

GAME-DAY GANGSTERS

**GAME-DAY
GANGSTERS**
CRIME AND DEVIANCE IN
CANADIAN FOOTBALL

CURTIS FOGEL



AU PRESS

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ABBREVIATIONS

AHL	American Hockey League
CCES	Canadian Centre for Ethics in Sport
CDSA	Controlled Drugs and Substances Act
CFL	Canadian Football League
CIS	Canadian Interuniversity Sport
CJFL	Canadian Junior Football League
NBA	National Basketball Association
NFL	National Football League
NHL	National Hockey League
MLB	Major League Baseball
SDRCC	Sport Dispute Resolution Centre of Canada

LEGAL CASES CITED

- Bell v. Edmonton Eskimo Football Club, A.J. 1133 (1988)
Brownhall v. Canada (Minister of National Defence), O.J. 672 (2006)
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Hodges v. Webb, 2 Ch. 70 (1920)
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R. v. Bertuzzi, B.C.J. 2692 (2004)
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R. v. George, S.C.J. 53 (1960)
R. v. Green, 1 O.R. 591 (1971)
R. v. Johnston and Tremayne, C.C.C. 64 (1970)
R. v. L.P., C.M.A.J. 8 (1998)
R. v. Lewis, S.C.J. 73 (1979)
R. v. Maki, 16 D.L.R. (3d) 137 (1970)
R. v. McSorley, B.C.J. 1993 (2000)
R. v. Murray, A.J. 653 (1998)
R. v. Pappajohn, 2 S.C.R. 120 (1980)
R. v. Paul, O.J. 5848 (1987)
R. v. Schwengers, B.C.J. 2780 (2005)
R. v. Shanower, 8 C.C.C. (2d) 57 (1972)
Smolden v. Whitworth, E.L.R. 115 (1997)
Thomas (Next friend of) v. Hamilton Board of Education, O.J. 2444 (1994)
Vowles v. Evans, W.L.R. 1607 (2003)

One of the greatest absurdities in the football mythology is that the players' interests are identical with those of coaches and administrators.

DAVE MEGGYESY, *Out of Their League*, p. 78

1

Discerning Consent in Canadian Sport

Playing at Hand-Sworn, Bucklers, Football, Wrestling, and the like, whereby one of them receiveth a hurt, and dieth thereof within a year and a day; in these cases, some are of the opinion, that this is a Felony of Death: some others are of opinion, that this is no Felony of Death, but that they shall have their pardon, of course, as for misadventure, for that such their play was by consent, and again, there was no former intent to do hurt, or any former malice, but done only for disport, and trail of Man-hood.

MICHAEL DALTON, seventeenth-century legal scholar

The issue of discerning consent is central to many court cases in Canada (Jones, 2000). The accused will often argue that the complainant gave consent, a legal defence most commonly used in cases involving sexual assault (Cowling & Reynolds, 2004; Stewart & Norris, 2004;

Wertheimer, 2003). Consent is, however, an integral aspect of many other cases. In this book I explore how participants (players, coaches, and officials) in Canadian football perceive consent by looking at three relevant areas: violence, hazing, and performance-enhancing drug use.

To examine this issue, the book delves into the complicated relationship athletes have with their sport and the law. It explores how players perceive and understand consent in stadiums filled with fans yelling “rip their heads off,” in locker rooms when veteran players demand rookies undress to receive anal prodding from “Mr. Broomstick,” and on team buses where performance-enhancing drugs are passed around like “penny candy.” Most importantly, it explores how acts that are considered criminal outside of the context of sport are tolerated, and in many ways promoted, in Canadian football. In the process, I identify the real “game-day gangsters”— they are not just the athletes engaged in quasi-criminal acts but also include those team and league administrators who tolerate, support, and promote them. I conclude the book with a discussion of what can be done to remedy the social problems that are now prevalent in Canadian football.

In the course of conducting research for this book, I interviewed eighty-one football players and administrators; their statements reveal the complex and multifaceted understandings those inside Canadian football have about consent as it relates to potential criminal acts. I hope the findings and theorizations offered here will be further explored and developed in subsequent research.

Violence, hazing, and drug use are all commonplace in Canadian football. They each raise similar yet unique legal concerns in relation to consent. I open the book with a discussion of the issues faced by lawyers and judges attempting to determine what constitutes consent and how to prove it has been given in Canadian sport. The next three chapters explore players' complicated and contradictory perceptions of consent in relation to violence, hazing, and performance-enhancing drug use in Canadian football specifically. These discussions reveal the disjuncture between how the legal system defines players' conceptions of consent and how players actually define consent in their own lives. In subsequent chapters I examine the concepts of "arenas of toleration" and "constrained consent" to show that legal rulings are not being made in the interest of players, and that free and informed consent is not possible within the current context of Canadian football. I conclude with a discussion about the implications of this research and the possible alternative models for dealing with legal issues in sport.

DEFINING AND DISCERNING CONSENT

While the Canadian Criminal Code makes no direct reference to consent as it relates to sport in Canada, the term is widely used within the code to describe various other infractions. Two sections of the code deal with the legal concept of consent in the most detail: Sections 150–154, pertaining to sexual offences, and Sections 265–268, pertaining to various forms of physical assault.

Section 151.1(2/3) of the code defines consent as “the voluntary agreement of the complainant to engage in the [activity] in question.” This section lists five scenarios in which voluntary consent has not been gained:

- (a) the agreement is expressed by the words or conduct of a person other than the complainant;
- (b) the complainant is incapable of consenting to the activity;
- (c) the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power, or authority;
- (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- (e) the complainant, having consented to engage in the [activity], expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Thus as Canadian law defines it, voluntary consent requires that the individual has a capable mental state, is free of coercion, and has the right to refuse. In addition, consenting to an initial activity does not necessarily imply consent to all subsequent activities. Section 153.1(5) of the Criminal Code adds to this definition by suggesting the accused must perceive that the act was not consensual. However, if the accused developed this perception in a reckless state of mind, or did not take reasonable steps to ascertain the complainant’s consent, then this perceived consent is void.

Criminal cases involving violence in Canadian sport tend to be tried under the physical assault laws in the Criminal Code (White, 1986). While this section contains

less detail on what voluntary consent entails, the term is repeated several times. Section 265(1) defines common assault as an application of force to another person without his or her consent. The conditions that prevent an individual from giving consent, regardless of his or her compliance, exist when the accused uses:

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) fraud; or
- (d) the exercise of authority.

Like the sexual assault provisions, there is also a common assault provision in Section 265(4): for a crime to have occurred, the accused must perceive that the activity is non-consensual. If the accused believes that the complainant consented, then this would constitute what is commonly referred to as “the consent defence” (Binder 1975, p. 235).

A further provision in the Canadian Criminal Code suggests that the consent defence is not universal, as not all activities are legal just because they are consented to. This is clear in Section 14, “Consent to Death,” which states that “no person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.” While this may appear to have little to do with violence in sport, it reveals that the consent defence is not universally accepted. Yet it has been taken as a valid argument in the realm of sports-related law.

Thus according to the Canadian Criminal Code, consent is defined as a voluntary agreement to participate in an activity that is free of coercion, deception, or fraud, and is granted and accepted in a clear mental state by all individuals involved. Additionally, consent is only a limited guarantee of defence because Canadian law does not allow individuals to consent to activities that are believed to cause undue harm, such as assisted suicide.

Despite the prevalence of violence, hazing, and drug use in Canadian football, few cases have appeared before the courts to deal with these infractions. The following section considers the issue of defining consent in Canadian sport. By doing so, it will more clearly depict the various difficulties Canadian lawyers and judges face in discerning consent within the context of sport. Where relevant, I also discuss other legal cases not involving sport.

VIOLENCE

As Dalton's statement at the start of this chapter indicates, the issue of discerning consent in violent sport is a centuries-old one. Despite this fact, various legal questions remain. The issues that prosecutors face when attempting to gain successful convictions in cases of sport violence are an unclear Criminal Code; the voluntary nature of sport participation; deciding where to draw the line (that is, defining the limits of acceptable behaviour); the occurrence of non-specific contact; determining the intent of the accused; establishing liability; and finally, weighing the benefits and risks of sport.

There are no Criminal Code provisions that mention consent in sport. Thus the task of lawyers and judges in cases involving violence in sport is to interpret the code and any legal precedents entrenched from interpretations by other legal professionals. Each case, however, has its own unique set of circumstances. For example, in *R. v. McSorley* (2000), professional hockey player Marty McSorley violently struck the head of an opposing player, Donald Brashear with his stick; the two players had engaged in a consensual fight earlier in the game. McSorley was both charged with and convicted of assault with a deadly weapon. Four years later another NHL player named Todd Bertuzzi appeared in a Canadian court after a violent incident with more permanent consequences (*R. v. Bertuzzi*, 2004). Bertuzzi had struck player Steve Moore in the back of the head with his gloved fist, breaking two of Moore's vertebrae and inflicting a brain injury that subsequently ended the man's hockey career. In this case, Bertuzzi was given a conditional discharge on the grounds that he would provide eighty hours of community service.

In both cases, the Criminal Code offered little clarification on how to deal with the issue of violence within the game. While some precedents involving violence in professional sport did exist, they had different aggravating and mitigating factors. For example, in *R. v. Maki* (1970) and *R. v. Green* (1971), two professional hockey players, Wayne Maki and Ted Green, appeared in court after engaging in an altercation where both used their hockey sticks as weapons, inflicting horrific, near-fatal injuries upon each other. Despite their significant injuries, neither of the men in this incident were convicted of a criminal offence. And while both of these cases set precedents, they cannot be

easily equated to the McSorley case. McSorley used his stick against a player who did not fight back. Likewise, the factors involved in *R.v. Bertuzzi* (2004) were clearly different, as no sticks were involved, and only one person was injured.

A second major difficulty the Crown faces when prosecuting cases of assault in sport is that it is perceived as a voluntary activity; it is commonly assumed that players understand the risks of the game and thus, by stepping on the field, they have consented to taking these risks. The Canadian Criminal Code suggests that consent must be voluntary and free of coercion, deception, or fraud. The alleged voluntary nature of participation in sport lends credibility to the consent defence, and is tied to the notion of *volenti non fit injuria* (translated as “injury is not done to the willing person”), or the legal assumption of risk (Corbett, Findlay, & Lech, 2008, p. 28).

Looking at the rulings of the judges in *R.v. Green* (1971) and *R.v. Maki* (1970), the value that Canadian courts place on the voluntary assumption of risk in sport is clear. In *R.v. Green* (1971), the judge stated,

I think within our experience we can come to the conclusion that this is an extremely ordinary happening in a hockey game, and the players really think nothing of it. If you go behind the net of a defenceman, particularly one who is trying to defend his zone, and you are struck in the face by that player's glove, a penalty might be called against him, but you do not really think anything of it; it is one of the types of risk one assumes.

Similarly, the judge in *R.v. Maki* (1970) said that “all players, when they step out onto a playing field or ice surface, assume certain risks or hazards of the sport.” In both cases the judges held neither player criminally responsible, and they were not legally penalized.

These interpretations of the law raise a question about how voluntary sport participation actually is. After all, a professional football player cannot easily leave the field of play if he feels the game has become too violent. Doing so would result in a fine or suspension from his team, possibly a fine from the league, the jeering of fans, being held in disrepute by his teammates, and the potential loss of his livelihood. Likewise, in university sports, if a football player were to refuse to play or left the field he would be placing himself at risk of losing his scholarship, which might be his only means of securing a university education. Determining the degree to which an individual’s participation is voluntary is not as easy as first described, given the possibility that the participant may have been coerced by a number of factors. This is important because coercion, under the Canadian Criminal Code, is grounds for voiding the defence of consent.

Building on the issue of voluntary participation is the question of where to draw the line in relation to consent and/or legality. That is, what is the acceptable range of rule-violating behaviours that players voluntarily consent to in sport? Some legal scholars, such as Alexandru Virgil Voicu (2005), suggest any behaviour that extends beyond the rules of the game is open to making a player liable for a criminal and/or civil offence. However, as many have contended, the rules of a given sport are never clear (Michigan Law Review Association, 1976). Formal

rules for particular sports are accompanied by a set of informal rules that govern with similar authority.

Players break formal rules in sport routinely. Given this, his or her consent to play is often also considered as consent to the risk of violent and often injurious actions, even if they fall outside of the rules of the game. For example, in *R. v. Green* (1971), the judge stated that a player being punched in the face, while outside the formal rules of the game, was an “ordinary happening in a hockey game and the players really think nothing of it.” The question then becomes where to draw the line of consent and/or legality. There is no clear formula for how to determine this line, and it is likely very different depending on the norms of the given sport.

In *Dunn v. University of Ottawa* (1995), a civil case brought by a player who sustained a serious injury when he was illegally tackled in a football game, the judge clearly suggested that simply because a play exists outside the rules of the game does not mean that it negates implied consent. He stated:

Football is a game sometimes described as controlled violence. There is much beauty and artistry within the context of this game, but there is also much vigorous and rough bodily contact by oftentimes large, fit men, wearing extensive protective gear. By playing this game, those involved accept certain risks, and of course one of those risks is that an injury will occur, given the nature of the game. Clearly, each case must be decided on its own facts, however, there can be little doubt that injuries inflicted in circumstances which show a clear resolve to cause injury do not

fall within the scope of implied consent. Therefore, the significant issue in this case is whether or not Lussier's conduct fell within or outside the scope of implied consent. Where contact is legal, within the rules of the game, no liability can attach. Even if contact is made outside the rules of the game, there can be no liability unless the player can establish that the Defendant knew he was breaking the rules, and had formed a deliberate resolve to injure or that he was reckless as to the consequences of his actions.

This important precedent suggests that the line defining acceptable behaviour cannot be drawn based on the rules of the game, but rather depends on the intent of the accused.

The problem of where to draw the line is further complicated in cases where the injurious act in question arises from non-specific contact. In the case of *R.v. McSorley* (2000), the violation was clear: McSorley skated across the ice with his stick in the air before striking the head of Brashear. However, not all acts are this obvious. For example, in his autobiography, a professional football player named Bill Romanowski (2005) gives an account of a potentially criminal violent act that occurred in a pile of football players:

When I was at the bottom of the pile . . . I reached to rip the ball out of the hand of Giants' running back Dave Meggett, all I could get a good grip on was his finger. So I just grabbed it and *ccrrraaccckkk*. Broke it like a chicken bone. I could hear him scream in agony. Oblivious, I got up and headed back to our

huddle as if nothing happened. My thinking was, *Dave Meggett's finger is broken. . . . Good. Better for our team. Helps our chances of winning — which we did, 44-3.* (Romanowski, 2005, p. 110, italics original)

How could a referee have caught this act? How could Meggett prove that it did not occur because of a routine tackle that he consented to?

Action in sport happens quickly, and despite the modern technology designed to record its intricacies, it is not always possible to know if a violent act was part of routine play or deliberately designed to injure. When Jason Jimenez broke Anthony Gargiulo's leg in a tackle in a Canadian Football League game, an injury that subsequently ended Gargiulo's career, no charges were brought against Jimenez because there was no replay footage to show what had occurred (CanWest News, 2007). It was not entirely clear if the contact was within the rules of the game or not.

Tied to this difficulty is the legal notion of *mens rea* (Latin for "guilty mind"), or the knowledge and intention to commit a prohibited act (Epstein, 2002). This is a major issue in sport litigation for four reasons: non-specific contact makes it difficult to discern if the player had any malicious intention; violent acts in sports might be perceived as instinctual; an objective of many sports is to physically harm, and even injure, opponents; and the accused player may believe that the complainant was a consensual participant in the violent act (Michigan Law Review Association, 1976).

The fact that players often act instinctually presents an additional legal difficulty in determining intent. *Mens*

rea suggests that the accused thought about their act prior to committing it (Epstein, 2002). Actions in sport are, however, often *reactions* to a rapidly changing situation, making it difficult for a judge to discern whether or not a player had the time to clearly think about committing a wrongful act. Furthermore, in the course of play, a player's excited emotional state could be considered a negative influence on his ability to determine right from wrong.

A third difficulty of discerning consent in relation to violence is that the deliberate harming of others is often an objective of a given sport. One of the most obvious examples is boxing where, as Jack Anderson (2007) suggests, the purpose is to assault one's opponent. Similarly, in sports like football and hockey where body contact is prevalent, an expected part of the game is that players will try to knock one another down. The intent to injure appears to exist; however, players are able to navigate around the law if they can prove they thought the act was consensual.

The fourth difficulty in determining consent is that the accused must have knowingly injured the plaintiff without his or her consent. The *R.v. Pappajohn* (1980) sexual assault case introduced the "honest but mistaken belief" clause to Canadian legal precedent. In this case, the defendant, George Pappajohn, argued for the right to use a mistake of fact defence, as he believed that the complainant consented to have sexual intercourse with him. The court decided that "reasonable" mistaken belief in consent should be considered. Pappajohn failed to prove that he reasonably believed that the complainant consented to have sexual intercourse with him, but the precedent was established nonetheless. This provision can be used in

cases of violence in Canadian sport, as a perpetrator of on-field violence can argue that he mistakenly believed that the other athlete had consented to the act. So where do players draw the line defining the extent of violence they consent to? And are players in the heat of competition able to make knowledgeable decisions about whether their opponent is consenting to the act of violence?

Beyond determining culpability is the issue of determining liability. Liability defines who is at fault and to what extent (Hronek & Spengler, 2002). Thus far, this chapter has only considered the criminal liability of a player who has committed a violent and injurious act. There are, however, other possible sanctions, such as civil liability or financial redress, as well as the liability of other individuals (Hronek & Spengler, 2002). Below I will briefly explore who else might be liable when injurious violence happens in sports, and what issues this poses in sports litigation.

Non-players can and have been held liable for sport injuries. For example, in two British cases (*Smolden v. Whitworth*, 1997; *Vowles v. Evans*, 2003) the referees of two separate rugby matches were held civilly liable for the serious injuries that two players sustained as a result of them breaching their “duty of care” to keep control over the game (Caddell, 2004). In a Canadian case (*Thomas v. Hamilton City Board of Education*, 1994), a high school football player sought damages from his school board because his neck was broken during play that he believed resulted from improper coaching. Similarly, in *Dunn v. University of Ottawa* (1995), a football player seriously injured during a game successfully sought damages from the coach of the opposing team for failing to adequately control

his players and coaching staff. In this case, liability was transferred to the University of Ottawa, where the coach was employed. In a case involving the CFL, *Bell v. Edmonton Eskimos Football Club* (1988), a player named James Anthony Bell sought damages against his team for serious injuries that he believed resulted from the improper manufacture of his helmet and the club's lack of investigation into the potential dangers of the product they supplied.

These cases all ask the same question: who is at fault? The difficulties of determining this are similar when dealing with any organization where it is challenging to pinpoint who has final responsibility (Hagan & Linden, 2009). Once liability is determined, demonstrating the culpable intent of the various accused is also difficult, as is deciding the degree to which the players consented to the acts of the accused. In the rugby cases just discussed, the judges decided that the players did not consent to the referees' breach of their duty of care. Other possible incidents, such as a football coach tapping one player on the shoulder and telling him to "take care of" an opponent, are not so clear.

In the Canadian Criminal Code, proving consent was granted is not always sufficient for protection from criminal prosecution. For example, an individual's consent to using cocaine does not make the practice legal. This particular type of legal provision is intended to protect people from consenting to activities with a high risk of causing harm. Why, then, is there such concern with the question of consent in sport? If sport has such a high risk for causing injury, why is the consent defence considered?

Consent is a legal issue in sport because unlike cocaine use, the benefits offered to individuals and society by the institution of sport are more readily apparent.

Sports have clear health benefits to both individuals and society, since they,

help maintain the citizenry's physical fitness, provide an outlet for frustrations and aggressive tendencies, satisfy the need and desire for people to prove their self-worth, provide for recreation and the pleasurable use of leisure time, and, at least with regard to team sports, train individuals to sacrifice themselves for the good of the group. (Michigan Law Review Association, 1976, p. 174)

Given these and other perceived individual and social benefits, consent is an important issue in sport litigation in ways that it is not for cases involving assisted suicide or illegal drug use. These positive aspects of sport undoubtedly also contribute to the reluctance of sports officials and legal administrators to bring to court cases on matters of sport violence. For example, if referees were always held liable for incidents that take place during a game, individuals would no longer want to volunteer their time and services, and local sport communities could collapse as a result. Furthermore, as I will argue in later chapters, sports generate tremendous revenue, so criminalizing it would hurt capitalist interests.

HAZING

The issues of discerning consent in relation to hazing (also termed initiation) in Canadian sport are similar to yet distinct from the issues I previously discussed pertaining to violence. The main legal issues in prosecuting

cases involving hazing are an unclear criminal code; where the line defining acceptable behaviour is drawn; the voluntary nature of participation; determining liability; and the secrecy surrounding the act. While incidents of violence in sport have led to few legal cases in Canada, even fewer have involved hazing. However, these cases, as well as the discussions of legal scholars in other countries where the prosecution of crimes relating to hazing is more common, have involved many of the issues presented here.

As with violence, no distinct legal statutes exist in Canadian law that detail what entails consent in relation to hazing in sport or in more general hazing activities. Hazing is, of course, not restricted to sport; it is common practice in the military, high schools, fraternities, and workplaces (Davis, 1997; Guynn & Aquila, 2004; Nuwer, 2000, 2001, 2004; Sweet, 1999). In the United States, at least forty-three states have laws or statutes pertaining to hazing (Finley & Finley, 2006). Of these, many recognize the consent defence as a legal strategy that reduces or eliminates criminal responsibility (Rosner & Crow, 2003). In Canada, no such legislation exists at the federal or provincial levels. Instead, lawyers and judges are left to interpret Criminal Code and Common Law in cases involving hazing.

In one case of hazing in the Canadian Armed Forces, an individual filed a grievance for acts classified as sexual assault, assault and battery, breach of fiduciary duty, negligence, and breach of Section 7 of the Canadian Charter of Rights and Freedoms (*Brownhall v. Canada*, 2007). Although the act that took place was termed hazing, the incidents were handled as individual crimes.

In a hazing case involving a junior hockey team in Canada, the acts were also handled individually, resulting in charges of performing an indecent act (Robinson, 1998). In this case two men, a player and a team trainer, were charged after subjecting team rookies to a series of hazing rituals. In *Crossing the Line*, Laura Robinson describes one of the sexual acts involved in this hazing ritual:

Scott did what he was told. These were men who could make or break his hockey career. They tied a string to his penis, [attached a pail to the other end], and then suspended the pail over the hockey stick. Out came the pucks. They started to throw them into the pail. As the weight increased, it pulled heavily on the string. It hurt, but Scott endured until the string pulled off. (Robinson, 1998, p. 67)

Many of the team's players, coaches, and administrators were involved in the hazing rituals, and yet only two were charged. Further, the charges made against these individuals were not of a serious nature. The prosecuting lawyer in the case stated that pursuing the more serious charge of sexual assault would have been too difficult (Robinson, 1998). To do so he would have been required to show that the players had not consented to be part of this ritual.

Prosecution on lesser charges is commonplace in cases of hazing that appear in Canadian courts. In *R. v. L.P.* (1998), one training officer at an Air Cadet training centre required several young men and women, between the ages of fourteen and seventeen, to engage in a number of sexual acts during a game of truth or dare. The dares included such things as streaking around the camp naked

and simulating anal sex. The accused pled guilty to two counts of sexual exploitation and was sentenced to five months in prison. He later appealed and had his sentence reduced. Reflecting on the defence's request for a lesser sentence, the President of the Standing Court Martial outlined the serious nature of the offence:

In my view, a sentence of thirty days incarceration is unreasonable and inadequate in the circumstances. We have six offences involving several young victims wherein the offender, a commissioned officer in charge of cadets undergoing adventure training, committed two sexual exploitation offences, counselled cadets to perform other degrading acts involving partial nudity and simulated sexual activity, and harassed cadets into performing other embarrassing acts. (*R. v. L.P.*, 1998)

The sentence that the training officer did receive was notably longer than what a regular civilian would be required to serve, according to the presiding judge, as the officer was engaged in providing a public service to minors at the time of the offence. Citing that the offences were part of an initiation process might in fact be seen as a legitimate defence against more serious charges in the Canadian legal system. In the absence of legislation pertaining specifically to hazing, it becomes the task of lawyers and judges to find another charge that can stick.

As with violence on the field, another difficulty in prosecuting crimes associated with hazing is determining where to draw the line of consent. Elizabeth Allan and Brian Rahill's anti-hazing website (<http://www.stophazing.org>) identifies a continuum of hazing acts. At one end

of the spectrum is “subtle hazing,” which involves such things as being required to carry heavy team equipment, clean up practice facilities, sing in front of groups of people, or receive unwanted nicknames. In the middle is “harassment hazing,” involving more potentially embarrassing or painful acts like being pressured to dress in clothing of the opposite gender, the unwanted removal of body hair, or being required to perform pointless tasks for senior group members. And at the other extreme is “violent hazing,” which includes forms of sexual abuse, physical beatings, forced alcohol consumption, abduction, and exposure to harsh weather conditions without proper clothing.

In this regard, the difficulty of discerning consent lies in identifying the extent to which consent was given, if it was granted at all. To provide an example, a football player may give his full consent to consume copious amounts of alcohol, by force if necessary, at a team gathering. He might not, however, consent to be dropped off blocks away from his home in only a T-shirt in the middle of winter while grossly intoxicated. Likewise, certain acts are more physically, emotionally, and psychologically harmful to some individuals than others. For example, one player might find it humorous and enjoyable to dress up as a woman for a night out with the team, while another might find it offensive, demeaning, and humiliating.

While the above mentioned continuum of hazing (<http://www.stophazing.org>) reveals the broad range of activities that fall under the label of hazing, and the accompanying harm that can result from such acts, it fails to accommodate personal perceptions of these incidents. The difficulty then lies not only in determining whether

the complainant consented to participate in specific hazing rituals but also whether the accused believed that the complainant had given his or her consent; that is, the “honest but mistaken belief” defence. The variability in individual perception of the line between acceptable and unacceptable hazing makes it difficult to determine whether the accused perceived the act as consensual or not. In the absence of laws and legislation on hazing, no clear legal definitions exist to identify what is perceived as acceptable forms of hazing and what is unacceptable. Likewise, there are no criteria for what is and is not considered a reasonable belief that the complainant consented to the act.

Like violence and aggression on the field, hazing is often perceived as a part of male sports that nearly all players experience voluntarily (Woods, 2007). The legal argument could be made that by agreeing to participate in football, one is agreeing to be hazed. Some believe that athletes consent to participate in whatever hazing rituals a team sees fit. However, simply because an individual knows that he or she is participating in a potentially harmful situation does not mean that he or she has consented to any outcome that might result.

Hazing often involves large numbers of individuals. In the incident Robinson described, where the junior hockey player had a bucket of hockey pucks strapped to his penis, an entire hockey team — including team administrators — were allegedly involved. Who, then, should be held responsible? Should only the individuals who added the pucks to the bucket face legal penalty, or should the onlookers as well? Likewise, if a coach is informed of these activities and does nothing to stop them, or does

not penalize those involved if he finds out after the fact, is he in some way legally responsible?

Unlike violence on the playing field, which is seen by officials, administrators, other players, and spectators, hazing often occurs behind closed doors (Kirby & Wintrup, 2002). As a result, crimes associated with hazing are difficult to prosecute. Before consent can be determined, it must be established that an illegal act did in fact take place. In most incidences of hazing, this becomes a question of the complainant's word versus that of his or her team and coaches. Furthermore, players will typically avoid going against their team to report any wrongdoings. Part of the perceived merit of hazing is that it binds teammates together through a shared experience, and often a secret. Describing this process, Laura Robinson (1998) writes,

when players are induced to break sexual taboos, they have crossed a line together and shed inhibitions that would otherwise place limits on what they are willing to do for the sake of the team. In this way they become part of a well-oiled machine without friction of each other's conscience. (Robinson, 1998, p. 92)

In many cases, hazing rituals become a team's shared secret. If a player reports an incident, he not only faces the ridicule of his teammates and exclusion from the group but also the possibility of the team collectively denying that the hazing even occurred (Robinson, 1998). Discerning consent, then, becomes secondary to determining if and what potential crimes associated with hazing actually occurred.

PERFORMANCE-ENHANCING DRUGS

Litigation surrounding the use of performance-enhancing drugs raises different challenges than those of violence and hazing. Where few laws and precedents exist in Canada pertaining to sport-related violence and hazing, the laws are clearer in regard to performance-enhancing drugs. The Controlled Drugs and Substances Act (CDSA) regulates the importation, production, and distribution of illegal drugs in Canada and prohibits the sale, production, and possession of a wide variety of controlled substances.

Many controlled substances can be classified as performance-enhancing drugs, used by athletes to gain a competitive edge in terms of muscle recovery, accelerated injury recovery, stamina enhancement, strength increase, and energy stimulus. Many of the drugs considered performance-enhancers can be legally provided by a medical doctor with a prescription, but the use, possession, and distribution of these drugs without a medical prescription is often illegal. The CDSA recognizes only one category of performance enhancers under the heading of “anabolic steroids.” While not considered by the CDSA to be performance enhancers, many athletes also use other unlawful drugs for performance-enhancing purposes, such as various stimulants like meta-amphetamines (often referred to as speed), and painkillers like codeine (Bahrke & Yesalis, 2002).

It is not illegal in Canada to possess and use steroids without a prescription, provided that the individual does not possess an amount of the drug that suggests the

possibility of trafficking. Anabolic steroids are regulated under Schedule IV of the Controlled Drugs and Substances Act; it is a criminal offence to seek or obtain them, and to traffic, import, export, or produce them. Persons found guilty of obtaining or seeking to obtain anabolic steroids face a sentence of imprisonment for a term not exceeding eighteen months. Or if an individual is convicted of seeking unlawful authorization from a medical practitioner to obtain steroids, he or she is liable,

- (i) for a first offence, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both, and
- (ii) for a subsequent offence, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year, or to both. (CDSA 4(7) (b))

In cases of importing, exporting, producing, and trafficking Schedule IV drugs, offences are punishable by summary conviction involving imprisonment for up to one year, or on indictment by imprisonment for up to three years (CDSA 5(3) (c)). For other drugs, such as codeine, similar laws apply. If attempts are made to unlawfully obtain a prescription drug for the purposes of personal use or trafficking, a fine or summary conviction could result.

In practice, those caught obtaining and distributing illegal steroids in Canada have not faced harsh penalties. In *R. v. Murray* (1998), the defendant was required to pay a fine of \$4,000 (CAD) which reflected the street value of the steroids he had imported. In *Fetherston v. College of Veterinarians of Ontario* (1999), Robert Fetherston received a two-year suspension from practising veterinary medicine in Ontario for illegally distributing steroids with the

knowledge that they were meant for human consumption. In *R.v. Paul* (1997), the defendant received a penalty of 200 hours of community service for steroid distribution. The judge noted during this case that,

the substance in question here is steroids, which is a controlled drug. That, in my view, is a very different substance from heroin or cocaine, or other prohibited drugs where, for first offenders involved in trafficking, a custodial sentence is the norm.

In none of these cases did the defendant receive any prison time. While treated in the legal system with less severity than in-game violence and hazing, performance-enhancing drug use is often perceived as a more serious offence in the regulatory frameworks of many sports leagues and organizations, and can result in penalties ranging from fines to lifetime suspensions from participation (O'Leary, 2001).

Unlike discerning consent in relation to violence and hazing, which is crucial because the consent defence denies that a criminal offence took place, legal cases involving performance-enhancing drugs generally do not focus on consent. Issues of consent do, however, still factor into such cases. Consent in cases of performance-enhancing drug use can be seen as an admission of guilt rather than an exoneration or legal defence. Two main issues arise when discerning consent in cases involving performance-enhancing drugs: determining the intent to obtain, use, and/or traffic the drugs, and determining liability.

There are no laws in Canada that ban the use of steroids if an individual obtains them by lawful means or without the knowledge that they were procured illegally.

Athletes can claim that they have used an illegal anabolic steroid without their knowledge or consent. This allows the accused to employ three legal defences to navigate around the law by making it difficult to determine his or her intent to obtain, use, and/or traffic illegal performance-enhancing drugs. In each, the defence denies that consent was given to use or possess illegal steroids.

One defence the accused can use to refute intent is to shift the blame onto another person. An athlete might suggest that he was unaware he was even using illegal steroids, as his trainer supplies him with a series of performance-enhancing supplements. In this case, the athlete claims that the trainer has violated his trust by not gaining his consent before supplying illegal drugs. Ben Johnson, a Canadian sprinter, made this claim when he suggested that someone must have slipped anabolic steroids into his drink without his knowledge. He claimed that “his body may be guilty, but his mind is innocent” (Johnson & Moore, 1988, p. 3).

Individuals caught using, possessing, and or trafficking illegal steroids may also make the claim they were unaware that a particular supplement they purchased legally contained any illegal ingredients. For example, in a Canadian civil suit, a number of individuals sought damages from a major supplement supplier by the name of Muscletech in 2006, since the company failed to accurately disclose that some of their products contained anabolic steroids.

Another intent defence that athletes have used is denying knowledge of the contents of packages filled with steroids received from international locations. In most fitness and bodybuilding magazines, the back pages are

filled with advertisements for anabolic steroids that can be shipped to Canada, without a prescription, from other countries where they are readily available. There are also countless websites that offer similar purchasing opportunities. Ordering anabolic steroids from these sources is illegal in Canada for two reasons. First, it is considered a conscious attempt to obtain steroids. Second, the quantities that are shipped are generally large enough to warrant a charge of trafficking. However, if the shipment is stopped and screened at customs upon entering the Canadian mail system, individuals can deny knowledge of the contents of the box.

In *R.v. Schwengers* (2005), the accused successfully used this defence, as the prosecution was not able to successfully prove that he had intended to receive the box and had knowledge of its contents. Even in cases where there is evidence of a purchase, the defendant could use a similar defence, whereby he or she claims to have received a product different from that which was advertised.

All of these intent defences lead to the difficult task of determining liability. With the first defence, it is difficult to pinpoint who is in fact responsible for the steroids that appeared in the athlete's locker or were injected into his or her body. There is no crime simply in possessing small quantities of anabolic steroids or testing positive for their use. The burden of proof lies in revealing how they were obtained and distributed. The difficulty, then, is uncovering the chain of distribution. Having illegal steroids flowing through one's body is not enough to result in a criminal conviction in Canada. For the second defence, it is difficult to hold a large corporation criminally responsible. Corporations have traditionally eluded criminal

penalty because it is challenging to attach a culpable mental state to such an entity, and hard to determine the specific individuals involved (Hagan & Linden, 2009). The third defence contributes to the difficulties prosecutors have in revealing how the steroids were obtained and distributed because the shipments cross international borders, as evidenced in *R.v. Schewengers* (2005). In such cases, legal attention focuses on those at the end of the distribution chain rather than individuals at the higher levels.

SUMMARY

Litigation related to on-field violence, hazing, and performance-enhancing drug use in organized sport all hinge on the legal notion of consent. This chapter has outlined some of the important challenges when determining consent in the context of these acts. In the next three chapters, I will explore the lived experiences and perspectives of players and administrators involved in Canadian football at the junior, university, and professional levels. In the process, I hope to address a series of central questions:

- How do players and administrators perceive consent?
- Where, if possible, can we draw a line between what is and is not considered consent?
- Who should be held liable under certain circumstances?

- What circumstances render the issue of consent irrelevant?
- Do any clear differences exist between the lived experiences of players and the disciplinary handling and procedures of football administrators?
- Do any clear differences exist between the perceptions and experiences of players across different playing levels?
- How well does the Canadian legal discourse on consent fit with the lived experiences and perspectives of those involved in Canadian football?
- How should sport be governed?

2

A Brotherhood of Violence and Mutilation

The next three chapters describe the perspectives and experiences of Canadian football players, coaches, and administrators. As such, they include numerous quotes and paraphrases to capture the voices of the participants. I make an attempt throughout to reveal the dissenting voices and varying realities of the embodied knowledge of individual players and administrators. However, I also try to reveal larger trends and themes that can contribute to our shared understanding of violence, hazing, and performance-enhancing drug use in Canadian football.

PERCEPTIONS AND EXPERIENCES OF VIOLENCE

Many football players in Canada do not perceive their sport to be violent. In fact, nearly half of the interview participants in this study reported that violence is

unacceptable in football. This assertion reveals a shared belief among football players that the collision of bodies routinely occurring during each play on the field is not violent. While every player interviewed indicated concern over acts that happened under these conditions, a substantial minority suggested that in-game contact should not be labelled violence. For example, one junior player stated that “football is a contact sport, not a violent sport.” A player at the professional level reported that football is not violent but is rather “a game of constant collisions.” A CFL quarterback pointed out, “physicality and collisions are happening all of the time. I am not sure I would call that violence.” Likewise, a university player stated, “I wouldn’t declare football as being violent. Some teams are, but the sport isn’t. A good game of football played until the whistle every play and without cheap shots is not violent.” According to these players, violence on the field only takes place when it is outside the rules of play, and occurs after a play has been whistled down, or well away from the action of the game. On-field violence only occurs when an act goes beyond the routine, sanctioned collisions involved in the sport.

In contrast to the limited definition of violence that many players and coaches hold, some perceive the routine body contact that occurs on the field as violence. For example, a university kicker stated, “violence on the field is an acceptable part of football to the extent that it is exerted in order to tackle or block a player legally.” Likewise, a junior linebacker noted, “I think it could just about be the most violent sport of all of the major sports around today.”

Players do not have a uniform opinion of how violence on the field should be defined. Many do not see routine

body contact as violence, while others do. All players do, however, report that they perceive contact that occurs after the whistle, outside of the rules of play, away from the action, or with intent to injure as violence.

Three distinct types of violence emerged from players' description of the force and collisions of Canadian football: routine contact, immoderate violence, and ultra-violence. Routine contact, such as an ordinary tackle, is commonplace, authorized by the rules of the sport, deemed consensual by the majority of athletes, and causes minimal injury. Immoderate violence, such as tackling a player from behind, is unauthorized in sport, intended to cause short-term injury, and non-consensual, but it is not so extreme that the legal system becomes involved. Ultra-violence is an extreme form of violence that is unauthorized, non-consensual, and causes severe, sometimes permanent injury. If, for instance, a player uses the spikes on his cleats to stomp on the head of a helmetless player, that is ultra-violence.

A CFL running back used the term "game-day gangsters" to denote players who deliberately inflict pain and injury on their opponents.¹ In his description, these players were perpetrators of either immoderate or ultra-violence. When they step out onto the field, they do so with the aim of intimidating the opposing team by using excessive violence and taking certain opponents out of the game with injuries to better their own team's chances of winning. The violence these players engage in is not the

1 In this book, the term "game-day gangsters" has been broadened to refer to athletes, coaches, administrators, and owners who engage in quasi-criminal acts in the context of sport.

result of a flaring temper or emotional response; it is a premeditated act of violent aggression. This behaviour is not considered to be the norm, and most players perceive the perpetrators in a negative way. While every athlete I interviewed during the course of my research knew of a player who could be labelled as a game-day gangster, none reported they had ever taken on this role or engaged in any activity that would encourage this title.

So-called game-day gangsters do not always limit their violent acts to the opposing team; at times, they attempt to inflict pain upon and injure their teammates. For example, it has been reported that several violent altercations broke out in the practices of the CFL's Edmonton Eskimos during the 2008 season. At one point, there were six fights reported within a five-day stretch during the Eskimos' training camp (Bennett, 2008). All of the players I interviewed indicated that they would never deliberately injure a player on their own team and feel a responsibility to protect their teammates in the informal economy of football. But such occurrences of teammate violence do exist.

Nearly all of the football players interviewed in this study expressed negative sentiments toward players who attempt to injure others on the field. The majority of them reported that a shared understanding exists in Canadian football, where players respect one another and do not want to see anyone seriously injured. This does not mean that players are not violent and do not try to hit each other as hard as they can on every play, but rather that they try to stay within the rules and are concerned about the well-being of those who they are playing with and against.

Elaborating on this sentiment, a CFL centre explained,

there is kind of a gentleman's pact in football. . . . We want to hurt each other, but generally we don't want to see anybody's career ended. That is why you see everybody is concerned about it when a guy goes down and an ambulance has to come out on the field.

Along similar lines, a CFL quarterback said,

In a sport like football it is up to the players to police it and have respect for each other out on the field, and [to] know that you have the ability to take away the person's livelihood; as a player you would hate to have somebody do that to you, so you have to use that same sensibility and not go after another player.

Describing the importance of respectability on the field, a university player stated, "You have got to have some class."

In some instances, even though an act is allowed within the rules of play, football players will often avoid it out of concern for the safety of their opponents. For example, a CFL offensive lineman claimed, "pile tipping is technically within the rules, but you don't want to do that to a guy. You don't want to take food out of families' mouths by injuring a guy on purpose, regardless of the rules." The term "pile tipping" refers to hitting a player who is standing by a pile-up of other players. The risks of pile tipping are that the player could easily get flipped over, seriously injuring his head and/or neck, or he could land on the pile and injure those beneath him.

Players describe a number of reasons for having this shared understanding of acceptable contact in football. First, most do not want to end anyone's career because they recognize the vulnerability of their own employment.

They expressed some empathy for injured players, drawing on their own experiences of injuries to identify with them. Second, athletes often see plays on the field that are intended to injure as an unnecessary addition to an already violent game. As one CFL player stated, “it is a violent enough sport as it is; it is a shame when guys take it on top of that. . . . I don’t get that.” Third, players are given the opportunity to be aggressive within the rules in ways that are meant to hurt, but not injure, opposing players. A coach and former player described this approach:

If you want to get him back, just hit him really hard next play. You’ve got a whole bunch of opportunities. You run 60 or 70 offensive plays, so the offence and defence is on that amount of time, plus your special teams, I mean you are going to find that guy at some other point in time.

Fourth, for a minority of players, superstition dissuades violent acts. One player claimed, “I do not want to end your career because the football gods shine on you, and if you do something dirty it is going to come back and get you.” A fifth deterrent is that players view guys who are out on the field trying to injure others as “hotheads” who “can’t control themselves” and as such are exploitable because they are not concentrating on the game. Sixth, acts intended to injure opposing players can ultimately hurt one’s own team with penalties that can lead to first downs, a better field position, and the ejection of key players from the game.

Although Canadian football players articulate this shared understanding that it is inappropriate to deliberately injure one another, they openly report a desire to

hurt their opponents within the rules of the game. Nearly two-thirds of players differentiate between injuries that take players out of the game, and those that only cause physical pain but do not limit their ability to keep playing. While the line between these two types of injuries appears to be clear in the minds of many players, they could not explain how they kept themselves from crossing it. The only explanations offered were that they had a “feel for the game” based on experience, and held a belief that the rules exist to ensure safety on the field. In other words, if an action is within the rules, then it is perceived as being unlikely to result in injury.

Illustrating this division between hurting an opponent and injuring him, a university linebacker reported:

As a defender, I do everything in my power to stop whoever has the ball. The goal is to make the play. The goal is to *hurt* the person. However, the goal is not to *injure* him. That is the clearest distinction I can make. I would never intentionally try and injure someone else, or end their career. However, I want them to fear me, to remember my hits, to try and avoid me, to think about me. Violence is a part of the game. The key is to keep it on the field. Hurt versus injury is the most important difference to keep in mind. (emphasis added)

Another university linebacker claimed, “I love seeing big hits, dishing out big hits, and even getting crushed myself. But there is a line between a big hit and a dangerous hit that could cause a serious injury.”

Athletes are most attuned to this difference between hurting and injuring when tackles are made on players

in vulnerable positions. For instance, in the pile tipping example, opponents see the player standing by the pile as someone in a vulnerable position, and so they will not hit him as hard, or at all, because the likelihood of injury exceeds the likelihood that he and the other players involved would be hurt. Similarly, most players report that they take extra care when tackling receivers who are attempting to catch the ball, because their bodies are in a vulnerable position as they concentrate on making the catch, rather than taking a hit. In CIS football, you can tackle a receiver even if the ball has been overthrown and is nearly impossible to catch. However, such a tackle would be perceived negatively. As one university defensive lineman stated, “you should never try to injure someone in a vulnerable position, like a receiver who is stretched out trying to catch the ball. You want to punish a guy, but you don’t want to injure him.”

Although players typically do not intend to injure one another on the field, nearly all of them acknowledged that getting injured is a part of the sport of football. One CFL player said, “you always have the thought that you might get hurt in the back of your mind every time you step out onto the field.” A junior coach reminiscing about his playing days explained, “everything just hurt so bad that it kind of blended into one big hurt.” He described the injuries he sustained during his playing career at the junior, university, and professional levels:

I don’t regret anything and I would do it all over in a heartbeat, but I have a steel plate, four pins and two screws in my left ankle, tore my MCL in my right

knee, a stress fracture in my right femur, I've broken both ankles, all of my fingers, ribs, slipped a disc, separated my left shoulder, bruised my tailbone ridiculously bad and it still bothers me to this day, and that was six years ago, and have badly dislocated my elbow. Your body hates you after.

His list is a typical one of the injuries described by many players who have been involved in the sport for several years.

Most players not only expect to receive minor injuries (such as sprained ankles and jammed fingers) but also know they could experience catastrophic ones that would end their playing careers and result in health repercussions later in life. A junior player indicated that,

people want to hit you as hard as they can and then move on, but we are all aware of the potential that your career could be over [with] the next snap because some guy rolls up on you from behind and you blow every ligament in your knee.

While players acknowledge and accept the possibility that they might be seriously injured during play, they do not perceive injuries resulting from violent acts that are outside the rules as a voluntary part of the game. A university cornerback confirmed this: "when guys are going at each other as hard as they can there is going to be some injuries, and accidents do happen. It is expected. As long as it is not a cheap shot, it is expected." As one player who had just retired from professional football due to an injury sustained from an illegal hit on the field stated, "If my injury had occurred during a play, or had

been an accident, I would be okay with it. I have been injured pretty badly before, but the way my last injury went down was not like that.”

Several players suggested that technological developments in equipment have decreased the general concern about injuries. For example, a CFL player claimed that it is “difficult to injure a player nowadays because of all of the padding.” Football equipment is now being developed that can absorb and distribute the impact of full-body contact. With these developments has come an increased faith in new medical technologies and procedures to get players back on the field faster, enabling them to recover from injuries that most likely would have ended their careers several years ago.

Some players expressed great confidence in new equipment and medical technologies to prevent and heal injuries, while others were less sure about the benefits of these advances. The modern medical establishment has developed new treatments for injuries sustained on the field, but it has also revealed the damaging effects that football can have on young men, particularly in the form of concussions. Many players reported a real concern about the possibility of long-term damage resulting from head injuries sustained on the field. University players noted that they experienced difficulty concentrating on schoolwork as a result of head injuries from football. While new equipment helps to absorb impact, a helmet can only do so much; the player’s brain still crashes into his skull with every tackle, causing swelling and tissue damage. Former CFL quarterback Matt Dunigan (2007) revealed his continuing struggle with the long-term consequences of head injuries that he sustained during his

career. He reports that he once flew to another city to visit his family without notifying anyone, a trip that he could not recall taking after the fact.

One university player expressed concern that new medical procedures are actually more harmful to players because they “give the illusion that the body is fine and well” before it has a chance to fully recover. He described an incident involving another player who had undergone surgery to repair an injury to his knee. During the procedure, the surgeon placed screws behind the knee to reconnect a torn anterior cruciate ligament. The player was able to walk out of the hospital shortly after the surgery and began rehabilitating the knee, gearing up to return to football. However, while the knee felt and appeared to be healed externally, internally the tissue was still damaged. The wound inside the knee became infected, requiring emergency surgery to save the player’s leg. Now in his early twenties, the young man is on a waiting list for knee replacement surgery, and he will never play football again.

New equipment and training technologies are also factors that change perceptions of the level of violence in Canadian football. A clear contention exists over whether the game has become any more or less violent in recent years. One university referee, reflecting back on his experience, remarked that the amount of violence had remained constant since he began officiating twenty-six years ago; however, he also stated he has noticed a change in the type of violence that is occurring. “More players seem to use their head as a point of attack. I think this is due to better helmets and the same aura of invincibility that teenagers had for decades, and still have.”

Matt Dunigan (2007) suggested that new equipment technologies have contributed to more contact in the game:

We are talking here about a game constantly being altered by the laws of physics: bigger, stronger, swifter, more muscular people wearing lighter, stronger equipment that allows them to move faster and hit harder and thus collide with greater force and impact than ever. (Dunigan, 2007, p. 21)

Likewise, a university administrator pointed out,

players now are bigger, stronger, faster, at a younger age than they used to be. I think this is due to better nutrition, and better training than there used to be. The result is a lot more violence at younger playing levels.

Others, however, suggest that immoderate and ultra-violence in Canadian football has lessened in recent years with the development of new social norms governing coaching techniques. A former CFL player who is now a university coach agreed.

I think the game has become less violent. When I played, coaches used to say “Rip their heads off,” “Take them out,” and that kind of thing. You never see that anymore. Coaches now teach skills and techniques. They evaluate their players based on technique, which could mean a hard tackle or block. But poor sportsmanship and dirty plays are generally perceived more negatively today.

Despite the disagreement about whether or not football has become more violent within the rules of the game, the individuals I interviewed revealed that less tolerance exists for violent acts outside the rules. Where coaches once encouraged their players to go out and injure athletes on the opposing team, both now perceive this type of behaviour more negatively.

The “Bounty Program” scandal in the National Football League is a controversial case highlighting the acceptability and promotion of immoderate violence in football. In the Bounty Program, players from the New Orleans Saints were paid additional wages to deliberately injure players on the opposing team. After a lengthy investigation and review, many players and coaches received suspensions ranging from several games to expulsion for an indeterminate amount of time from league activities. The existence of such a program suggests that some coaches and players continue to promote acts of immoderate and ultra-violence, but the stiff penalties handed to those found guilty indicate that levels of tolerance are shifting. Interestingly, however, the acts of violence that led to injuries of opposing players were not punished by the league when they occurred. The suspensions given were for paying “bounties” to players who inflicted injuries on their opponents, forcing them to leave the game. It was the existence of an explicit bounty program that was deemed unacceptable by league administrators, rather than the acts of extreme, injurious violence.

DRAWING THE LINE OF CONSENT

The players I interviewed identified a number of criteria for what they considered consensual violence on the field. While not every player identified all of the criteria, each described at least one, if not more. The most common response from players was that any contact that occurs within the rules of the game is consensual. Another common response was that for on-field contact to be consensual, it must occur between whistles. That is, it must take place while the play is live, rather than after a referee has blown the whistle to signal the end of a play. A third common conception of consensual violence was that the act must occur as part of the play. That is, even if a hit is within the rules and occurs between whistles, it must be part of the play to either move or stop the ball from being moved forward; players suggest that tackles should not be made twenty yards away from the action, regardless of the rules. In keeping with this sentiment, the CFL has recently instituted a “tourist” rule that now bars players from hitting others away from the play.

These three criteria form the most common understanding of the limits of consent pertaining to on-field contact: (1) it must be within the rules, (2) it must occur during active play, and (3) it must occur as part of the play. There are three other criteria reported by several players: (4) the hit or tackle must occur within the confines of the playing area, and not out of bounds or in the end zone, (5) the player must use only bare hands to hit or tackle, not his helmets or cleats with the intent to injure, and (6) a player must know that a tackle is coming, and

not be blindsided or hit from behind. These six criteria form a broad, comprehensive list of the limits to which the players interviewed in this study consider violence on the field to be consensual.

Most players consider any acts that go beyond the limits described here as non-consensual. The Canadian football players who participated in the interviews provided specific examples of plays in football that they do not consider to be consensual:

- taking a shot after the whistle
- hitting players in vulnerable positions
- hitting someone who is already down
- teaming up to hit a single player
- hitting a player who just scored a touchdown
- tackling a player who has run or caught a ball out of bounds
- hitting a player twenty yards away from the play
- attempting to deliberately injure a player
- hitting from behind
- stomping on a player when he is down
- hitting a player whose attention is elsewhere
- ripping someone's helmet off
- throwing helmets
- punching or kicking
- low shots at or below the knees
- shots to the groin
- poking an opponent in the eye
- a shot to a known injured spot

While game officials commonly penalize players for some of these infractions, for many they do not. There appears to be a set of informal rules in football that extend beyond the official regulations dictating what is and is not considered consensual violence on the field.

DISCIPLINARY PERSPECTIVES ON VIOLENCE

None of the junior players interviewed expressed any concern over how their conference review boards handled matters pertaining to violence on the field. Some suggested that the on-field officiating could be improved with increased consistency on rulings, but overall the players perceived disciplinary reviews to be fair and effective. No players reported that the conference rulings on violent acts were either too harsh or too forgiving.

At the university level, players had a different view of disciplinary rulings; the majority reported that the CIS review process is inadequate and ineffective. In one example, a university player reported that he had been violently tackled outside of the rules of play. His coach lodged a complaint against the player who made the tackle, informing the athletic director of his university. The athletic director ruled that the incident was not serious enough to warrant a report to the regional level, and as a result no penalties were imposed on the player. The injured player expressed concern that he had no recourse to address violence committed against him on the field.

Other university players suggested that the officials ignore too many cheap shots, especially hits after the whistle. One university wide receiver stated, "I think

officials need to throw a lot more unnecessary roughness flags for late hits.” A university quarterback expressed similar concern over rules and officiating decisions that ignore violence on the field. He explained:

There are twenty-seven teams, with let’s say an average of seventy players on every team, so about 1,900 CIS football student athletes. Out of these, a maximum of about 250 will ever play football after university. So there is no reason for these athletes to have to suffer major injuries that will plague them the rest of their lives because their league didn’t protect them. Accidents will happen, but playing the sport you love should be about playing the sport you love, not about having to deal with the consequences of loosely enforced rules. Any intent to injure should be more strongly [punished] than it is now.

A large number of university players expressed similar concern over “loosely enforced rules” in CIS football, and the lack of severe penalties for incidents of excessive violence on the field. This suggests that in CIS football, a disjuncture exists between the players’ concern with violence on the field and the organization’s typical disciplinary responses to these acts.

Players at the professional level had similar concerns about the apparent tolerance of league officials for acts of excessive violence on the field. Several players expressed anger over a particular incident, where a BC Lions lineman, Jason Jimenez, broke the leg of a Calgary Stampeders’ player, Anthony Gargiulo, in a tackle that was perceived by most as illegal. Gargiulo was unable to see the hit coming, was pulling up because the play

was ending, and the hit occurred well away from the game action. Jason Jimenez was suspended for a game, appealed, and had his suspension revoked. Commenting on this incident, a CFL quarterback said, "There was a situation last year where a BC lineman hit a Calgary player in the back of the knees and blew his knee out; that type of thing has no place in football." A CFL fullback criticized the league's response, stating, "I think the league has done a poor job of handling incidents like Jason Jimenez's away-from-the-play hit on Anthony Gargiulo last year that ended his career. We need more suspensions for players that act out violently on another player. Miniscule fines are insufficient and not a good deterrent." Similarly, an offensive lineman in the league claimed,

In the CFL they have just brutal policies on that. There is a recent incident with Jimenez from BC. He took a shot at a Calgary d-lineman way behind the play and ended his career, pretty much. He will probably never come back. It kept getting sent to arbitrators, and now he didn't even get suspended because there was no good evidence. It was just ridiculous. That is a situation where it had no effect on the play and the guy is taking a cheap shot. Yeah, there should be serious repercussions there.

Expressing similar sentiments, another player added, "situations occurred this past season where a player was fined less for a very illegal hit [than] another player who publicly criticized the officiating [at that game]. Suspensions should be handed out."

A CFL offensive lineman raised the concern that the lack of disciplinary punishment for acts of violence on

the field encourages some players to deliberately injure others:

I think they should change the way they penalize guys. Suspending someone for one game is ridiculous. In a league like the CFL, where your hopes ride extremely high on one player like a quarterback, if a team could pretty much guarantee their spot in the Grey Cup by injuring that quarterback, if their only punishment is a one-game suspension, there are guys out there that would do it, because you get a lot more money for playing in the Grey Cup than you do for one random game. The reward-to-risk ratio is pretty good for intentionally injuring players in the CFL.

Under the current collective bargaining agreement, CFL players are paid \$20,000 by the league, in addition to their contract salary,² if they are on the active roster of the team that wins the Grey Cup. This is a substantial sum considering the salaries of most players, so it may be an incentive for some to deliberately injure those who are important on the opposing team. The financial compensation of winning far outweighs the light penalty imposed for inappropriate violence by the league.

The majority of players I interviewed suggested that the police and legal system should only become involved in certain circumstances of violence on the field. Only two players thought that legal officials should never become

2 According to one CFL player agent interviewed for this book, the average contract salary among CFL players is just over \$40,000 a year.

involved in matters pertaining to football, regardless of the infraction. One of them stated, “What happens on a football field should stay on the field. Police should never be involved.” The other player, a university kicker, said, “no matter how violent something is in a game, I think it should only be punishable by the officials or by the league, nothing on the football field should be punishable by law.” Among the players who thought there should be legal intervention for incidents of ultra-violence in the game, ideas of when this should occur differed.

Most players stated that criminal charges should only be considered for acts not directly related to playing football. That is, while the act might have occurred on the field, it must have little to do with the game to be deemed criminal. One professional offensive lineman describes this sentiment:

Just because it is a football field does not mean that anything can go. I’ll give you an extreme case: if I conceal a knife on the field and stab a guy in the neck that would be illegal. It doesn’t matter that it is on the football field. Even if I were to punch a guy in a huddle, then that is assault and I should be charged because it isn’t part of the game.

Along similar lines, a junior wide receiver stated, “as soon as the player’s actions don’t resemble one of a football player, then yes. If he has no intentions of playing football, and is more concerned [with] assaulting another player then yes, he isn’t playing football anymore.”

Some players argued that criminal sanction should only be considered when equipment and tools are used to harm an opposing player. Some examples of this were

stepping on a player with cleats, hitting a player with a helmet, or carrying illegal equipment with the intent to cause harm, such as wearing brass knuckles concealed under a glove. A junior player described such a scenario: “Ripping a guy’s helmet off and stomping on his head with a cleat has nothing to do with a football game. In that kind of circumstance, a crime has absolutely occurred and should be prosecuted.” Similarly, a CFL quarterback claimed: “If I saw a case where a guy was stomping on a helmetless person or something like that, then I would think that would be a case.” A CFL fullback noted,

you can’t assault people with a potentially dangerous weapon at work and not be held accountable. Athletes should be held to the same standards. The football field is a workplace. Having said that, I can’t think of any recent events in the CFL that warrant[ed] criminal prosecution.

Like the fullback, while most players suggested that legal sanction should be used for incidents of on-field violence, few reported having ever witnessed or being involved in an act that warranted such attention.

During the interviews, players and administrators named four groups of individuals who could be held legally liable for incidents related to on-field violence: opponents, coaches, officials, and teammates. Most of the players suggested that if an opponent engages in deliberate, injurious violence, he should be held legally liable for his actions in either a criminal or civil court. Most also reported that the coach should be held liable if he instigated the player’s actions, instructed the player to commit the act, or allowed his team to get out of control.

A university cornerback asserted, “Yeah, I think coaches should be [charged]; if they are telling the players to hurt people, then they are definitely liable.” Likewise, a professional offensive lineman stated, “there is going out and playing hard and doing little things to try to take shots at guys, but if a coach tells you to take shots at guys after the play, then that is garbage and he should be penalized.” A junior coach said,

I never played dirty, and I don't accept dirty. I don't coach guys like that. I never have and never will. Coaches have a responsibility to ensure that their players are not playing dirty. If I saw a guy repeatedly trying to do something dirty, I would bench him or pull him. Allowing that stuff is unacceptable.

The majority of players and administrators agreed that referees should be held liable if poor officiating leads to a catastrophic injury from on-field violence; however, only one administrator thought this could go as far as criminal liability. The university administrator commented that if a referee ever attacked a player on the field and caused serious bodily harm, he should be held criminally liable. Otherwise, most interviewees suggested that referees should be liable, but only to the extent that they receive a fine or lose their officiating credentials. As one university running back claimed, “even though I don't always like their calls, the refs are doing the best they can to enforce the rules. You can't see everything.” Agreeing with this point, a university linebacker argued, “referees are certainly liable, but as far as criminally liable, I don't think so. Their jobs are on the line, and that should be enough.”

Every referee I interviewed reported that he would stop officiating if a precedent was set in Canada that game officials could be held legally liable for incidents of on-field violence. A referee at the professional level explained,

we do the best job that we can, but at the end of the day, this is a hobby for us. It doesn't pay the bills; it's not our main profession. If we start to be held legally liable because of alleged poor game control, I think many of us would quit and it would deter others from entering officiating.

Likewise, a university referee claimed, "if [officials] face legal liability, you would not have any referees." He later commented, "It is my job to make sure the field goal posts are wrapped, not to keep violence from happening on the field. It is my job to penalize; it is the coach's to keep violence from escalating."

Several players noted that a responsibility of teammates on the field is to keep each other safe. While few players thought teammates should be held legally liable for on-field violence, one player provided an interesting example. In football, players often block for the player who has the ball; the ball carrier is protected by teammates as much as possible. Players can, however, deliberately slip up or stumble when blocking to ensure that their teammate is hit hard. A similar example is what one professional player termed a "club rush," where the offensive linemen deliberately allow the defence to rush by and sack the quarterback at full speed. This is done as a penalty, of sorts, to the quarterback for something that happened off the field, or because the players are not content with the quarterback's passing selection.

Despite players' agreement that criminal liability has a place in the game, there are no real legal penalties for on-field violence at the professional level of football in Canada. As a player who was injured in a game from a hit outside of the rules stated,

As a member of the Canadian Football League Players' Association I have no right to file any kind of suit against the opposing player, coach, official or the league. Players who injure others have a right to appeal fines or suspensions, but the guy who is injured basically has no rights, is what it comes down to, unfortunately. When you sign a CFL contract you sign away the right to hold the CFL, its coaches, or other players liable for any injury that might occur during play.

After this player was injured, he received no compensation from the CFL for his injuries, and had no legal grounds to hold anyone liable for the injuries he sustained from an illegal hit.

Players' perceptions of consent with regards to contact and violence on the field do not relate directly to their beliefs about when the law should become involved. The majority of players I interviewed suggested that legal investigations should only take place for acts of ultra-violence that have nothing to do with football, or where a weapon is used. Despite this, players stated they do not consent to acts that take place outside of the rules and active play, away from the play, off the field, involving more than bare hands, or acts that are initiated from behind or outside the line of sight. Such violence is perceived as unreasonable and deserving of league penalty, but not criminal prosecution.

Legal cases involving violence on the field of play typically rest on discerning consent. Yet contrary to many legal arguments, the players I spoke to stated that they do not give their consent to be injured simply by stepping onto a field and agreeing to play football. A disjuncture therefore exists between player perceptions of violence on the field and Canadian legal discourse. In the interviews, players listed six main reasons for why they do not consent to violence on the field. However, for players, the issue of consent is not a factor that determines whether a crime has occurred on the field. Instead, players examine the intent of the accused, and the manner in which he carried out the violent act.

In relation to other aspects of Canadian legal discourse on violence in sport, the majority of players enter the field with the knowledge that they could be seriously injured. However, they do not expect that such an injury will occur from a deliberate act of injurious violence. The notion that athletes give voluntary consent by virtue of stepping on the field does not resonate with the players I interviewed.

SUMMARY

Contrary to current Canadian legal opinion, the consent defence is an invalid excuse for on-field violence from the perspective of the athletes themselves. The Canadian football players I interviewed outlined six conditions necessary to consider violence on the field consensual: the act must (1) be within the rules; (2) occur during active play; (3) be part of the play, not separate from it; (4) occur

within the confines of the playing field; (5) use only the body and bare hands; and (6) occur in the line of sight of the player involved. Players do not consent to acts of violence that fail to meet any of these provisions. Opposing players who engage in these acts are labelled “dirty” or “cheap” or as “game-day gangsters.” Even so, while players might not consent to acts of violence that do not include these provisions, they do not perceive all such acts as criminal. For the majority of players, an offence must be extreme, over-the-top, ultra-violence before legal officials should become involved.

The majority of players want league administrations to give more severe penalties to players engaging in immoderate violence on the field. According to them, administrators are not doing enough to prevent and penalize excessive violence. The majority of players do not, however, suggest that this should be the responsibility of the police and legal system, except in extreme circumstances that have little to do with the game of football.

3

Hazing in the Aftermath of McGill's "Mr. Broomstick"

In 2005, McGill University took an unprecedented stand against hazing in university sport. Following a serious hazing incident involving rookie and veteran football team members, university officials suspended the entire program for the remainder of a season. After a thorough investigation, officials at McGill released a statement that described the initiation ritual involving “nudity, degrading positions and behaviours, gagging, touching in inappropriate manners with a broomstick, as well as verbal and physical intimidation of rookies by a large portion of the team” (Drolet, 2006, p. 1). The players directly involved in the hazing incident were penalized by the university and required to do community service as a group to learn more appropriate ways of team-building. The McGill hazing incident and the news it generated forced the governing bodies of football throughout the country to review their policies and

procedures around hazing. This chapter explores hazing in Canadian football in the aftermath of the McGill incident.

PERCEPTIONS AND EXPERIENCES OF HAZING

Few players that I interviewed for this research actually used the word hazing the way it is typically employed to describe processes of initiation for new players on a team. Instead, players at the junior level used the term “rookieing,” university players used “initiations,” and professional players used “pranks.” For players at all levels, the term hazing carried a negative connotation that they felt did not describe their activities. Hazing, to them, referred to what happened at McGill.

One university player illustrated what he considered the distinction between initiations and hazing: “Initiations are non-serious jokes or pranks, while hazing is more serious, causing either long-term embarrassment or hav[ing] the potential to emotionally or physically harm the player.” Revealing the negative connotations of the term hazing, a CFL player stated: “If we were to call it hazing, we would have to call it ‘gentle hazing.’” Athletes at all levels spoke about hazing as an activity that only hockey players engaged in, and not football players. One university offensive lineman asserted that “Hazing is wild in hockey.” A professional player made a similar statement, “I don’t know what it is with those hockey players. It’s like it’s always got to be sexual with them or something.”

Each of the terms athletes use at the various playing levels have a somewhat different meaning. Besides the common approach there is “rookieing,” a process that lasts

an entire season. As long as a player is a rookie, they are susceptible to being “rookied,” although initiations typically occur at the beginning of the season, or just before. According to the players I interviewed, the most common initiations are usually conducted in one evening, often referred to as a “rookie night.” Rookie nights are prevalent at both the junior and university level. The difference between the initiation rituals for each level is that junior rookies often must “earn their place” for the entire season, while university players become accepted members of the team after they have successfully undergone “rookie night.” At the professional level, there is less emphasis on initiating rookies, and more on playing pranks on one another. Rookies are most often the targets for pranks, but they can be pulled on anyone, regardless of how many years they have been on a team. A common ritual CFL athletes engage in is to play pranks on a team member having a birthday. As one player explained, “sometimes we’ll tape a guy to the goalpost on his birthday and coat him in ketchup, Gatorade, and things. It’s great fun.”

Every player reported experiencing some form of initiation when they joined their current team. Players at the professional level noted that initiations become both less prevalent and less severe at higher playing levels. One quarterback noted, “I got it bad in high school, bad in university, but not so bad in the CFL.” An offensive lineman believed that initiations in the CFL are less common than at other levels because,

everyone is a grown man. Nobody wants to get their toes stepped on, so people don’t have a lot of tolerance for it. Players are also in the spotlight, so they

don't want to do anything that could look bad for themselves or their team.

The idea expressed by this player is that grown men are less likely to haze one another.

While professional players reported harsh hazing rituals at the junior and university levels, the CJFL and CIS players I interviewed did not confirm this. Contrary to the perceptions of the CFL players, the testimonies I gathered in my research suggests that hazing is more prevalent in their league than it is at the junior and university levels in Canada. However, when the current CFL athletes were playing at the lower levels, it is possible that hazing rituals were more common and severe than they are today. One professional player recounted his hazing experience as a junior player:

I had it very bad. I had a raw egg cracked in my ass, and a guy had to get it out with his head. It was pretty ugly. I knew a couple of guys that quit that football team because of the stuff that happened. Mine was pretty bad, but there were a couple that were even worse.

Other professional players also stated that they were “hazed pretty bad” at the junior and university levels, while current players in both leagues did not report similar experiences.

According to the junior players I interviewed, “rookieing” typically begins with a rookie night. Coaches are often fully aware of the team's plans and commonly chaperone during the events. One junior player described the course of events:

We had a rookie party for the team where we dressed them up in some ridiculous outfits, and we all went out together. All the vets paid for everything and everyone had a good time. The coaches were aware about all of it.

A junior offensive lineman noted, “coaches supervised rookie day, which was more a team bonding thing than a hazing.”

Following rookie night, junior rookie players are not considered full members of the team until they “earn their place.” According to the players I interviewed, rookies gain membership over the course of the year by performing various tasks for the whole team and specific veteran players, such as carrying equipment, cleaning the practice facility, or cleaning up the bus after a road trip. One junior linebacker described it as a positive experience:

Any so-called hazing that happened was completely harmless and was all in fun. I wouldn't even call it hazing compared to some of the things that you hear about. Some of the things our rookies had to do were clean up the bus after road trips, or the field after practice.

It is also common for rookies at the junior level to engage in a variety of embarrassing tasks to, as one junior offensive lineman described, “prove their commitment to the team.” One example of such a task was to get a rookie to walk up to a group of young women and say an embarrassing line or phrase to them. Another was to have a rookie sit down at an already-occupied table in a fast food restaurant, not say anything, and start eating his food. A

junior defensive halfback described the embarrassing act used on his team: “We had all of our rookies memorize a line from the song ‘Small Town Girl’ and played [it] on our ferry ride home with each different rookie singing a line for everyone on the ferry.”

Just like the junior players, university football players were adamant that hazing did not exist at their playing level. However, like the other athletes, each university player recounted having undergone some form of “initiation” that according to them could “hardly be considered as serious as hazing” or “wasn’t really hazing at all, but . . .” With a firm precedent set by McGill University against hazing, university players are adamant about not labelling their initiation rituals “hazing.” However, when asked directly, the majority of players I interviewed reported that the McGill suspension had little to do with their negative perceptions of the term hazing. I interviewed several football players from McGill, and none thought the suspension had any influence on their current initiation practices.¹ One player argued, “the incident was just blown out of proportion by players who were not even involved. Nobody really gives it much thought.” Another player from the school reported, “It is still a sensitive issue here, but we all know that that stuff is unacceptable,” and a third stated, “it happened, it’s over, our program has moved on. That kind of sick stuff would never happen on this team.”

Other players at universities across Canada reported similar sentiments, saying that the McGill hazing incident

1 It is important to note that the players I interviewed were not on the McGill roster at the time the suspension occurred.

has little to do with their current initiation practices. Most players do, however, express concern that they could be penalized by their coach for any acts of hazing. As one university offensive lineman claimed, "the coach that I played for had a rule that if someone left because you hazed him, then you might as well leave too." Players reported that coaches were concerned about the possibility of hazing, and would often chaperone initiation activities to ensure that no one was harmed. A university linebacker noted, "during our rookie initiation night this year, a coach was present throughout the whole event. We were often warned by him about the consequences of hazing."

Players described a number of activities that took place at a university football rookie initiation night. The most commonly reported activity was having rookies dress up in female clothing to go out and party for a night. One team organized a Jell-O wrestling competition for rookies at a local nightclub. They filled a children's pool with Jell-O, and rookies wrestled one another in front of a crowd of onlookers. Another common initiation ritual reported by players was shaving rookies' various body parts, such as the head, armpits, chest, legs, and in one instance, eyebrows. After going through some form of initiation, university players reported that rookies were generally considered part of the team, and that few divides existed between rookies and veterans.

From the standpoint of most professional football players, hazing is perceived as "child's play" and not something done by grown men. However, pulling creative pranks on teammates is considered an acceptable activity. Every professional player I interviewed had a favourite prank that they had personally used on a teammate, or had seen or

heard done to another. A CFL linebacker described several pranks: “Pubic hair in rookies’ chinstraps, snakes and pig-heads in their clothes, farting in their water bottles.” Similarly, another player described the ultimate CFL prank as putting a hogshead in a rookie’s locker, partly because it “stank up the whole locker room.” A third described nailing the shoes of all of the team’s rookies to the floor before practice. A CFL quarterback described one incident where a rookie’s equipment was duct-taped around the locker room, requiring the man to find and unwrap it fast enough so that he would not be late for practice.

Not all pranks in the CFL are directed toward rookies. As already noted, pranks are common on a player’s birthday. According to several players, they can be played on a veteran if he is not keeping his locker tidy, has made a costly mistake in a game, or simply to laugh at his expense. One player described putting a catfish in one of the team’s ice baths to surprise an unsuspecting player after getting into the already unpleasant tub. Another player who is allergic to peanuts had his car coated in peanut butter by teammates, requiring him to have it professionally cleaned before he could go anywhere near it.

Like teams at the other playing levels, teams in the CFL often have a rookie night at the beginning of the year to initiate new players. These nights, in contrast to the other playing levels, typically involve drinking games instead of forcing rookies to engage in humiliating acts. Former CFL quarterback Matt Dunigan (2007) wrote,

on rookie night the vets took us out the night before the intra-squad game, bought the food, paid for the booze, tried to initiate us. . . . There was a method to

this madness: the next day in the intra-squad game the vets would look great because the rookies were so hung over their hair hurt. (Dunigan, 2007, p.117)

Like other rookieing rituals, team initiations in the CFL also persist throughout the season. One rookie offensive lineman was charged with the responsibility of buying veteran players breakfast on road trips. Another rookie from the same team had a similar experience, which he labelled "monetary hazing." A third player described the initiation practices on his team, where rookie players were paired with veterans for the entire season and forced to do tasks at their request. He indicated that typical tasks he had to do involved making sure the player arrived to all meetings and practices on time and helping to clean up after him.

The most common hazing ritual in professional football is singing: rookies are forced to sing their university's song in front of the entire team during mealtimes in the cafeteria at training camp. A rookie fullback described his hazing experience in the CFL:

Hazing exists, but in a friendly way, at least on my team. For the rookies, we had to sing a song in front of the whole team, so it was in good fun. I also got a hard time from one of the veterans. I just had to make sure that he was up on time, that he made it to all of his meetings. When he needed things, I had to go get it. Things like that. It is all in good fun.

While hazing does appear to be more prevalent in the CFL, most players noted that it was not a negative experience for them.

The players I interviewed at all three levels provided a number of explanations for why initiation rituals are conducted by their team each season. Overall, they described these rituals as being not overly pleasant, occasionally harmful but usually not; the players considered them a somewhat functional and unavoidable aspect of playing football. The most common response players gave to justify initiations is that they build team cohesion. Explaining the purpose of rookie night, a junior wide receiver noted, “to me, it brings you closer to the guys and makes the team come together. It is a chance to spend time with your new teammates outside of the field or gym.” A junior fullback added, “it’s just something to break the ice, to let the rookies know they belong.” Similarly, a university offensive lineman reported, “it just helps us become a more cohesive unit right from the beginning of the season.” A CFL rookie noted: “It’s just a rite of passage that you have to go through to know that you are part of the team.”

Several players noted that hazing occurs as part of a cyclical process, where players experience hazing as rookies, and then feel as though they need to haze subsequent generations of players. Describing this sentiment, one professional offensive lineman explained, “with hazing . . . everyone always remembers back to what happened to them when they were a rookie, and they just feel that it gives them the right to continue it on.” The problem with this attitude, according to several players, is that it leads some to increase the intensity of hazing rituals from year to year. One university player noted, “It’s like ‘this is what happened to me, now I’m going to make the rookies next year get it even worse.’” This player suggested that each year the hazing ritual becomes more severe until it gets

to a point where a group of veterans thinks things have gone too far, or an outside party steps in, such as the university's administration. This notion of hazing as part of a cycle of violence was also reported by Johnson (2000) and Abdulrehman (2006) in their research of hazing in Canadian sport.

Some players asserted that hazing helps to lessen the inflated self-confidence or "egos" that young players bring to a team when they were stars at a lower level. A junior defensive halfback stated, "with most guys being all-stars in high school before playing in junior, it humbles them a little so everyone is on the same level." A few players at the professional level reported that players who need to be taught a lesson are often hazed. A CFL fullback explained,

it exists in places where . . . rookies have behaved in a manner that team veterans deem inappropriate and [so they] must teach said rookies a lesson. I could run on and on about stories of A535 in people's jockstraps, hiding people's helmets, or garbage cans of water leaned against dorm room doors.²

Other players indicated that some engage in initiations simply because they are fun and entertaining. Initiations typically occur, or are at least most severe, during team training camps where players are exhausted from practising two or three times in a single day. For players, initiations can be a fun break from the difficulties and stress of pre-season training.

2 A535 is a muscle relaxant that causes pain when it is applied to sensitive body parts.

Several players argued against hazing, asserting that it has no purpose in football and that there really is no rationale for its existence and prevalence. A junior wide receiver stated,

I never really liked the idea of rookie initiations, or stuff like that. One thing that is a constant on any team I have been on is that rookies do the extra chores that all the players are supposed to do, like carrying equipment from here to there. . . . I don't think it serves much purpose.

Along similar lines, a professional player reported that initiations are just “a dumb excuse for guys to drink and have a night off from training camp.” Consistent with these players' sentiments, a university coach declared, “hazing is just not productive. The young kids coming in are already under enough pressure to make the team, learn the plays, and adjust to the university game; the added pressure isn't needed because it doesn't amount to anything.”

DRAWING THE LINE OF CONSENT

While some initiation rituals are perceived as harmless and even considered enjoyable, many forms of hazing are seen as harmful and unacceptable to Canadian football players. The players I interviewed identified a number of criteria to define the acceptable limits of team initiations in football, although not everyone described the same ones. The most common response from players was that the act should not cause any physical, psychological, or

emotional harm. Another frequent response was that players should not force rookies to do anything they would not feel comfortable doing themselves. A junior offensive lineman explained, "it is all about what you are willing to do. If you are not willing to do it, then it is inappropriate."

A third response given by numerous players is that the initiation should not involve anything sexual. Several players pointed to reports of initiations involving various acts of a sexual nature in hockey as being well beyond the line of consent. Similarly, while describing the "Mr. Broomstick incident" at McGill University, a professional offensive lineman stated, "what happened at McGill a few years back is pretty much crossing the line."

Another criteria reported by several players was that hazing is not consensual if the person being hazed says "no," or asks for the hazing to "stop." According to the players I interviewed, being on a football team does not imply that you have consented to be hazed. Similarly, several players indicated that if an individual does not appear to enjoy the initiation, then it should be stopped. According to one CFL quarterback,

I think going too far is basically when you can see that the guy is not taking it light-hearted. You never know what is going to get a guy's goat and you hope that everybody just goes out there to enjoy it, but I have seen it where a player just wasn't too happy about having a missing uniform or having all of his stuff frozen before practice. With those types of things, you hope that someone steps in and stops it because you don't want it to be a thing that makes people angry. That is taking it past the limits.

Some players noted that a great deal of discretion is required in the initiation process, as one player might be willing to shave his eyebrows, while another does not want his hair touched for religious reasons. A CFL full-back noted, “I think pranks and initiations are something that have to be handled very delicately. . . . People have to use their individual discretion and judgment to make sure things don’t cross the line.”

In total, the players I interviewed named five main criteria for engaging in consensual hazing: (1) no physical, psychological, or emotional harm or distress should occur; (2) no act should be required if all the players involved are not willing to do it themselves; (3) no form of sexual abuse should occur; (4) if the participant says “no,” the act should stop immediately; and (5) participants must be willing and not be visibly angered by the process. Failing to meet these criteria is crossing the line for acceptable limits of hazing.

The football players also provided specific examples of initiation rituals that they felt crossed the line of consent:

- paddling players
- violating religious freedoms
- forced consumption of toxic substances
- forcing players to engage in illegal activities
- anything involving feces or urine
- harming players’ personal relationships outside of football
- beating or causing physical injury
- public displays of nudity

- sexual abuse
- forced consumption of anything in excessive quantities like alcohol, hamburgers, or syrup.

DISCIPLINARY PERSPECTIVES ON HAZING

In the aftermath of the McGill Mr. Broomstick incident, universities across Canada tightened their policies on hazing, prohibiting any initiation ritual or act. Most players at the junior and university levels reported that the zero tolerance rules on hazing in their leagues were excessive. Many players viewed the McGill incident as an overreaction that unnecessarily penalized athletes who were not directly involved.

For those acts that players deemed non-consensual, most players indicated that the perpetrators should face lengthy suspensions. Every player I interviewed indicated that individuals involved in harmful hazing activities should face disciplinary review and league penalties. But punishing an entire team, including those not involved in the hazing, was considered excessive and unfair.

Although a zero tolerance policy against hazing exists in Canadian university football, every university player in this study indicated that they had gone through an initiation process or ritual of some kind when joining their university team. Both players and coaches ignore the rules that completely ban any form of initiation. According to one player,

McGill has a zero tolerance policy when it comes to hazing, where we can participate in no activities that

will endanger or significantly embarrass our teammates in the name of initiation. That being said, veterans do put the rookies through initiation, but nothing that will harm them, or could be considered hazing.

Similarly, a quarterback from another university stated, “yeah, there are regulations. Officially, you are not allowed to haze. But, the team will come together and decide what they are going to do regardless of the rules.”

Coaches suggested to me that players are going to engage in initiations without much regard for the rules, so most officials at the junior and university levels tolerate initiations under their supervision. Numerous players indicated that coaches were present at their rookie night initiation to ensure that no harmful acts occurred. A junior coach argued, “they are going to haze each other whether we like it or not, so we just ensure that they understand the consequences of their actions and [that they] don’t take anything too far.”

According to Johnson and Donnelly (2004, p. 139), coaches occupy a vital yet often contradictory position in hazing in football. “The role of the coach is double: he or she is seen both as an agent of change and as someone who supports and encourages the continuation of traditional initiations.” On the basis of their interviews with athletes and administrators of university sport in Canada, these two authors found that hazing policies had one of three outcomes: initiation bans, modified initiations, or hazing moving underground.

None of the players at the professional level reported concern over the lack of disciplinary policies and procedures pertaining to hazing in the CFL. Arguing for the

merits of his own disciplinary review process for hazing, a CFL running back claimed, “if someone does something to me that I don’t like, I want to be the guy getting him back, not Mark Cohon.”³ With no formal policies against hazing in the CFL, there is minimal disconnect between players’ perceptions of the act and the league’s disciplinary review process. Most players appear content with the lack of formal rules around hazing in the CFL.

Despite this laid-back view taken by CFL athletes, every player I interviewed indicated that athletes should be held criminally accountable for certain acts involving hazing. The most common statement made by players was that any type of hazing involving a criminal act should be treated as such. If a player is forced to engage in a sexual act, then the hazers should be charged with sexual assault. Or if a player is physically harmed, a charge of physical assault should result. A junior centre reinforced this belief, stating, “the excessive stuff has no business being in sport, period. That is just disgusting stuff. If somebody got assaulted then sure, absolutely they should be charged to the fullest extent of the law.”

None of the players indicated that individuals should be given any leniency for criminal acts they engage in during hazing rituals; however, few thought that Canada should inaugurate legal statutes to specifically criminalize hazing. As one CFL player argued, “initiations can be a team-building experience. There’s no need to criminalize that just because some guys will take it to the limit.” A junior wide receiver commented, “hazing should not

3 Mark Cohon is the commissioner of the Canadian Football League.

be a crime unless a crime occurs.” Overall, most players suggested that whether an act was part of a hazing ritual or not, it should have no bearing on whether a crime has occurred; instead, the individual incidents of hazing should be investigated as possible criminal acts.

During the interviews, players named four groups of individuals who could be held criminally liable for hazing incidents in Canadian football: players directly involved, players who were witnesses, coaches, and the university or league in which the hazing took place. All players agreed that individuals directly involved in hazing incidents that include criminal acts should be held legally liable for their actions. A small number of players also indicated that legal liability should be considered for those who witness a serious hazing incident and do nothing to stop it. Likewise, a few suggested that individuals who witness a serious hazing incident and fail to report it or lie about it to protect teammates should face legal sanction.

Players indicated similar provisions for the legal liability of coaches and league or university administrators. In general, players stated that coaches and administrators should be held criminally liable for any acts that they engaged in; although no player could think of an incident where one of their team coaches had taken part in the hazing process apart from helping to shave heads or chaperoning a rookie night. Several players also said that any attempts to conceal a hazing incident by coaches or administrators should result in legal sanctions or penalties, such as a fine or being fired. Players did not think that coaches or administrators should be held liable for failing to provide adequate rules to prevent hazing.

As with on-field violence, there is a disjuncture between players' perceptions of consensual hazing and their views on criminal culpability and liability. Players draw the line on consensual hazing with five main provisions; acts outside of these are considered non-consensual. But for most players, lack of consent does not necessarily imply that an act should be labelled criminal. Much like their perspectives on violence, these athletes think some hazing might be non-consensual and immoderate, but not extreme enough to warrant legal prosecution. Instead, they believe immoderate hazing might be better dealt with via league penalties.

Most players indicate that they do not consent to all forms of hazing when they join a football team. In Canadian courts, however, it is often assumed that participation on a team implies consent to hazing. Many players expect initiations to be an enjoyable experience where they will get to know the new members of their team through a humorous game, challenge, or prank. While players expect to be initiated on new teams, they do not expect the process to be harmful, and do not willingly consent to such acts.

According to the players I interviewed, there is really no way to get out of the initiation process. One professional offensive lineman explained, "initiations are pretty much a part of every sport at every level. It is just something you have to go through, whether you like it or not." Players suggested that they could resist certain initiation rituals, but must undergo some form of initiation before they are fully accepted on a team. Thus while players might consent to certain acts, they do so knowing they must.

SUMMARY

As with on-field violence, Canadian football players perceive the consent defence as invalid in most incidents of hazing. The players I interviewed outlined five conditions that must be met for an act of hazing to be considered consensual: (1) there must be no physical, psychological, or emotional harm or distress arising from the act; (2) no act should be required if all of the players involved are not willing to do it themselves; (3) it must involve no sexual abuse; (4) if a player says “no,” the act must be stopped immediately; and (5) players must be willing participants who are not becoming visibly angered by the initiation process. But even after listing these requirements, the players I interviewed suggested that failing to meet them was not grounds for a criminal charge. Arguing about whether a criminal act has occurred based on consent is irrelevant to them. They draw two different lines to mark the limits of appropriate behaviour, one defining their consent to be hazed in football, and another to indicate a crime has occurred. Players do, however, strongly agree that those who engage in criminal acts while hazing should be penalized in the Canadian legal system.

While a disjuncture exists between players’ perspectives on hazing and how it is handled by the justice system, there is less of one between their perspectives and the disciplinary proceedings of league administrations. At the junior and university levels, leagues put in place a number of rules and procedures against hazing. Most players report that these rules are harsh and excessive, and few express any concern over how they are enforced,

although several did indicate that they thought the McGill suspension was unwarranted. At the junior and university levels, coaches allow initiations to occur in violation of the official rules, but monitor the process closely to ensure that no players are harmed. For the most part, the junior and university players I interviewed supported this approach to handling the disciplinary aspects of hazing. At the professional level, no rules or direct disciplinary procedures for hazing exist. The CFL players interviewed indicated that this approach, or lack thereof, resonated with how they thought disciplinary reviews should be handled in their league. They expressed no need for harsher penalties by the CFL head office for incidents involving hazing on their teams.

4

Athletes in the Era of Performance-Enhancing Drugs

In recent years, performance-enhancing drug use in professional sport has received significant legal and media attention, particularly in Major League Baseball (MLB), which came under the scrutiny of US Congress during a two-year investigation that led to the Mitchell Report (2007). Composed of over 300 pages of findings, the report reveals the prevalent use of steroids in professional sport and provides recommendations for their elimination.

Canadian cases of doping usually receive much less media attention, although there are exceptions. One such example is the steroid bust in the University of Waterloo football program. Following the arrest of a player for steroid trafficking and possession, the Canadian Centre for Ethics in Sport (CCES) took an unprecedented step by testing every athlete on the Waterloo football team for illicit performance-enhancing drugs. When the results showed

that nine players tested positive for banned substances, the university suspended the entire team and placed the coaching staff on administrative leave for one year, cancelling their football season (McElroy, 2010).

The CCES's actions at the University of Waterloo marked the first occasion in Canadian football history where an entire team has been tested for performance-enhancing drugs. Typically in a Canadian season, one to five players will be tested within a football team. This limited sampling means that the number of athletes using steroids in Canadian football is largely unknown. By turning to players' accounts, I can shed some light on this mysterious black hole in our knowledge of steroid use. In addition, these accounts offer insight into players' experiences and perceptions of drug use.

PERCEPTIONS AND EXPERIENCES OF PERFORMANCE-ENHANCING DRUG USE

Among the players I interviewed for this book, there was no shared, general definition of performance-enhancing drugs. The majority of players across all levels stated that only steroids and human growth hormone variants were considered performance-enhancing drugs, while many substances commonly put in the same category outside of sports, such as stimulants and painkillers, were not. Some players indicated that steroids could increase muscle mass, speed, intensity, recovery time, and overall strength, while others argued that they are not even performance-enhancing drugs because the adverse effects actually interfere with the body's normal functioning. As

one junior defensive lineman explained, “steroids cause so much damage to the body and injuries from pushing the body past its natural limits that they end up limiting performance, not enhancing it.”

Several players noted a wider range of substances that they considered performance-enhancing drugs; the two most common were the legal supplements creatine and protein powder. Players reported that using these allowed them to recover faster from workouts, providing gains in lean muscle mass and increased strength. While most players reported using such supplements, many did not consider them to be performance-enhancing drugs. One university wide receiver noted, “Creatine is a performance-enhancer, but it’s not a performance-enhancing drug.” A number of players made a similar distinction between supplements, which are legal, and all the drugs they presumed to be illegal. Likewise, several players noted the prevalent use of caffeine pills, especially at the junior level, as a performance enhancer. Others, however, argued that caffeine pills could not be classified as a drug.

The players’ reports varied widely on the prevalence of performance enhancers in Canadian football, particularly at the professional level. However, the majority of athletes at all levels indicated that they currently used or had previously used some form of legal supplement to enhance their performance on the field. For example, a university offensive lineman noted, “on the legal side I think that 100 percent of our team has used some sort of supplement. Mostly just protein powder, but some guys will go a bit more intense.” The most common supplements mentioned by Canadian football players included creatine, protein powders, and caffeine pills. Many other

players reported using products known as “weight gainers” in the bodybuilding industry; these are typically a blend of creatine, protein, and complex carbohydrate powders athletes use to create a high-calorie meal replacement bar or drink. In Canada, most of these supplements are legal, though largely unregulated, and can be purchased off the shelves of many grocery and health food stores.

Players’ reports on the prevalence of illegal steroid use varied. None of the 59 players I interviewed admitted to ever using steroids; however, every participant indicated that he knew *at least one other* football player who had.¹ At the junior level, the majority of players reported that while some in the league used steroids, most do not. A CJFL wide receiver affirmed, “I would probably guess less than a quarter of the league does them.” Likewise, a junior offensive lineman explained, “there are guys out there who will use them, but most guys just think they are dumb because of the negative health effects and because it’s cheating.”

Nevertheless, at the university level, players indicated a higher prevalence of steroid use. One university linebacker said that he knew of at least 15 CIS football players who were currently using illegal steroids, and a quarterback noted that there are “a lot of young steroid freaks playing university football in Canada.” Others indicated only a few players on their own team used any illegal performance-enhancing drugs. Most players did, however, note suspicions that other teams had multiple

1 Given the legal and moral implications of steroids, it is not likely that players who currently use steroids, or have used them in the past, would willingly disclose this information.

players who were currently using steroids or had done so recently.

Similarly, reports from professional football players varied widely on the prevalence of steroid use. At one end of the spectrum, a CFL offensive lineman noted, “you are not really sure most of the time. You always have your guesses of who is on what. I would say that a couple of guys that I have played with or against have used them.” At the other end, a linebacker estimated that 10 to 20 percent of the professional league’s players had recently used some form of illegal steroid.

Most CFL players reported that they were not able to give an estimate because of the secrecy surrounding illegal drug use. For example, a quarterback noted, “I don’t think that it’s very prevalent, but I’m not naïve enough to think that it’s not there. I don’t know if I could put a percentage on it, or anything like that.” Another professional player made a more alarming admission:

It is running rampant. People need to realize that it’s not two guys over here doing it, but it’s more like if you take one hundred professional football players, you’ll probably find that eighty-five have used some form of illegal supplement.

A third athlete who came to Canada after playing in an American league alleged, “steroid use in the CFL is more prevalent than anywhere else I have seen.”

Reports on illegal steroid use in the CFL thus vary anywhere from 1 to 85 percent. Even with the huge range in reported rates, these numbers indicate that steroids are being used in junior, university, and professional football in Canada. This prevalence does not, however, appear

to be as high as it once was in US professional football where, according to Dave Meggyesy:

The violent and brutal player that television viewers marvel over on Saturdays and Sundays is often a synthetic product. . . . I saw players taking not only steroids, but also amphetamines and barbiturates at an astonishing rate. . . . Trainers do more dealing in these drugs than the average junky. (Meggyesy, 1971, p. 73)

He goes on to say, “some pro teams dispense amphetamines and barbiturates like they were penny candy” (p. 91). The reports of football players I interviewed in the course of my research provide little evidence that illegal performance-enhancing drug use is anywhere near this prevalent in contemporary Canadian football. It is clear, however, that steroids are being used by some in junior, university, and professional football in Canada.

Players report a number of reasons for using steroids: to gain weight, to go pro, to get better at their jobs, to keep their jobs, and to make up for lost time and wages. The first rationale, weight gain, was the most common one reported by players. One CFL offensive lineman who weighs close to 300 pounds remarked, “usually the biggest issue for me is that I am always small at my position, so it has always been a battle to gain weight.” Likewise, a 165-pound university cornerback exclaimed, “Look at me. If anyone has a justification to use steroids, it would be me. I know I need to pack on some weight.”

Most players I interviewed at the junior or university playing levels said that if they did use steroids, it would not be simply to excel at their current playing levels.

Instead, they said they would do it to increase the possibility of being drafted by a Canadian or American professional team. “For a lot of guys, playing junior football is their last shot,” a CJFL running back explained. “A lot of these guys will probably never play university football, and they know that. Steroids become a way to realize their dream.”

Professional players indicated that using illegal steroids could increase their proficiency at their jobs, a form of use that has been termed “vocational” (Courson 1991, p. 141). Others suggested that they faced pressure to use steroids in order to keep their jobs. Many felt that steroids can aid an athlete’s recovery from football-related injuries. Several players also suggested the added size and strength that can come from taking steroids makes players less prone to injuries. Beyond these health-related rationales, some also reported feeling pressure to use steroids to keep up with new players who could take their place on the football field, a common explanation given by older players and those who have experienced a serious injury. A few athletes see steroids as a way of gaining their younger or healthier playing days. Many players also reported experiencing pressure to use steroids in order to keep up with those who were already using them.

One running back suggested that steroid use in the CFL was not prevalent among the star players, but was among those struggling to make teams from year to year. According to this player, steroid use in the CFL is largely a result of the league’s pay structure, which forces many to take jobs during the off-season to earn a reasonable living. While established players make a high enough

salary to train throughout the off-season, those who are finding their place in the league must work other jobs. As a result, they often do not receive the same amount and quality of training as established players. This leads to a growing disparity between players' physical conditions based primarily on the league's salary structure. For those who must work full-time during the off-season, steroids become a shortcut to remain competitive with players who earn enough to focus strictly on training.

Despite these explanations for why players use steroids or feel the pressure to use them, the athletes I interviewed also discussed several reasons not to. One common reason was that, because steroids are illegal, players who use them could get league suspensions. They also noted that steroids are difficult to obtain without risk of legal sanctions. Others felt that taking steroids was a form of "cheating." Several players were of the opinion that steroids are not as useful as some people report them to be, and thought they could achieve greater results through proper training and nutrition. For others still, the illegal drugs were simply too expensive. According to one CFL player, a single steroid cycle can cost thousands of dollars, which most Canadian athletes cannot afford. Furthermore, the increase in pay that they could potentially receive by using steroids is not considered significant enough to make it worth the various health risks associated with using the drugs.

From players' accounts, an interesting paradox related to using performance-enhancing drugs in Canadian football emerged: the drugs are known to lessen *and* heighten the risk of injury. On one hand, players believed that steroids make them bigger, stronger, and faster,

protecting them from strains, sprains, and fractures common in the sport. On the other, they thought that steroids carry multiple health risks and could heighten the chance of injuries. One CFL offensive lineman noted, “the human body has limits. If you push past those limits, things are going to start breaking down.” According to this player, the risk of injury from steroid use is caused by muscles that grow in size and strength too quickly, so that other parts of the body, such as tendons and ligaments, cannot keep up. Players using steroids then face a greater risk of tearing tendons and ligaments, which can be career-ending injuries. However, several players reported concerns about being smaller and weaker than those using steroids, which exposes them to injury resulting from size and strength differentials. According to the majority of players across all the playing levels, if no one was using steroids, then these kinds of injuries would be much less pervasive. However, as long as players are using steroids, then this paradox continues to exist.

DRAWING THE LINE OF CONSENT

Players reported a number of criteria to define the consensual limits of performance-enhancing drug use in Canadian football. As with the lines marking the limits of consent for on-field violence and hazing, there was not a definitive set of criteria defining consent to performance-enhancing drug use expressed by all players; however, many were overlapping and interrelated. Most suggested that for performance-enhancing drug use to be consensual, players must be aware that they are taking a banned

substance. One university running back asked, “If you don’t know you’re taking it, how can you be at fault?”

Many players also indicated that performance-enhancing drug use is non-consensual if the athlete took a drug suggested and/or provided by a teammate, coach, or trainer, but had not been informed that it was banned in their sport, or illegal. A professional offensive lineman explained, “guys on the team are usually the best resource on what to take and what not to. You trust that they know what they’re talking about and won’t give you something illegal that could get you into trouble.”

For drug use to be consensual, others noted that the player must be completely informed about the possible negative side effects and health consequences of ingesting a particular substance. If a teammate, coach, or trainer misinforms the player about the possible adverse effects, then most consider the use of the substance non-consensual. A few players also suggested that performance-enhancing drug use is non-consensual if the coach required a player to take a banned substance in order to make a team or remain on one.

In total, the players I interviewed listed four criteria for establishing consensual performance-enhancing drug use: players must (1) know they are ingesting a substance; (2) be informed about whether the substance is banned in their sport or illegal if it is provided by a teammate, coach, or trainer; (3) be informed of the negative health consequences or side effects of the drug if it is provided by a teammate, coach, or trainer; and (4) not be forced to take a banned substance by a team coach.

Players also listed specific circumstances where performance-enhancing drug use would not be consensual.

Some of the examples were:

- a coach or trainer providing what he calls a “painkiller” to a player that is actually an illegal steroid or banned substance;
- an individual “spiking” the team Gatorade container with a banned performance-enhancer;
- a player passing pills around the locker room without adequately informing his teammates about their legal status or possible side effects;
- a coach telling a player he will remain on special teams until he takes a banned substance to bulk up;
- a coach telling players to use an illegal substance in the off-season in order to make his team or another in the following year.

DISCIPLINARY PERSPECTIVES ON PERFORMANCE-ENHANCING DRUG USE

Drug testing policies and procedures in Canadian football are both ineffective and insufficient. According to the majority of players I spoke to at the junior and university levels, the random tests conducted by the Canadian Centre for Ethics in Sport do little to curb performance-enhancing drug use. On teams with over sixty players, only four to six are typically tested each year, and often none are selected at all. The small likelihood that players taking steroids will be selected for a test is well understood, and as a result drastically reduces the tests’ capacity to curb drug use.

In response to the inadequacies of the current system, some players suggested testing everyone who participates in the playoffs. As one put it:

This would ensure that those teams that are succeeding aren't using any forms of steroids or anabolic agents. And limiting to playoff teams would cut costs, but also deter the whole league from using. If you can't win a Vanier² [Cup] by cheating, then what would be the point? It's also in playoffs where most players get their CFL exposure.

The limitation of this approach, however, is that players could use steroids earlier in the season and then make sure they are clean by the playoffs to avoid testing positive.

At the junior level, players expressed a similar concern over the lack of testing in their league. One junior defensive tackle agreed. "Considering in two seasons I've never seen a member of our team take a test, I'm not sure they are effective." A junior wide receiver remarked, "not only do they not test enough, but I have heard of guys failing the test and still getting to play."³

Shortly after I conducted the interviews for this book, the CFL introduced a newly developed drug policy. Since the new drug testing procedures mirror those of the CJFL and CIS, although testing for fewer substances and imposing lighter penalties, it is likely that many of the same difficulties already discussed about this method will arise in the coming years. Every player whom I interviewed

2 The Vanier Cup is presented to the winner of the CIS championship.

3 No junior administrators interviewed were aware of any incident to confirm this statement.

for this book indicated that the CFL should implement some form of drug testing in the near future. One professional offensive lineman argued, “it is an embarrassment to the league and its players that there is no testing.” A wide receiver reported that in surveys conducted by the Canadian Football League Players’ Association every year, a “vast majority . . . almost all players agree that testing should be done.” Several administrators asserted that while they also felt that drug testing should be done, other matters were currently of greater concern, such as player marketing and injury compensation. According to one administrator, “the CFL doesn’t have drug testing like many other major sports leagues, but it also doesn’t generate the same income those leagues do. . . . We are not talking about a multi-billion dollar league here.”

Beyond the issues related to the limited number of players selected for drug tests each year, players also described how easy it is to cheat on random drug tests. A common concern reported by about half of the players was that the development of new drugs and cleansing agents allowed athletes to use steroids without testing positive. According to one junior centre, “the drug testers will just never be able to keep up to the drug takers. . . . They are always just one step behind.” Other players noted inherent problems with the predictability of the drug tests. A university quarterback suggested that since players know their team will only be tested once during the year, they can just wait until that’s done, and then start taking steroids for the remainder of the season. Likewise, a university coach remarked, “if guys are going to cheat, they are probably smart enough to mask it and not get caught.” Whether players actually engage

in such behaviour is not clear from the interviews, as no one reported engaging in drug test manipulation for themselves or a teammate. The effectiveness of league drug testing rests not only on conducting an adequate number of tests but also on making sure that they are effectively detecting those who are using illegal steroids. Insufficient testing combined with testing practices that do not work means that little is being done to effectively limit steroid use in Canadian football.

Most players interviewed reported that players should face criminal penalties for any acts deemed criminal, regardless of their relation to football. However, the majority of players indicated that testing positive for steroid use should not result in automatic criminal sanction, unless a thorough investigation deems it warranted. According to one junior linebacker, “if a player is suspended from the league for using, then that should be enough.” Other players noted that a league suspension for steroid use would be a much harsher penalty for most players than a small legal one.

While players did not think that testing positive for steroid use should usually result in criminal sanction, they indicated a number of instances where individuals should be held criminally liable for actions related to performance-enhancing drug use in Canadian football. The majority of players reported that those handing out steroids to their teammates should be held legally liable for distribution, especially if they are not informing players about the illegal nature and health consequences of the drugs. Likewise, several players reported that team trainers and coaches who promote the use of illegal steroids should face legal sanctions, particularly

if they place any conditions on a player, such as requiring him to take steroids in order to make the team or earn a first-team position.

While several players indicated that coaches and trainers should be held liable for directly influencing players to use banned substances, this influence must be direct; otherwise these officials should not be held criminally liable. That is, a coach who suggests that a player should gain weight in the off-season is not necessarily indicating he should go on a steroid cycle. Referring to his own coaches, one professional offensive lineman claimed:

They never pressure you to go on steroids or something. They normally say that they want you bigger, faster, stronger [than] usual. Some guys will take that as needing to go to the next level and take steroids, but a guy like me, I will just work harder and take legal stuff because that is what I do.

Others, however, indicate that coaches should be held liable for indirectly suggesting that players use steroids.

Players also indicated that coaches and trainers who are aware of players on their team taking steroids have a responsibility to report this to testing officials. According to a few players, those who do not report this information and allow steroid users to continue playing should face a league disciplinary review. In instances where coaches or trainers deliberately aid in covering up the steroid use of players, a few players indicated that they should face some form of legal penalty.

A junior coach indicated that coaches and league administrators should be reprimanded if they fail to adequately educate their players about the harmful effects of

steroid use and the safer alternatives for achieving similar results, such as a high-protein diet:

There is more education about how to take stuff and get away with it than there is to get the same sort of results or good results from other clean and natural products. That is the problem. These kids don't realize what they are doing to their bodies. It hurts them. If they were offered a viable alternative, I am sure that most would take it.

In an effort to respond to this concern and avoid liability, the Canadian Centre for Ethics in Sport now requires all junior and university football players to take an online drug education course. The course materials highlight the dangers of steroid use, list the substances that are banned in Canadian amateur sport, and provide tips for eating and training for maximum results without using steroids.

According to one professional offensive lineman, league administrators, especially at the professional level, should be held liable for performance-enhancing drug use. He argues:

What people have to realize is that the human body, regardless of how well trained, cannot do certain things. If you are six-foot-seven and 330 pounds, there are certain things that you are not going to be able to do. Naturally, you should not be able to run a 4.7 40 and do all of the things that they do. The vast majority of those guys are on performance-enhancers, whether it is steroids or growth hormones or amphetamines, all of that stuff, cocaine use, all of it. The reason why you will never hear owners bitch

and complain is that it is way too big business. All of these fans are used to seeing a certain product on the field, guys are so fast and so strong. If they ever started to test for everything and got it to be a clean sport, guys would not be as fast, guys would not be as big, they would not be as strong. You would not get the same kind of product on the field. People would lose interest.

Players' perceptions of consensual performance-enhancing drug use are consistent with the way it is handled by the Canadian criminal justice system. As mentioned above, the players I interviewed indicate four criteria for consensual performance-enhancing drug use: players must (1) know they are ingesting a substance; (2) be informed about whether the substance is banned in their sport or illegal if provided by a teammate, coach, or trainer; (3) be informed of the negative health consequences or side effects of the drug if provided by a teammate, coach, or trainer; and (4) not be forced to take a banned substance by a team coach. Based on the legal cases I examined, only the third criterion might not be recognized in Canadian legal courts, if a player were to purchase steroids without being informed of their harmful side effects. The other three are similar to defences that shift blame from the user onto someone else to avoid legal accountability.

Players did, however, suggest that harsher legal penalties should be imposed on individuals who distribute steroids, particularly if they do so without adequately informing the athletes about the illegal nature of the drug and any harmful side effects. From the perspective

of many players, individuals distributing steroids should receive more punitive criminal sanctions than they typically do currently.

SUMMARY

The potential legal penalties for performance-enhancing drug use are less severe than those for violence and hazing in Canadian sport. However, league disciplinary procedures are more severe when a player tests positive for steroid use than they are for on-field violence and hazing. Players who test positive for steroid use in Canadian football typically receive a one-year suspension for their offence. In contrast, no administrators whom I interviewed were aware of a single incidence of on-field violence that resulted in a penalty of more than a five-game suspension. Despite the harsher punishments given by league administrators on performance-enhancing drug use, none of the players I spoke to complained about the penalties typically given for positive drug tests. In fact, they argued that more players should be tested to ensure that steroid users were no longer able to play the sport of football.

5

Arenas of Toleration in Canadian Football

While conducting his everyday work, a young man in Calgary was struck violently from behind, without notice or chance for recourse. His leg was broken, and various muscles and tendons were torn as a result. The injuries sustained from this violent act were so severe that he will never be able to return to his place of work again (CanWest News, 2007). In a separate incident in Montréal, a young university student was forced by a group of men to undress, receive anal prodding from a broomstick, and expose his naked body in public (Drolet, 2006). In lockers rooms across Canada, numerous groups of young men have filled and continue to fill syringes, injecting their bodies with illegal anabolic drugs (Gillis, 2005). These incidents, while seemingly distinct, share four main commonalities: they (1) were illegal, according to Canadian Criminal Code definitions; (2) all took place in Canadian workplaces;

(3) occurred in and around the sport of football; and (4) were all deemed *tolerable* enough that no criminal charges were laid.

CONCEPTUALIZING TOLERABLE DEVIANCE

Robert Stebbins (1996, p. xi) defines tolerable deviance as behaviours that “occupy a middle ground, both attitudinally and emotionally, between acceptable, normative practices and disdainful, criminal practices.” For him, deviance is defined in relation to the moral norms of the community, a conception similar to the one proposed by Émile Durkheim (1968 [1893]), and later by Kai Erikson (1966). In the Durkheimian sense, when the “collective conscience” is morally offended a community unites, a crime is socially defined, and the society seeks retribution through the punishment of the offender (1968 [1893], p. 80). Through this process, moral boundaries are defined, clarified, and redefined within the community (Erikson, 1966). Building on this, Stebbins explained that tolerable deviance occurs when individuals cause a slight (but not major) offence against the collective morality of a community. The offence is neither normative nor criminal, but instead rests on a continuum between the two.

The continuum of tolerable deviance is classified using three main subtypes of severity or threat to the collective good (Stebbins, 1996, pp. 4–5). The first and often most severe slight against collective morality is termed “criminal tolerable deviance.” This form is illegal, but tends to be overlooked by law enforcement officials, as

it is not considered a top priority. It is a crime but is not considered a “disdainful crime” (Stebbins, 1996, p. xi). The second type, “non-criminal tolerable deviance,” is outside the jurisdiction of the law but is still treated as deviant by the community. The final form, “legitimate tolerable deviance,” is guaranteed or protected by the law, despite its divergence from the norms of society.

Along with the three subtypes of tolerable deviance, Stebbins (1996, pp. 7–15) also provides three main justifications for why people engage in various forms of tolerable deviance: for purposes of recreation, as a form of work, and as a means of psychological adjustment. Individuals pursue tolerable deviance as leisure during their non-working hours for enjoyment or relaxation; an example is recreational drug use. Tolerable deviance as work occurs in the workplace and/or is part of how the individual earns their livelihood: the sex trade is one example. The third justification, tolerable deviance as adjustment is related to the unbalanced or unhealthy mental state of the individual caused by issues such as drug addiction or mental disorder, which fuels the deviant activity.

Many scholars have used the concept of tolerable deviance as a descriptive device to help classify certain forms of deviance. Hathaway (1995) examined middle-class marijuana use as a form of tolerable deviance. Likewise, Osborne and Fogel (2007, 2008) conducted a study on the normalization and tolerance of marijuana use among graduate students and working professionals in Canada. Brannigan and McDougall (1983) explored the non-criminal act of hang-gliding as a form of tolerable deviance.

As Stebbins wrote (1996), tolerable deviance is not an explanatory concept, but rather serves as a sensitizing concept. Hathaway and Atkinson's (2001) application of tolerable deviance in their research on marijuana use and ticket scalping provides an example of Stebbins' intended use of the concept. These researchers do not simply apply tolerable deviance as a label – instead they use it as a starting point for theoretical description. They describe the various processes that go into making marijuana use and ticket scalping tolerable by certain sectors of society, and the continuous struggles that allow for this tolerance.

Taking a new approach with the term, Young and Atkinson (2008) invoke tolerable deviance as an explanatory concept to reveal why deviance in sport is often overlooked by legal officials. Young and Atkinson (2008) identify seven reasons for the tolerance of deviance in sport. First, they suggest that a hierarchy of social problems is created by law enforcement officials because they do not have the resources to tackle all problems. As a result, some criminal activity is overlooked. Second, they reveal a culture of internal policing, whereby sports leagues are granted the ability to govern themselves through the creation and formation of laws. In so doing, league officials are able to turn a blind eye to criminal activities that would cast a negative light on the league. Third, sport can be seen as a mimesis enabling warlike behaviours but with less devastating consequences. Fourth, athletes are often treated as a special or revered population that the public does not rally to see punished for criminal behaviours. Fifth, there is a general acceptance of the belief that criminal behaviour in sport is an individual problem, rather than a problem

arising from structural issues. When crime occurs it is due to a rare offender — a single “rotten apple” in a batch — and little further investigation is done into larger issues. Sixth, legal intervention is difficult in the context of sport as current laws and legal precedents make successful convictions unlikely. A significant reason missing from this list is that the tolerance of deviance in sport serves the interests of individuals in positions of power, which is discussed in this study.

In this chapter, I use the concept of tolerable deviance to expand the discussion of on-field violence, hazing, and performance-enhancing drug use in Canadian football. Each of these acts can be considered forms of tolerable deviance. Like Hathaway and Atkinson (2001), I explore the processes and power struggles that permit some potentially criminal acts to be tolerated in sport. I develop the concept of “arenas of toleration” to supplement this notion, revealing the various groups who have vested interests in tolerating these acts of potentially criminal deviance in Canadian football. I attempt to take this concept beyond Hathaway and Atkinson’s discussion, to examine how toleration of deviant acts serves the interests of football administrators in Canada, creates precarious labour conditions for football players, and marginalizes them.

In doing so, I offer a critical perspective on the concept of tolerable deviance in football and the process through which certain acts come to be tolerated. Criminologists have paid a great deal of attention to how some acts are labelled as deviant, but have given less attention to how and why some acts of deviance come to be accepted and legitimated in certain social contexts.

TOLERABLE DEVIANCE IN CANADIAN FOOTBALL

Violence on the Canadian football field is tolerated, despite the fact that many of the acts would be deemed illegal outside of sport. This violence rarely invokes moral outcry from the community and has, to date, never resulted in serious legal sanction. Whereas criminal charges have been laid in cases of violence in other sports (see, for example, *R. v. Ciccarelli* [1989], *R. v. McSorley* [2000], and *R. v. Bertuzzi* [2004] in hockey), there does not appear to be a single Canadian case where a football player has been criminally charged and convicted for violence on the field. In Stebbins' sense of the term, in-game football violence is tolerable deviance.

Tolerance of violence is not restricted to football leagues, but extends beyond them as well. Legal precedent set in the case *Dunn v. University of Ottawa* (1995) suggests that the Canadian legal system tolerates violence on the field. The judge presiding over this trial remarked, "those involved accept certain risks, and of course one of those risks is that an injury will occur." Describing the tolerance of violence on the field of play in football, Atyeo writes:

The thing about sport is that it legitimizes violence, thereby laundering it acceptably clean. Incidents routinely occur in the name of sport which, if they were perpetrated under any other banner of open warfare, would be roundly condemned as crimes against humanity. The mugger in the parking lot is a villain; the mugger on the playing field is a hero. (1981 [1979], p. 11)

In Canadian football, on-field violence is not only tolerated but also promoted, as I will discuss in the next chapter.

Each of the fifty-nine players I interviewed indicated that they had experienced some form of initiation ritual when joining their current team. Despite this, none had ever taken part in or heard of a case where legal authorities became involved. Similarly, apart from the McGill University hazing incident, no players were aware of league or team penalties for any acts involving hazing. The players interviewed in this study described numerous examples of hazing they had experienced that received no sanction or punishment. For example, as one professional player recounted in an earlier chapter, he had a raw egg cracked in his anus, with another player instructed to retrieve the egg using his mouth. Another described an incident where a player who was allergic to peanuts had his car coated in peanut butter. Both of these acts can be seen as deviant, and potentially criminal, yet no penalties were considered.

The use of illegal or banned performance-enhancing drugs is further evidence of tolerable deviance in junior, university, and professional football in Canada. While some players have been charged, few have been convicted for the possession, distribution, and/or use of them. In 2002, a CFL player named Mike Mihelic was arrested after police seized 120,000 pills and hundreds of bottles of injectable steroids from his home and those of a few others. All charges were, however, dropped (Gillis, 2005). Similarly, police discovered that Calgary Stampeders' kicker Sandro DeAngelis was part of a steroid distribution ring, but he has never been criminally charged or sanctioned by the league for this involvement (Jenkins

& Rosenthal, 2005). In the Waterloo steroid case Eric Legare, who had played for the team, was charged with possessing and trafficking the drugs. He was ultimately convicted on other charges, none of them drug-related. Jordan Matechuk, formerly of the Hamilton Tiger-Cats, was arrested for the possession of steroids and charged with marijuana possession when attempting to cross the US–Canada border. He was sentenced to ninety days in prison (Wazny, 2012).

It was not until 2011 that CFL players began to be tested for steroid use. New policies mean that there are penalties for users who get caught, but the league still remains modest in their punishments: first-time offenders do not even receive a suspension. Furthermore, it is still very possible for a football player to go through their entire career — across junior, university, and professional playing levels — without ever being tested for steroid use. Steroid use is a tolerated aspect of Canadian football, for the most part.

ARENAS OF TOLERATION IN CANADIAN FOOTBALL

Stebbins (1996) delineates different forms of tolerable deviance and describes various behaviours that can be assembled under the concept, from deviant sexual practices to mental disorders. Questions about where tolerance comes from, who shows it, how, and for what purposes are less clear. In the following section I develop this concept further by identifying actors who tolerate violence, hazing, and performance-enhancing drug use, and the possible reasons for their tolerance.

I consider five main arenas of toleration in Canadian football: individuals or groups that take to the field, manage those who take to the field, watch those on the field, provide media coverage of those on the field, and legislate and litigate the actions of those on the field. These groups form “arenas of toleration” that collectively determine what is defined as tolerable deviance in Canadian football. Building on Stebbins’ (1996) work and the insights of Hathaway and Atkinson (2003), I introduce a critical perspective that examines the competing interests of different groups who may benefit from tolerable deviance in Canadian football.

The first arena of tolerance, those who take to the field, is made up of the players, coaches, trainers, and referees actively involved in the on-field aspects of a football game. This is where the so-called deviants exist: the players are the ones violently tackling opponents on the field, hazing one another, and unlawfully using and distributing steroids. They are labelled deviants even though their acts are often tolerated. At first glance, they appear to be the “game-day gangsters.”

The players whom I interviewed refuted the notion that a culture of tolerance for on-field violence exists. Players who deliberately injure others in a game are negatively labelled “dirty” or “cheap.” The majority of players I interviewed reported having similar perceptions of athletes who use performance-enhancing drugs; they noted concerns over the minimal drug testing in Canadian football.

While revealing some intolerance for injurious on-field violence and performance-enhancing drug use, the majority of players reported tolerating hazing, providing it did not involve sexual acts, was consensual, and was not

done with the intent to injure. In fact, well over half of the players at the junior and university levels indicated that their team and league policies were excessively restrictive with regard to hazing.

The coaches, trainers, and referees interviewed had similar perspectives in relation to violence, hazing, and performance-enhancing drug use. Revealing intolerance for immoderate and ultra-violence on the field, one junior coach asserted that he would pull any player on his own team if he saw him engage in a deliberate attempt to injure. With regards to intolerance of steroid use, all of the coaches indicated that they would never promote steroids or allow a player on their team to use them. Revealing a tolerance for hazing, all of the coaches indicated that they, or another member of their coaching staff, supervised or were informed of all team initiation practices to ensure that the players did not take things too far.

That managers, team owners, and league officials tolerate various forms of deviance in sport is clear. As Jeffery Benedict (2004, p. 70) remarks, professional sport is the “one place where a registered sex offender can get a \$33-million increase in salary the day he gets out of jail, and then be introduced to the public as a ‘great guy’ without any questions being asked.” Although this statement was made in reference to a player in the National Basketball Association, it depicts how tolerance of crime and deviance exists within sport, especially at the professional level.

Administrators at the junior, university, and professional playing levels indicated that disciplinary reviews for acts of violence on the field are rare, leading to few suspensions. In fact, the only suspensions noted in recent

years by interview participants were at the junior level, for two players who got into a fight. One university coach filed a complaint to report excessive violence on the field by an opposing player, but the university's athletic director ignored it, and no formal review took place.

At the professional level, team management and league officials are tolerant of hazing practices. None of the players reported that they were aware of any specific rules pertaining to hazing, initiations, or pranking. The 2008 CFL Rule Book makes no mention of hazing. Likewise, the team and league administrators with whom I spoke were not aware of any players having been penalized for hazing.

An alleged zero tolerance policy against hazing exists at the junior and university levels of Canadian football. In practice, however, this is typically not enforced. The 2005 McGill hazing incident disrupted this tradition, where university officials, marking a clear intolerance for hazing in university sport, suspended the entire team for the remainder of the season. However, after this incident, initiation rituals continued. Every player interviewed from McGill indicated that despite the existing policy and sanctions, they all underwent some form of initiation when they joined the team.

Likewise, junior and university football in Canada have a zero tolerance policy for illicit steroid use, yet as the previous chapter outlined, so few players are subject to random testing each year that they are not effectively enforced. At the professional level, no policies or testing procedures were in place until 2010. This lack of policy had the effect of allowing players to use steroids with impunity. Furthermore, the CFL has permitted numerous

players to join the league after they were suspended for failing drug tests in the National Football League (Barnes, 2006).

The spectators of Canadian football also play an integral role in deciding what forms of deviance are tolerated. For instance, while fans may condemn the use of steroids as cheating, they still expect to see the power and speed on the field, possibly enhanced by their use. Several players I interviewed noted the expectations of fans to see violence on the field. One professional centre stated, "That is what the fans pay to see; they want to see gladiators, not gentlemen." Or as the CFL player quoted earlier remarked, "All of these fans are used to seeing a certain product on the field; guys are so fast and so strong." Even at the junior and university playing levels, where the revenue generated by ticket sales is far less than that made by the CFL, players frequently remarked that spectators like to see violence on the field. A university coach claimed that he recently heard a parent yell out, "Rip their heads off!" while cheering at a game. Not only do fans tolerate violence on the field, they also appear to expect, promote, and celebrate it.

The media adage, "if it bleeds, it leads" is not only true of crime and accident reporting, but is a common characteristic of sports news and media coverage. For example, in Super Bowl XLIII (2009), James Harrison intercepted the ball on his own goal line and made a record-setting 100-yard run for a touchdown. The majority of the video replays that followed the live television coverage were not of the exceptional athletic feat, but rather of the tackle Harrison received as he crossed the goal line. He lay motionless for a short period of time from the hit, and it was unclear if he was injured or exhausted. The

tackle caused Harrison to land on his head and shoulder as he entered the end zone for a touchdown. It was replayed on national television multiple times, in slow motion and shown from different camera angles, far more often than his 100-yard run. According to Young and Smith (1988), slow motion and instant replay have been used to increase the media coverage of violence on the field. When violent hits happen live, they occur so fast that a viewer can miss them. With slow motion replay, viewers can see each violent tackle and examine the intricacies of the hit, as well as the injuries that often occur. As Harrison's example illustrates, violent tackles can be replayed repeatedly, slowed down to examine each aspect of the impact, and dissected from different angles by commentators and television viewers. This is done, according to Young and Smith (1988), to "heighten the dramatic appeal" (p. 299). They describe the typical media coverage at a football game: "A devastating hit is replayed in slow motion, the cameras zoom in on an injured player grimacing in pain on the bench, colour commentators argue over who is the hardest hitter in the game" (p. 299). In this above example, Harrison was not injured from the tackle. He lay motionless for a moment in sheer exhaustion. However, the replay prolonged the time Harrison spent on the field before getting up, heightening the drama of the on-field violence. As with spectators, various media sources tolerate deviance in sport, while also aiming to heighten its dramatic appeal.

The lack of legal cases involving violence, hazing, and performance-enhancing drug use in Canadian football suggests that the criminal justice system is a sphere that tolerates these acts. No relevant criminal

law precedents exist where a Canadian football player has been criminally charged and convicted for on-field violence or hazing, and very few cases have involved performance-enhancing drugs. These matters, while all potentially criminal, have been ignored.

Some cases of violence on the field have ended up in Canadian civil courts. In *Bell v. Edmonton Eskimos Football Club* (1988), a player named James Anthony Bell unsuccessfully sought damages against his football team for serious injuries that he believed resulted from an improperly manufactured helmet, and the club's failure to investigate the potential dangers of the product they supplied. Similarly, in *Thomas v. Hamilton City Board of Education* (1994), a parent unsuccessfully sought damages for the injury his son sustained allegedly as a result of poor coaching. In both incidents, the courts asserted that violence on the field was not a legal matter, effectively revealing legal tolerance for it.

EXPLAINING TOLERABLE DEVIANCE IN CANADIAN FOOTBALL

Tolerance of on-field violence, hazing, and performance-enhancing drug use is not in the interest of players, but rather is in the interests of spectators, team managers and owners, the media, and league administrators. A CFL linebacker expressed this sentiment: "Our staff are all a bunch of snakes. They don't care about us as people, just [as] investments to keep their jobs." Tolerance of these acts in Canadian football serves the interests of capital accumulation. The real game-day gangsters are

those who profit from the deliberate tolerance of crime and deviance in sport.

Acts of on-field violence are turned into commodities. For example, there is a well-known picture of Lawrence Taylor tackling an opposing quarterback so hard that he broke the player's leg. This photograph is a popular item, bought and sold in many markets; the depicted act of violence has become a commodity. In the context of Australian rugby, Hutchins and Phillips (1997, p. 161) term this "selling permissible violence." The same term could apply to Canadian football. If violence on the field were illegal, it would not serve the interest of capital accumulation. Consistent with this sentiment, a CFL offensive lineman claimed, "the league tries to sweep excessive violence on the field under the rug." For major money to be made, the violence must be authorized and defined as legal.

Misguided theories about hazing can similarly serve the interests of team and league administrators. A common belief is that hazing is an effective method for creating team cohesion, resulting in a better-functioning, more dominant unit. Such ideas contribute to the prevalence of reported hazing in the military. The tolerance of hazing could be because it is seen as a method to cultivate a team mentality, with athletes willing to do things that they might not ordinarily do for the benefit of their team, such as using steroids or committing injurious violence against an opposing player.

The use of performance-enhancing drugs also produces a better product on the field for the viewing audience to consume. A professional offensive lineman remarked that the human body has limits that can be surpassed with steroids. They can help transform the body

into a spectacle of power and aggression, which contributes to the desired performance on the field. From the perspective of this player, the CFL league office deliberately turns a blind eye to drug use because it helps to put a “better” product on the field and more money in the pockets of team owners and league officials.

PRECARIOUS LABOUR IN CANADIAN FOOTBALL

Beyond the commodification of the athlete and their acts of permissible violence, tolerance of violence, hazing, and performance-enhancing drug use creates precarious labour conditions for professional Canadian football players. In professional football, players become commodities to be bought and sold by teams. It can be argued that management is not concerned with the health, safety, and financial security of the players, but rather with generating profits. Unlike most other professional sports leagues, few CFL players have guaranteed contracts, their income is short-term, and they are not provided with long-term health care benefits despite the violent nature of their work. It is one of the few workplaces where a man can show up for work one day, have his legs broken while performing his everyday job tasks, get fired shortly after for no longer being able to perform his job effectively, and lose all health benefits upon dismissal. While players are protected from disciplinary and criminal sanctions for acts like on-field violence, this tolerance keeps the victims from being able to qualify for compensation when they are injured, nor can they seek redress for violent acts committed against them.

Leah Vosko (2001, 2003) describes several defining characteristics of precarious labour: it is unstable, with no guarantee of permanency or full-time hours; it provides little to no health care, maternity leave, or other benefits; it generates an undefined and unregulated relationship between employers and employees; it creates a uniquely individualistic and competitive work environment; and it often places the worker in physically demanding positions. Each of these characteristics describe Canadian football, particularly at the professional level. They also apply to university football, where scholarships are at stake, or to junior football, where the chance to continue playing in university or as a professional is won or lost. Even so, in this chapter I only consider the precarious labour conditions in the Canadian Football League.

Professional Canadian football players I interviewed described their work as precarious, unstable, insecure, and uncertain. While players do sign contracts, these provide little in terms of a guaranteed salary. Even those who sign a four-year contract with a team can be cut at training camp as early as the second season. According to a CFL player agent, it is in the best interest of players to sign shorter contracts, since longer ones provide guarantees to team management, rather than players. As this agent indicated:

Any player can be cut at training camp each year, regardless of their contract. If you sign a one-year deal and have a good season, you can look for more money in the off-season. If you sign a longer deal, then you are stuck in that contract and do not get any real security from it.

All contracts in the CFL have an option to extend by one year, so if a player signs a one-year contract, the team can bring him back for an additional year. If the player signs a four-year contract, the team can bring him back for a fifth year. As one professional player claimed, “the CFL contract protects the club, not the player.” Another remarked,

the professional game is a high-pressure, performance-based business where if you are not on your game constantly, you are on your way home. I often ask my friends to imagine going into their jobs and knowing that if they don’t perform every day, they are going to get fired.

Similarly, a professional offensive lineman remarked, “there’s no guaranteed money in Canadian football.” Likewise, a CFL running back stated that there is, “absolutely zero job security without any guaranteed contracts. There is no confidence whether you will be receiving a paycheck week in and week out.”

The career of a professional football player is not a very long one. It is only between the ages of twenty and thirty-five that most can successfully perform their jobs. Following their time in the league, football players are left to look for employment without the experience required for well-paying jobs. Unlike NFL players, most Canadian football players do not achieve celebrity status, which will help them transition to alternate career paths after leaving the sport. Most CFL players make a little over \$40,000 a year and some must work second jobs during the off-season to make ends meet. The salary is not high enough to enable players to save for retirement, nor does it provide

the necessary financial resources to cover medical costs after being injured and/or released from their teams.

A quarterback described the problems with the lack of security in Canadian professional football: “even if you are one of the lucky ones and injuries don’t end your career, age will always get you.” Explaining his career prospects after playing CFL football, a centre remarked, “while my other friends are twelve years in the workforce working up the corporate ladder, I am way behind in the business world. There will be a huge transition for me when I retire from football.” Likewise, a fullback stated, “professional football doesn’t really set you up for much.”

An additional characteristic of the precarious labour conditions in the Canadian Football League is the lack of health care and benefits provided to players who have been injured on the job. Standard contracts only cover health care costs for players injured during the season, and only to the start of training camp the following season, when they can be cut from the team and their contract terminated. If a player is injured during training camp or in the pre-season, the team can cut him, provide no compensation, and require him to pay for his own medical fees and support services. A player who had to retire from football due to an injury described what athletes in his situation actually need:

Players should have some sort of restitution; at least some sort of severance. Fortunately I had a strong support system around me after my injury, because I had no way to work and was not getting any money from the CFL. I think it is only fair that they should provide some sort of compensation. I was injured

on the job. In any other industry you will get that kind of coverage or compensation, but not in Canadian football.

Commenting on the compensation (or lack thereof) players receive in the CFL, a running back remarked,

the most pressing issue in the CFL right now is lack of financial assistance for players who could be physically disabled from playing this sport. The league should ensure that the players currently playing are given some peace of mind when dealing with serious injury.

Given the prevalence of serious injuries that do occur in football, this lack of health benefits is particularly problematic. The sport is a high-risk occupation where career-ending injuries are common, and many result in long-term health issues for players. Football, because it is a sport, sits on an unclear line between work and leisure. Some might consider players' efforts on the field to be work, which it clearly is because they earn a salary, pay taxes, fulfill job obligations, and have a contract, among other typical aspects of paid work. Others, however, perceive football as a game. Players might be paid, but they are being paid to play. This perspective can obfuscate the employer–employee relationship that exists in football, which allows team owners to avoid providing injury compensation, long-term benefits, and a guaranteed contract from season to season.

The precarious labour conditions in the CFL create a unique work environment where athletes are forced to continuously compete to keep their jobs. If a player

refuses to make a violent tackle at the coach's request, or gain the appropriate weight in the off-season, he can be replaced by any other athlete waiting to step out on the field in his place. Kevin Young (1991, 1993) suggests that athletes who step onto the playing field face a choice: they can either relinquish the health and safety standards that are guaranteed to any other worker, or they can forget about playing in the league.

Football is a sport of constant collisions that places incredible strain on all parts of the human body. Beyond dealing with injuries on the field, football players, like most professional athletes, must train in ways that are unimaginable to most people. In training camp, players must endure as many as three 2-hour physical training sessions in a single day. The results of this over-training can be devastating. For example, a high school athlete in the United States recently died in a football practice from over-training that caused "septic shock, multiple organ failure and complications from heat stroke" (Schreiner, 2009, p. 1). Referring to the physical strain caused by football, a CFL player said, "The human body is only capable of so much."

Football players are forced to push their bodies to the limits in order to keep their jobs under precarious labour conditions. To exceed these limits, some may turn to performance-enhancing drugs that provide immediate results, but also have long-term health consequences for the athletes. According to a former CFL player, "my body is going to give out long before yours does just because of the crap that I put it through, no matter how well I have taken care of it from then on. Your body hates you after."

My findings in this research parallel the theoretical work of Bero Rigauer (1981) and the ethnographic study

of Michael Robidoux (2001). Using the same approach I took, both considered sport an occupation. Rigauer (1981) argued that sport, as work rooted in a capitalist labour system, is reflective of the oppressive aspects of capitalism. Human performance is reduced to a commodity to be sold in the marketplace. Similarly, Robidoux (2001) examined the oppressive conditions faced by American Hockey League (AHL) players which included job insecurity, unpleasant and dangerous working conditions, and a lack of autonomy. Robidoux (2001) argued that because athletes are celebrated, given heroic status, and treated as fortunate, they often overlook unfavourable labour circumstances and uncritically accept an employer–employee relationship that puts them at a disadvantage. When players challenge labour standards, they face public criticism and are labelled “greedy” and “unappreciative.”

SUMMARY

In this chapter I critically examined the vested interests spectators, team managers and owners, and league officials have for tolerating on-field violence, hazing, and performance-enhancing drug use in Canadian football. In so doing, I expanded Stebbins’ (1996) concept of tolerable deviance to describe a process where toleration serves the interests of capital accumulation. The arenas of toleration that allow and often promote on-field violence, hazing, and performance-enhancing drug use in Canadian football have their own vested interests in tolerating these acts.

Tolerance serves the interests of fans who want to consume permissible violence, team managers who are selling players and the violence they commit as commodities, and league officials whose jobs rest on the economic success of the league. By tolerating acts of injurious violence on the field, players are able to avoid league disciplinary action and criminal penalty; however, they are also given no chance for recourse and denied compensation if they are the victims of such violence. This tolerance marginalizes and oppresses players within the institution of Canadian football, leading to precarious labour conditions and constraints on their freedom to consent.

6

Constrained Consent on the Gridiron

The players interviewed for this book indicated numerous reasons for playing football. In total, the players stated some three dozen different reasons for why they play: “competition,” “brotherhood,” “the personal challenge it creates,” “fans,” “atmosphere,” “scholarship money,” “getting paid,” “a chance to feel important in the community,” “travelling the country,” “a feeling of status,” and “being in the spotlight.” None of the fifty-nine players I spoke to listed violence, hazing, and performance-enhancing drug use as enjoyable aspects of football, or reasons for playing it. One professional offensive lineman remarked, “The actual sport of football is a tough sport to like; all of the practice and hitting your head against people constantly.”

On-field violence, hazing, and performance-enhancing drug use all act as constraints on the enjoyment of playing football: they are understood by the players to be

necessary drawbacks of the sport. Furthermore, the decisions of players to engage in these acts are constrained; they make their decision amid a variety of constraints that limit their freedom of choice.

CONCEPTUALIZING CONSTRAINT

The term “constraint” comes from the field of Leisure Studies, where it is used to denote the less enjoyable aspects of an activity or the restrictions placed on one’s involvement (Scott, 2003). The term is also commonly used in mathematical calculations to denote restrictions on the degrees of freedom to arrive at a particular solution (Irving & Mullineux, 1959). The same definition could be applied to social circumstances. In this discussion, constraint is a descriptive tool used to examine players’ perceptions of the various unpleasant aspects of football. While players enjoy football for numerous reasons, they do not enjoy all aspects of the sport. These non-enjoyable aspects act as constraints.

At present, the concept of constraint is not used in the Canadian legal system or discourse. However, the way in which I developed and used the concept in this chapter overlaps with common legal notions of motive, mitigating factors, *mens rea*, general intent, specific intent, and coerced consent. While sharing similarities with these legal notions, the concept of constraint has its own characteristics that help to determine how and why particular criminal acts occurred.

In *R.v. Lewis* (1979), motive was defined as that “which precedes and induces the exercise of will.” Rational

decisions made to alleviate constraints could be understood as motives, intentions to engage in a criminal act. A subtle difference exists between motive and constraint. People can have motives to commit crimes that result from the various constraints that they must negotiate and make decisions within.

Constraint is also similar to (though distinct from) the legal concept of mitigating factors, sometimes termed mitigating circumstances. Mitigating factors, as outlined in *R. v. Johnston and Tremayne* (1970) and *R. v. Shanower* (1972), are circumstances that do not completely exonerate an individual of a crime, but result in a reduced penalty for the offence. Constraints could provide motives for crimes or serve as mitigating factors, but not all mitigating factors are constraints. For example, an athlete who provides community service through a team charity might be given a lighter sentence because of his work in the community. In that case, the community service is a mitigating factor in the sentence. It is not, however, a constraint.

The broad legal term of *mens rea* is also related to the concept of constraint. *Mens rea* is defined as a guilty or culpable state of mind (Verdun-Jones, 2009), and relates directly to the intent to commit a criminal offence. In Canadian law, *mens rea* is typically divided into two categories: general and specific intent. This division was entrenched in Canadian common law by the case of *R. v. George* (1960). General intent requires proof of the intention to commit a prohibited act, while specific intent refers to the mental awareness and aim to commit a known crime. General intent does not require the intent to break a specific law, just commission of an unlawful act (or *actus reus*). Motive therefore relates to why an act was

committed (e.g. revenge), while intent involves the purpose of the act, (e.g. to injure) (Verdun-Jones, 2009). Constraints could lead an individual to develop a general or specific intent to commit a crime; however, they are neither motive nor intent in and of themselves.

The legal notion of coercion also relates to constraint or constrained consent. In *Hodges v. Webb* (1920), the legal notion of coercion was defined as “the use of physical or moral force in an attempt to interfere with the exercise of free choice.” A key feature of coercion is the “attempt to interfere.” Coercion requires a third party who presses an individual, with threats, bribes, and punishments, to consent to a given activity. Constraints could be coercive influences from a third party; however, they are often more subtle than this, without explicit threat or force.

Six kinds of constraint emerged from the interviews: (1) unpleasant aspects of work or leisure activities; (2) time, space, and other limiting factors that affect work or leisure activities; (3) limitations on free choice or consent; (4) obstacles that prevent one from attaining a goal or goals; (5) coercive influences from a third party; and (6) motivations for behaviours, deviant or criminal, to alleviate constraints.

The concept of constraint developed and applied in this chapter is closely related, even complementary, to the common legal terms that have been discussed. While not a concept used in the legal system, the notion of constraint does appear to be a viable way to help explain the various pressures that may lead some individuals to choose to commit a crime or consent to have a crime committed against them in Canadian football and broader social contexts. Constraints limit consent and provide motives for crimes,

yet they also allow for autonomous decision-making that is often, although not always, free of third-party coercion.

Players reported numerous constraints in Canadian football. On one level, the majority suggested that on-field violence, hazing, and performance-enhancing drug use could all be considered constraints. As I indicated in the opening paragraph of this chapter, none of the fifty-nine players whom I interviewed reported violence, hazing, and performance-enhancing drug use as reasons for why they play and enjoy football. For the majority of players, these are unpleasant aspects that they engage in to be able to experience what they defined as the joys of the sport, such as building friendships, gaining status, and being in the spotlight.

On another level, football players must negotiate a variety of constraints when consenting to engage in on-field violence, hazing, and performance-enhancing drug use, as both perpetrators and victims of these acts. As such, their consent can be understood as constrained. In some instances, these constraints result from the coercive influences of a third party. In others, players are not coerced, but they act under conditions where the only other options are unappealing.

CONSTRAINTS ON VIOLENCE

A number of constraints contribute to how and why players both consent to and participate in different forms of violence on the field of play in Canadian football. These include a competitive work environment, league tolerance, the threat of being labelled feminine, and expectations

from fans. Some players use painkillers and steroids to alleviate the pressure of these constraints.

The competitive work environment of football requires that players act aggressively on the field at all times, or risk facing a number of formal and informal punishments. First, players who avoid hitting hard will likely never be selected for a football team. Once players are on a team, they must constantly compete for playing time. Few players want to be on the special teams line, responsible for kicks and kickoff returns. Because of the speed at which the play is moving, it is during these plays that athletes typically receive the greatest number of injuries on the field, as well as the most severe ones. Many players thus describe special teams as the “suicide squad.” There is constant competition among team players to be on offensive and defensive teams, rather than special teams. For players who are not willing to hit hard and consent to violent hits, their playing time could be relegated to the special teams line.

Those who are not skilled enough for special teams, or who do not play a position suitable for this line, can be cut from a team for not making violent tackles or consenting to hard hits. A CFL player remarked that if he were to take a single day off from playing with violent intensity, he might as well start looking for another job.

Beyond making teams, earning playing time, and remaining on teams, the competitive constraints of football also place players in competition with one another for scholarships and higher wages. According to one CFL defensive lineman, the more tackles he makes during a season, the higher his salary becomes. He benefits directly from the performance incentives in his contract: if he can

reach a certain number of sacks (tackles on the quarterback) then he receives a financial bonus. Indirectly, the more tackles he makes, the greater his salary will likely be in the subsequent season. According to two CFL agents whom I interviewed, most players' contracts are performance-laden: they have a low salary, typically around \$40,000 a year, and then receive bonuses for accomplishments on the field. Players on a team are then competing with one another to gain the performance incentives within their contracts.

Teams also receive performance incentives from the CFL based on their success. According to one agent, under the current collective bargaining agreement, CFL players were paid \$20,000 as a bonus by the league if they were on the active roster of the team that won the Grey Cup in 2008. For the majority of players in the CFL, \$20,000 represents a significant increase in their yearly salary. As a result, each game, point, and yard is important in the drive to win a league championship. This heightens the constraint of competition to the point where players are more willing to deliberately commit injurious violence on the field, and consent to the possibility of having these acts perpetrated against them. An offensive lineman expressed concern over this constraint, and indicated that players might deliberately injure important opponents with the idea that the financial compensation of winning would far outweigh the light penalty imposed by the league. The system of rewards and punishments in Canadian football that encourage violence on the field create a constraint of competition contributing to the perpetration and consent to on-field violence.

The league's promotion and tolerance of violence on the field is an additional constraint on consent in Canadian football. League officials at the junior, university, and professional levels have done little to prevent and penalize excessive on-field violence. While league administrators do not directly require players to engage in violence on the field, they reward on-field violence by providing incentives for winning games with violent tactics. Furthermore, team and league administrators benefit by selling tolerable violence to fans. Players have no grounds to refuse to take part in this violence on the field, apart from leaving the sport.

League administrators and to a lesser extent the Canadian legal system have created an arena of tolerance in football where players have no recourse and receive no compensation for injurious acts of violence on the field. This tolerance constrains the players, who are not being directly coerced into committing and consenting to violence on the field, but their success in the sport will be limited if they do not do so. Furthermore, players have limited freedom to decide the extent to which they will consent to acts of violence on the field, as their perspectives on the limits of consensual violence are disconnected from the actions of league officials.

The threat of being labelled feminine, or as "not a real man," forms an additional constraint on consenting to violence in Canadian football. Beyond making a team and earning the financial incentives of scholarships and bonuses, players must contend with the constant threat of being labelled by coaches and other players on their team as lacking sporting masculinity. Sporting masculinity, and its ideals of violence and aggression, are constraints

on a player's decision to commit or consent to violence on the field.¹ To not consent to or engage in on-field violence could lead to criticisms of one's masculinity and identity. Men who do not live up to masculine rules on the football field are labelled, or threatened with labels that denote femininity, a serious insult in the hyper-masculine realm of football.

Violence in Canadian football has become a commodity. Paying spectators expect to see violent tackles on the field. Fans often cheer louder for a hard tackle than they do for a brilliant pass or running play. Likewise, televised football games often repeat hard tackles in slow motion, rather than highlighting exceptional athletic feats. In so doing, the media is able to heighten the dramatic appeal of on-field violence. The majority of players interviewed also indicated that spectators encourage violence on the field, even in amateur settings. As such, the expectations of fans can place a constraint on players' degrees of freedom to choose to engage in and consent to violence on the field.

As I noted at the start of the chapter, constraints often lead to behaviours perceived as criminal or deviant in order to alleviate restriction. To address the constraints of violence on the field, some players use illicit steroids to gain size and strength, allowing them to be more aggressive and violent, and take painkillers to numb the pain of injuries caused by on-field violence. Furthermore, some players believe that steroids help to aid in the recovery of injuries that result from the perpetration and victimization of excessive on-field violence.

1 For a more detailed discussion of sporting masculinity in Canadian football, see Fogel (2011).

Like steroids, painkillers represent a way to alleviate some of the constraints of on-field violence. By temporarily numbing the physical pain associated with such acts, painkillers can lessen a player's concern about on-field violence. According to the majority of players I interviewed, using painkillers is perceived as a masculine response to injury. Those who do not use painkillers, and instead opt to miss plays and games, are labelled as "soft" and "weak." Like steroids, the use of most painkillers is not illegal with a medical prescription; however, some players acquire them in illegitimate ways.

HAZING CONSTRAINTS

Several constraints contribute to how and why players consent to and perpetrate hazing in Canadian football: the team's tradition, being part of the team, the threat of feminine labels, the secrecy of the act, and the tolerance of team coaches.

Several players noted that hazing is a cyclical process where the hazers' experiences as rookies leads them to feel justified in hazing subsequent generations of players. One of the problems with this attitude is that it leads players to come up with initiation rituals that are more severe than those used the year before. As one player suggested in chapter 3, each year the hazing ritual becomes more severe, until it gets to the point where a group of veterans thinks things have gone too far, or an outside party steps in, such as a university administration.

Traditions of hazing extend well beyond acts within a particular football team from year to year. It has a long

history in North America,² and has become so ingrained that it exists in religious organizations, fraternities, the military, high schools, dormitories, and athletic teams (Nuwer, 1990, 2001, 2004). The athletic teams that engage in hazing are not only comprised of men in masculine sports. Bryshun and Young (2007, p. 308) described a hazing ritual on an adolescent girls' soccer team termed a "kidnap breakfast." It involves team coaches entering the homes of rookie players, cajoling them out of bed at 7 a.m., and placing them in the back of the coach's minivan, where they presumably then go out for breakfast with the team. Hazing in Canadian sport is pervasive, found across all levels and types. To stand against these rituals is to stand against long-established traditions of hazing on one's team and in Canadian sporting culture more generally. As such, this history places a constraint on players' freedom to choose to engage in and consent to hazing rituals.

To become part of a football team, players must go through some form of initiation. None of the fifty-nine players to whom I spoke reported avoiding an initiation process when they joined their current teams. According to them, there is really no way to get out of it. Players perceive initiations as a process that they "have to go through" to "be part of the team." They suggest that they can resist certain rituals, but they must undergo some form of initiation before they can be fully accepted on a team. While players might consent to certain acts of hazing, they do so under the constraint that they must in order to become full members of their team.

2 For a detailed history of hazing, see Trota and Johnson (2004).

A mark of masculinity in Canadian football is the extent to which players are able to comply with various initiation rituals. Several indicated that compliance with them shows “guts,” “courage,” and “real balls.” Many described by players involve embarrassing tasks, such as singing in front of large groups of people. The aim of an embarrassing initiation ritual is to have rookie players put their pride aside for their team; to do so is perceived by teammates as a courageous act. According to several players, refusing to take part in such a ritual could lead to labels of “sissy” or “pussy,” and their teammates’ loss of respect. Several players also indicated that a mark of manliness was to win initiation competitions. For example, one junior player indicated that being able to chug the most syrup was “the sign of a real champ.” Others indicated that the consumption of alcohol was often a central feature of hazing competitions. According to the players, rookies who are able to consume large amounts of alcohol are deemed manly. Those who are not able or willing to consume copious amounts of alcohol are labelled “girls.”

According to Young (1983), perpetrating extreme forms of hazing can result in masculine valorization on a team. Quoting a team rugby newsletter, Young wrote,

The man who decided to place the red-hot marshmallows on the top of the beer bottle for better penetration will be elected to the M_____ Rugby Hall of Fame. For many of the lads it marked the first time in their lives that their arseholes were really on fire!
(1983, p. 131)

Players willing to put rookies through harsh initiations are perceived as team leaders with traits of superior

masculinity compared to other members on the team. Their acts of hazing are deemed worthy of admittance to their team's "Hall of Fame." This celebration of hazing is a further constraint on players' decisions to engage in it, as doing so is to be labelled masculine, and failing to do so is considered feminine.

Hazing often occurs behind closed doors, outside the purview of non-team members (Kirby & Wintrup, 2002). The privacy of the act could be considered a space constraint that influences players' decisions to consent to it. Since there is no one to witness the act, players know that they will likely not face any sort of penalty for engaging in hazing. If one player spoke against the team, it would be his word against the rest. Players are not, however, likely to report incidents of hazing because it would damage team cohesiveness. As I discussed earlier, team cohesion is considered important to the informal economy of protection on the field, and to becoming a well-functioning unit.

The privacy of the act also makes it a shared secret for a team. The secretive aspects of hazing add constraints to players' decisions to haze and be hazed, as team members are the only ones present and are not likely to go against the demands of their teammates. To do so would limit the trust that players have for one another when they step out onto the field.

Many incidents of hazing in junior and university football in Canada take place either in the presence of coaches or with their knowledge. This diminishes the privacy of the act to some extent, but it does not appear to provide much relief from constraints. The coaches' tolerance of hazing lends some legitimacy to it, reinforcing notions of building cohesion. The presence of a coach

shifts the act from being a hazing to merely being a form of team bonding, and then constrains a player's free choice to participate in initiation rituals. With a coach supporting and supervising the acts, players are less likely to withdraw their consent for fear of appearing uncommitted to a team, just as they would if they failed to follow a coach's directions on the field of play.

PERFORMANCE-ENHANCING DRUG USE CONSTRAINTS

Various constraints on Canadian football influence players' decisions to consent to performance-enhancing drug use. These include the demands of the sport, the need to keep up, the paradox of performance-enhancing drug use, and the tolerance league administrators and the Canadian legal system demonstrates for the act.

The competitive and masculine demands of the sport of football require players to be big, strong, fast, and athletic. Through the chemical augmentation of steroids, players can achieve athletic feats that they would not otherwise be able to do. Steve Courson (1991) asserted that he was able to gain over thirty pounds of muscle mass in a single month while on a steroid cycle, and they helped him to drastically increase his running speed. Constraints from the demands of the sport are limitations on the free choice to engage in steroid use. A CJFL running back affirmed that for some players, "steroids become a way to realize their dream." Courson (1991) calls this type of steroid use, done to meet the demands of the sport, "vocational drug use" because athletes use them to become more productive at their jobs.

The demands of the sport of football can be particularly difficult for players who face the limitations of genetics, injuries, age, and training time. Some men are able to grow muscle mass with little effort, while others can spend hours lifting weights and eating high-calorie meals without gaining a pound. As such, some men's physicality allows them to access the sport of football more readily than others. Some men who do not have that genetic potential turn to steroids to achieve the strength and weight gain of their genetically gifted counterparts.

Likewise, some feel constrained to use steroids because other players are using them. Non-steroid users are then at a disadvantage, and must use the drugs to level the playing field in the tough competition for jobs, playing time, status, and masculine identity. Players who are aging or who have experienced injuries may also turn to steroids to compete with younger men who have healthier bodies. Some see steroids as a way of gaining the strength of their more youthful playing days.

One professional running back suggested that steroid use in the CFL was not as prevalent among the star players as it was among those attempting to make teams from year to year. According to this player, steroid use in the CFL is largely a result of the pay structure that forces many players to take jobs during the off-season to earn a reasonable living and to support their families. The limitations of time and the need to keep up in a highly competitive and physically demanding sport create multiple constraints for players to consider.

According to several players, if no one was using steroids, then the risk of injury caused by larger, heavier men and muscles that grow too quickly would be much less

pervasive. However, as long as players are using steroids, this paradox will continue to exist, creating a further constraint for Canadian football players to negotiate when deciding whether to use performance-enhancing drugs. Players are pulled in one direction to be bigger, stronger, and less vulnerable to injuries from other men on the field; yet simultaneously they are pulled in another, toward damaging health consequences and the increased risk of certain injuries attributed to steroid use.

While no player indicated that a coach had ever directly suggested that he use steroids, their use is tolerated by officials in Canadian football. For example, a football coach at Mount Allison University allegedly knew that two of his players were using steroids, but continued to let them play without notifying any league authorities to have them tested. The players were subsequently tested, and failed. The coach, Marc Loranger, was fired. However, in a civil suit following the incident, he made the case that he had been wrongfully dismissed and was awarded five-sixths of his salary for the year (*Loranger v. Mount Allison University*, 1998).

Dealing with constant encouragement to be bigger, stronger, and better at their jobs, and the need to keep up with others in a competitive work environment, players are faced with a number of constraints when deciding whether or not to use performance-enhancing drugs. The apparent tolerance of steroid use by coaches, league officials, and the Canadian legal system adds to this constraint, further limiting the degrees of freedom that each player has when making this decision.

Donnelly (2008), while not specifically using the term constraint, lists a number of pressures that lead some

athletes to use performance-enhancing substances. He includes a “culture of excellence” that only values winning, the “medicalization” of society that emphasizes drug use, the “rationalization of the body” that treats bodies as trained objects distinct from personhood, the “professionalization of sport” that adds extra incentive to excellence, and the “demand for records” that expects athletes to be stronger and faster than their counterparts from previous eras (Donnelly, 2008, p. 20). All of these pressures could be considered constraints, as I have defined them.

SUMMARY

Numerous constraints limit the degrees of freedom by which Canadian football players are able to consent to on-field violence, hazing, and performance-enhancing drug use. The legal issue of discerning consent in Canadian football fails to take into account these and other possible constraints. As I revealed in this chapter, players are not able to provide free and informed consent, because it is invariably constrained by a number of factors.

The concept of constraint is important in determining the extent to which individuals freely choose to engage in particular criminal acts. Free and informed consent is not possible in this context, as consent is always constrained by factors that limit the degrees of freedom that an individual has. When individuals commit crimes, they do so with numerous factors pushing and pulling them, constraining their culpable intent. Despite the clear importance of constraints, especially in this examination of Canadian football, the notion remains largely absent from legal discourse and scholarship.

7

Implications of this Research

Injurious on-field violence is extensive in Canadian football. However, league officials at the university and professional playing levels are doing little to prevent, curb, or punish these acts. Hazing continues at alarming rates, as each of the fifty-nine players I interviewed reported experiencing some form of initiation when they joined their current team. Performance-enhancing drug use among football players is similarly common, with each player stating that although he himself did not use illegal steroids, he knew at least one other Canadian football player who currently is. Despite the prevalence of violence, hazing, and performance-enhancing drug use in Canadian football, little is being done to address these issues at the junior, university, or professional playing levels.

I have argued in this book that these acts are tolerated by individuals in positions of power because they serve

the interests of capital accumulation and create precarious labour conditions for football players. Team owners and league officials are able to profit from selling tolerable violence, which in turn allows them to evade workplace health and safety regulations, deny paying injury compensation, and avoid providing adequate job security. The free and informed consent of Canadian football players to engage in these acts is constrained by these and other related factors.

The various personal issues faced by players in Canadian football include serious injuries, chronic physical pain, and psychological harm. They are complicated by the fact that players get little support from their teams or league, especially if they can no longer play. The friends and families of some Canadian football players must deal with their violent mood swings, addictions, and lack of emotional awareness, all lost on the gridiron.

Various legal and sport scholars have proposed a number of reforms to resolve some of the issues I have presented in this book. In conclusion, I consider the viability of eight of these legal and/or institutional reforms: (1) increasing social control, (2) encouraging self-regulation, (3) balancing legal reform, (4) creating federal commissions, (5) allowing sport to exist in a “state of exception” (6) developing networks of social support, (7) establishing prevention programs, and (8) furthering sports law in Canada.

The social control theory holds that the best way to deal with crime and deviance in sport is to increase criminal prosecution (Gulotta, 1980; Yates & Gillespie, 2002; Voicu, 2005). Proponents of this “tough on crime” approach advocate increasing crime control as a deterrent

to keep players from committing acts of on-field violence, hazing, and performance-enhancing drug use. It focuses on punishing individual football players who engaged in the acts, instead of those who promoted and tolerated them, such as the coaches, team owners, and league management officials. There is the risk that criminal responsibility will be placed on the individuals committing the acts, rather than those promoting and benefitting from them.

Another approach for dealing with issues of crime and deviance in sport is to promote the self-regulation of particular bodies of sport (Eugene & Gibson, 1980; Standen, 2008). Penalties provided by a sports league tend to be quick and certain. In contrast to this approach, the formal social control model is often long and drawn out, as court cases can take months, if not years, to be resolved. Standen (2008) argued that league penalties are often more severe than legal ones, and provide a better deterrent. For example, after choking his coach during practice, NBA basketball player Latrell Sprewell was suspended for the remainder of the season without pay, and his contract was terminated, which was valued at over \$25 million. According to Standen (2008), this was likely the most severe penalty given to an individual for a common assault. But two issues plague this reform. First, it punishes the player while ignoring the individuals in positions of power who are promoting the deviant acts. Second, Canadian football is currently governed this way and yet, various problems relating to on-field violence, hazing, and performance-enhancing drug use continue to exist.

A third possibility is balanced legal reform (DiNicola & Mendeloff, 1983). The goal of this approach is not

increased social control and prosecution of crime, as proponents of this reform perspective see those options as being “as troublesome to apply as [they are] intrusive on play” (p. 845). Instead, the idea is to strike a balance between the need for social control in sport and the desire of athletes to compete in violent sports. Such reforms could include writing provisions into the Canadian Criminal Code that specifically address violence in sport, or tabling an act that clearly delineates what is considered consensual violence, hazing, and performance-enhancing drug use in sport. White (1986) proposed that laws be clarified through a variety of “bright-line tests” (p. 1048). The tests would set clear guidelines for acceptable and non-acceptable violence in sport. For example, acts of non-consensual violence become criminally prosecutable if they happen after a play has been whistled down, but those occurring during play are afforded leniency. Such legal reforms could have positive results in that increased legal attention will be paid to the intricacies of sport; however, the athlete still remains as the focus of attention. Such reforms should also develop provisions that denote the liabilities for others promoting and tolerating deviance in sport, such as coaches, team owners, and league management officials.

Another proposed institutional and legal reform is to create governing bodies that have the specific purpose of mediating sporting disputes (Blackshaw, 2002; DiNicola & Mendeloff, 1983; White, 1986). This would allow for increased specialized knowledge regarding sport cases, quicker responses and settlements than those provided by the legal system, and less intrusion on the sport. A commission to handle disputes in sport does currently exist,

called the Sport Dispute Resolution Centre of Canada (SDRCC). At present, however, it does not routinely deal with all sport disputes in Canada. The cases it handles tend to involve labour agreements, rather than incidences of injurious violence, hazing, and performance-enhancing drug use. Further developments of this federal commission could enable it to give specific attention to sport-related issues without burdening the Canadian legal system. One difficulty faced in prosecuting acts of deviance in sport is the challenge to understand both the rules and norms of a given sport, and the legal conventions surrounding the possible criminal incident. A federal commission could develop this specialized knowledge to effectively deal with these intricacies.

Rather than making specific attempts to deal with legal matters in sport, a fifth approach to reform advocated by some is to allow sport to exist in what Giorgio Agamben (2005) terms a “state of exception.” Agamben refers to the state of exception as one of lawlessness during wartime crises. Sport, already outside the jurisdiction of the law, could be treated as a state of exception existing beyond formal governmental control and regulation. This does not necessarily suggest there are no rules, but that the rules that do exist are beyond governmental regulation. Just as there are rules of engagement during a time of war, sport could have its own rules of engagement existing outside of Canadian law. This notion ties to the German legal notion of *Sozialadäquanz*, which requires that “society tolerate those injuries that are unavoidable concomitants of playing the game the way society desires it to be played” (Michigan Law Review Association, 1976, p. 177). But with few legal cases addressing

on-field violence, hazing, and performance-enhancing drug use, Canadian football already exists in a state of exception, and yet this only appears to exacerbate the issues. As such, this approach is not a viable solution.

In the National Football League, a number of services and support networks have been created to help athletes after their careers as professional football players have ended. For example, the National Football League Players' Association (NFLPA) has a Retired Players' Association to help those men tackle the issues they must face after leaving the sport. Recently, the Retired Players' Association won a civil suit of \$28.1 million in damages for contractual violations on behalf of 2,062 former NFL players (Johnson, 2008). Other organizations have emerged, such as the Fourth and Goal Foundation, which provide financial and social services to retired players and their families. Retired players in Canada do not have similar support services, which could help them and their families address many of the problems resulting from chronic pain, addictions, mental health issues, and health care costs.

Many of the strategies being used to deal with the social problems in football, and sport more broadly, are reactionary. They attempt to remedy the problem after it has occurred. We must make more attempts to prevent social problems in sport before they arise. One recent attempt to develop preventative programming is the Canadian Centre for Ethics in Sport's requirement for all junior and university athletes to complete an online training seminar on the damaging effects of performance-enhancing drug use. Likewise, researchers have begun experimental studies on the use of team-building games and exercises with athletes to help prevent hazing in sport

(Johnson & Homan, 2004). More preventive strategies need to be inaugurated and developed along these lines.

A CFL contract consultant, or agent, whom I interviewed suggested that an important development in sport could be a concentrated area of sports law. Sports law is not recognized as a type of law in Canada or the United States, and no Canadian universities offer specialization in the topic. Several law schools offer a class in sport law, but none offer a concentration. An agent I interviewed, who is also a lawyer, suggested, “there is really no such thing as sports law in Canada. Even in the United States, where several universities do offer specializations in sports law, there is still no such thing as sports law.” Sports law falls into other categories: criminal law, administrative law, civil law, contract law, employment law, labour law, procedural law, and substantive law.

Developing a concentration in sports law could allow legal professionals with knowledge of the intricacies of sport and the law to specialize in that area. It could facilitate further research in law faculties and in other disciplines on issues related to sports law, crime, and justice. These developments could lead to important legal and institutional reforms, alleviating many of the issues related to on-field violence, hazing, and performance-enhancing drug use in Canadian football.

LIST OF INTERVIEWS

Study Participants

JUNIOR PLAYERS	UNIVERSITY PLAYERS	PRO PLAYERS	
Defensive back	Cornerback	Offensive lineman	
Wide receiver	Offensive lineman	Quarterback	
Running back	Quarterback	Linebacker	
Linebacker	Wide receiver	Defensive back	
Defensive back	Running back	Fullback	
Offensive lineman	Defensive back	Fullback	
Running back	Wide receiver	Defensive lineman	
Cornerback	Linebacker	Wide receiver	
Wide receiver	Placekicker	Running back	
Linebacker	Running back	Offensive lineman	
Full back	Offensive guard	Offensive lineman	
Defensive back	Running back	Safety	
Defensive end	Defensive back	Linebacker	
Defensive back	Full back	Center	
Slot back	Defensive back	Defensive back	
Defensive back	Defensive end	Offensive lineman	
Center	Running back		
Wide receiver			
Center			
Nose tackle			
Offensive lineman			
Safety			
Defensive back			
Cornerback			
Defensive end			
Quarterback			
<i>totals</i>	26	17	16
<i>overall</i>	81		

JUNIOR ADMIN

Coach

Undisclosed

Team trainer

Undisclosed

Undisclosed

Undisclosed

Referee

Undisclosed

Team President

UNIVERSITY ADMIN

Athletic Director

Athletic Director

Referee

Coach

Coach

Undisclosed

PRO ADMIN

Undisclosed

Undisclosed

Referee

Undisclosed

Player agent

Player agent

Undisclosed

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