



## One argument the league could make [UPDATED - NOW LESS FLAWED!] 🗨️

by Quisp on Jul 22, 2010 1:49 PM PDT in Kovalchuk 38 comments

*I'm not a lawyer or any kind of accredited expert, and there's no way I know more about the CBA than the pros do. So there must be a high degree of probability that everything I am about to say is wrong. You have been warned.*

[update #1: I was wrong about at least one part, and I am re-examining all assumptions based on that. See the comments for the evolution of my disagreeing with myself. I am leaving this post up in order to give people with too much free time -- like me -- a chance to weigh in on where my reasoning is wrong. So, consider this a rough draft of a possibly doomed idea. Also, if you're the kind of person who only wants to put verifiable facts and conclusions in his/her brain -- which on the topic of the CBA is totally understandable and I may soon join you -- I advise skipping this post entirely.

Aren't you glad you were warned?]

**[UPDATE #2: I believe I have figured out the problem and the solution. I was right about the conclusion but not about the reason (what you call a Gettier Problem, eh?); but I have crossed out false parts and added new, improved truth. New bits in italics. All original italics have been removed.**

**Note, original "you have been warned" warning still in effect. :)]**

\*\*\*

If a player and club enter into an SPC the parties have no intention of fulfilling, and the contract is front-loaded to artificially lower the cap, the effect of this is to drain real funds from the Escrow Account, because the offending contract's increased salary relative-to-cap is ~~reducing the declared revenues of the team, which in turn makes the overall revenues lower, which requires every player in the league to forfeit a greater percentage of his salary than he would otherwise, because the players' share of salary is a fixed number, and the offending player's "extra" salary (relative to his artificially low cap) comes out of the players' share, forcing everyone to take a hit.~~

Artificially lowering the cap hit by extending the term of the contract costs other players money in the present. This is, in and of itself, not a circumvention, **provided that the player plays to the end of his contract**. Because, at the end of the contract -- more than a decade in the future -- the player's salary, relative to cap hit, is tiny (instead of huge), and the result is a benefit to the players' escrow reimbursements.

~~The other effect of having extra salary on the books in a given season is that it lowers declared revenues for that season, which translates to less revenue sharing for the poorer clubs, who depend on it. This, in turn, means the richer clubs benefit not merely by getting to sign players they would not ordinarily be able to sign, but by (1) essentially charging the overage to the Escrow Account, and (2) giving less of their revenue to the losers at the bottom of the food chain.~~

However. Once again, this is not a circumvention, provided that the player plays to the end of his contract.

But if neither the team nor the player has any reason to believe that the player will be playing seventeen years in the future, if in fact something less than 1% of NHL players in history have ever played at age 44, if nobody -- not the club, not the player, not the league, the fans or any random person on the street (really, try it!) -- thinks there's any reasonable expectation that the guy is going to play those last years, and especially not at less than 1/20th of his original salary...

...that's a circumvention of the CBA.

And it's not a "victimless crime" either. It screws the other players ~~and the other teams~~ out of money to which they are entitled, by that very same CBA. The promise of ~~revenue sharing, and the possibility of the players getting more money if revenues go up, are cornerstones~~ *is a cornerstone* of the CBA, which the owners, the players, the union and the league all voted for.

Oh but wait. I almost forgot.

Yes, the players ~~and the "low revenue" teams~~ get screwed in the early years of the contract, but there is a second screwing at the end of the contract which is the direct consequence of the fact that the player has retired before he ever gets to those minimum wage years.

Because the player will have retired, his now low salary (relative to cap hit) years are off the books. If he had played, the low salary years ~~would have benefitted the bottom feeding clubs because of increased revenue sharing (because the rich team would have less deductible salary relative to cap hit), and which would have benefited the players because they would get more kicked back to them out of escrow (again, because the team can't~~

~~deduct as much salary that year, the player is taking very little from the players' share, relative to his cap hit~~). But no. Those low salaries are gone, right when they would have been a burden to the offending team (~~puny deduction relative to~~ huge cap hit sucking up valuable pay-roll room). And the result of that is, a double-screwing ~~the poorer teams and all of the players in the union,~~ and of course the fact that the offending team is able -- by this maneuver -- to field a better (more expensive) team than the CBA allows, which gives them an unfair advantage over rival clubs. Which is really another way of saying, they are screwing the league and the NHLPA.

Which might be one reason the league is objecting. And why I am curious to see how the NHLPA handles this.

Read More: [Ilya Kovalchuk \(LW - NJD\), Los Angeles Kings](#)

#### Comments

I hope the league knows all of this...

Look, I don't care where Kovalchuk plays next year. But I don't like these types of contracts.

Fact of the matter, is if the Devils pay Kovalchuk \$11.5 million for five years, yet only have a cap hit of \$6 million, they'd theoretically be able to get another great player with that \$5 million or so... Two great players at, really, the cost of one (yes, that is all dependant on the actual salaries that year, but I'm not gonna making up numbers)

GMs and owners will always look for ways to get around the CBA. That's the nature of the sporting business. But this was just utterly blatant.

*Denis Gauthier sucks at hockey... and life.*

by [Kevin Y](#) on Jul 22, 2010 1:08 AM PDT [+](#) [reply](#) [🔗 actions](#)

#### Grossman should be suspended for this deal

I still don't see how a reasonable person (arbitrator) can not see that the Kovalchuk contract is purely structured to circumvent the cap.

The league will show the arbitrator that the client wanted a \$100/10 year deal. NJ gave him a \$98.5/11 (\$8.95 cap hit) deal. That should have been the deal signed, except NJ couldn't take on that cap hit so they added 6 years and \$3.5 million to the contract for the sole purpose of lowering the cap hit.

This is not a hockey deal for a declining player in his 40's. Recchi just got \$1+ million at 43 and Modano is looking for \$1.2 per year (for 2 years). These hockey players are not going to sign \$3.5 million over 6 years at any point in their careers.

As soon as Grossman or Lou bring up the other contracts, the arbitrator could say that those contracts have nothing to do with the Kovalchuk contract that is being questioned. Different client, different agent, different GM and a completely different structure.

You could also argue that Hossa would probably take a \$4 million/4 year deal to play out his career in Chicago. He's getting older and would like to stay with the organization and \$4 million over 4 years isn't a bad deal at 38. Hossa's contract is a smart long-term hockey deal with a reasonable decline in salary at the end.

How are Grossman and Lou going to argue those last 6 years of the Kovalchuk contract? Especially Grossman, he just got his client a \$98.5/11 contract, why commit to 6 more years at \$3.5 million? Charity for the love of the city that he was been in for a few months? No reasonable person (arbitrator) is going to believe that. No player would ever take a \$3.5 million over 6 year contract, ever. Maybe a 1 year deal at \$550,000 to prove your worth (Afinigenov), but no one would commit to 6 years at \$3.5 million.

by [Sydor25](#) on Jul 22, 2010 6:57 AM PDT [+](#) [reply](#) [🔗 actions](#)

I have read the CBA nowhere does it say you can only sign them to a certain age and the salary structure is also within the rules. This is just the league making a point that in next cba it will be different. But as it stands this deal is within the rules.

by [KingHellfire](#) on Jul 22, 2010 8:16 AM PDT [👍 up](#) [+](#) [reply](#) [🔗 actions](#)

#### Your Other Effect

*The other effect of having extra salary on the books in a given season is that it lowers declared revenues for that season, which translates to less revenue-sharing for the poorer clubs, who depend on it.*

Beyond Article 50's definition of Direct Costs, I haven't seen anything in the CBA that supports the idea that a team can subtract Player Salaries from Gross when determining HRR. Article 49, which deals specifically with Revenue Sharing, gives us Preseason and Regular Season Gross Net of Arena Costs, but nothing about Net of Player Salaries.

But think about it for a minute. The CBA sets Player Salaries, in sum, at 57% (or whatever) of HRR. If clubs were permitted to deduct labor costs from that figure, the Players Share wouldn't be 57%. It'd be 57% of 43% and if that were the case, no club would be losing money — how could it? Their labor costs would be just 24% of Gross!

Secondly — It's difficult to imagine Small Market owners standing still and allowing the Big Market clubs to pick their pockets this way.

Until we have a better understanding of how the league determines HRR — something more substantial than a definition of Direct Costs — I don't think the second part of your theory holds.

by [Lars H](#) on Jul 22, 2010 7:32 AM PDT [+](#) [reply](#) [🌐 actions](#)

### Lars, we went over this in the other thread, the last time you brought it up.

Here's what I said then:

no, that just means that the definition of "arena costs" does not include player costs, which are defined and included elsewhere.

#### 50.1 Hockey Related Revenues, Club Affiliated Entity and League Affiliated Entity.

(a) "Hockey Related Revenues." "Hockey Related Revenues" or "HRR" for each League Year means the operating revenues [...] from all sources [...] relating to or arising directly or indirectly out of the playing of NHL hockey games or NHL-related events in which current NHL Players participate or in which current NHL Players' names and likenesses are used, by each such Club or the League, or attributable directly to the Club or the League from a Club Affiliated Entity or League Affiliated Entity, as expressly set forth herein, and is subject to any inclusions or exclusions as expressly set forth in the Article 50.

The parties have described Hockey Related Revenues with a nonexhaustive list of Hockey Related Revenues (net of Direct Costs as defined herein, where specified herein), in order to permit the inclusion of new revenue streams (net of Direct Costs where agreed upon between the parties herein, or, failing agreement, by ruling of the System Arbitrator), to be included automatically, without a new or separate negotiation, subject to the provisions below.

"Direct Costs" shall mean any costs, including fixed and variable costs, attributable to a revenue-generating activity. For example, the salary of an individual employed by a Club or Club Affiliated Entity whose duties contribute to revenue activities specified in this Article 50 may be apportioned among such revenue activities specified in this Article 50 as a Direct Cost to the extent such netting of Direct Costs is permitted [...].

There are several pages of the CBA dedicated to instructing accountants how to check and double-check player salaries and bonuses to ensure that the amount paid is the amount included in the HRR to offset revenue.

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 7:53 AM PDT [👍 up](#) [+](#) [reply](#) [🌐 actions](#)

### Just to be clear

what you're suggesting is, despite the fact that HRR is defined to be net of direct costs which are defined in the sweeping manner above, and despite the fact that the CBA expends several pages instructing accountants how to check and double check players' salaries to insure that they are correct in the HRR...

...despite all of this, somehow players' salaries are not considered a direct cost.

That's crazy, in my opinion.

Just think about that. The CBA requires rich teams to give a portion of their earnings to poor teams. But the rich teams would somehow allow a CBA that makes them cough up millions in profits to teams that spend tens of millions less on player salary than they do? Aside from everything I quoted from the CBA, it's just common sense that they are allowed to deduct players' salaries as direct costs.

And it's even worse for the teams that make no money. You would have us believe that the teams that are in financial distress are forced to declare revenue as if they didn't have player salaries to pay. That would result in the players getting even more money (via escrow reimbursements) out of their own pockets.

I believe about 60% of a team's operating costs goes to player salaries. Obviously that would vary from team to team. And that fact alone requires player salaries to be included. If they weren't, the owners wouldn't ever have signed off on it.

It just makes them look like they're making money they're not making.

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 8:09 AM PDT [up](#) [reply](#) [actions](#)

## Not Crazy

I believe about 60% of a team's operating costs goes to player salaries. Obviously that would vary from team to team. And that fact alone requires player salaries to be included. If they weren't, the owners wouldn't ever have signed off on it.

Well, according to the CBA, player costs should be Capped at 57% of Revenue. To determine Income (or Profit), one would start with Revenue, subtract out that 57% (are whatever), then start subtracting out all the other expenses and wind up with a considerably smaller number. There's no way HRR is that considerably smaller number.

Here's a chart from Forbes. It shows estimates of each Club's Revenue and Income. The Total Revenue for 2009, according to Forbes, was \$2.82B (which seems high, but it's an estimate) and Income was \$183.5M. Which number is likely the one used to determine the league wide Salary Cap — the \$2.82B or \$183.5M?

Player Salaries just cannot be deducted from HRR. It doesn't add up.

by [Lars H](#) on Jul 22, 2010 8:35 AM PDT [up](#) [reply](#) [actions](#)

## Oops

forgot to link the chart: <http://hfboards.com/showpost.php?p=26891588&postcount=41>

by [Lars H](#) on Jul 22, 2010 8:36 AM PDT [up](#) [reply](#) [actions](#)

## I Know

And I remain unconvinced. Direct Costs refers to all that other stuff — insurance, security, the guy who sells t-shirts — not Player Salaries.

Following the definition of Direct Costs — which only indirectly refers to Player's Salaries — Article 50 spells out what's included and what isn't in HRR. Typically, when Direct Costs are referenced, they are usually accompanied by an "including, but not limited to" clause. For example, the following describes how Pre Season Games figure in to HRR:

Pre-season Games: All revenues received by a Club or a Club Affiliated Entity derived from the playing of pre-season games, including, without limitation, gate receipts, fees from third party promoters, governments or arena operators derived from the playing of home pre-season games and appearance fees earned from the playing of away pre-season games, net of appearance fees paid to visiting teams for home pre-season games (all such revenues net of admission, GST and other provincial and state or local taxes, and any other charges imposed by government regulation, and net of Direct Costs, including, without limitation, in the case of pre-season games, insurance costs, immigration costs, arena rent, team travel and lodging costs, provided, however, that the Direct Costs that may be netted against total revenues generated by pre-season games shall not in the aggregate exceed fifteen (15) percent per League Year on a League-wide basis);

Since Player Costs are far and away a club's biggest cost, it's odd that an "including, without limitation" clause would skip right over it.

by [Lars H](#) on Jul 22, 2010 8:18 AM PDT [up](#) [reply](#) [actions](#)

## I'M TOTALLY WRONG ABOUT THE DIRECT COSTS

I was thinking about what you said:

The CBA sets Player Salaries, in sum, at 57% (or whatever) of HRR. If clubs were permitted to deduct labor costs from that figure, the Players Share wouldn't be 57%. It'd be 57% of 43% and if that were the case, no club would be losing money — how could it? Their labor costs would be just 24% of Gross!

Players salaries (just looked it up) are around 75% of total revenues. The average salary in 2009 was about \$1.9MM. That's about \$1.2 billion, which is indeed about 54 (or whatever) % of the total revenues of the league.

So I totally disagree with myself. If I were right, the league would get to deduct the \$1.2 billion and the revenues would only be \$1.3 billion-ish, and the players share would about half of what it is.

Let me think about why this makes sense, given what I said above about how it makes no sense.

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 8:33 AM PDT [up](#) [reply](#) [actions](#)

.38% (4/1042) of non-goaltender players that played at least 500 NHL games played at the age of 44.  
(This only includes retired players and assumes chelios is retired. If you don't restrict to retired players, 4/1248, or .32%)

[Link](#)

*On the Mike Weber bandwagon.  
Tyler Ennis: Freed from Portland!*

by [Ubiquitous](#) on Jul 22, 2010 8:04 AM PDT [+](#) [reply](#) [⚙️ actions](#)

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**Thanks. That's great.**

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 8:09 AM PDT [👍 up](#) [+](#) [reply](#) [⚙️ actions](#)

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Hey, I don't know if everyone's seen this, but a lawyer named Danielle made some great comments on the whole matter over [at the Insider](#) yesterday (scroll down to replies to IceGuy). Sorry for the big chunks of text.

On potential penalties:

**Danielle Reply:**

@Iceguy, There are two different processes here – one for the contract and one to investigate the circumvention. Just because the contract potentially circumvents the contract, it does not necessarily mean that they will find a violation of the circumvention provisions sufficient to result in fines, etc. (I realize that is not necessarily logical, but we are in CBA-land, here, logic doesn't apply).

**The fines and penalties you reference are permissive and there is also a meet and confer between the league and the players association before it gets to that point.** If they can't agree, then it goes to arbitration and if the arbitrator finds circumvention, then those fines can be imposed. But if the league and PA agree on a different form of discipline, or believe, for instance, that there was a circumvention but not severe enough to warrant penalties, then it never goes any farther. So anything can still happen...

On the strength of the league's case:

**EASportsMgt:**

[...] I'm curious for your thoughts, do you think the PA files a grievance or asks Grossman to go back and renegotiate the contract with NJ?

**Danielle Reply:**

...As I read Article 11, which deals with the rejection of contracts, they do not have to prove the intent, just the effect. So even if they did not intend for the contract to circumvent the cap, it can still be rejected because the effect is to do so.

The same is true for Article 26 – it uses the phrase "is intended to or has the effect of" circumventing "the provisions of this Agreement or the intention of the parties as reflected by the provisions of this Agreement". That is also another place where it gets interesting because they are looking at the intent of the parties in the CBA negotiations, not just the actual final words of the CBA, which often are vague – basically, what the CBA means, rather than just what it says.

**So it is actually an easier burden of proof for the league – they only have to prove the effect, not the actual intent.** And that is why I think there is a relatively clear-cut situation here. Kovi could have fully intended to play 17 more years (cough **yeah right** cough), but the effect is clearly a circumvention of the cap, especially considering there is little chance the league minimum in those last 6 years will be as low as \$550K.

I think the PA is in a really tough situation here. As numerous people have pointed out, these kinds of contracts hurt the PA's members as a whole to the benefit of the stars. On the other hand, taking a stand here could set up strategy for the next round of CBA negotiations. So I think there are a lot of high level talks going on right now trying to determine what the best course of action is.

Grossman and Lamoriello, on the other hand, could find themselves in a pretty sticky situation given the certifications required under Article 26. I think their best way to save face and be able to file those certifications is to go back and rework the deal. As has been pointed out, the technically cannot tweak/adjust this contract because it is void. But that does not mean they cannot go back and use these terms as a starting point to come up with a new contract. At this point, the league probably won't accept 17 years (I think they could have gotten away with it if they had been smarter about the numbers). Kovy is probably going to have to take less money and NJ is probably going to have to take a higher cap hit. Personally, I think that they almost should stick to their guns on 17 years and just back-load the contract a little more and shave some money off those \$11.5M years. That would bolster Kovy's statement that he intends to play for the full 17 years. Either that, or he should go with a much shorter-term deal of, say 7 years (which won't get him the annual salary he wants). If they go to, say, a 10-12 year deal, then it just strengthens the argument that he only ever intended to play that long and never intended to play the full term of the contract.

It's all fascinating to me... (and it would have been a great learning tool for my students had it happened 3 months ago).

**EASportsMgt Reply:**

In terms of the effect, is there a clear cut effect of circumventing the league rules?

One can argue that although the income falls off the last 6 years of the contract it is much different than Hossa's deal that goes down to 1 Mil in the final 4 years which takes him to his 42nd birthday. [...]

But going back to circumvention. I don't believe that in the language used, they brought up circumvention. I think they used "retirement contract" because again proving a circumvention is more difficult.

**Danielle Reply:**

I am not sure what you mean by your question about is there a clear cut effect? Do you mean what penalties there are, or do you mean what effect they would be looking at to say that yes, in fact, there is a circumvention? If you mean the latter, well, I think they look at a number of factors. In this case, the deal is structured in a way that during the years he is likely to play, he is making an average annual salary of over \$9M (or just under \$8M if you assume he plays until he is 40), but the annual cap hit is \$6M. There is too much of a discrepancy there. The CBA is structured to allow the team to use the average annual salary to calculate the cap, but the intent is that that average be a true reflection of what the player is making. **By extending this those extra few years, they structured a deal where the average salary for the years he is likely to play far exceed the cap and he can walk away at a typical retirement age without losing much money. So they circumvented the intent of the provision.**

by [Niesy](#) on Jul 22, 2010 8:27 AM PDT [reply](#) [actions](#)

Heh, don't know why the quote boxes came out wonky each time. Hopefully it's clear.

*In Dinglebarn We Trust*

by [Niesy](#) on Jul 22, 2010 8:29 AM PDT [up](#) [reply](#) [actions](#)

**Wow**

That lady's smart. If you're gonna be over at Rich's site, will you save us some time and copy/paste more of these jewels?

by [hughestom1](#) on Jul 22, 2010 8:43 AM PDT [up](#) [reply](#) [actions](#)

I think that's all she wrote, but yes, I'll keep a lookout for them. The clarity of her writing style is fantastic.

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by [Niesy](#) on Jul 22, 2010 8:58 AM PDT [up](#) [reply](#) [actions](#)

**Niesy, why don't you see if you can lure her over here with an offer of cookies or a trail of bread crumbs or something.**

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 8:59 AM PDT [up](#) [reply](#) [actions](#) 1 reccs

If she's anything like my lawyer friends, she probably enjoys lengthy discussions. :) I'll drop a link.

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by [Niesy](#) on Jul 22, 2010 9:06 AM PDT [up](#) [reply](#) [actions](#)

Whoops, I take that back, there's a lot more...BRB.

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by [Niesy](#) on Jul 22, 2010 9:13 AM PDT [up](#) [reply](#) [actions](#)

**First of all, thanks for hefting that over here.**

Second, the issue of article 11 procedures vs. article 26 procedures keeps coming up, legitimately, because the cba is not at all clear (shocking, I know) about how the process for rejecting a contract relates with the overall process.

She may be right that there is a separate (long and boring) process (per 26) to get to the penalties. But what's messed up about that is, the league has already "found" and concluded there is a circumvention, which is why they rejected the contract. And, further, the language they used (no rights, no contract, etc.) is specific to 116a(i) which means, essentially, that they are alleging (in fact deciding that there is actually) an article 50 violation.

To make that play nice with Danielle's point, I guess the league's "investigation" would be seen to have been conducted and concluded, since they have already declared a circumvention, but the process itself for assessing the degree of circumvention and the resulting fines is a different longer more tedious one than the quick process (per 11.6) of ruling whether the contract is void.

If that's the case, that means two arbitrations potentially. One next week to rule on the contract. And another, if the league cares to pursue it (I suppose they would have that "off ramp"), which would take a long time and would result in penalties.

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 8:58 AM PDT [up](#) [reply](#) [actions](#)

**I mean "could" result in penalties**

and at the end of Pp 1, I should have said "the overall process of investigating circumventions."

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 9:01 AM PDT [up](#) [reply](#) [actions](#)

Danielle turns out to be "a union-side attorney who happens to teach Sports and Entertainment Law." Wow. How lucky are we that she's a Kings fan?

More bits. Here she talks about the fallout that might hit Grossman and Lou:

**Danielle reply:**

...And before we blame it all on Grossman, Lou was just as complicit. It takes 2 to enter into a contract and he very well could have refused to go along and structured the contract more reasonably, just the way Lombardi did with his offer. Lou and Grossman both have a lot of explaining to do and both may find themselves in a bit of hot water. Grossman will probably take a harder fall than Lou, but Lou should not walk away from this unscathed...

**jet Reply:**

@Danielle, Grossman has taken a big hit with respect to his credibility both among clients and GMs. I would venture to guess that his career is essentially over.

Lou is going to skate with the "I was just following orders" line. This may be worth the hit if he gets Kovi for 8 years for 50M.

**Danielle Reply:**

@jet,

I think Grossman's career is going to be dependent on the outcome of any investigation. He could be disciplined by the league and could lose his certification. But if the league does not take any sort of action, I think he'll be just fine. His clients may see him as someone who really fights for them to get them what they want. They may not trust him as much anymore or, on the other hand, they could figure he got caught once, he won't get caught again.

As for Lou, well, he already started laying the groundwork for the "just following orders" defense when he first talked about the deal. I doubt, tho, that he gets Kovi for 8 years for \$50M. Kovi knows he can still get big bucks and they'll find a way to structure the deal within the cap. And if they don't, he'll go to a team that will.

It's interesting, really. People who were begging for Kovi to come here now hate him and are saying Lombardi needs to stay far away from him. Really, I don't think he is the bad guy here. Was he complicit in this? Yeah, to an extent. But how many of these guys really understand the intricacies of the CBAs? I'm sure Lou and Grossman said to him "here's a way you can get the money you want and, while it's a little bit hinky, there is a loophole in the CBA that lets us do it."

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by [Niesy](#) on Jul 22, 2010 9:45 AM PDT [reply](#) [actions](#)

**One more!**

She also made another post on Tuesday highlighting section 26.8 (the one that lists the annual certifications for agents, GMs, CFOs, and Club Presidents, requiring them to uphold Article 26). As in the earlier quote, she believes there are two separate arbitration processes:

Danielle says:  
July 20, 2010 at 10:43 PM

There is also another arbitration system under the circumvention provisions, **separate from the one that would hear the NHLPA's challenge to the contract itself**, that could be brought in if either the league or players association wanted to challenge this under the circumvention provisions (I doubt either would want to resort to this but who knows). If they do, there are some huge penalties under Section 26.13(c) if the arbitrator finds a circumvention has occurred by either a player or a Club...

[Quote from that section of the CBA about the potential fines.]

And from a later reply:

Funny, many of the people who were most vocal 24 hours ago, claiming the Kings should have made this deal, have suddenly become silent.

I actually think it is going to be a pretty interesting case, if it actually makes it to the arbitrator. **I still think the NHLPA will put itself in a precarious position if it fights it very aggressively.** I would not be surprised to hear the Devils and Kovi reach a new deal before a hearing can be held. No case is easy for an arbitrator, but I don't see how one can look at the numbers and not find it violates the spirit of the CBA.

But if it does go forward, it is going to be fun to watch, both as a lawyer and a fan of the team that "lost" the Kovi-stakes (tho I still don't think it's a loss).

*In Dinglebarn We Trust*

by [Niesy](#) on Jul 22, 2010 10:04 AM PDT [up](#) [reply](#) [actions](#)

**Devils aren't renegotiating before "5 day window."**

I don't see the Devils renegotiating a contract with Kovalchuk before the 5 day grievance window expires. I'm not sure why a lot of people think this will happen and everyone will be on their merry way.

If the NHLPA doesn't protest this contract, then the Devils will have mandatory penalties handed to them. The league rejected the contract on the basis that it circumvented the CBA. In other words, they broke the rules. When you break the rules, there are consequences. One of which will include a hit to their salary cap for next season. This will effect any new deal and as it stand right now, the Devils don't know how serve that penalty will be. (\$1 – 5 million reduction in salary cap). The Devils are already up against the cap will 3 roster spots to fill. This will greatly effect their negotiations with Kovalchuk and I don't see how they could proceed now until those penalties are handed down.

by [Kingsfan99](#) on Jul 22, 2010 10:15 AM PDT [up](#) [reply](#) [actions](#)

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### that's my reading of the cba, but note that daly implied the club did have options at this point

so it's possible-to-probable the official reading of the cba is different.

my reading of the cba is that there is no tweaking possible, and — per danielle — that any sit-down occurs at a later date (after the contract has been voided or allowed) vis-a-vis the *further* investigation of the degree of circumvention and what penalties might apply.

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 10:32 AM PDT [up](#) [reply](#) [actions](#)

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### Penalties

It's my understanding that if the NHLPA does not file a grievance within 5 days, then the contract is null and void. In addition, since the league rejected the contract on the basis that it circumvents the CBA, there are mandatory penalties to be imposed on the Devils. One of which will be a mandatory hit to next year's salary cap. Minimum of \$1 millions, maximum of \$5 million; at the discretion of Gary Bettman.

by [Kingsfan99](#) on Jul 22, 2010 10:37 AM PDT [up](#) [reply](#) [actions](#)

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### where does it say in the CBA that the fine is mandatory?

All i've read is that if penalties are applied, the commissioner may apply any or all of a list of penalties, one of which is the fine. I haven't found anything that explicitly states the fine must absolutely be imposed. The only thing i've found that is explicitly mandated about the fine, if one is indeed chosen as a penalty, is that it can under no circumstances be less than 1 million.

I hope that if this rejection holds up Bettman doesn't back down and does actually apply a cap fine to NJ, mandatory or not. That contract is such a joke.

by [-J](#) on Jul 22, 2010 12:24 PM PDT [up](#) [reply](#) [actions](#)

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### i find that clause to be ambiguous at best

i just don't see how it makes sense to limit the fine in that way. it's not like there's a reason to stop him from issuing the fine, like with a penalty that must be a major (which causes the ref not to call the penalty because it has to be a stiff one :)).

however, in the spirit of shorthand, most people think the fine is not mandatory. I am in the minority on this. And I can see the point of the people I don't agree with, so probably I'm wrong.

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 1:16 PM PDT [up](#) [reply](#) [actions](#)

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### a very basic point

Quisp, I got lost in trying to follow the specifics. You guys are operating above my pay grade. However, two points. One, I just read in the ny post that they would Not have to pay the 1 million to 5 million dollar penalty. Why I don't know, and personally in spite of what is written in the CBA I would be surprised if Bettman made them pay it.

Second (very basic here but I'm surprised no one has brought this up). Given that very big money is very important to Kovi's very big goal scoring prowess, I personally have a very very difficult time imagining that he would play at 41 years of age for a paltry \$550,000 (especially when there will be other players getting god knows what at that point). He doesn't seem to be cut out of the same cloth as someone like Chris Chelios.

by [number 6](#) on Jul 22, 2010 9:49 AM PDT [reply](#) [actions](#)

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### just read one of Danielle's bits from above

Wow, so she essentially said what I say here. No way does he play at a league minimum (or what may be Below league minimum at that point). Now that she has pointed that out, if they let this contract go thru (PA rebuttal or Not) it would be scandalous. Scandalous. If Bettman and the league want to have any sort of reasonable profile beyond the very shaky profile they already have, they'd best do something.... and by that I don't mean trimming off a year at the end and upping the years at \$550,000 to like \$700,000. Nothing they do surprises me though.... unfortunately.

by [number 6](#) on Jul 22, 2010 9:55 AM PDT [up](#) [reply](#) [actions](#)

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### **i can see it going either way, but i believe it is a fair interpretation of the CBA**

that if the arbiter finds in favor of the league, then the fine is mandatory. however, danielle's (i'm using her first name like I know her so well) point about there being two separate processes, one for the contract, another for the circumvention, is something we have been debating for a few days now with not much resolution other than my hunch that it's a long drawn out process leading to the same conclusion (and other people's hunches that it's the opposite).

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 10:29 AM PDT [up](#) [reply](#) [actions](#)

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One of the popular arguments for the validity of the Kovalcuk contract is that the league did nothing when it came to Hossa's, Pronger's, Luongo's contract etc. "Since those weren't rejected, this one shouldn't be either."

I'd like to make an analogy demonstrating why that is not a very strong argument.

You're doing 90 MPH on the freeway, a police officer pulls you over and gives you a speeding ticket.

Your response is: "Officer the guy next to me was doing 75 MPH and you didn't give him a ticket, therefore I feel I shouldn't get one either."

by [Kingsfan99](#) on Jul 22, 2010 9:55 AM PDT [reply](#) [actions](#)

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### **Yes, I made this analogy earlier (not that it was my original or anything, just that it -- and other analogies like it -- are occurring to many sane people**

*Wait till this year.*

by [Quisp](#) on Jul 22, 2010 10:15 AM PDT [up](#) [reply](#) [actions](#)

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### **question...**

is there any way the term of a player's contract can be transferred to a different organizational non-playing role and still be valid...?

is there any rule specifying that a "roster player" must be paid for "roster services"...?

excuse my naivete...

i'm just wondering if an organization is able to restructure the role of a "player" during any part of the agreed term....

by [\(variable\)](#) on Jul 22, 2010 11:04 AM PDT [reply](#) [actions](#)

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i should have deferred to yr warning...

"it's a SPC, you \_!"

now you know i'm not a lawyer...

by [\(variable\)](#) on Jul 22, 2010 11:41 AM PDT [up](#) [reply](#) [actions](#)

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### **That Seems Reasonable**

Except we're dealing with the law and contracts and so on.

For example, with trademarks, if one does not actively protect one's trademark from infringement (deliver cease and desist letters to infringers and so on), then one is assumed to have relinquished the right to defend it.

We see this in employment law, as well, iirc. So, say an employer has a written policy regarding punishment for lateness, but fails to enforce that policy. Then, perhaps following a complaint filed by an employee who felt he was unfairly punished for tardiness, a judge would determine that the actual policy followed by the company (no punishment for lateness) would be the standard, not the policy found in the manual.

Those arguing that Hossa et al's contracts also circumvented the CBA are arguing that the actual policy of the NHL, based on its actions and not on the language in the CBA, is to allow such circumvention.

I don't know who's right. An arbiter will decide.

by [Lars H](#) on Jul 22, 2010 11:04 AM PDT [+](#) [reply](#) [⊗](#) [actions](#)

Lars, the problem with the CBA is that there is no hard guidelines for cap circumvention, it is what Bettman says it is. This was intentional so that the clause could be used to stop whatever the GM/Owners/Agents dream up to break the cap. That is why an arbitrator is needed.

I'm not a lawyer, but wouldn't the league have to say that Hossa's contract circumvents the cap for this to be used as a defense for Kovalchuk's contract? Since it was never declared illegal, how could the NHLPA use this as a contract that circumvents the cap?

This is what the arbitrator is for and if also why the NHLPA hasn't filed anything yet. They know they don't have a strong case to explain those final 6 years.

It's just fun to speculate what an independant arbitrator will decide.

by [Sydor25](#) on Jul 22, 2010 12:25 PM PDT [+](#) [up](#) [+](#) [reply](#) [⊗](#) [actions](#)

okay I was somewhat doing okay until the cross out and italics bit. yes I was warned but come on now! this isn't playing fair. we demand a new post that is cleaned up! :)

*Ever get the feeling we are on a collision course with reality?*

*"They who would give up an essential liberty for temporary security, deserve neither liberty or security" -- Benjamin Franklin*

by [Angy](#) on Jul 22, 2010 2:14 PM PDT [+](#) [reply](#) [⊗](#) [actions](#)

