsin, and Nebraska (the main states in which the USHL is located) is \$7.25 per hour. If a player worked 6-10 hours per week earning minimum wage, he would earn between \$43.50 and \$72.50 per week. These hours and earning capacity are not full time employment. IOWA CODE § 91D.1 (2008) (The state hourly wage shall be at least... \$ 7.25 as of January 1, 2008.); NEB. REV. STAT. ANN § 48-1203 (LexisNexis 2009) (every employer shall pay to each of his or her employees a minimum wage of...Seven dollars and twenty-five cents per hour on and after July 24, 2009.); WIS. ADMIN. CODE DWD § 272.03 (2009) (no employer may employ any employee in any occupation, trade, or industry at a lesser hourly rate than as follows... All employees except opportunity and minor employees \$ 7.25 per hour.).

167. Suppose that team X in the USHL is located in a major metropolitan area a great distance from other teams in the league. As a result, team X pays a great deal more for ice time and its travel costs are significantly higher than other teams. Team Y, a major junior team located in a small city in Ontario, is in close proximity to league opponents. Team Y's travel expenses are low as are its expense within its own city. Therefore, athletes playing for team X receive more dollar value from the USHL team than do athletes playing for the major junior team. This scenario works both ways as teams in both leagues spend varying amounts. It is nonetheless important to note that since players in both leagues do not have to pay for anything, they are receiving something of value and it is possible for USHL players to receive a higher dollar value than major junior players though not in cash form.

great, it is arbitrary to classify major junior players ineligible as professionals while allowing USHL players to retain their amateur status.

Though the major junior hockey season is comparable to a minor-league-hockey season in terms of length and games played, the similarities end there. Season length should not be the critical factor in determining whether a league is considered professional. First, many junior A leagues and major junior leagues have seasons that compare to professional hockey. Second, the players' lives away from the rink are a better indicator of whether they are playing professional hockey.¹⁶⁸ Compared to professional hockey, major junior hockey is amateur hockey. Major junior players have little responsibility, no expenses, and are highly dependent upon team coaches and staff and their billet families. They live with families and have their meals and other home necessities provided for them. By contrast, at the AA level of professional hockey, players are independent and self-sufficient. Professional players live alone, with a teammate, or with their own families, are responsible for their bills, and do their own shopping and cooking. Professional hockey players at the AA level are able to support themselves and others with their earnings. Major junior players, by contrast, depend on their parents and their billet family for support.¹⁶⁹ Many major junior players are still in high school; while AA professional players play hockey as a full-time job.

168. Twenty-year old AHL rookie Spencer Machacek, who made the transition from major junior (Vancouver Giants) to the AHL (Chicago Wolves), commented on the difference between the leagues saying "[y]ou have to grow up fast. You're cooking on your own, you have to get your sleep and if you're not eating right it's going to show up in your game." Kevin Oklobzija, *Spencer Never a Passenger*, THE HOCKEY NEWS, Feb. 9, 2009, at 34.

169. The Maine Moose of the International Junior Hockey League, a junior A league, had a policy whereby players eighteen-years and older were allowed to live by themselves. Bill Stewart, *Junior Hockey: Billet families provide stable home*, MORNING SENTINEL, Apr. 25, 2008. This policy did not work out well and a season later it was amended so that all players were required to live with billet families. *Id.* Commenting on the policy change, Moose head coach Glenn Carey said, "[w]e just find when a teenager has the final say, the logic and maturity in those decisions isn't always readily there." *Id.* Carey continued, "[w]hen no one holds you accountable, you try to cut corners. . . . We feel having a structured home life will aid the program." *Id.* Though the Maine Moose are a junior A team and not a major junior team, the sentiment, concerns, and reasoning apply across the board for junior hockey. The age range is the same as is the lifestyle, mentality, and maturity of the players.

Hockey players at the AA (Central Hockey League and ECHL) and AAA (American Hockey League) levels are members of a labor union called the Professional Hockey Players Association (“PHPA”).¹⁷⁰ The PHPA negotiates player benefits by way of a collective bargaining agreement.¹⁷¹ Benefits negotiated include the following: health and welfare benefits, training camp allowances, travel and trade relocation expenses, per diem stipend, housing allowances, licensing rights, and revenue-sharing.¹⁷² By way of contrast, major junior players are not members of the PHPA or any other labor union for that matter. The mere existence of a labor union and a collective bargaining agreement at the AA and AAA levels¹⁷³ and the lack thereof in major junior hockey are further evidence that major junior is amateur hockey. Furthermore, professional players at the AA level are eligible for workers’ compensation when they are injured;¹⁷⁴ major junior players are not.¹⁷⁵ Comparing major junior hockey with the AHL, the ECHL, the Central Hockey League, or the IHL makes it clear that major junior hockey is much closer to junior A hockey than it is to professional hockey.

Finally, Canadian courts have indicated that major junior

170. About the PHPA, <http://www.phpa.com/en/content/home/about/index/> (last visited Oct. 3, 2009); *CHL and PHPA Reach Agreement* 10/3/2009 10:15 AM, http://www.centralhockeyleague.com/pressroom/news/index.html?article_id=3682.

171. *Id.*

172. *Id.*

173. ECHL-PHPA COLLECTIVE BARGAINING AGREEMENT July 1 2009 - June 30, 2013, *available for purchase at* https://www.phpa.com/shop/index.php?main_page=product_info&cPath=66&products_id=7; AHL-PHPA COLLECTIVE BARGAINING AGREEMENT September 1 2007 - August 31, 2010, *available for purchase at* https://www.phpa.com/shop/index.php?main_page=product_info&cPath=66&products_id=4; *See generally* PHPA Website, <http://www.phpa.com/en/content/home/index/> (last visited Oct. 16, 2009).

174. CHL-PHPA Collective Bargaining Agreement Summary *available at* <http://www.phpa.com/en/content/home/about/chl-collective-bargaining-agreement%20/> (Question: *Do CHL players have Workers’ Compensation Rights?* Answer: Yes, through the Standard Players Contract and Collective Agreement, CHL Players injured during the course of their employment will see their Workers’ Compensation rights protected. Players will receive full salary during the period of injury which is not an advance of any Workers’ Compensation payments).

175. Email from Karl Jahnke, Director of Media Relations and Marketing Services, Quebec Major Junior Hockey League (Oct. 21, 2009, 16:18:00 EST) (on file with author) (A general inquiry was emailed to the QMJHL league office regarding the eligibility of major junior players for workers’ compensation. Mr. Jahnke replied that “players do not receive worker’s [sic] compensation.”).

is not professional hockey. In *Vigoren v. Nystuen*¹⁷⁶, the Court of Appeal for Saskatchewan expressed the view that major junior hockey was distinct and separate from professional hockey.¹⁷⁷ The case involved damages from a car accident, the facts of which are insignificant for present purposes.¹⁷⁸ However, there was a dispute regarding an individual's expertise in assessing the potential development of young hockey players.¹⁷⁹ The Saskatchewan Appellate Court explained that the trial judge qualified the individual as an expert able to assess, "the potential to be successful in the Major Junior Hockey League [sic] and in professional hockey," but that the individual had "more experience with major junior hockey than with professional hockey."¹⁸⁰ Regardless of whether or not the individual was an expert, it is important to recognize the court's language. It is clear that according to the court, major junior hockey is not professional hockey. The court set forth major junior hockey and professional hockey as two separate levels. It would have been redundant for the court to list major junior hockey if it was included under the umbrella of professional hockey. In listing major junior hockey separately, the Court of Appeal for Saskatchewan made it clear that it did not consider major junior hockey to be professional hockey.

A. NCAA Determines Amateurism on a Sport by Sport Basis

NCAA regulations allow an individual to play professionally in one sport and to retain amateur status in another.¹⁸¹ This practice is seen in college football, where some players have previously played professional baseball. Two prominent college football players that played professional baseball before attending college were Chris Weinke and Drew Henson.¹⁸² Weinke spent six seasons, from

176. *Vigoren v. Nystuen*, [2008] N.S.J. No. 201 QUICKLAW (S.K.C.A. May 10, 2006), available at 2006 SK.C. LEXIS 1135 at *69.

177. *Id.* at *69.

178. *Id.* At *4.

179. *Id.* at *69.

180. *Id.*

181. NCAA Manual art. 12.1.3. ("A professional athlete in one sport may represent a member institution in a different sport and may receive institutional financial assistance in the second sport.")

182. See Timothy W. Smith, *Weinke Passes First Test at Age 26*, N.Y. TIMES, Sept. 1,

the time he was eighteen until he was twenty-four, in the Toronto Blue Jays organization.¹⁸³ Upon signing his first professional baseball contract at eighteen, Weinke received \$375,000–\$400,000 as a signing bonus.¹⁸⁴ He advanced as high as the Triple-A level, the level below Major League Baseball.¹⁸⁵ Weinke then attended Florida State University, where he quarterbacked the football team.¹⁸⁶ In 2001, at the age of twenty-eight, Weinke was the oldest player in the history of college football to win the Heisman Trophy as the best player in the sport.¹⁸⁷

Henson's story differs from Weinke's because Henson played professional baseball while he was enrolled in college playing football.¹⁸⁸ Henson was a quarterback at the University of Michigan from 1998 until 2002.¹⁸⁹ During that time, he played professional baseball in the minor leagues in the New York Yankees' and Cincinnati Reds' organizations.¹⁹⁰

1998, available at <http://www.nytimes.com/1998/09/01/sports/college-football-weinke-passes-first-test-at-age-26.html>; see also Jack Cavanaugh, *The Yankees' Two-Sport Prospect*, N.Y. TIMES, June 4, 2000 available at <http://www.nytimes.com/2000/06/04/sports/baseball-the-yankees-two-sport-prospect.html>.

183. Joe Drape, *Heupel and Weinke, the Heisman Favorites, Have Common Trait*, N.Y. TIMES, Dec. 8, 2000 available at <http://www.nytimes.com/2000/12/08/sports/on-college-football-heupel-and-weinke-the-heisman-favorites-have-common-trait.html>; see also Chris Weinke's Florida State University Player Profile, http://seminoles.cstv.com/sports/m-footbl/mtt/weinke_chirs00.html.

184. See Smith, *supra* note 182 (this article states that Weinke received a signing bonus of \$400,000); *Jays Sign Young Star*, N.Y. TIMES, Aug. 21, 1990, available at <http://www.nytimes.com/1990/08/21/sports/sports-people-baseball-jays-sign-young-star.html> (this article states that Weinke received a \$375,000 signing bonus).

185. Chris Weinke's Stats Page on Baseball Reference.com, <http://minors.baseball-reference.com/players.cgi?pid=15439>.

186. See Smith, *supra* note 182; see also Chris Weinke's Florida State University Player Profile, *supra* note 183.

187. Chris Dufresne, *Narrow Vote Gives Weinke the Heisman*, L.A. TIMES, Dec. 10, 2000, available at <http://articles.latimes.com/2000/dec/10/sports/sp-63825>; Joe Lapointe, *At Age 28, Weinke Is the Oldest Heisman Winner*, N.Y. TIMES, Dec. 10, 2000 available at <http://www.nytimes.com/2000/12/10/sports/college-football-at-age-28-weinke-is-the-oldest-heisman-winner.html>.

188. Joe Lapointe, *A Fork in the Road Ahead*, N.Y. TIMES, Sept. 22, 1999 available at <http://www.nytimes.com/1999/09/22/sports/baseball-a-fork-in-the-road-ahead.html>; *Henson Will Return For Senior Season*, N.Y. TIMES, Jan. 6, 2001 available at <http://www.nytimes.com/2001/01/06/sports/colleges-football-henson-will-return-for-senior-season.html>.

189. See Jack Cavanaugh, *supra* note 182.

190. Rafael Hermoso, *Henson Is Leaving Yankees To Pursue an N.F.L. Career*, N.Y. TIMES, Feb. 3, 2004, available at <http://www.nytimes.com/2004/02/03/sports/baseball-henson-is-leaving-yankees-to-pursue-an-nfl-career.html>.

Before arriving at Michigan, Henson received a two-million dollars signing bonus from the Yankees.¹⁹¹ Neither Weinke nor Henson were minors when they signed professional contracts and played professional baseball;¹⁹² both were grown men who were able to make informed, prudent decisions. The levels of baseball Weinke and Henson played were comparable to AHL and AA hockey, respectively, in terms of the age and maturity of the players, the rates of pay, and the level of independence of the players. Nonetheless, under NCAA regulations, Weinke and Henson were still considered amateur football players, even though they were “true” professional athletes.

Allowing athletes to play professionally in one sport and maintain amateur status in another is inconsistent with the NCAA’s overarching goal of promoting amateur athletics. This is especially true in situations, such as Weinke and Henson, where lucrative professional contracts are involved. It is fundamentally wrong to allow professional athletes, such as Weinke and Henson, to compete collegiately but not let major junior hockey players do the same.

The NCAA’s bylaws define amateurism for purposes of intercollegiate athletic eligibility.¹⁹³ Courts have held that though the NCAA has not distilled amateurism to its purest form, this does not mean the NCAA’s attempts to maintain a mixture containing some amateur elements are unreasonable.¹⁹⁴ True, the protection of amateurism invariably involves the protection of minors, but NCAA regulations are inconsistent in this end and, as a result, undermine legal precepts that protect minors. It makes little sense to allow men over the age of majority to play one sport professionally and maintain amateur status in another, while preventing minors, who have received little more than gas money, from playing their sport at the collegiate level. The NCAA tells that fifteen-year old, “you made a choice and now

191. See Jack Cavanaugh, *supra* note 182; Heather Kamins, *What Color Do You Get When You Cross Yankees Blue with Michigan Blue? Drew Blue: Quarterback Will Try Two-Sport Career*, THE MICHIGAN DAILY, Jul. 27, 1998, available at <http://www.pub.umich.edu/daily/1998/jul/07-27-98/sports/sports1.html>.

192. See *Jays Sign Young Star*, *supra* note 184; see also Heather Kamins, *supra* note 191.

193. *Banks v. NCAA*, 746 F. Supp. 850, 862 (N.D. Ind. 1990) (citing *McCormack v. NCAA*, 845 F.2d 1338, 1340 (5th Cir. Tex. 1988) (Alvin B. Rubin, J.)).

194. *Id.*

this path is closed to you,” yet it willingly accepts a twenty-five-year old that made a living for six years as a professional athlete. If anything, the NCAA should be more in line with legal principles that strive to protect minors. Instead, the NCAA holds that fifteen-year old accountable for his adolescent indiscretion, while allowing a twenty-eight-year old to quarterback a college football team and to win the Heisman Trophy. This reasoning is flawed, backward, and in need of reconsideration.

B. Options for Major Junior Players

Of course, the NCAA does not completely foreclose a major junior hockey player from attending college in the States; it only prevents his participation in NCAA-sanctioned athletics. Major junior players are also eligible to play collegiate hockey at Canadian universities. But this point misses the critical issue: the fact that the NCAA forces a decision on minors and holds them accountable. Furthermore, it overlooks the importance of athletic scholarships and the role that they play in making a college education a viable option for many athletes and their families. Though a player may wish to attend a college or university, it may be prohibitively expensive. For such athletes, the only opportunity to get an education is an athletic scholarship.

Major junior players also have the opportunity to attend Canadian universities and play collegiate hockey there. The governing body of Canadian intercollegiate athletics is the Canadian Interuniversity Sport (“CIS”).¹⁹⁵ Major junior leagues provide financial assistance for players to attend

195. See CIS Bylaw, Article 40.10.6.2.3.6 reprinted in Canadian Interuniversity Sport (CIS), 2009-2010 Bylaws, Policies, & Procedures (2009) available at http://www.cisport.ca/e/pol_proc/index.cfm. [hereinafter CIS Manual]. CIS allows former professional athletes to compete at the intercollegiate level one year after the individual last competed at the professional level. CIS Manual at art. 40.10.6.2.1. As applied to hockey, participation in professional competition after January 10 renders the athlete ineligible for the following CIS season commencing in the fall. CIS Manual at art. 40.10.6.2.3.6.1. The CIS Manual is unclear as to whether major junior hockey is considered professional hockey. CIS Manual at art. 40.10.6.2.3.6. The CIS Manual states that European leagues in any division are considered professional leagues; however it does not address leagues in North America. CIS Manual at art. 40.10.6.2.3.6.2. A reasonable interpretation would be that the CIS does not consider major junior hockey to be professional since major junior players are eligible to play CIS hockey.

college. Players receive one year of financial assistance for every year they play for a major junior team.¹⁹⁶ This makes a college diploma a viable option for many major junior players who would not otherwise be able to afford tuition at a Canadian university.

While major junior players have the option to attend an American university and not play hockey or play hockey at a Canadian university, the NCAA still is arbitrarily and unnecessarily closing the door to such players at an inappropriate age. Major junior players do have other options, but the decision is unnecessarily forced on the players at too young an age by the NCAA.

VII. CONCLUSION: SOLUTIONS TO THE PROBLEM

The NCAA Manual is filled with sport-specific bylaws tailored to fit leagues and competition for a particular sport as evidenced by the bylaw specifically addressing major junior hockey.¹⁹⁷ There is no reason why the NCAA cannot fashion a rule addressing this problem and bring it more in line with accepted legal principles. Though the problem is more

196. WHL Frequently Asked Questions, *supra* note 55, at Question 9.

The WHL offers a year scholarship, including tuition, textbooks and compulsory fees, to a post-secondary institution of the player's choice for every season that player played in the WHL. About the WHL Scholarship and Education, http://www.chl.ca/whl_education.php (last visited Oct. 9, 2009). Furthermore, the WHL has teamed up with Canada West Universities (a collection of fourteen Canadian Universities located in western Canada, *see* <http://www.canadawest.org/members.aspx>) to offer what the WHL calls, "Western Canada's Premiere Hockey Scholarship." *Id.* The WHL claims that the "WHL scholarship, combined with additional financial assistance from Universities in Western Canada, [is the] equivalent to any other offer available in North America today." *Id.*

Similar to the WHL, the OHL website states that players will receive "a minimum scholarship of tuition, textbooks and compulsory fees towards an undergraduate degree for each year played in the OHL." OHL Scholarship: THE OHL SCHOLARSHIP PROGRAM, http://bestofbothworlds.ca/hm/inside.php?sid=6&static_sid=17 (last visited Oct. 8, 2009). The scholarship can be applied to a traditional four-year undergraduate college program or a technical or trade school, firefighting, or EMS. *Id.* Furthermore, the player's scholarship may be utilized as any college or university in the world. *Id.*

The QMJHL has the same one-year-grant-for-every-year-played program that the OHL and WHL have. Article 4, QMJHL Education Policy, Adopted May 9, 2005, Modified Sept. 2007, available at http://www.lhjm.qc.ca/navcache/getcontents.php?currentpath=/root/Éducation/Education_Policy_20071002.pdf (last visited Oct. 8, 2009).

197. NCAA Manual art. 12.2.3.2.3.

complex than the NCAA regulation that stipulates that major junior hockey is professional hockey, classifying major junior hockey as amateur is the first step in remedying an unfair situation. Other issues such as hiring an agent,¹⁹⁸ playing against professional players,¹⁹⁹ and entering endorsement deals²⁰⁰ all violate NCAA regulations on amateurism. The solutions to these problems would not be difficult to resolve were major junior hockey classified as amateur hockey.

The NCAA should be guided by well-settled legal principles that seek to protect minors. A player should not have the door to college hockey slammed in his face because of a choice he made when he was fifteen. Players should be allowed to play major junior hockey until the age of eighteen, the age of majority. At eighteen, major junior players would then have a choice between continuing to play major junior or pursuing the collegiate route. If, at the age of eighteen, the player desires to play college hockey but needs another year or two of development, he would have the option to play junior A hockey in North America. This solution resolves many of the issues presented by the NCAA's classifying major junior hockey as professional. First and foremost, it would not force a detrimental decision on a minor. Second, players would leave major junior hockey before the amount of the weekly stipend became significant. Third, it would allow players to make an informed decision as to which path is best for them. Taken together, these three factors combine to make eighteen the optimal age at which a player must decide which path is best for him.

The age of majority in most states is eighteen. At eighteen

198. NCAA Manual art. 12.3.1. The NCAA rules athletes ineligible if they agree orally or in writing to be represented by an agent for the purpose of promoting the athlete in a particular sport. *Id.*

199. Major junior rules allow a player to play ten games in the NHL and then return to their major junior team. This player would obviously lose NCAA eligibility as he has played professional hockey and has attained the age of 18. The issue is how this player's status affects his teammates. The NCAA allows a professional to play on a team with amateurs as long as he is not paid by a professional team. NCAA Manual art. 12.2.3.2.1. This scenario does not present a problem because players returned by NHL teams to major junior teams are not paid by the NHL team once they are returned. Furthermore and major junior hockey would be amateur hockey. Therefore though the player would be considered a professional because he played in the NHL, he would not jeopardize the amateur status of his major junior teammates.

200. NCAA Manual art. 12.5.3. NCAA student-athletes cannot engage in commercial endorsements during or outside the playing season. *Id.*

an individual can be held legally accountable. In light of this policy, eighteen is a reasonable age at which to hold players accountable for their actions. At eighteen, players can be bound by contracts with teams and agents. They can make informed decisions and be held responsible for those decisions. Furthermore, when a major junior player turns eighteen, his weekly stipend increases from \$35 per week to \$50 per week. While \$50 per week is negligible, \$35 per week is even less significant.²⁰¹ For example, at the age of twenty, major junior players receive \$150 per week, which is a drastic increase from \$50 and a \$20 that approaches professional hockey salaries. Finally, at the age of eighteen, a player can make a more informed decision about his future. At eighteen he has a much better sense of where he is developmentally than at fifteen. If an individual is an NHL prospect, he will be drafted at eighteen or at least know that NHL teams are interested in him. This gives players a better sense of where they are developmentally, and which path is best for them.

Though the NCAA should rightfully be concerned about players attending college for a year or so before moving to the professional ranks, these concerns are ill-founded. Elite players who can make the jump to the NHL from major junior hockey typically do so at the age of eighteen or nineteen. As previously illustrated, major junior hockey is custom tailored to such players. If an eighteen-year old is able to go from playing major junior hockey directly to the NHL, he will likely have a successful and prosperous hockey career, unless he suffers an unforeseen injury. This player does not have the same incentive or need for a college education as his teammate that is lower on the depth chart.

Such a rule change would not affect elite players bound for NHL careers. Rather, the change would benefit the next tier of players who would have the chance of a college education and four years of development. Each path, major junior and college, has its own advantages and disadvantages. Each player is different, and it is up to the individual to decide which path suits him best. In trying to protect players and the integrity of the game, the NCAA has unnecessarily taken options away from young hockey players and made the choice

201. A plan could be designed through which a player repays his stipend or performs some form of service to earn his eligibility. The total amount that a major junior player would have to repay would be less than \$1000 per season played.

for them.

The major junior dilemma is more complex than a single NCAA provision. There are other issues that pose amateurism problems, such as representation by an agent and engaging in endorsements. It is easy to criticize a faulty system; however it is more important to create a better system. The remedy proposed by this article may not be ideal, but it is a start. The goal of this article is not to solve the problem in one fell swoop, but rather to open a discussion that has been brushed aside for too long. The current system is failing at the expense young athletes. This is an unacceptable result. Punishing an imprudent fourteen-year old because he dreams of playing professional hockey is fundamentally wrong. Since when is a child punished for dreaming big? As columnist Ken Campbell wrote, “[t]o arbitrarily take options away from players is just plain wrong.”²⁰² That is currently what is happening to young hockey players in the name of amateurism. The time has come to review NCAA regulations and create a system that puts the interests of young athletes first.

202. Campbell, *supra* note 1, at 15.