

**SHOT ON GOAL: CONCUSSION DISCUSSION IN THE NATIONAL  
HOCKEY LEAGUE (NHL)**

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### ABSTRACT

The National Hockey League (NHL) is faced with many lawsuits regarding misconduct in the game that may lead to former players' mental health problems and disease in the future. The game is a traditional which means it has its pros and cons regarding its regulations. With science advancing, there has been proof showing the connection between the game and brain injuries. Hockey must keep up with the advances and change its rules to stay consistent with the studies. As the game became more physically taxing, rules changed and equipment was added (eg. The Helmet rule in 1979) to ensure player's safety and keep up with the times. Players and coaches must learn to understand when it is the proper time to take a player out of the game to ensure they do not have a brain injury. With many recent discoveries about the brain and how a simple jarring of the head can lead to a brain injury, the NHL needs to become stricter and put the safety of their players at the forefront of the game.

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## SHOT ON GOAL: CONCUSSION DISCUSSION IN THE NHL

In recent years, there have been growing concerns regarding concussions among professional athletes. The National Football League (NFL), National Hockey League (NHL), Union of European Football Associations (UEFA), and leagues alike, have been reevaluating the rules surrounding the repercussions of a hit to the head. There have been many class action law suits reported of cognitive decline later in life, which have been at the forefront of the public eye for the last four years (Henry, 2016). Former players and families have been suing the NHL with accusations of “failure to provide up-to-date medical information about the risk of long-term brain damage” (Bonesteel, 2015) in particular, a case regarding former NHL player, Steve Montador. Montador was found dead in his home at the age of 35, cause of death being unknown. After further examination of his brain, the Canadian Sports Concussion Project found his brain to have Chronic Traumatic Encephalopathy (CTE). CTE is a degenerative brain disease that has been link to repeated head trauma. In Montador’s case, he had sustained a total of 13 concussive brain traumas and fought 69 times throughout his career (Bonesteel, 2015). With the high-speed nature of hockey, brain injuries are very common among the most elite players in the NHL. In 2016, the banter surrounding concussions quickly fired up when commissioner Gary Bettman seemingly shrugged off any connection between concussions and CTE, when all the research points to the two being connected.

### **Purpose**

The purpose of this paper is to examine the links between concussions, CTE, and the professional sport of hockey. Several legal aspects, such as contracts, liabilities, and the NHL’s

rules and regulations are investigated to fully comprehend the legal and medical implications surrounding concussions and brain injuries in the NHL.

### **Significance**

Each year, there are concussions that go undiagnosed, documenting only 5.8 per 100 players (Benson, 2011). Hockey players are brought up as “tough and all business” on the ice, and “getting your bell rung” wasn’t something to be worried about because it happens all the time. As technology and science have advanced, brain injuries have become more central in the discussion regarding the dangers in hockey. In 2013, the addition of hybrid icing aimed to protect the players. Instead of having the players fly down the ice at full speed to see who touches the puck first, the referee makes a call before anyone gets too close to touching the puck. This single rule change has decreased the amount of injuries behind the goal line by 37% (Kluger, 2016). Changing the rules has been in deliberation between the NHLPA and the NHL since the influx in ex-players saying they have been having health issues after their careers. They claimed there is no exit strategy and the NHL is there purely for money and doesn’t care about its athletes. Having ex-players complain, is bad press for the NHL, which is why it may be necessary for them to change the rule.

## REVIEW OF LITERATURE

Being such a traditional sport, the NHL did not have any rule or contract that has been stated regarding player's concussion problems. With brain injuries being such a growing concern in the NHL and sports in general, they have established rules in hopes of reducing the amounts of injuries in the sport. Fighting, illegal checks, and equipment are three areas that have endured the most changes since the founding of the sport in the late 1800s.

### **Fighting**

Fighting is something that has decreased significantly in the past ten years, making it rare to see a fight while at a game. John Scott, a 6'8" ex-defenseman of the NHL was always on the prowl to find fights in the league, but as he got older, the fights were few and far between. He said "It has gotten even harder these days. It's hard to find fights," (Kuc, 2016). According to the NHL, in the 2012-13 season, there were 346 fights in 767 games, in 13-14 season there were 332, in 14-15 259, and in 15-16 only 212 (Kuc, 2016). It has been proven time and time again that there are direct correlations between brain injuries and fighting. The game is evolving from a tough, grueling sport to more of a finesse and skill-driven sport. The sense where there are two tough guys on the ice turning into a definite fight has left the game, and has not been particularly important in the game anymore. Scott believes the game is changing into something that many players are fine with. "There are times when your team needs a pick me up, or when you need to swing the momentum of a game and that is when I come into play. I've changed the momentum many times in a game. The fear of a fight always changes the momentum of a game," (Kuc, 2016). Taking responsibility for your actions is something that is prominent in the game of

hockey. If you hit a player illegally, you should expect some retaliation from the opposing team, they are going to protect their teammates no matter what.

### **Illegal Checks and Rule 48**

When hockey was still seen as a sport that only tough guys play, it was just the way the game was. There was never a call when someone got hit high, or checked to the head. That is why the NHL introduced Rule 48 to the rulebook, and they almost got it right. The rule states, “A hit resulting in contact with an opponent’s head where the head was the main point of contact and such contact to the head was avoidable is not permitted,” (NHL Rulebook, 2018). It, like many new rules, has room for improvement. Rule 48 can be interpreted as “the head must be targeted. In other words, the contact must be intentional,” (Heshka, 2012). The “war room” in Toronto is the place where all the goals, assists, hits, injuries, and penalties are evaluated and analyzed after they happen. “The amount of brain injuries that you endure in the NHL is consistent with every game. It has been proven that you get at least one traumatic brain injury per game. I have played in over 700 hockey games, which means my brain has endured over 700 brain injuries,” says Daniel Carcillo, former player on the Chicago Blackhawks (Carcillo, 2018). The intent of going in to hurting someone is not what the game is about, however there are times when retaliation for an action is acceptable.

It is found in the case of Todd Bertuzzi, a former NHL player who had an illegal hit to the head of a promising rookie, Steve Moore. After many reviews of Todd Bertuzzi’s illegal hit to the head of Vancouver player Steve Moore, the two parties decided to settle after 10 years of battling. Bertuzzi claims that the Coach of the Vancouver Canucks at the time, Mark Crawford told him that Steve Moore deserved retaliation for the hit in the previous game against the captain of the Canucks, Marcus Naslund. The retaliation aspect of hockey will always be there,

but where does the line get crossed? Moore believed the illegal action crossed the line. Moore's lawyer proved he could've graduated summa cum laude from Harvard University before his injury, but took the step to start his NHL career instead of going to school. Moore claimed that Bertuzzi should pay for his education so he can continue down another career path instead of his intended NHL career (Moore, 2012). He would need accommodations according to his ailments due to the injury that the school would provide for him to succeed. Moore also claimed suffered permanent damage to his mental and physical abilities that he believes Bertuzzi should take responsibility for his actions.

The question the court needed to decide was, "should the defendant, Todd Bertuzzi, be charged with intent to injure and to pay medical/education expenses?" The court has decided to dismiss the request for the authorization of an examination of the GMAT exam database. However, before the court could come to a complete ruling, the two parties came upon a settlement agreement. The court believes Dr. Rutner's analysis was to prove that Mr. Moore didn't in fact need accommodations, then it logically follows that the accommodation was irrelevant and did not affect the prediction that Moore would in fact pass the GMAT. Although Moore would be accepted into a graduate program, he would require significant accommodations which would and it is questionable that he could now succeed with said accommodations. The court rules that this is an irrelevant issue regarding the GMAT status of Steve Moore.

It is important for the NHL to not forget about basics. Many times, players get caught up in their own game and they take their own spin on the basic skating and hitting that they learn in youth hockey. There is a certain way to hit a player that the players are taught when they are learning to play the game. Often, they don't care how they hit other players, after all, it is the entertainment business. In order for the NHL to reduce the amount of concussions and brain injuries, they *must*



revert to the basics of the game to ensure the players don't intentionally try to injure another player. It might seem like a miniscule and redundant change, but it can potentially help people who are at risk of brain injuries in the NHL.

The most recent case filed by former NHL players in 2016 is settled for \$18.9 million. The former NHL players claim to say they suffered concussions during their playing days and questioned whether the league and teams did enough to help protect them during gameplay. They believe the NHL should claim some responsibility to their brains being traumatized for the rest of their lives. The settlement gives each player only \$22,000, which is a low price for what they have endured (Ozanian, 2018).

### **Equipment Changes**

To keep up with the advancing science and technology, the sport of hockey is forced to take drastic safety precautions to ensure maximum career potential. In the 1920s, players began making their own homemade shin pads and kneepads to start to protect their legs. They also began to wear gloves reinforced with animal hair and bamboo to stabilize the wrists. In the 1930s, it was quite rare to see a player with a helmet on, and it wasn't until 1970 it was a consistent option for players. The first ever goaltender to wear a face mask was Jacques Plante on November 1, 1959 (TLC, 2018) after he took a puck to the face. His coach was reluctant to let him wear it during the game, and people began ridiculing him and questioned if he was actually "tough enough to play the sport". In recent years, the equipment has been ever changing, with new technology finding ways for players to improve their game daily. Mouth guards seem like a small change, but it is in fact one of the most important. The NHL has not yet made mouth guards required, but are on the verge to with all the advancing studies. The gel inside a mouth

guard cushions the teeth when a player gets hit. The cushion of the gel inserts slows the speed of the teeth coming together which slows the speed the brain is moving as well.

In summation, fighting, illegal checks, and equipment changes have been at the forefront of the advancing technology surrounding the NHL. Fighting in the NHL has decreased significantly in the last 10 years, since the sport has become more offensive and finesse-based, rather than the defensive brawling that encompassed the sport in the early 2000s. Although fighting still happens during games, it is often because of a retaliation than just “for fun”. Illegal checks and Rule 48 is something that is overlooked in the game. In recent years, the NHL has been cracking down on the rules regarding the illegal hits to the head, with suspensions up to 25 games and fines up to \$10,000. Many players have sought legal action against the NHL claiming the league responsible for all the future diagnoses that they endure when they are older. Equipment changes have been primary in player safety. They have changed significantly since the birth of the game in the late 1800s. The most notable is having helmets be required in the 70s. All these changes in the game of hockey have been due to the advancing science and technology surrounding the game. As more studies come out, there will be an expectation of changes in all three of the above headlines.

## CONCLUSIONS, IMPLICATIONS, AND RECOMMENDATIONS

There have been negative effects in the cases against the National Hockey League, the following section will draw conclusions regarding the NHL's forced attention shift to reevaluate their rules, regulations, and standards throughout the league to solve the problems surrounding the increasing amount of concussions in the league.

### **Conclusions**

Many conclusions can be drawn regarding the NHL's concussion epidemic. Overall, the current rules and regulations do not have the safety of the athlete as the top priority. This is due to many issues which include the following:

1. Traditions of the game call for the rules to stay consistent. (Henry, 2016)
2. Advancing technology and science proving how unsafe the sport can be. (Heshka, 2012)
3. Proven CTE in former player's brains. (Dryden, 2017)
4. Players and coaches insisting they are okay to play after they endure a brain injury during a game. (Kluger, 2016)
5. The NHL and NHLPA must be on the same page regarding player safety. (TLC, 2018)

### **Implications**

The number of issues the NHL currently has proven that change is necessary in the future. Former athletes are beginning to become more vocal about their lives after the game and calling on the NHL to make a change so the current players do not have to go through what they are

currently. As more players leave the league and find out they have brain problems, issues will continue to grow. Without change, the NHL is going to see many more cases against them regarding safety. To avoid this outcome, the NHL must revise its rules and regulations to the fullest extent to ensure the players understand their health and future is something that they care about and are trying to fix. The rule changes should start at the top, most professional level, and trickle down through all the leagues leading to the NHL, when the prospective athletes reach the elite level, they will already be used to the rules. Once implemented, these changes will allow future NHL players to avoid the unfortunate issues and diseases that exist with the former NHL players.

### **Recommendations**

The most basic improvement to the current state of the NHL would be for the NHL to further educate players and prospects about the dangers of an improper hit to the head, and the delicate-ness of the brain. It is important for them to understand that there is a risk when playing this game of hockey, and they should be taught the best ways to avoid it. (TLC, 2018). This should be a temporary solution while significant rule changes and plans are made.

The next step needs to be working with experts in the science field to aid in designing proper protection to ensure player's safety. Take all the proven experiments and find out what the experts would recommend doing in order to prevent further injuries to athletes in the league. (Henry, 2016). They will be able to find out what causes the CTE and how to go about preventing it so it doesn't happen to another brain again.

Another problem that the NHL currently has is having coaches playing their players without proper testing. This does not help the case of safety being the number one priority of the NHL, as the coaches should be one of the people who recognizes the player "getting their bell

rung”. (Heshka, 2012). It is very important that the coaches on the professional level still go over basics and make sure the players understand what makes a clean hit and when it is okay to hit someone.

The five major issues with the NHL each have a recommended solution based on experts’ evaluation of the current situation. The NHL must now decide how to make changes to improve the state of the former players in the league. If this is not done soon, more litigation is bound to follow as former NHL players have a more dominant voice in what the future looks like for current players.

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