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LEGAL ANALYSIS OF THE NHL PLAYER’S CONTRACT

JOSEPH M. WEILER*

I. INTRODUCTION

If one were to scan the provisions of a National Hockey League (NHL) Standard Player’s Contract ten years ago and compare these clauses to the current terms of the Standard Player’s Contract (see Attachment A) or the Collective Bargaining Agreement, it would be difficult to discern any major alterations. However, anyone who reads the morning sports page cannot help but be aware of the dramatic changes in the world of hockey resulting in a new context in which these contractual provisions now operate. Consequently, when I sat down to write this article, I felt that the best way to analyze a NHL Standard Player’s Contract would be to review the recent major legal events in the NHL. Understanding the impact of these developments is integral to appreciating that the terms of the new NHL Standard Player’s Contract are now being written by different people who comprise the labor-management relationship in hockey, and that these contracts are interpreted by a new breed of arbitrators on behalf of a much broader demographic spectrum of hockey players. In my view, each of these “personality” changes in the game has a major effect on how player contracts are being negotiated and how they will be enforced.

These changes have not come without conflict. During the spring of 1992, the NHL experienced its first players’ strike. I believe this strike was not caused by the relative difficulty in the issues being negotiated. These issues are familiar to any sports fan — free agency, the entry and waiver drafts, endorsement revenue, and so forth. Rather, I believe the strike was the result of a new relationship tested under fire between the NHL owners and the players, and particularly between the owners, the NHL Players Association, and its new executive director, Bob Goodenow. The resultant Collective Bargaining Agreement has provided the parties with an eighteen-month period to review and hopefully to strengthen this relationship before they begin bargaining again next summer. My remarks will attempt to trace the significant factors that the parties must continue to address in order to move to the next stage of their relationship. How the terms of the next Standard Player’s Contract and the Collective Bargaining Agreement

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will operate in the real world, of course, depend on whether the parties can mend the wounds created by the strike and set in motion the mechanisms needed to resolve their differences before they stand toe to toe next summer. Thus far, reconciliation has been very slow.

I will focus on several features of the NHL that, in my view, will have a critical impact on the terms of player contracts and their enforcement. I will explain these forces with reference to specific disputes as well as analyze arbitration decisions and other processes of dispute resolution that help describe how the terms and conditions of employment of NHL players are negotiated and enforced. These disputes describe the nature of:

1. the emerging internationalization of the NHL;
2. the impact of the form of restricted free agency in the NHL and how salary arbitration and equalization arbitration operate;
3. the lack of sharing of relevant information between the league and the NHLPA and how this contributed to the recent strike and was the subject of the first major grievance arbitration decision in NHL history; and finally,
4. the failure of parties to work together to address player drug use and injury issues as a first step in the creation of a new relationship that would be more conducive to achieving consensus on the terms of revenue sharing and salary cap that they agreed in principle to pursue at the end of the players' strike.

II. THE INTERNATIONALIZATION OF THE NATIONAL HOCKEY LEAGUE

One need only glance at the roster of the Winnipeg Jets or look at the players taken in the first round of the recent NHL entry draft to see that what used to be a game dominated by Canadian players and coaches has now become a game of European and American as well as Canadian men. For example, the Jets' roster has three Russians (Sergei Bautin, Evgeny Davydov and Alexei Zhamnov), two Finns (Teemu Selanne and Teppo Numminen), two Swedes (Thomas Steen and Fredrik Olaussson), and three skilled Americans (Phil Housley, Ed Olczyk and Keith Tkachuk). The Jets have a Finnish assistant coach (Alpo Suhonen) and a general manager (Mike Smith) who has a Ph.D. in Political Science and has authored seven books.

The recent NHL entry draft included many first round picks from Europe and the United States. Rookie of the Year honors will be contested by the likes of Teemu Selanne of the Jets, Viacheslav Kozlov of the Detroit Red Wings, Dimitri Yushkevich of the Philadelphia Flyers, Alexei Kovalev of the New York Rangers, Roman Hamrlik of the Tampa Bay Lightning (the first player picked in the 1992 draft), Darius Kasparaitis and Vladimir
Malakhov of the New York Islanders, Vitali Prokhorov of the St. Louis Blues, Martin Straka of the Pittsburgh Penguins, Jozef Stumpel of the Boston Bruins, and Alexei Zhitnik of the Los Angeles Kings.

The result of the influx of non-North American players into the NHL over the past decade is that the League is beginning to look like the United Nations on ice. In 1967, Canadian born players made up nearly 97% of the NHL rosters. By 1992, Canadian players comprised less than two-thirds of NHL rosters, U.S. born players 17% of NHL rosters, Russia born 7%, Czech born 5%, Sweden born 3%, and Finland born 2%.

The addition of this much broader talent pool of players has helped to pave the way for expansion into five new cities (San Jose, Tampa, Ottawa, Miami, and Anaheim) and ultimately will contribute to an increased international approach to the way the game is played. Indeed, the introduction of these talented new players will also help pave the way to expansion of League games, television coverage and merchandising opportunities, and even perhaps franchise expansion into European and Asian markets.

The NHL owners and NHLPA recognized this potential in their settlement terms of the spring strike when they agreed to add two League games in non-NHL cities and to “work together” on both domestic and international levels to generate revenues and to embark on special projects and promotions “for the good of the game.” To date, no such joint action has been attempted. In the medium term, however, it is anticipated that the parties will cooperate toward expanding both the revenue base and the player pool that can be tapped from foreign markets.

The “internationalization” of the NHL has brought some early legal “growing pains,” particularly involving the enforcement of transfer fee obligations to the Soviet Ice Hockey Federation and the adjudication of standard player contract obligations involving players from the former Soviet Union. Two of these cases involve the Vancouver Canucks and a former Central Red Army Hockey Club star, Vladimir Krutov. For the ease of reference, I will refer to these cases as “Krutov I” (a case involving the transfer fee obligations of the Canucks to the Soviet Ice Hockey Federation and the Central Red Army Club) and “Krutov II” (the case involving Krutov’s claim for two years’ back pay). Krutov II is pending; Krutov I was adjudicated by arbitration last winter.

Many details of these cases are shielded by confidentiality and shall remain so. I assisted the Canucks on both matters. However, these cases are significant to sports lawyers generally because they illustrate that with the internationalization of professional sports, the legal mechanisms applied to enforce contractual obligations will likely involve international commercial
arbitration and cross-cultural problems arising from contract negotiation, interpretation and dispute resolution between different legal systems.

Krutov was heard by a Swedish arbitrator in Stockholm under the Uncitral Rules of International Commercial Arbitration. The issue in the case was whether the Canucks were obligated to continue to pay transfer fees to the Soviets for the second and third years of a three-year deal. The parties had entered into a transfer fee agreement in September 1989 that referenced a clause in an Addendum to the Standard Player's Contract where the parties agreed that Krutov could not be cut, traded or sent to the minor leagues. This clause was inserted at the request of the Soviets, who did not want their star players coming under disrepute in North America. If the player did not work out with the NHL club, the Soviets preferred that he return to his native Russia.

The Canucks pointed out that at the time the contract was signed such a clause would likely be “turfed out” by the NHL Control Registry because it violated League rules. Sure enough, after Krutov commenced playing for the Canucks, the contract was submitted for registration, and the NHL League office refused to register the contract on the ground that it violated the League's Constitution, By-Laws and Collective Bargaining Agreement. Under League rules, Krutov was ineligible to play unless he was under a contract registered with the league.

Krutov, like his former Red Army linemates, Igor Larionov and Sergei Makarov, was asked to sign a new contract without the offending clause. Larinov and Makarov did so. Krutov would not. As a result, the Canucks could not play Krutov in future League games and promptly cut off transfer fee payments to the Soviet Ice Hockey Federation and salary payments to Krutov. The Soviets took the case to arbitration under a term of the transfer fee agreement and were successful. The Canucks were required to pay the balance of the transfer fee despite the fact that the player was ineligible to play in the NHL.

The relevant point of this case for sports lawyers is that the nature of the international commercial arbitration process as conducted in Sweden is a far cry from what a Canadian or American lawyer is used to back home. In order to adequately prepare for such a case, a lawyer must be aware of the Uncitral Rules of International Commercial Arbitration, including how these rules are administered by Commercial Arbitration Centres (in this case the Stockholm Chamber of Commerce), how the foreign and North American Arbitration statutes apply for purposes of appeal and enforcement of the award, and the conflicts of law and choice of law questions that arise in these types of cases. For example, in this case the contract was signed in Moscow. Under these circumstances, which contract law applies
— the Russian Civil Code or the Soviet Commercial Code? Krutov’s player contract was performed in British Columbia and other parts of North America. In these circumstances, would British Columbia statutory or common law of contract apply?

The commercial arbitration process proved to be very expensive both in terms of time and money. Over the protest of the Canucks, the hearing was scheduled by the arbitrator in mid-January, during the NHL season. The key witness for the Canucks was Pat Quinn, the team’s president, general manager, negotiator and coach. He was forced to leave his coaching responsibilities and fly to Sweden for the case. The arbitrator appointed by the Stockholm Chamber of Commerce knew nothing about professional hockey, or sports law or the unique legal regime of the NHL. Rather, he was a distinguished Swedish lawyer familiar with Swedish law who was asked to adjudicate a case involving Russian and Canadian law. What do you think the odds are that this task can be done well with a marathon hearing on a long weekend in January?

Krutov II involves the player’s claim for back pay for two years under his Standard Player’s Contract (SPC). The irony of this claim is that it seeks to enforce a claim under the terms of the SPC rejected for registration by the League office because the particular term at issue (the no-cut, no-trade, no-farm clause) violated the Constitution, By-Laws and Collective Bargaining Agreement of the League. As noted earlier, Krutov refused to sign a contract that would be accepted by the League for registration.

Under the terms of the Standard Player’s Contract (paragraph 19), any disputes between the player and his club arising out of the interpretation and application of the contract are to be arbitrated by the President of the NHL. Krutov’s lawyers sought to enforce his claim under the SPC in an action brought in the Supreme Court of British Columbia. However, the Court ruled that the fact that the Standard Player’s Contract was not registerable with the NHL does not void the arbitration procedures contemplated in the SPC.¹

The Court refused to give effect to Krutov’s argument that the involvement of the NHL in the earlier decision concerning the legality of the SPC under League rules gave rise to an apprehension of bias that should preclude arbitration. This decision is consistent with a long line of cases that have upheld the arbitral process under paragraph 19 of the SPC as not offending the rules of natural justice despite the fact that the adjudicator is the NHL President, who is elected by the NHL member clubs and paid by

the owner-partners in the League. As with earlier cases where players have objected to the role of the President as arbitrator under the Standard Player's Contract, the Collective Bargaining Agreement, the By-Laws or the Constitution on the ground of apprehension of bias, the courts have consistently refused to intervene.²

The role of the NHL President as arbitrator is quite unusual in other non-sport collective bargaining contexts (which explains why Krutov would so object), but is not without some parallel in other professional sports. Commentators describe this presidential role as "reflective of the good relationship enjoyed by the NHL and the NHLPA."³

On-ice officials, as well as the President of the NHL or his designate, have the authority to impose discipline on a player for both on-ice and (in the case of the President alone) for off-ice behavior. These decisions addressing the issue of whether a player has acted in a manner that is dishonorable or prejudicial to or against the welfare of the League or the game of hockey can result in expulsion, suspension or a fine.⁴ These disciplinary decisions are reviewable by the Board of Governors on the grounds that the discipline imposed was unreasonable. These kinds of disciplinary decisions are not subject to grievance arbitration under the Collective Bargaining Agreement.

The imposition of discipline by a club on a player is subject to grievance arbitration that may involve a two-part process, depending on the nature of the discipline. If the grievance involves a disagreement about the facts, (such as the propriety of the discipline) the interpretation of the Collective Bargaining Agreement or a club rule, the arbitrator is an independent third party.⁵ If the dispute concerns the severity of the penalty imposed, the interpretation of the SPC, the NHL Constitution or the NHL By-Laws, then the NHL President is the arbitrator. If an independent arbitrator is required to interpret a club rule, he or she is bound by the club's interpretation unless such interpretation is arbitrary or capricious.⁶

Krutov II involves factual circumstances where the player may not have been in "good physical condition" during training camp or at the outset of

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² See Brewer v. Maple Leaf Gardens Ltd. (unreported decision of the Supreme Court of Ontario, dated April 19, 1985).
⁴ NHL BY-LAWS § 17.3.
⁵ NATIONAL HOCKEY LEAGUE & NATIONAL HOCKEY LEAGUE PLAYER'S ASS'N, COLLECTIVE BARGAINING AGREEMENT art. 4.02, 4.03, 4.04 (1988) [hereinafter Collective Bargaining Agreement].
⁶ Id. at art. 4.07(b).
the 1990-91 season. As such, he could be viewed as having been in violation of his obligations to the Vancouver Hockey Club under paragraphs 2(a) and (b) of the SPC. To my knowledge, there has been no arbitral jurisprudence in any professional sport on the meaning of a player’s obligation to be in good physical condition. There have been several decisions in Major League Baseball on the impact of repeated drug use on a player’s obligation to remain in good physical condition. Likewise, in the NBA there have been several grievances on the issue of whether a player has adequately completed his drug rehabilitation program and thus is fit to play. However, the Krutov case appears to be the only professional sports case where the issue is one of simply being overweight and out of shape rather than being affected by drug usage which could also be the subject of discipline per se. It will be interesting to see if this issue becomes the subject of arbitral comment in the Krutov II case.

The Krutov II case is remarkable because circumstances in the case may lead to various adjudicators each having a different role to play in different stages of the process before the ultimate question of liability for back pay can be resolved. For example, under the terms of paragraph 19 of the NHL Standard Player’s Contract, it would appear that the NHL President would render an interpretation of the meaning of the phrase “in good physical condition” and decide whether a failure by the player to be in good physical condition would absolve the club from its obligation to pay the player. An independent arbitrator would presumably have the obligation to determine if this failure to pay was a form of discipline or not. If the decision was that the club’s failure to pay the player was a form of discipline, then the severity of the discipline would be a matter decided by the President. If the failure to pay the player’s salary was found to be a form of discipline pursuant to a club rule, then the independent arbitrator would be bound by the club’s interpretation of its rule unless such interpretation was arbitrary or capricious.

As you can see, the overlapping jurisdiction of the various decision-makers and arbitrators makes for a very complex situation under the NHL legal regime. It is a wonder Justice Harvey stayed the claim by Krutov in his court, and remitted the matter back to the parties to sort it out. One can appreciate why a foreign player with limited English language skills would have difficulty understanding how this web of interlocking arbitral systems could be unraveled.

III. FREE AGENCY, EQUALIZATION AND SALARY ARBITRATION

Under the new agency NHL Collective Bargaining Agreement and By-Law 9A, there are six categories of free agency, three of which have been
added during the latest round of negotiations. The vast majority of players, however, are covered by the previous three categories of free agency:

Group I - Players under the age of 24 who have not played five years of professional hockey.
Group III - Players 30 years of age or over.
Group II - All other players.

The three new categories of free agency negotiated in 1992 are:

(i) A player who has completed ten professional seasons and did not earn more than the average league salary in his last contract year. The player can elect once in his career to become an unrestricted free agent at the end of his contract (including his option year);

(ii) A player who is 25 years of age or older and has completed three professional seasons and has not played in more than 80 NHL games can become an unrestricted free agent. The number of games played by a goaltender to become eligible under this category is to be determined by the mediation committee;

(iii) A Defected Player. There are four categories of defected players.
The old club has the right to match.

If the old club loses a Group I player, it may be entitled to “compensation” or “equalization” from the new club signing the Group I free agent. Equalization may consist of players, draft picks and cash. The nature of compensation, consisting of various draft picks, depends on the monetary value of the new contract offered by the new club. In order to be entitled to compensation, the old club must make a qualifying offer of (a) $200,000, or (b) an amount equal to the player’s previous year’s salary. The old club also has a right to match if it makes a qualifying offer 15% over the player’s salary of the previous year and the player chooses compensation rather than equalization.

Group II free agents also have the right to choose compensation or equalization. To be entitled to compensation or equalization, the old club must make a qualifying offer similar to that for a Group I free agent. The old club has the right to match under either scenario. However, if a Group II free agent is 26 or older, and his old club’s 15% greater offer is less than $351,000, the old club will not have a right to match.

Group III free agents have the choice of being subject to Group I type of equalization or that the old club has the right to match. The old club has the right to match only if it makes a qualifying offer 15% greater than the player’s previous year’s salary and the offer exceeds $351,000.

This system of free agent compensation evolved in the NHL at various stages of the renewal of the Collective Bargaining Agreement since 1975. The NHL free agency system combines certain elements of rules developed
in the National Football League (compensation based on salary), the National Basketball Association (the right to match or right of first refusal), and Major League Baseball (protection of certain players from selection as compensation). The legitimacy of the system of equalization for the loss of a free agent under U.S. antitrust laws was upheld in the case of *McCourt v. California Sports Inc.*

In *McCourt*, the NHL argued successfully that the compensation/equalization scheme in By-Law 9A was (as noted in the evidence of President John Ziegler) "essential to maintain the competitive balance among member teams in the NHL [and] that the less affluent clubs and those clubs located in less desirable cities would not be able to retain good hockey players without By-Law 9A." The opponents of By-Law 9A, of course, argued that it would inhibit teams from signing free agents and would depress salaries more than if open competitive bidding were allowed. The latter argument carried the day in U.S. District Court. However, the Court of Appeals for the Sixth Circuit vacated the lower court injunction on the basis that the NHL's Collective Bargaining Agreement dovetailed with By-Law 9A in exonerating the compensation/equalization scheme from antitrust challenge under the labor exemption doctrine in American antitrust law.

When one examines the compensation or equalization that the old club would receive if a Group I or II player signed with a new club, it is not surprising that very few NHL clubs bid on free agents and very few quality players have moved to new clubs. This limited degree of player movement and the effect of the compensation/equalization scheme in By-Law 9A was clearly evident during the 1980s when virtually no quality players exercised free agency rights. The best example of the risk of a team signing free agents is the experience of the St. Louis Blues and Scott Stevens in 1990-91.

Stevens, an all-star defenseman, played for the Washington Capitals in the late 1980s. In 1990, he played out his option and signed a contract with St. Louis that more than doubled his salary with the Capitals. The Capitals were entitled to match the Blues' offer to Stevens, who was a Group II player. The Capitals declined. Under the provisions of By-Law 9A, the Capitals became entitled to five first-round draft picks as compensation for the loss of the rights to Stevens.

In the summer of 1991, the St. Louis Blues again entered the free agent market to sign Brendan Shanahan, a Group I player with the New Jersey

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Devils. Under the provisions of By-Law 9A, the Devils were entitled to equalization. Under By-Law 9A, the club acquiring the player must immediately notify the player’s former club and the NHL President of the signing. The two clubs then have three business days to agree on an equalization payment. If no agreement is reached, the clubs have two more business days to submit their proposals concerning equalization to a neutral third party (in this case, arbitrator Ed Houston). The arbitrator has two business days to reach a decision. The arbitrator must choose one proposal, without any compromise, a process somewhat analogous to the final offer salary arbitration process in Major League Baseball.8

The significant difference between final offer equalization arbitration in the NHL and final offer salary arbitration in Major League Baseball is that in baseball, the criteria specified in Article VI, F (12) of the Basic Agreement provide guidance to practitioners and the arbitrator so that they can decide which proposal is more reasonable. These criteria in baseball include the length and consistency of the player’s career contribution, the record of the player’s past compensation and comparative baseball salaries. The parties at salary arbitration proceedings present statistical evidence of the player’s performance and compare these with the achievements of players in similar positions and their salaries.

Objective standards of player performance are not as easily utilized in equalization arbitrations in the National Hockey League. The practical effect of equalization is a “forced trade.” Equalization to the old team may consist of draft picks, players and cash. It is unlikely that a simple “one-for-one” player equalization decision could be made. For example, it would be difficult for the Devils to find a player on the Blues’ roster who had the same qualities as Shanahan — a forward who combined speed, size, youth, toughness and offensive qualities. After all, if such a player existed, why would St. Louis have ventured into the competitive free agent market to sign Shanahan in the first place?

The equalization arbitration process is further complicated by the fact that the compensation can take the form of a combination of players (who may play different positions than the free agent), draft picks and cash. It is the combined effect of these three components that form the proposal advanced by either party at the arbitration. Players who play different positions may serve different team functions and are often evaluated on different scales (e.g., goaltenders in hockey, like pitchers in baseball, tend to be paid

the highest salaries on the team). Draft choices represent unknown potential and thus are more difficult to quantify. In some years, the crop of draft age players is thought to be more “ripe” than in others. Some players, like Brett Hull who was drafted 117th overall in 1984, develop later in their careers. And finally, hockey teams are organic entities with a certain “esprit de corps” or chemistry that contributes to their success. This feature, however, is difficult to quantify in an arbitration hearing.

In light of these complicating factors, Bijou suggests the following approach for counsel who represent the old and new team. For the old team that is owed compensation, counsel must:

(i) prove the contributions of the free agent to his former team;
(ii) describe the impact of the loss of that player’s services to the team; and
(iii) impress upon the adjudicator the insufficiency of the new team’s proposal.

For counsel representing the new team that owes compensation, the task of counsel is:

(i) to downplay the potential contribution of the new player — a task requiring considerable finesse because of the presumably high salary offered by the club to attract the player in the free agent market;
(ii) describe the sufficiency of the compensation offered in terms of the player(s)’ past performance and potential to contribute to the club owed compensation; and
(iii) demonstrate that the compensation requested by the club losing the free agent is excessive, if not punitive.9

The arbitrator’s function in an equalization arbitration is to select one proposal as more reasonable. The challenge for either club is that each side has only a few days to prepare for the case and neither side knows what the other will offer until the hearing commences. Recognizing this logistical difficulty, By-Law 9A.9(c) provides a safety valve. More specifically, while the arbitrator must render his judgment within two days, the parties, after receiving the other team’s proposal, have the opportunity to resume negotiations and reach an agreement. However, the arbitrator must render his or her decision within two days unless he or she is notified by both sides that an agreement about compensation has been reached. There is no appeal from the arbitrator’s decision, unless, as in the case of Dale McCourt, the entire process is challenged in court as a violation of antitrust law.

9. See id.
How has this system worked? The awarding by Judge Houston of Scott Stevens as compensation for Brendan Shanahan was highly criticized. Commentators railed that this was a trade that no one in their right mind would make. A *Hockey News* writer suggested that the NHL honor Judge Houston as its “Executive of the Year” because “there aren’t many guys in the business that could have pulled off that deal.” These comments failed to consider that the judge could not award what he thought was the best compensation. He could only award the more reasonable of the two offers. The Blues’ proposal of skater Rod Brind’Amour, substitute goalie Curtis Joseph and future third- and fourth-round draft picks was considered less reasonable by Judge Houston than New Jersey’s proposal of Scott Stevens. In fact, the New Jersey Devils’ written submission pointed out that the Blues’ proposal at arbitration paled in comparison to its final offer during pre-arbitration negotiations.

The predictable aftermath of the Stevens-Shanahan case was that the NHLPA was expected to seek changes in the free agent compensation system during the next set of negotiations in 1991-92. The NHLPA was somewhat successful in this endeavor. Under the new system, the Group I player has a choice whether his old club should be compensated with draft picks (the nature of which depends on the new salary paid to the player) or whether he would become subject to the system of equalization arbitration that provides for existing players as compensation. If the latter system is used, there is an obvious need for the arbitrator to have intimate knowledge of the game, to be familiar with its players and both the statistical and intangible contribution that players make to individual teams. Perhaps a panel of arbitrators consisting of ex-players, coaches and general managers would be appropriate. Otherwise, the perception that the equalization arbitration process is a “crap shoot” with no identifiable standards may pose too great a downside risk for a NHL Club to enter the free agent market in order to strengthen their teams. If this proved to be the case, then the already miniscule flow of free agents between NHL clubs may completely dry up.

A. Salary Arbitration

The National Hockey League was the first professional sports league to insert salary arbitration by an independent arbitrator into its collective bargaining arrangements with its players. This initiative was prompted by the 1969 *Report of the Task Force in Sports in Canada*, which was highly critical of the anti-competitive effect of the “reserve clause” found in paragraph 17 of the NHL Standard Player’s Contract since 1958. The reserve clause tied the player to his team in perpetuity in much the same way that analo-
gous clauses operated in baseball, football and basketball. The SPC provided that any dispute about a player's salary could be submitted to the President of the League for final disposition.

In 1969, the NHLPA and the League incorporated a new system of salary arbitration to be conducted initially by two nominees appointed by the club and the player. If there was no agreement on an appropriate salary by the two nominees, the salary would be set by a third party arbitrator. In 1971, this arbitration system was changed so that subsequent disputes were to be resolved by a single salary arbitrator, Judge Edward Houston. Salary arbitration was made available to any unsigned drafted player or any other player whose contract had expired and who could not reach agreement with his club on terms of renewal.

Salary arbitration in the NHL differs from that in baseball in several significant aspects. First, access to salary arbitration in the NHL is available to unsigned draftees as well as to any unsigned player. Baseball salary arbitration is only available for players with at least two (or more likely three) years playing experience and with less than six years playing experience. Thereafter, of course, players have relatively unrestricted free agency rights in baseball. In hockey, as described above, free agency is complicated by the compensation/equalization scheme in By-Law 9A for players who have played professional hockey for less than 10 years or who are under the age of 31.

The second distinctive feature of salary arbitration in the NHL is that conventional adjudication procedures are used rather than the final-offer selection process used in baseball. Similar to baseball, arbitrators in NHL salary arbitrations may consider a variety of evidence in rendering their decisions about what is fair compensation, including:

1. The overall performance of the player in the previous season including official statistics prepared by the league (both offensive and defensive);
2. The number of games played by the player, his injuries or illnesses during the preceding season;
3. The length of service of the player in the league and/or with the disputant club;
4. The overall contribution of the player to the competitive success or failure of the club in the preceding season; and
5. Any special qualities of leadership or public appeal not inconsistent with the fulfillment of his responsibilities as a playing member of his team.
6. The compensation of any player(s) who is alleged to be comparable to the player who is the disputant.\textsuperscript{10}

The third distinguishing feature of NHL salary arbitration is the procedure and timing of the arbitration process. NHL salary arbitration involves the presentation of briefs by the club and by the representative of the player. These briefs are usually exchanged immediately prior to the hearing or are simply submitted to the arbitrator at the hearing itself. With a couple of notable exceptions, neither party has seen fit to use legal counsel at these hearings. Rather, the player’s representative and the general manager of the club will present their proposal and supporting argument to the arbitrator.

The player may be present at the hearing but can be asked to leave the room by the club when it makes its presentation as long as the player is represented by an agent or an attorney.\textsuperscript{11} In baseball, the player has an absolute right to be present during the hearing. The presence of the player at the hearing presumably would act as a deterrent to management making its presentation to the extent that management seeks to question the player’s value to the club relative to the compensation comparison the player uses in support of his salary demands. The arbitrator is instructed to report his decision to the parties and counsel, either orally or in writing, as soon as possible after the close of the hearing,\textsuperscript{12} and is specifically encouraged to render his decision before training camp.

The process of salary arbitration in the NHL seems to contemplate that the entire process, including the award of the arbitrator, be completed before training camp opens. The actual practice is a far cry from this model. The parties have not established a rigid timetable for this process as in baseball. While the player must file for arbitration before August 10, the actual hearings may and have in fact occurred with increasing frequency well into the regular season.

Last season (1991-92) a number of salary arbitration decisions (retroactive in their effect to September 1) were rendered well into February or even March. For example, the salary arbitration between defenseman Larry Murphy and the Pittsburgh Penguins was heard on February 12, 1992, and the decision was rendered by arbitrator K. Allan Hinnegan on March 13, 1992, less than one month prior to the end of the regular season. One can imagine the potential disruptive effect on player and team morale this could

\textsuperscript{10} Collective Bargaining Agreement, supra note 5, at Exhibit 3.7, § 7(b).
\textsuperscript{11} Id. at Exhibit 3, § 5.
\textsuperscript{12} Id. at Exhibit 3, § 12(a).
have. Indeed, the process and decision involving Doug Gilmour and the Calgary Flames had precisely this effect.

The award in the Gilmour case was rendered on November 13, 1991. Gilmour was unhappy with the decision. He wanted $1.2 million for the 1991-92 season. The Flames offered $550,000. The arbitrator awarded $750,000. Gilmour subsequently made a number of comments to the media designed to force the Flames to trade him. Ultimately, he got his wish, and was traded to the Toronto Maple Leafs, who renegotiated his contract up to $1 million per year. The Calgary Flames, in the meantime, had a very unhappy marquee player for much of the season. No doubt this contributed to the deterioration of the team's performance during the season (dropping from first to fifth place in the Smythe Division).

The lesson to be learned from the Gilmour scenario was not lost on the League and the NHLPA when they renegotiated the Collective Bargaining Agreement in March and April 1992. Part of the strike settlement was an agreement to revamp the salary arbitration process. In particular, the parties agreed that salary arbitrations were to be conducted prior to the start of training camp, if possible, but certainly before the start of the regular season. Unfortunately, this has not been accomplished. At the date of this writing, the parties have been unable to agree on a new panel of eight arbitrators from the National Academy of Arbitrators to sit in on these cases, as well as on the fine-tuning of this process. The parties did agree that the arbitrator would be required to issue the award within 48 to 72 hours after the hearing, instead of the previous practice of three to four weeks.

The decision to retain the conventional adjudication model for salary arbitration rather than the final-offer selection model indicates that there was no consensus between the parties that conventional adjudication has had a chilling or narcotic effect on salary negotiations. The statistics seem to verify this conclusion. While one might suspect that the final-offer selection process used in baseball would result in a much greater percentage of salary dispute settlements prior to the hearing than with conventional adjudication that operates in hockey, the statistics do not verify this assumption. For instance, of the players who filed for arbitration in baseball between 1974 and 1989, approximately 76.3% settled prior to an award being issued. Likewise in the NHL in 1991, 77 of 100 players who filed for salary arbitration settled prior to the hearing.

When one compares the impact of the salary arbitration on baseball and hockey negotiations, the major distinction between the two sports appears to be in the delay and expense and the potential negative impact on team morale that results from the slow operation of the salary arbitration system in hockey.
With respect to the impact of the combination of salary arbitration and restricted free agency on the level of player salaries in the NHL, the evidence is that following the merger between the NHL and WHA in 1979, salary levels in the NHL fell in relative terms compared to those in baseball and basketball where free agency rights of players were being expanded. The recent rapid escalation in NHL players’ salaries over the last three years has occurred despite the continuance of restricted free agency. The average salary in the NHL has risen from approximately $200,000 to $500,000 in the last three years. Perhaps the major contributor to the rise in salaries was the availability of salary information. Prior to 1989, this information was considered “confidential” pursuant to an agreement between the League and the NHLPA. Salary figures could not be released to clubs or players despite the fact that the contracts were registered with the League office. Under these circumstances, it would be quite difficult to negotiate in an informed manner unless the player, agent or club general manager had effective contacts allowing them to learn about relevant salary information “through the grapevine.” This picture changed, however, when the League and the NHLPA agreed to release salary figures for players. Predictably, the length of salary arbitration decisions and the subject areas of comparisons documented therein lengthened considerably.

The combination of players who moved between teams, whether as free agents or holdouts insisting on trades or more generous teams, or who received offers from other clubs that their old club decided to match, or filed for salary arbitration and ultimately settled or received an award, has resulted in a rapid escalation of salary levels in hockey that has more than doubled the average NHL salary in the last two years. This rise in player costs has forced clubs to look for new sources of revenue as well as to seek a revenue sharing/salary cap arrangement with their players.

To date, the NHL owners’ efforts to cooperate with their players in a “partnership” manner in the shaping of the League has not been rigorously pursued. Perhaps the best illustration of this is the failure of the League and the NHLPA to share relevant information involving sources of revenues and costs during collective bargaining negotiations in 1991-92. In my view, this was a major contributor to the NHL players' strike in April 1991 and will continue to be a stumbling block to forging a cooperative approach to the operation of the League. This lack of common vision about the relevant NHL financial picture is displayed in the recent grievance arbitration chaired by Ted St. Antoine.
B. The "Average League Salary" Arbitration

On August 14, 1992, arbitrator Theodore J. St. Antoine issued an award as a "Voluntary Labor Arbitration Tribunal" in a matter of interpretation of the 1992 Collective Bargaining Agreement between the NHLPA and the National Hockey League member clubs. This decision discusses the course of negotiations between the parties from June 1991, to the conclusion of the Collective Bargaining Agreement on April 10, 1992, at the end of the players' strike. The new Collective Bargaining Agreement included a provision creating a new category of unrestricted free agent that was to apply to a "Ten Year Pro." This free agent category would apply to a player "who has completed ten professional seasons or more (minor or NHL) and who in the last year of his contract did not earn more than the "average league salary." Such player could elect once in his career to become an unrestricted free agent at the end of his contract.

After the dust settled following the strike and the Stanley Cup playoffs were completed, the parties became aware that they were in disagreement concerning the meaning of "average league salary." The NHL owners took the position that this term encompassed all players who had played in NHL competition the previous year and who had signed under the NHL Standard Player's Contract. The League calculated this average salary to be $236,000. The NHLPA took the position that this average League salary applied only to the top twenty players (skaters and goaltenders) on each club. Under this view, the average salary, including bonuses, would be $379,000. Both sides agreed that during the course of their negotiations there was no specific discussion of any formula for calculating the average salary nor any specific attempt to define what they meant by average salary.

The evidence alluded to in the award indicated that the parties during their negotiations did engage in a full campaign of "just plain propaganda" using various calculations of "average league salary" in order to seek public support for their bargaining. As President John Ziegler testified:

"[Average salary] got to be kind of a joke between us. I referred to it as Bob [Goodenow] referred to it as "the propaganda." [The] Players Association had their average salary. And we had our average salary. And we agreed to disagree."

At various times during the lengthy negotiations, the League announced that the average salary was $276,000 (June 13, 1991), $350,000 (mid-September 1991), and $379,000 (March 9, 1992). The NHLPA calculated the average team salary at $263,866 (September 1991), $339,000, $340,000 and $350,000 (in March and April 1992).

Arbitrator St. Antoine appeared somewhat amused by the posturing of the parties during negotiations in comparison with the positions they took
at arbitration. During negotiations, the League sought to continue to restrict free agency because players' salaries were escalating quickly and had reached $379,000. The NHLPA was claiming that salaries were low and that free agency should be expanded. Thus, we see the NHLPA alleging in September 1991 that the average salary was $263,866. Neither side seemed to agree about the accuracy of the other's figures.

After the parties agreed to create a new category of unrestricted free agency for 10-year veterans, they took radically different positions when it became time to implement this "agreement." Arbitrator St. Antoine commented at page 7 of his award:

"I am sure I need not dwell on the irony that each side is now insisting essentially or promoting the meaning of "average League salary" that it stoutly resisted during the whole course of the 1990-91 negotiations" (emphasis added).

The failure of the parties to come to a shared view about player salaries, however, had serious ramifications for the individual players and clubs affected by the new category of free agency. Arbitrator St. Antoine continued:

"But that irony cannot be ignored because it has substantive implications. Each party was keenly aware that the other was calculating the average league salary by means of a quite different formula. Yet I find as a fact that in striving mightily to reach agreement under the pressure of a strike and the loss of the 1992 Stanley Cup playoffs, neither side made clear to the other the meaning it was attributing (if indeed there was any fixed notion) to the crucial phrase, "average League salary," in the free-agency provision at issue in this arbitration" (emphasis added).

Arbitrator St. Antoine recognized that the propaganda used by both sides during their negotiations was designed for "tactical" and "public relations purposes" (page 7). He commented that "such high jinks" are no doubt "part of the grand tradition of collective bargaining." However, the parties created a problem of contractual interpretation for themselves by transporting the identical terminology used in their public relations exchanges into the wording of the new Collective Bargaining Agreement. In the case of the position now advanced at arbitration by the NHLPA, St. Antoine noted that the NHLPA had persistently rejected the League's concept of an average salary during negotiations. St. Antoine opined that the NHLPA cannot now "have it both ways." By its silence regarding the same phrase in the League's free agency counter purpose, the NHLPA should not be considered to have suddenly embraced what it had long spurned.
The flip-flopping of the parties in their interpretation of the phrase "average league salary" posed an intriguing contractual interpretation problem for the arbitrator. The evidence disclosed that each party did indeed have a different figure in mind when it agreed to this phraseology. The League wanted to include all players under NHL contract; the NHLPA wanted only the top twenty players on each club. St. Antoine could have thrown up his hands and said there was simply no "meeting of the minds" and therefore no contract reached on this issue. Rather than take this tack, St. Antoine concluded that the parties clearly intended to reach "an agreement having legal consequences in this situation." In keeping with the modern "objective" theory of contract law, St. Antoine determined that a reasonable meaning could be assigned to the language the parties chose as an expression of their agreement. He concluded that a "weighted average" of all players who competed in NHL games during the previous season, measured by the number of games actually played by each individual, would be the appropriate measure for the average calculation of league salary.

St. Antoine's decision formed the basis for a subsequent calculation by the parties that the average League salary for purposes of this new category of free agent would be $368,000. This salary figure included bonuses and deferred compensation to players. Several veteran players have subsequently changed teams as a result of this new category of free agency. For example, Ric Nattress moved from the Toronto Maple Leafs to the Philadelphia Flyers and Phil Bourque moved from the Pittsburgh Penguins to the New York Rangers. Other players, such as the Hartford Whalers' Steve Konroyd, reportedly were able to use this new category of free agency to achieve significantly higher salaries with their current teams.

In my view, the larger significance of the Average League Salary Arbitration is that it illustrates the need for the parties to share relevant financial information and to take greater care in negotiating new language into their Collective Bargaining Agreement. Admittedly, the negotiations in 1991-92 were difficult. There was no established relationship of trust between the NHL owners and the new leadership of the NHLPA. The eventual Collective Bargaining Agreement was concluded during a tense work stoppage with the owners and their players facing the horrible prospect of fan revolt if there was a cancellation of the balance of the season and the playoffs.

The parties now must enter into a sustained effort to seek common ground based on a shared view of the sport's current and future financial prospects. Unfortunately, the summer of 1992 saw little progress in this regard.
IV. THE PROSPECTS FOR FUTURE COOPERATION BETWEEN THE NHL PLAYERS AND OWNERS

At the conclusion of the players’ strike in early April 1992, the parties to the NHL collective bargaining relationship agreed to several joint initiatives whereby they would cooperate for their mutual benefit. For example, they agreed concerning:

(1) FUTURE JOINT REVENUE
   To jointly work together on both domestic and international levels to generate revenues and embark on special projects and promotions “for the good of the game.”

(2) HEALTH AND SAFETY
   To establish a Safety and Health Committee with equal representation from the clubs and the NHLPA, to discuss and resolve as promptly as reasonably practicable under the circumstances any health or safety problems related to the players' employment by the clubs.

(3) HOCKEY ECONOMIC STUDY COMMITTEE
   The NHL clubs offered to develop and submit to the NHLPA a proposal for restructuring with a salary cap and revenue sharing concept along the lines of the NBA system. This restructuring will require good faith bargaining by the parties if it is to be completed before the expiration of the CBA on September 15, 1993. To facilitate the bargaining process, the parties agreed to establish a Hockey Economic Study Committee.

   Each of these three initiatives should contribute to a shared sense of partnership in the development of the National Hockey league so obviously lacking during the 1991-92 collective bargaining negotiations leading to the players’ strike. Unfortunately, the behavior of the parties since the strike does not indicate that they have aggressively pursued these joint initiatives. There has been little progress in establishing any of these joint committees. The parties have yet to appoint their new panel of salary or grievance arbitrators or to flesh out new procedures for these dispute resolution forums.

   During the month of August 1992, two significant events indicated how far the parties were still apart on matters that would at first glance appear to be of mutual self-interest. John Kordic, a veteran journeyman player known for his role as an “enforcer,” died of a cocaine overdose. The response of the League office was a suggestion that it would sponsor seminars for the parents of entry-level draftees in order to educate the players’ families about the reality of life in the NHL fast lane, including the access of players to drugs. The NHLPA Executive Director’s response was one of surprise at this suggestion. He mused that he would have expected that the
League would have talked to the NHLPA before embarking on this initiative. Unlike the situation between the National Basketball Association and its players’ association, in the NHL there is no joint League-NHLPA approach to drug education, discipline or rehabilitation of drug users. Perhaps drug use and drug addiction should be a subject to refer to the new “Joint Safety and Health Committee.”

In late August 1992, the NHL Board of Governors met in Tampa and agreed to change the rules relating to the imposition of discipline for fighting and the use of sticks, as well as lifting the obligation on players to wear helmets during league contests. It is reported that the NHLPA was not involved in any prior consultations about these changes in League policies. To the extent that these changes are designed to protect players from injury (by imposing stiffer penalties for instigating a fight and hitting a player with a stick above the waist), are these matters that relate to player safety? Likewise, the lifting of the mandatory wearing of helmets rule can also be interpreted as an initiative relating to the safety of the player. If these two moves were undertaken for marketing purposes, would this come under the meaning of promotions “for the good of the game” and thereby be covered by the “Special Joint Venture” initiative the League and the NHLPA agreed to pursue together? In view of the fact that these joint committees have not yet been established, should these changes in League rules have been discussed at the Owner-Player Council which has been in existence for many years?

These observations illustrate that the NHL clubs and the NHLPA continue to act as adversaries rather than pursue the joint-management or strategic alliance approach to developing hockey. Hopefully, the parties will embark on a more aggressive campaign to work together on these issues that have such critical impact on the financial security of the League, on the health and safety of the players, and consequently, on the content of the Standard Player’s Contract. Otherwise, the relations between the NHL owners and players will more closely resemble Major League Baseball and the National Football League rather than those in the National Basketball Association, the model they agreed to pursue when they sheathed their swords on April 10 at the end of the players’ strike. It is hard to imagine that the NHL will be able to pursue its potentially exciting ventures into Europe and Japan if it cannot sort out its problems at home. Stay tuned.
ATTACHMENT A

IMPORTANT NOTICE TO PLAYER

Before signing this contract you should carefully examine it to be sure that all terms and conditions agreed upon have been incorporated herein, and if any has been omitted, you should insist upon having it inserted in the contract before you sign.

NATIONAL HOCKEY LEAGUE
STANDARD PLAYER’S CONTRACT
(1986 FORM; REVISED 1988)

BETWEEN res a member of the National Hockey League, hereinafter called the “League”

AND res hereinafter called the “Club,”

In consideration of the respective obligations herein and hereby assumed, the parties to this contract severally agree as follows:

1. The Club hereby employs the Player as a skilled Hockey Player for the term of ............... year(s) commencing October 1st, 19............. and agrees, subject to the terms and conditions hereof, to pay the Player a salary of

$.................................................. Dollars.

Payment of such salary shall be in consecutive semi-monthly installments following the commencement of the regular League Championship Schedule of games or following the dates of reporting, whichever is later; provided, however, that if the Player is not in the employ of the Club for the whole period of the Club’s games in the National Hockey League Championship Schedule, then he shall receive only part of the salary in the ratio of the number of days of actual employment to the number of days of the League Championship Schedule of Games.

And it is further mutually agreed that if the contract and rights to the services of the Player are assigned, exchanged, loaned or otherwise transferred to a Club in another League, the Player shall only be paid at an annual salary rate of

$.................................................. Dollars in the ................. League.

or $.................................................. Dollars in the ................. League.

or $.................................................. Dollars in the ................. League.

2. The Player agrees to give his services and to play hockey in all League Championship, All Star, International, Exhibition, Play-Off and Stanley Cup games to the best of his ability under the direction and control of the Club in accordance with the provisions hereof.

The Player further agrees,
(a) to report to the Club training camp at the time and place fixed by the Club, in good physical condition,
(b) to keep himself in good physical condition at all times during the season,
(c) to give his best services to the Club and to play hockey only for the Club unless his contract is released, assigned, exchanged or loaned by the Club,
(d) to co-operate with the Club and participate in any reasonable promotional activities of the Club which will in the opinion of the Club promote the welfare of the Club and to cooperate in the promotion of the League and professional hockey generally,
(e) to conduct himself on and off the rink according to the highest standards of honesty, morality, fair play and sportsmanship, and to refrain from conduct detrimental to the best interest of the Club, the League or professional hockey generally.

The Club agrees that in exhibition games played after the start of the regular schedule (except where the proceeds are to go to charity, or where the player has agreed otherwise) the player shall receive his pro rata share of the gate receipts after deduction of legitimate expenses of such game. This provision re exhibition games is applicable in the National Hockey League only.

3. In order that the Player shall be fit in proper condition for the performance of his duties as required by this contract, the Player agrees to report for practice at such time and place as the Club may reasonably designate and participate in such exhibition games as may be arranged by the Club.
1992

NHL PLAYER’S CONTRACT

4. The Club may, from time to time during the continuance of this contract establish reasonable rules governing the conduct and conditions of the Player, and the reasonable rules shall form part of this contract as fully as if herein written. For violation of any such rules or for any conduct impairing the thorough and faithful discharge of the duties incumbent upon the Player, the Club may impose a reasonable fine upon the Player and deduct the amount thereof from any money due or to become due to the Player. The Club may also issue a written warning stating the amount of the fine and/or the duration of the suspension and the reason thereof. Copies of the rules referred to herein shall be filed at the main offices of the League and the National Hockey League Players Association (“NHLPA”).

5. (a) Should the Player be disabled or unable to perform his duties under this contract he shall submit himself for medical examination and treatment by a physician selected by the Club, and such examination and treatment, when made at the request of the Club, shall be at its expense unless made necessary by some act or conduct of the Player contrary to the terms and provisions of this contract or the rules established by Section 4.

(b) If the Player, in the judgment of the Club’s physician, is disabled or is not in good physical condition at the commencement of the season or at any subsequent time during the season (unless such condition is the direct result of any injury sustained during the course of his employment as a hockey player with the Club, including travel with his team or on business requested by the Club) so as to render him unfit to play skilled hockey, then it is mutually agreed that the Club shall have the right to suspend the Player for such period of disability or unfitness, and no compensation shall be payable for that period under this contract. If upon joint consultation between the Player, the Club’s physician and the Club General Manager, they are unable to agree upon the Player’s disability or physical condition, the Player agrees to submit himself for examination by an independent medical specialist and the Parties hereto agree to be bound by his decision.

(c) If the Player is injured during the course of his employment as a hockey player with the Club, including travel with his team or on business requested by the Club, the Club will pay the Player’s reasonable hospitalization until discharged from the hospital, and his hospital bills and doctor’s bills, provided that the hospital and doctor are approved by the Club. This approval will not be unreasonably withheld.

(d) It is also agreed that if the Player, in the sole judgment of the Club’s physician, is disabled and unable to perform his duties as a hockey player by reason of an injury sustained during the course of his employment as a hockey player, including travel with his team or on business requested by the Club, he shall be entitled to receive his remaining salary due in accordance with the terms of this contract for the remaining stated term of this contract as long as the said disability and inability to perform continue but in no event beyond the expiration date of the fixed term of this contract. The Club shall be deemed to include any option period related to a playing season after the playing season in which the injury occurred. In consideration of payment made by the Club to fund the Major Medical Plan pursuant to Section 12.01 of the Collective Bargaining Agreement between the Member Clubs of the League and the NHLPA, if the Club agrees to pay Disability Insurance pursuant to Section 16.01 of such Agreement, payment shall be made by the Club in the event that the Player is declared to be not physically fit for play, as determined by the Club’s physician. If the Player is declared to be not physically fit to play, he must be ineligible to receive the salary that is due or to become due to the Player under this contract.

(e) In connection with a disability which is not caused by an injury sustained during the course of his employment as a hockey player including travel with his team or on business requested by the Club, if upon joint consultation between the Player, the Club’s physician and the Club General Manager, they are unable to agree upon the Player’s physical fitness to return to play, the Player agrees to submit himself for examination by an independent medical specialist and the Parties hereto agree to be bound by his decision. If the Player is declared to be fit for play, he must perform his duties hereunder and be entitled to receive the full benefits of this Agreement. If he is declared to be not physically able to play, he shall not be entitled to the benefits of this Agreement until he has been declared to be physically fit to play by the independent medical specialist.

(f) The Player represents and agrees that he has exceptional and unique knowledge, skill and ability as a hockey player, the loss of which cannot be estimated with certainty and cannot be fairly or adequately compensated by damages. The Player therefore agrees that the Club shall have the right, in addition to any other remedies which the Club may possess, to enjoin him by appropriate injunctive proceedings without first exhausting any other remedy which may be available to the Club, from playing hockey for any other team and/or for any breach of any of the other provisions of this contract.

5. The Player and the Club recognize and agree that the Player’s participation in other sports may impair or destroy his ability and skill as a hockey player. Accordingly, the Player agrees that he will not during the period of this Contract or during any period when he is obligated under this Contract to enter into a further contract with the Club engage or participate in football, baseball, softball, hockey, lacrosse, boxing, wrestling or other athletic sport without the written consent of the Club, which consent will not be unreasonably withheld.

6. (a) The Player hereby irrevocably grants to the Club during the period of this contract and during any period when he is obligated under this Contract to enter into a further contract with the Club and during any period when he is obligated under this Contract to enter into a further contract with the Club the exclusive right to permit or authorize any person, firm or corporation to take or make any pictures or motion pictures or television of himself, and agrees that all rights in such pictures and television shall belong to the Club exclusively and may be, reproduced, distributed or otherwise disseminated by the Club directly or indirectly in any manner it desires, except as said grants may be modified from time to time pursuant to the applicable provisions of any Agreement between the Major League clubs of the League and the NHLPA.

(b) The Player further agrees that during the period of this Contract and during any period when he is obligated under this Contract to enter into a further contract with the Club he will not make public appearances, participate in radio or television programs, or permit his picture to be taken, or write or sponsor newspaper or magazine articles, or sponsor commercial products without the written consent of the Club which consent shall not be unreasonably withheld.

6. It is mutually agreed that the Club will not pay, and the Player will not accept from any person, any bonus or anything of value for winning or otherwise attempting to affect the outcome of any particular game or series of games except as authorized by the League By-Laws.

7. The Player agrees during the period of this Contract and during any period when he is obligated under this Contract to enter into a further contract with the Club he will not tamper with or enter into negotiations with any player under contract or reservation to any Club of the League for or regarding such player’s current or future Clubs. This provision shall be applied as if the Club is the “Club” as defined in any National Basketball Association’s (“NBA”) collective bargaining agreement, and with such other restrictions on such player as are contained in such collective bargaining agreement or in any other agreement between any NBA Players Association or any other negotiating union or bargaining unit, and shall be applied as if the Player is a member of said bargaining unit. The Player has no rights to or obligations under any agreement made or entered into prior to the execution of this contract. The Player’s obligations hereunder are subject to the terms and obligations of such other agreement or agreements.

8. It is mutually agreed that the Club shall have the right to sell, assign, exchange and transfer this contract, and to loan the Player’s services to any other professional hockey club, and the Player agrees to accept and be bound by such sale, exchange, assignment, transfer or loan, and will faithfully perform and carry out this contract with the same purpose and effect as if it had been entered into by the Player and such other Club.

10. It is further mutually agreed that in the event that this Contract is assigned, or the Player’s services are loaned, to another Club, the Player shall, by notice in writing delivered personally to the Player or by mail to the address set out below his signature hereto advise the Player of the name and address of the Club to which he has been assigned or loaned, and specifying the time and place of reporting to such Club. If the Player fails to report to such other Club, he may be suspended by such other Club and no salary shall be payable to him during the period of such suspension.
10. The parties agree that if the Club shall default in the payments to the Player provided for in Section 1 hereof or shall fail to perform any other obligations agreed by the Club hereunder, the Player may, by notice in writing to the Club and to the League and the NHLPA, specify the nature of any and all defaults and thereafter:

(a) if the Club shall fail to remedy the default within fourteen (14) days from receipt of such notice, except as hereinafter provided in subsections (b) (c), (d) and (e) of this Section 12, this Contract shall be terminated, and upon the date of such termination all obligations of both parties shall cease, except the obligation of the Club to pay the Player's compensation to that date, provided otherwise, that;

(b) the Player hereby irrevocably offers to the League an option to cure said default within the seven (7) days next succeeding the fourteen (14) days within which the Club may cure the default upon the condition that in the event the League may accept this offer, the League would then guarantee payment of that portion of the Player's salary, as set forth in Section 1 hereof, as may become due for a period of twenty-one (21) days from receipt by said League of any notice of default. The League may accept this offer by notification to the Player and the NHLPA in writing of such acceptance and of its guarantee of said twenty-one (21) day salary period as soon as possible following receipt of notice of default from Player but no later than the date of such notice of default, as provided above, but not specifically included and set forth in said notice, shall be assumed by the League or such assignee club. The Player shall have no liability with respect to such club being obligated to perform under this Contract.

(c) said option may be assigned by the League to any other member club and, upon such assignment, the assignee club shall have the right to all of the rights of and assume all obligations of the League under this Article 12; and

(d) the Player further agrees that, if the League has given due notice as set forth in subsection (b), he will continue to perform all of his obligations under this Contract for the full twenty-one (21) day period and, in the event the Club does not cure the default within the fourteen (14) day period, as set forth in subsection (a), the League, or any member club to which such option has been assigned, may cure the default within the seven (7) days following the first fourteen (14) days next succeeding receipt of notice of default; and

(e) if the Club elects to terminate this Contract pursuant to this Section 13, it shall be obligated to pay to the Player, in equal monthly installments, beginning on the July 1st next following the date on which the termination is effective, at the rate of $50,000 per year:

(i) if the Player is under 26 years of age at the time the termination is effective, an amount equal to 1/3 of, or

(ii) if the Player is 26 years of age or older at the time the termination is effective, an amount equal to 2/3 of the total fixed amount of the Player's league salary, as set forth in Section 1, for the unexpired fixed-term and option year of this Contract, reduced by any advance payment of salary received by the Player prior to the date the termination is effective.

The Player may, within 10 days after the receipt of the notice of termination, elect in writing to be paid a lump sum equal to the present value of the amount payable pursuant to subsection (b) above on the date of termination in lieu of receiving monthly installments. Written notice of such election shall be delivered to the Club or mailed by registered mail within the said 10-day period at its address set forth below. The present value of the amount payable pursuant to subsection (b) shall be computed on the basis of an interest rate equal to the prime rate of interest of the Chase Manhattan Bank, New York City, on the date of termination.

(f) Upon receipt of the notice of termination the Player shall immediately be a free agent not subject to equalization and shall no longer be subject to recall.

(g) Waiver claim of Player by another Club shall pre-empt and relinquish Club's Buy-Out obligation, due to failure to clear waivers.

14. The Club may also terminate this Contract upon written notice to the Player that only after obtaining waivers from all other League clubs, if the Player shall at any time:

(a) fall, refuse or neglect to obey the Club's rules governing training and conduct of players, if such failure, refusal or neglect should constitute a material breach of this contract,

(b) fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract,

In no event shall the Club be entitled to compensation due to him in the earlier of the date such notice is delivered to him or the date of the mailing of such notice to his address as set out below his signature hereon.

In the event this Contract is terminated by the Club while the Player is "away" with the Club for the purpose of playing games the installment of $50,000 per week shall be paid within seven (7) days after the return "home" of the Club.

The Player further agrees that the Club may carry out and put into effect any order or ruling of the League or its President for his suspension or expulsion and that in the event of suspension his salary shall cease for the duration thereof and in that event of expulsion this Contract shall terminate forthwith.

15. The Player further agrees that, in the event of his suspension without pay pursuant to any of the provisions of this Contract, there shall be deducted from the salary stipulated in Section 1 hereof an amount equal to the exact proportion of such salary as the number of days' suspension bears to the total number of days of the League Championship Schedule of games.

16. If because of any condition arising from a state of war or other cause beyond the control of the League or of the Club, it shall be deemed advisable by the League or the Club to suspend or cease or reduce operations, then:

(a) in the event of suspension of operations, the Player shall be entitled only to the proportion of salary due at the date of suspension,

(b) in the event of suspension of operations, the salary stipulated in Section 1 hereof shall be automatically cancelled on the date of cessation, and

(c) in the event of suspension of operations, the salary stipulated in Section 1 hereof shall be replaced by that mutually agreed upon between the Club and the Player, or, in the absence of mutual agreement, by that determined by neutral arbitration.

17. (a) The Club may no later than June 1st of the final year of this Contract, tender the Player a Player's Termination Contract and notify him that he has the choice of executing said Player's Termination Contract and delivering it to the Club or on or before June 30th of that year or automatically being unconditionally released from any further obligations to provide services under this Contract as of July 1st of that year. A copy of the offer must also be promptly delivered by the Club to the NHLPA. The Player's Termination Contract shall be on the same terms and conditions, including any and all performance bonuses, as this Contract for the provision of said contract may be modified from time to time pursuant to the applicable provisions of any Collective Bargaining Agreement between the member clubs of the League and the NHLPA except that it shall be for only one additional season at the Player's unconditional release from any further obligation to provide services under said Player's Termination Contract effective upon conclusion of the following year's Stanley Cup playoffs.
If Player wishes to accept the Player's Termination Contract which has been tendered in accordance with the preceding paragraph, he must deliver notice of such acceptance to Club, which notice must be received by Club on or before June 30. Failure to notify Club of acceptance by June 30 shall constitute a rejection of the Club's tender of a Player's Termination Contract, and an election by the Player to become an immediate Free Agent without compensation on July 1.

(b) If the Club does not take the action permitted under subsection (a), it shall no later than August 10th of the final year of this Contract tender to the Player a new Standard Player's Contract upon the same terms and conditions (including this Section 18) as this Standard Player's Contract (as the provisions of said contract may be modified from time to time pursuant to the applicable provisions of any Collective Bargaining Agreement between the member clubs of the League and the NHLPA except that salary and the number of years of its fixed term may be different. If the Club fails to tender such a contract to the Player on or before August 10th, then the Player at his option, provided such option may not be exercised later than August 12th, may elect to become a free agent, without any further obligation to provide services under this Contract and as such will have the right to negotiate with any club in the League, or with any other club, without obligation on the part of a club which, under such circumstances, acquire his services to make an equalization payment to the Club.

(c) Without regard to any action taken by the Club under subsections (a) and (b), the Player may notify the Club no later than September 25th of that year that he wishes to accept the Club's Offer of a Player's Option Contract. If the Player gives such notice, the Club shall no later than September 25th of that year tender the Player a Player's Option Contract, and the Player shall forthwith enter into said contract. The Player's Option Contract shall be on the same terms and conditions, including any and all performance bonuses, as this Contract (as the provisions of said contract may be modified from time to time pursuant to the applicable provisions of any Collective Bargaining Agreement between the member clubs of the League and the NHLPA) except that it shall be for only one additional season at the Player's previous year's salary and shall provide that effective the following July Ist the Player will be a free agent, without any further obligation to provide services under said Player's Option Contract, and as such will have the right, as provided by Section 9A of the League By-Laws, the text of which is printed on the reverse side hereof, to negotiate and contract with any club in the League, or with any other club.

(d) If the Club has not taken the action permitted under subsection (a) and the Player has not exercised the option provided by subsection (b) or has not given notice to the Club in accordance with subsection (c), then the parties shall enter into a new Standard Player's Contract for the succeeding season upon the same terms and conditions (including this Section 18) as this Standard Player's Contract, except as to salary, which shall be determined by neutral arbitration under the applicable collective bargaining agreement providing a mechanism for such arbitration, provided, however, that if no such collective bargaining agreement is then in effect, the Player's salary shall be the same as his salary, including any and all performance bonuses, for the previous year.

(e) As used in this Section 18, the phrase "final year of this Contract" does not include the "option year".

(f) The Club's notice and tender obligations under this Section 18 shall be deemed fulfilled if the Club delivers the required written notification and/or the proposed contract to the Player in person on or before the applicable deadline date or mails the same by registered mail postmarked no later than said deadline date to the Player at the address set forth below his signature hereto. If the Club has elected to use the mail, the Club shall notify the NHLPA of its action in writing, by sending a copy of the transmittal letter or otherwise, at the time of mailing to the Player. The Player's notice and delivery obligations under this Section 18 shall be deemed fulfilled if the Player hand delivers the required notice or mails the same by registered mail postmarked no later than said deadline date to the Club at its address set forth below.

19. The Club and the Player severally and mutually promise and agree to be legally bound by the Constitution and By-Laws of the League and any Collective Bargaining Agreement that has been or may be entered into between the member clubs of the League and the NHLPA, and by all of the terms and provisions hereof, copies of which shall be open and available for inspection by Club, its directors and officers, the Player, the NHLPA, the Player's representatives and his arbitrator, the President of the League, and the National Hockey League as an arbitrator and his representatives, and to the extent that, other arbitrations procedures are provided in any Collective Bargaining Agreement between the member clubs of the League and the NHLPA to cover such dispute.

The Club and the Player further agree that all fines imposed upon the Player under the Playing Rules, or under the provisions of the League By-Laws, shall be deducted from the salary of the Player and be remitted by the Club to the N.H.L. Players' Emergency Fund.

20. The parties agree that the rights provided in Section 18 and in any Addendum hereto and the promise of the Player to play hockey only with the Club, or such other club as provided in Sections 2, 11 and 12, and the Club's right to take pictures of and to televise the Player as provided in Section 8 have all been taken into consideration in determining the salary payable to the Player under Section 1 hereof.

21. It is severally and mutually agreed that the only contracts recognized by the President of the League are the Standard Player's Contracts, Player's Termination Contracts, Player's Option Contracts, Post-Option Year Termination Contracts, Double-Eagle Contracts, Standard Contracts (Corporate), Standard Termination Contracts (Corporate), Standard Option Contracts (Corporate), Post-Option Year Termination Contracts (Corporate) and Double-Eagle Contracts (Corporate) which have been duly executed and filed in the League's office and approved by the Club (or his designated representative), and that that this Agreement contains the entire agreement between the Parties and there are no oral or written inducements, promises or agreements except as provided herein.

In Witness Whereof, the parties have signed this day of , at the place hereinafter set forth.

A D 19

WITNESSES:

Club

By

Address of Club

President

Player

Home Address of Player

I hereby certify that I have, at this date, received, examined and noted of record the within Contract, and that it is in regular form.

Dated 1988, for the National Hockey League.

Les parties ont par les présentes expressément accordé que ce contrat soit rédigé en anglais.

Parties hereby state their expressed wish that this contract be drafted in English language.

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