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Agency Theory and Athlete
Representation in Professional Hockey

by

Daniel Scott Mason



A thesis submitted to the Faculty of Graduate Studies and Research in partial
fulfillment of the requirements for the degree of Doctor of Philosophy.

Faculty of Physical Education and Recreation

Faculty of Graduate Studies and Research

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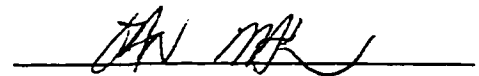
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Abstract

This thesis is comprised of a series of three related papers providing a case study analysis of the relationship between players and agents in the elite professional hockey industry in North America. Using agency theory as a framework (Eisenhardt, 1989; Jensen and Meckling, 1976), the effects of various industry changes and attempts to regulate and monitor agent behaviour are examined. Following an introductory chapter and overview of agency theory in chapter two, the third chapter provides a methodological discussion. The fourth chapter identifies factors that have influenced the player-agent dyad since its inception in the late 1960s. These factors include the formation of the National Hockey League Players' Association (NHLPA), the operations of the World Hockey Association, rapid revenue growth and league expansion, an increasingly competitive agent market, the advent of salary disclosure, and the NHLPA's agent certification program. The effects of these changes on players and agents are discussed in the context of the agency model.

The second paper (chapter five) reviews the means through which sports industry stakeholders have attempted to regulate agent behaviour (one of two agency solutions to agent opportunism), with a focus on their specific effects on hockey agents. The agency model is then used to create a means of evaluating the effectiveness of these mechanisms, on the basis of their ability to reduce agency problems found in traditional principal-agent dyads. In doing so, agency theory provides a means through which the success or failure of certain monitoring mechanisms can be understood.

The final paper (chapter six) uses the player-agent relationship in professional hockey as a case study to test the assumptions of the agency model; several research

questions regarding the conditions of the player-agent relationship are developed based on the changes that have occurred in the hockey industry. The results suggest that, while agency theory provides an effective means of identifying and understanding problems within agency relationships, other external factors have a much stronger influence on the agency dyad in hockey than do traditional solutions to agency problems suggested by the model. These findings are reviewed in the context of recent discussions of the merits of agency theory found in the organisational literature.

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CHAPTER 6

HOW EFFECTIVE IS THE AGENCY MODEL IN PREDICTING PRINCIPAL-AGENT BEHAVIOUR? EVIDENCE FROM PROFESSIONAL HOCKEY

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CHAPTER I INTRODUCTION

Since the 1960s, professional sport in North America has undergone rapid and drastic changes. The four major leagues (National Football League, National Basketball Association, Major League Baseball, and National Hockey League) have all been subject to dramatic expansion (Helyar, 1994; Whitford, 1993), the threat of rival leagues (Brown, 1987; Lautier & Polnaszek, 1996; Pluto, 1990), increased and new revenue sources (Harris, 1986; Quirk & Fort, 1992), and the presence of a more formidable bargaining adversary in the form of players' associations (Miller, 1991). The results of these changes include greater player mobility, the reduction of player restraints, and an increase in players' salaries. It is within this context of growth that players began using agents to negotiate contracts on their behalf (Greenberg, 1993).

The appearance of player agents, along with the advent of players' associations, has increased the bargaining power of athletes and dramatically affected player-management relations within the industry (Steinberg, 1991; Voigt, 1991). Prior to agents and players' associations, owners and managers were able to keep salaries down artificially through controlling the players' access to information regarding the profitability of teams and other players' salaries (Cruise & Griffiths, 1991). The fact that many professional athletes often forwent educational opportunities to pursue athletic careers, and consequently lacked the skill to negotiate contracts, helped experienced management personnel in maintaining this oppressive practice.

According to Fraley and Harwell (1989) the arrival of the agent in the professional sports industry was facilitated by the abolition of the reserve clause and option clauses, which increased players' mobility and bargaining power, by allowing them to seek offers from competing teams rather than staying bound to one club. The emergence of rival leagues was also a factor, which allowed players alternative employment opportunities, while salary disclosure provided a basis of comparison between different individuals. In addition, increased television coverage resulted in greater league revenues which could be spent on player salaries and television exposure allowed athletes to seek endorsement opportunities to supplement their playing wages. As explained by Closius (1983, p. 399), "players, unions, agents and rival leagues all

participate, in some form, in the decisions which will shape the future of sports." While some players had used the services of agents as early as 1925 (Gould, 1992), it was not until the mid 1960s that player agents became commonplace (Gallner, 1974).

Today, agents are involved in almost every sports-related contract negotiation, representing an athlete's professional, personal, and financial interests (Greenberg, 1993). The result has been an increase in the athletes' bargaining power. As Ehrhardt and Rodgers (1988, p. 637) explained, it is not by coincidence that "as more and more athletes hired agents, average salaries soared. Clearly, agents proved a decisive advantage for the athlete." However, despite the benefits that agents have derived for their players, they have also been guilty of fiscal mismanagement and other unscrupulous behaviours that have led to attempts to monitor agents (Benitez, 1986; Cohen, 1993; Crandall, 1981; Shropshire, 1990). Historically, agents have not been required to obtain any specific form of certification, education, or training in order to negotiate on behalf of an athlete (Kohn, 1988). In addition, the actions of some agents have damaged the image of those who pursue athlete representation as a profession (Fraley & Harwell, 1989; Shropshire, 1989). Although the number of dishonest agents is small, the behaviour of the few was enough to cause the creation of various agent certification plans (Cox, 1992; Grosse & Warren, 1991), which includes US State and National Collegiate Athletic Association (NCAA) legislation. In addition, players' associations have, for similar reasons, created and implemented certification programs (Fehr, 1993; Lefferts, 1984). Even the agents themselves have, at times, sought to monitor their own affairs to add credibility to their profession, by developing certification guidelines and programs (Greenberg, 1993). However, it has been difficult to strictly regulate behaviour, as the duties of the agent can vary greatly, and agents themselves require little in the way of training and/or accreditation (Burke, 1993; Crum, III, 1986; Faber, 1993; Gallner, 1974; Shropshire, 1990).

Regardless of each agent's specific role for his or her client(s), agents, as a group, have had a profound effect on the professional sports industry over the past four decades. In particular, professional hockey has experienced rapid growth and change during this time, which has included the organisation of labour, competition from a rival league, rapid revenue growth, and changes to the supply and movement of labour. Thus, this

industry provides a unique opportunity to analyse the development of, and changes to, one specific principal-agent relationship, between players and agents, within a rapidly growing and changing environment. To do so agency theory (Eisenhardt, 1989; Jensen & Meckling, 1976), which is concerned with the nature of the contract that exists between a principal (in this case, the athlete requiring the services of the agent) and an agent (the athlete representative, or agent), is used as a framework for analysis.

The value of sport organisations as a site of analysis, using theories such as agency theory, has been recognised by several scholars. According to Noll, the professional sports industry provides an “exceptionally interesting subject for economic study” (1982, p. 348). Similarly, Goff and Tollison (1990, p. 4) report that “a small group of economists have started to view sports as an arena in which athletes behave according to incentives and constraints.” Thus, the professional sport industry in general, and professional hockey in particular, provides an interesting venue to study agency theory, because of its roots in economic theory, and the various economic incentives that govern the contract within principal-agent dyads. The professional hockey industry contains many different examples of principal-agent relationships. The unique nature of a professional sports league suggests that the league itself acts as principal and the individual teams serve as agents (Atkinson, Stanley & Tschirhart, 1988; Mason, 1997). In addition managers are hired as agents by the individual clubs, who in turn hire players, personnel, and other agents to perform various duties for the teams. Thus, the professional hockey industry provides an example of a matrix of complex (and, at times hierarchical) agency relationships. Within such an environment, it is conceivable for some parties to simultaneously act as agents to a higher principal, and as principal to lower groups of agents (Whynes, 1993; Sappington, 1991).

There are various types of agency costs, solutions to problems of agency, degrees of risk aversion, and levels of information asymmetry that dramatically affect the nature of the principal-agent (P-A) contract in a specific setting. Thus, as explained by Levmore (1993, p. 538), “agency arrangements can only be understood along with detailed information about their contexts.” The professional hockey industry and its stakeholders provide a unique and interesting case for analysis using agency theory. One aspect that differentiates hockey leagues from many other for-profit firms is the lesser degree to

which owners are wealth maximisers. Quinn and Jones (1995) noted that while most firms are traditionally viewed as wealth maximisers, researchers must also acknowledge the importance of legal, ethical, and social concerns that will often determine the actions of the firm. Given that professional sport has strong socio-emotional as well as economic value to its stakeholders, using professional hockey as a case study provides a complex example of how P-A relationships develop and function. For example, in a study of revenue sharing and the National Football League (NFL), Atkinson, Stanley and Tschirhart (1988) found that professional sports team owners were not pure profit maximisers; investors in teams often sought other benefits to owning a club besides generating profits. These could include a desire to field a winning team at the expense of team profitability, and/or using a team as a means of increasing the public profile of its owner (Quirk & El Hodiri, 1974). Zorn (1994, pp. 369-370) reported that "at least a portion of the motivation for owning sports franchises is personal pleasure, or at least personal aggrandisement." This discovery is congruent with McGuire (1988, pp. 8-9), who states that "organisational theory suggests that the organisation does not always strive for economic efficiency, or even optimal efficiency." Thus, the efficiency of the contract between owners and agents will be difficult to determine and assess unless both parties desire the same non-monetary benefits from their association. The degree to which different stakeholders seek other, non-monetary benefits also makes the sports industry a unique site through which agency relationships can be studied.

Another aspect of professional team sports that makes the environment under which contracting occurs unique lies in the relationship between managers and players. Historically, managers have held an advantage in bargaining position for remuneration with the players. This has had a drastic effect on the relationship between the two parties. A study by Pinkley, Neale, and Bennett (1994) looked at the impact that alternatives have on negotiated agreements. Because professional athletes had few employment options outside of sports that were as lucrative, their bargaining position was significantly lower than that of management. Thus, they had far less power in negotiating; this may have led to depressed salaries in professional hockey for many years (Cruise and Griffiths, 1991).

To compensate for a lack of bargaining position, professional athletes began seeking the aid of representatives to negotiate on their behalf, and formed Players'

Associations to negotiate collectively (Miller, 1991). Thus players, who acted as agents in playing professional sports for managers (who act as agents for ownership), sought the services of agents to negotiate their playing contracts with managers. This provides a unique example of the development of a P-A dyad within an organisation, which will be one focus of this thesis research. The stream of agency theory to be adopted will be positivist agency theory, which will allow for the identification of the agency relationships, problems, costs, and solutions that are inherent in the P-A relationship between players and their representatives. The positivist focus is more appropriate for this research than the principal-agent model, the other stream of agency research. This is because

the applicability of principal agent models is limited to two settings: a) where performance standards are precise and knowledge of the effort-outcome relationship is complete, and b) where performance standards are precise but knowledge of the effort-outcome relationship is incomplete (Nilakant and Rao, 1994, p. 652).

The positivist approach is concerned with identifying and examining the effects of governance mechanisms, such as monitoring and contract form, that define agency relationships within specific settings (Eisenhardt, 1989). Because professional hockey teams are private businesses, and financial information such as player salaries have only recently become publicly available, it would be difficult to precisely attribute direct causal relationships between the activities of specific agents and principals in this setting. In addition, the proprietary nature of P-A relationships in professional hockey makes it difficult to obtain the requisite data to determine precise measurements of the efforts of professional hockey agents. Thus a positivist model, with its emphasis on broader processes is the most appropriate approach for this study. As discussed above, the fact that principals and agents are not always complete wealth maximisers would also make the determination of precise performance standards difficult. However, in using a positivist approach to agency theory, professional sport supplies a setting that can provide an example of how such agency relationships develop and function. It can also be used to test agency theory assumptions about the nature of compensation and information systems that determine the contracts that exist between stakeholders in a given firm.

In this instance, the professional hockey industry could be considered an aggregate of contracting principal-agent relationships. Therefore, from an agency perspective, a firm could consist of the industry as a whole, or even a single relationship between one principal and one agent (Hesterly, Liebeskind and Zenger, 1990).

In order to develop these objectives further, the second chapter of this thesis provides an overview of the basic tenets of agency theory. Opportunism, agency costs, risk aversion, and the relationship between monitoring and contract structure are explained within the agency framework, and provide the theoretical model that underpins this thesis research. Chapter three is comprised of a discussion of methodological considerations related to the thesis, while chapters four through six comprise the body of the thesis, which consists of a series of three independent but related papers. The central focus of the fourth chapter is to use agency theory to identify and review industry factors that have influenced the player-agent relationship since the mid 1960s. Industry growth and change and the development of hockey agents are examined within a context of franchise expansion, increased unionisation, revenue growth, the emergence of a rival league, and environmental munificence. The dynamics of the player-agent dyad are reviewed under varying conditions of information asymmetry between stakeholders; this chapter employs the agency model to predict future behaviour within the agency relationship. The agency model is also used to suggest some alterations to the contract between player and agent to reduce inefficiencies that have arisen due to the various environmental contingencies that have affected players and agents in recent decades.

The second study (found in the fifth chapter) employs the theoretical construct of agency theory as a means of evaluating attempts by several stakeholder groups to find solutions to opportunistic agent behaviour, and their implications on hockey agents in particular. As proposed in agency theory, this would include the creation and implementation of monitoring mechanisms by industry stakeholders in order to monitor agent activities. Stakeholder groups involved in attempts to monitor player agents include state and federal governments, the NCAA, and Players' Associations, who, at various times, have adopted certification programs. Following a review of these programs and criticisms found in the literature, the agency model is used to develop criteria with which the certification programs can be assessed in terms of recognising and

reducing traditional agency problems. In doing so, it is hoped that the agency model can provide additional insight into problems associated with these programs, and suggest changes to reduce agency problems and improve program effectiveness in monitoring hockey agent behaviour.

Based on the results of the first two studies, the final paper (chapter six) uses the agency model to develop research questions regarding the effects of environmental factors (identified in chapters four and five) on the player-agent relationship. In analysing the data collected for this study, these predictions are tested using the professional hockey industry as a case study. The results, which suggest only partial support for the agency model, are discussed in the context of other empirical research and theoretical debates found in the organisational literature. Thus, this thesis research used professional hockey as a case study to determine the effectiveness of agency theory to predict outcomes in a specific industry. In this manner, a specific principal-agent dyad in professional sport can provide a means through which the tenets of agency theory can be investigated, given changes to information systems and other factors affecting the specific P-A relationship itself.

While the thesis research is confined to professional hockey and the National Hockey League in particular, this study should have generalisability to the other major North American professional sports leagues, as the services provided by the agent to the player, agent compensation, and agency problems are likely similar in all leagues. Each league has been subject to similar market pressures, revenue opportunities, threat of rival leagues, and expansion. However, professional hockey does not generate the same revenues as the other three major leagues, particularly from television. Despite this, player salaries have grown exponentially in all four major leagues in recent decades, and negotiation methods, fee structures, and compensation systems have developed similarly across sports. In addition, the study should have generalisability to other industries that feature single-principal, single-agent dyads governed by explicit contracts.

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CHAPTER 2

AN OVERVIEW OF AGENCY THEORY

The theory of agency has developed substantially over the past three decades (Eisenhardt, 1989). As explained by Ross (1973), agency relationships are among the oldest and most common modes of social interaction. Early research in this area concentrated on an ownership-management, principal-agent (P-A) relationship, particularly in larger, public firms owned by a diverse group of stockholders. Problems would arise where owners had difficulty in verifying and/or monitoring the behaviour of individuals working within a firm, particularly where ownership was not involved in firm operations. In contrast, agency problems would not arise in a small firm owned and operated by a single person. Problems of divergent behaviour would be minimised, as an owner-managed single-owner firm would be marked by decisions that maximised the owner's personal utility (Jensen and Meckling, 1976). A similar logic was presented by Fama (1980), who reported that where the manager acted as the firm's sole security holder, there would be no incentive problem, as there would be no P-A relationship. However, as organisations expanded and developed, the owner would eventually need to rely on the assistance of other parties to aid in managing and operating the firm, and/or the firm would become owned by a diverse group of stockholders. However, in acquiring the services of another party to perform the management function, there exists the potential for the manager to act self-interestedly, which may result in a decrease in welfare to the owner. This problem was addressed in Jensen and Meckling's (1976) seminal discussion of the principal-agent relationship, when they noted "if both parties are utility maximisers there is good reason to believe that the agent will not always act in the best interests of the principal" (p. 308). Incongruent interests held by principals and agents underpin the agency model; an agency problem arises where the agent acts in self-interest to the detriment of the principal while acting on behalf of the principal. Agency theorists are concerned with the ways in which this problem can be resolved, which consists of monitoring agent behaviour and/or changing the terms of the contract that governs the principal-agent dyad.

Thus, the relationship between the owner (in many cases the stockholders) and manager will be governed by a contract that determines what duties are to be performed,

and how the manager is to be compensated. This contract is paramount for the corporate stockholder, as control over resources is severely limited because ownership of the firm is dispersed over a large number of shareholders. Thus, as explained by Demsetz (1983), today's shareholder cannot exercise significant power to oversee managerial performance in the modern corporation. While traditional problems of diverging interests between ownership and management could be seen as solvable through other mechanisms such as control and authority, Alchian and Demsetz (1972) argued that the firm has no authority or power to settle issues beyond that of ordinary market contracting between two parties. For this reason, the solution to problems of divergent behaviour can be accomplished through changes to the nature of the contract that governs the owner-manager relationship. Both parties are aware of the existence of self-interest; Fama (1980) described the firm as a team of individuals who act out of self-interest, but realise that their survival is dependent upon the success of the team in competition with other teams. Thus, Fama discussed the agency problem in terms of the separation of ownership and control; problems arise as the manager does not receive the full benefits of his or her decisions, and may not put forth adequate effort in performing work duties.

Agency theorists view many of the problems associated with organisations and individuals in terms of the relationships between stakeholders and the terms that govern such relationships. The relationship is seen as one whereby one party, the principal, tries to motivate another (or others), the agent, to act in a manner advantageous to the principal (MacDonald, 1984). In many instances, the agent's services are required due to a certain degree of specialisation that the job or service to be performed requires. Often the principal would need to obtain the services of an agent because the former did not have the ability to accomplish the task. Ellis and Johnson (1993) described this need for specialists as underlying the creation of advertising agencies who perform tasks for their clients. In early discussions of agency theory, the example was that of stockholders or other owners of a firm (acting as principal), who sought the services of managers (the agents) to operate the firm on behalf of ownership. The term *contract* is a metaphor used to describe the principal-agent relationship; such relationships can and do exist on many levels within a firm, and can include employer-employee, and ownership-management dyads.

From an agency theory perspective, the firm is a nexus of contracting relationships (Jensen and Meckling, 1976) that exist between the various stakeholders within the firm; McGuire (1988) concurred when she described an organisation as an aggregation of transactions or negotiations. Similarly, Fama (1980, p.289) stated that the firm “is viewed as a set of contracts among factors of production, with each factor motivated by its self-interest.” Early discussions of agency centred on the means through which owners could try to get managers to act in a manner that would maximise owner utility. One criticism of agency theory has been a focus on increasing the welfare of principals (Barney & Hesterly, 1996), and not on altering the terms of the contract to benefit both parties. However, Alchian and Demsetz (1972) considered the principal-agent relationship to be one that must be acceptable to both the principal *and* agent, otherwise one party would not agree to contract with the other.

The nature of the terms of the contract is paramount to satisfying the needs of both the principal and agent, while minimising the decrease in welfare to the principal that may occur due to the agent acting in his/her self-interest. This is difficult, as due to the bounded rationality of the principal, the opportunity for the agent to act in self-interest without detection is always present. Because the principal has entrusted the agent to perform some duty (as the principal lacks either the time or the ability to accomplish the task personally), the agent has the opportunity to misrepresent information, or to divert firm resources for personal use (Nilakant and Rao, 1994). Jones and Butler (1992) contended that the incentive to pursue personal interests is increased in situations where the principal cannot evaluate agent behaviour, where information asymmetry favours the agent. Alchian and Demsetz (1972) discussed agents who work in a team setting. The marginal productivity of each member is difficult to detect, as the basis of evaluation is the task completed by the team as a whole. For example, if a team of movers works together to unload furniture from a truck, and the job takes several hours, it would be difficult to determine if one of the movers worked much more slowly and did not put forth as much effort as any of the other movers. In addition, there are other environments where the nature of the relationship between principal and agent creates opportunities for agents to act in self-interest. Kesner, Shapiro, and Sharma (1994) looked at agent behaviour in brokering mergers. Agents would be negotiating on both sides of an

agreement, between a bidding firm and a target firm. Both agents worked for a fee contingent upon the sum of the transaction between the two firms. However, while this would not be a problem for the agent who represented the target firm, the agent for the bidding firm would have no incentive to lower his/her firm's bid, as it would ultimately lower his/her own compensation, which was a percentage of the total transaction amount.

The examples above reveal the potential and possible incentive for agents to act in self-interest within principal-agent relationships. Eisenhardt (1989), in an extensive review of agency theory literature, contended that there are two major types of self-interested agent behaviour: *adverse selection*, and *moral hazard*. Adverse selection occurs in instances where agents misrepresent their own ability in order to serve the principal. The problem that exists here is that the principal cannot verify the agent's claims, and therefore contracts with an agent who will not necessarily maximise principal utility. The second major problem associated with opportunistic agent behaviour is moral hazard. This is caused primarily by a lack of effort on the part of the agent, and is commonly referred to as shirking (Eisenhardt, 1989). In addition to the two types of self-interested behaviour suggested by Eisenhardt, Lewis and Sappington (1993) explored another potential problem--agent ignorance. This is different from the misrepresentation associated with adverse selection, as it provides an example where the agent may be incapable of serving the principal appropriately, due to a lack of information. However, both misrepresentation and ignorance can be reduced by the agent incurring personal costs that credibly rule out the possibility of ignorance (Lewis and Sappington, 1993), or show that the agent has obtained a desired level of competence.

The consequences of opportunistic agent behaviour, which can be created by adverse selection, moral hazard, or agent ignorance, are called agency costs. As explained by Jensen and Meckling (1976), there are three types of agency costs. The first are monitoring costs incurred by the principal to detect unwanted agent behaviour. An example of this would be the installation of a video monitoring system in a factory, or having employees use a time clock to record their actual times at work. The second type of agency cost is the bonding expenditures of the agents, who try to show the principal that a certain degree of expertise or ability has been obtained that will allow for the adequate completion of the service or task to be performed for the principal. Bonding

expenditures could include forms of education, or certification that show that a standard level of performance or ability can be achieved. The final agency cost is the residual loss that is incurred by the principal due to the opportunistic behaviour of the agent. Agency costs can be incurred both *ex ante* and *ex post*. *Ex ante* costs are associated with developing the contract, and *ex post* costs are incurred through monitoring and enforcing the existing contract (McGuire, 1988). Thus, as discussed by Fama and Jensen (1983), agency problems occur because contracts are not costlessly written or enforced, and further complicated because, as discussed earlier, the agent's greater familiarity with a task makes it difficult for the principal to evaluate the extent and quality of the agent's efforts.

Agency problems are problems of information asymmetry; in many instances the agent can and will act opportunistically because the principal can never completely verify the levels of expertise, effort, or quality of the agent's behaviour. Thus, "the study of agency in market contexts should shed some light on the economics of information" (Ross, 1973). According to MacDonald (1984), agency theory can be seen as a part of a broad research program that focuses on problems of asymmetrical information; agency theory is an effective tool for analysis as it is rare that relationships exist where information actually is symmetrical. In most cases, it is assumed that, because the agent has the experience and ability to perform the specific task that is contracted for, information asymmetry will favour the agent (Baker, 1992).¹ According to White (1992), traditional agency theory discussions have determined that eliminating the various information asymmetries that favour agents will reduce traditional agency costs for principals. However, White argues that this is not always true, as control costs can still arise due to monitoring problems. An example would occur where the costs of reducing information asymmetry, by creating information systems regarding agent behaviour to reduce the likelihood of agents acting in self-interest was high. Thus, although agents might not act in self-interest and incur an agency cost, the principal still incurs agency costs to ensure that self-interest does not occur. In such a case, the prohibitive cost of

¹ Some studies have sought to examine different information assumptions (Beaudry, 1994; Lewis & Sappington, 1993; Sobel, 1993).

creating, implementing, and enforcing monitoring mechanisms (monitoring costs) may outweigh the reduction of agency costs (residual loss) that might occur.

The above discussion has shown that, regardless of the levels of information asymmetry between principal and agent, there still exists the potential for agency costs to be incurred due to opportunistic agent behaviour. The focus of agency theory

is on determining the most efficient contract governing the principal agent relationship given assumptions about people (e.g. self-interest, bounded rationality, risk aversion), organisations (e.g. goal conflict among members), and information (e.g. information is a commodity that can be purchased) (Eisenhardt, 1989, p. 58).

In a review of the agency literature, Eisenhardt (1989), identified two ways in which agency theorists contend that principals can stop this unwanted agent behaviour: 1) create monitoring mechanisms; and 2) contract on the outcome of agent behaviour. Monitoring mechanisms are useful in situations where the performance of the agent can be easily evaluated. Because the agent is less likely to shirk if he or she is being monitored, opportunistic behaviour will be reduced. However, monitoring costs are only appropriate where the costs incurred to reduce shirking do not exceed the value of the resources consumed by the agent who is shirking (Demsetz, 1983). For example, it would not be appropriate to install a video surveillance system in a stock room to detect an employee stealing stationery when the surveillance costs more to the firm than what is stolen by the employee. However, there are instances where the creation of monitoring mechanisms affects the principal-agent relationship in other ways. For example, Conlon and Parks (1990) found that monitoring may increase the level of co-operation between the principal and agent.

The monitoring of agent behaviour is not necessarily the sole responsibility of the principal. The presence of additional agents may also provide valuable information regarding the performance or activities of a specific agent. Additional agents will also make it easier for the principal to assess the performance of the agent, as a principal who is not overly familiar with evaluating a particular task can judge the relative performance of an agent with peer agents (Sappington, 1991). Fama and Jensen (1983) also noticed

this practice in situations where agents interact; principals can get information about specific agents from the agents' own colleagues.

While increasing the information available to the principal--regarding the behaviour of the agent--can reduce agency costs, the most commonly discussed solution to agency problems requires contracting on the outcome of agent behaviour. The rationale behind this practice is that, if the principal's goal is profit maximisation, the solution to problems of shirking is to give managers a reward that is contingent upon the financial performance of the firm itself. It is within this arrangement that much of the agency literature has developed. However, in creating a contract that is performance-based, there will be a transfer of risk from the principal to the agent. The result will be a loss of welfare to the principal if the agent is risk averse; the agent will choose activities and seek opportunities that will reduce risk. Thus, the solution to risk problems would then be to apportion a higher degree of the compensation to factors not directly related to output. An example of this would be to have a commissioned salesperson work on a part salary, part commission basis. Ideally, there would be a compensation scheme that would be generated that would accommodate the risk preferences of each individual agent, but this is prohibitively costly. An example might be where a manager (acting as principal) is responsible for contracting with a large number of subordinate agents. However, both the principal and agent must be aware of their risk preferences in determining the most efficient contract.

For this reason, the appropriateness of the use of either monitoring or performance-contingent (P-C) compensation schemes to reduce agency costs will be highly dependent on the levels of risk-aversion that the principal and agent have. Note that the term risk should not be confused with uncertainty, which assumes that the future is unpredictable; rather, risk concerns the level of competitive return that will be demanded by a risk bearer for a certain degree of risk that is undertaken (Jones and Butler, 1992). Agency theory assumes that agents are risk averse, and principals are generally risk-neutral (Nilakant and Rao, 1994). Using the owner-manager principal-agent relationship as an example, managers are hired to perform entrepreneurial activity that will increase the wealth of the owners(s). However, if the manager is rewarded with a salary, there will be an incentive to shirk, as the same salary will be realised within a

reasonable range of productivity. Thus, agency theory contends that in giving the manager stock options or other revenue sharing schemes, the manager will have a greater incentive to work harder to increase the wealth of the firm, which will ultimately increase the agent's personal wealth. However, managers will still be risk averse, as they will only be rewarded by entrepreneurial activity that is successful (Jones and Butler, 1992). For this reason, agents who are compensated in a performance contingent manner will demand a premium for assuming the risk of failing and receiving little reward (Conlon and Parks, 1990; Parks and Conlon, 1995). This is considered a risk premium that may often attract certain agents to specific labour markets (Kren and Kerr, 1993). Thus, alternatives to traditional profit-sharing compensation schemes are sought to reduce the transfer of risk from the principal to the agent (Levmore, 1993). Alchian and Demsetz (1972) considered the degree of risk-aversion to determine the roles sought by members of a firm; those who are most risk averse will seek employment positions rather than try to obtain any degree of ownership with an organisation.

In discussing the two alternatives to solving agency problems--creating monitoring mechanisms or contracting on behaviour outcomes--one can see that the availability of information (asymmetry) and the risk preferences of the principal and agent will dramatically affect which solution, or combination of the two, is sought. Using an agency model allows one to determine to what degree monitoring or compensation will be adjusted to meet the need of a specific principal-agent dyad. This is very useful to firms, as rewards in the competitive marketplace rarely take the form of a pure piece rate; this is where the reward the agent receives is equal to the marginal product that the duties of the agent provide (Nalebuff and Stiglitz, 1983). Thus, the basis of agency theory is the trade-off or balance between the cost of measuring (monitoring) behaviour and the costs of measuring outcomes and transferring risk to the agent (Eisenhardt, 1989; Kren and Kerr, 1993). The problem of determining an efficient contract is confounded by the degree to which information asymmetries and the existence of performance measures exist within the firm. Baker (1992) found that incentive contracts that emphasise the total value of the organisation are common where information asymmetries are great and few performance measures exist.

The two solutions to agency problems thus are interrelated; if monitoring is easily accomplished and inexpensive, the principal should not needlessly transfer risk to the agent, as the likelihood of opportunistic behaviour is reduced. Conlon and Parks (1990) found a decrease in performance-based contracts as the monitoring ability of the principal increased. Similarly, the type of reward structure will also be influenced by the degree to which monitoring can be implemented. Demsetz (1983) stated that firms who had high monitoring costs offered managers less take-home wages, and higher on-the-job amenities, as this type of manager compensation is more difficult to control and monitor.

However, the efficiency of the contract that governs the principal-agent relationship cannot be seen simply in terms of a combination of levels of monitoring and the nature of the reward structure of the contract. Agency costs can also be reduced through other mechanisms. Fama and Jensen (1983) viewed the problem of agency as one created by the separation of ownership and control; thus, changes to the structure of the decision making process within an organisation may reduce the likelihood of agents diverting resources for their own use. The creation of decision hierarchies would make it more difficult for one person to divert such resources for personal use, to the detriment of the firm as a whole. Similarly, Watts and Zimmerman (1983) found that an audit changed the expectations of a firm and therefore reduced the agency costs borne by the manager. However, this was only effective if it was expected that the auditor would report discovered breaches of contract. A firm can also use a board of directors as a mechanism to reduce agency problems (Bathala and Rao, 1995; Fama and Jensen, 1983).

Another way that managerial shirking is reduced is through the nature of across-market competition. A manager would be less likely to shirk knowing that there was a significant number of would-be managers willing to assume the manager's position with the firm (Alchian and Demsetz, 1972). Similarly, an ethical code could also reduce opportunistic agent behaviour, although this could not be enforced in a way similar to traditional methods of policing the P-A contract, which is done by creating sanctions for observed contractual breaches (Noreen, 1988).

Some studies have addressed how other factors may affect the traditional P-A relationship. While outcomes are dependent upon the agent's actions and effort, they are also dependent upon random external variables, such as market conditions, or the actions

of others (McGuire, 1988). Market competition will reduce shirking, as other potential agents will offer their services for a smaller reward (Alchian and Demsetz, 1972). Thus, an agent will not likely shirk and increase the likelihood that his or her position be given to another willing agent. Similarly, Bathala and Rao (1995) found that managers employed by firms in debt were less likely to take extra perks, as they were afraid of bankrupting the firm. In addition, the paying of dividends reduced opportunistic agent behaviour; this made the firm subject to more frequent disclosure, analysis, and scrutiny. Managers found it difficult to divert resources without detection, and the need to pay out dividends also decreased the discretionary funds available to management (Bathala and Rao, 1995).

The degree of environmental munificence that a firm is operating under will also affect the P-A relationship. As explained by Castrogiovanni (1991, pp. 542-543), environmental munificence is “the scarcity or abundance of critical resources needed by (one or more) firms operating within an environment.” Parks and Conlon (1995) tested agency theory assumptions during conditions of varying munificence. They found that the agency model does not work properly under conditions of scarcity; risk aversion is likely to be higher in conditions of this type. Managers likely do not feel that potential losses are controllable (Singh, 1986). In conditions of abundance, agents will perceive less risk and have a greater willingness to accept a performance-contingent contract (Parks and Conlon, 1995).

Thus, the degree to which a contract is performance-contingent will also rely on the state of nature, in addition to levels of risk aversion. For example, if a manager was compensated completely on performance (agency theory’s basic solution to agency problems between management and ownership), then a manager might be punished for the performance of the firm dictated by events beyond his or her control (such as a market collapse). Similarly, the manager might be rewarded for serendipitous behaviour, such as mistakenly selling stock shortly before market collapse (McGuire, 1988). Thus, according to Nilakant and Rao (1994) there are now three means through which efficiency loss due to agency problems can be reduced during conditions of informational asymmetry: 1) increase monitoring structures; 2) base compensation on an average of time periods, therefore reducing the role of chance events; and 3) decrease the risk

imposed on the agent by basing the compensation relative to the performance of other agents. In this way, the uncertainty in agency theory can be associated with three factors: 1) moral hazard, or lack of effort (shirking) on the part of the agent; 2) adverse selection, or the misrepresentation of the agent's abilities to perform what is contracted for; and 3) the state of nature, which is outside both the principal and agent's control (Nilakant and Rao, 1994).

Employing the conditions and assumptions discussed above, agency theory has developed significantly in recent decades, into distinct research streams. In an in-depth review of the agency theory literature through the late 1980s, Eisenhardt (1989) determined that there were two distinct types of agency theory. The first, *positivist agency theory*, describes the governance mechanisms that limit opportunistic agent behaviour, and recognises the types of contractual alternatives that govern the P-A relationship. In addition, positivist agency theory focuses on the separation of ownership and control that reduces opportunistic manager behaviour (Nilakant and Rao, 1994). The second type of agency theory research is *principal-agent*; this theory has a more mathematical focus, and is concerned with the design of ex-ante employment contracts and information systems. Essentially, Positivist theory seeks to identify various informational and contractual alternatives, whereas the Principal-Agent version determines the efficiency of contracts (Eisenhardt, 1989). Through these two streams of research, agency theory can be evaluated as a theory of human behaviour, and a theory of performance outcome (Nilakant and Rao, 1994).

For this reason, agency theory has many research applications. As discussed above, agency theory has developed from the traditional economic theory of the firm, which originally looked at the relationship between management and the ownership of firms. However, agency theory has been used in several different research areas, including advertising (Ellis and Johnson 1993), ethics (Noreen, 1988), congressional control (Spiller, 1990) and retail sales (Eisenhardt 1988). The agency model recognises common problem structures across research streams; therefore, the results from one area may be germane to research in other fields (Eisenhardt, 1989). An important contribution that agency theory makes is in drawing a clear distinction between behaviours and

outcomes, and clarifying the importance of such a distinction in determining appropriate compensation (Eisenhardt, 1988).

Despite its merits, agency theory has not avoided criticism. In a review of organisational economics, Barney and Hesterly (1996) noted that while agency theory considers humans to be utility maximisers, an emphasis has been placed on financial gains (i.e. humans are pure profit maximisers). However, some studies have examined instances where agents are not pure profit maximisers (Atkinson, Stanley & Tschirhart, 1988). In addition, because most agency theory research has emphasised agent opportunism and the ways in which principals can resolve this problem, the theory has an investor focus despite the fact that the theory is neutral; in other words, agency theory often overlooks cheating by principals (Nilakant & Rao, 1994). However, some research has attempted to consider the implications of opportunism on the part of principals (White, 1992). Other critics have recognised that using a performance-contingent compensation system may encourage agents to act opportunistically toward other stakeholders while acting on behalf of principals, as agents may do whatever it takes to increase their rewards (Kurland, 1995). McGuire (1988) stated that agency theory has been too limited in looking almost exclusively at financial shareholders, and thus provides only a very limited perspective on organisational reality. Nilakant and Rao (1994) contended that agency theory assumes that increasing effort increases performance, which is not always the case. Finally, MacDonald (1984) reported that agency theory only applies to a few types of principal-agent relationships.

Despite her concerns, McGuire (1988) conceded that agency theory provides a useful tool for analysing organisations. While the focus of agency theory research has been directed toward profit maximisation, the professional sport industry has already been shown to feature utility maximisers who seek other rewards other than financial gain (Mason, 1997). In addition, this thesis research builds on previous agency studies by examining a principal-agent relationship unlike that of an owner-manager relationship (where much of the previous agency research has occurred). Thus, this thesis aims to build on the existing empirical research on agency theory by focussing on a unique principal-agent dyad with varying levels of monitoring, information asymmetry, opportunism, and utility functions.

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CHAPTER 3 METHOD

This chapter is concerned with methodological considerations related to the thesis, specifically data collection, sources used, and strategies for data analysis. Methods are presented individually within each of the three studies; however, additional details regarding the method used for this thesis research are provided here. The research site was chosen for a number of reasons. The first was that the professional hockey industry provides a unique and discrete site for analysing single-principal, single-agent relationships, as described by the agency model. According to Eisenhardt (1989a, p. 71) agency theory must “expand to a richer and more complex set of contexts.” Given that a discernible population of principals and agents existed for study in this research context, it was hoped that the results emanating from the study would be germane to principal-agent dyads across industries and settings. Other reasons for selecting the player-agent dyad in professional hockey for analysis included the fact that the relationship had a discernible origin period during the late 1960s, and the industry has been influenced by significant environmental changes. In addition, the professional hockey industry has been heavily influenced by the actions of former National Hockey League Players’ Association (NHLPA), Alan Eagleson. His impact on the ways in which the industry has operated since the late 1960s remains today, as the NHLPA seeks to establish itself as a formidable bargaining adversary with the League. These unique characteristics provided an opportunity to trace changes to the principal-agent relationship in dynamic circumstances. While the situation in other professional sports leagues could have furnished similar opportunities for study, hockey was chosen due to the availability of data created by contacts already established by the researcher and members of the thesis committee. Hockey was also chosen due to a dearth of research in the academic community. In contrast other North American professional sports, particularly baseball, have been the site of organisational and/or economic analysis for decades (Cairns, Jennett & Sloane, 1986; Jennings, 1990; Johnson, 1993; Noll, 1974; Scully, 1989; 1995; Sommers, 1992; Zimbalist, 1992).

The use of the agency model was determined *ex ante*, and as the thesis research proposal developed, the means through which data would be collected were

contemplated, with specific consideration given to accessibility and availability of data. These were discussed at length with members of the supervisory and thesis committee during the candidacy exam and following the oral presentation of the thesis proposal. Although the committee approved of these methods, this chapter seeks to provide further insight into the sources of data, the processes of data collection and the way in which the data were analysed. A qualitative approach was employed, to understand the behaviour of principals and agents in professional hockey and test the assumptions of agency theory. As explained by Morse (1994, p. 25), “despite current perceptions and students’ prayers, theory does not magically emerge from data.” Instead, following a detailed review of available literature on agency theory in the organisational economics literature, a series of research questions regarding the behaviour of players and agents was developed. These were derived according to the expectations of the agency model, and were based upon various environmental and contractual influences that are described in detail in chapter two. In particular, this research follows the positivist agency model, which is concerned with identifying conflicts of interests between principals and agents and the means through which these conflicts can be reconciled (Eisenhardt, 1989a). Following an initial review of data concerning the business operations of professional hockey, three distinct research problems were developed to anticipate potential changes to the dynamics of the player-agent dyad, and appeared in the thesis proposal for this study. They are discussed in more detail in each individual paper (chapters 4, 5, and 6) of the thesis.

The investigator had already used a positivist agency model for a previous study on professional team sport (Mason, 1997a). He also had experience using historical methodology in researching the development of professional hockey (Mason & Schrodtt, 1996; Mason, 1998), professional baseball (Mason 1997b), and the business operations of professional sports in North America (Mason & Slack, 1997). The positivist agency model seeks to identify and describe the means through which agency problems can be reduced; in light of this, a focus on broader industry patterns and influences on the player-agent relationship in hockey was sought, rather than discrete, independent principal-agent relationships. Thus, a focus on general changes to the form of the explicit contract between principal and agent, and the mechanisms created to monitor agent

behaviour was deemed appropriate. With this research objective, a qualitative approach was determined to be the best means to address the research problem, and allow for adequate data collection. As explained by Miles and Huberman (1994), the strengths of qualitative research are in focussing on naturally occurring, ordinary events in natural settings, an emphasis on specific cases, and assessing causality in a particular setting. Because this study sought to identify and review environmental factors that have influenced the player-agent relationship, the means through which stakeholders have sought to reduce agency problems, and test agency assumptions regarding the effects of these changes on the player-agent dyad within a specific industry, qualitative research methods were an ideal approach.

Another impetus for the use of qualitative research methods was a concern regarding the accessibility of certain types of data. Due to the proprietary nature of the professional sport industry and the acrimonious relationships between stakeholders in the industry, it was anticipated that data collection would be hampered by a reluctance of industry stakeholders to impart information, even if assured of anonymity. An example of this would be an agent unwilling to disclose specific information on the contracts between him/herself and players; although player contracts are public, player-agent contracts are not, and agents would not be expected to impart information that could possibly be used by a rival in the competitive agent profession. Similarly, although player-agent contracts are registered with the NHLPA, the NHLPA could not disclose contract figures of specific agents, as this would compromise the union's position with both player and agent—this information is only kept with the NHLPA as part of their agent regulation program, and is not meant to be used for any other reason. In addition, while it was expected that some players and agents would be willing to disclose personal information regarding their player-agent contracts, it was difficult to determine what number would be willing to do so, and at what cost to the researcher to find out. As such, accessibility issues precluded the use of substantive quantitative measures for the study, except where such data are publicly available. Given this potential problem, the qualitative approach was considered the best means to obtain data, as collection methods such as interviews could be structured to obtain information on broader industry changes, on which it was anticipated that interviewees would be more likely to divulge their

opinions and ideas. The use of questionnaires was also considered; however, it was anticipated that the commitments of industry stakeholders, who are faced with constant requests for their time (from the media, fans, charitable organisations, etc.) over and above their duties within the industry would result in an inadequate response rate. Given this potential problem and the lack of financial resources available to the researcher, questionnaires were not deemed an ideal means through which data could be collected. In contrast, it was determined a priori through various established contacts that the researcher would be able to arrange interviews with several key stakeholders, which would lead to future interviews. In this manner, data could be collected directly from stakeholders; however, concerns about the reluctance to impart information specific to each stakeholder's experiences remained. To circumvent this problem, interviews were structured to ask the interviewee general questions, and each subject was informed that certain questions need not be answered. In doing so, the opinions of the subjects could be obtained, with less concern that they would be unwilling to give information specific to their own relationships. Finally, some data were supplied by various stakeholders on the condition that the source and the data in no way be associated with this research; this information was deemed proprietary and does not appear explicitly in the text of the thesis. As such, the researcher was able to obtain data that were an important contribution to the study, without compromising the positions of the informants. However, because this data does not appear explicitly throughout the thesis, the researcher recognised that these sources be identified here. An example of this would be where certain results of the analysis of other data collected for this study were then provided to certain stakeholders who were able to corroborate or refute the findings on the basis of their own information. In this way, these stakeholders were able to assist in the study without having to disclose either their identities or the specific data on which they based their opinions.

Data Sources

The following section reviews the types of sources used for this study. While an emphasis on certain types occurred for each of the three individual studies, sources are described below according to their use for the thesis as a whole. Data were collected from a number of sources, but primarily through interviews, literature written by

stakeholders or containing information directly attributable to industry stakeholders, and industry documents. The historical method was used to classify the data into primary and secondary sources. From a historical perspective, a source is considered primary if it is obtained from an individual or collective group directly associated with an event or experience. This view differs somewhat from other definitions, which contend that a source is primary only if it was generated expressly for the purposes of the study at hand. However, data from other sources may be more reliable than those obtained this way, particularly when there is a large temporal discrepancy between an event and the time of data collection. For example, when reviewing the player uprising in 1957 that contributed to the development of the National Hockey League Players' Association, a number of sources were used. Using a traditional qualitative approach, an ideal means to obtain data would be to interview players, such as Ted Lindsay, who were instrumental in its formation. However, in interviewing him today, he would be asked to recall an event that occurred over forty years ago. As explained by Brundage (1989, p. 16), "there must always be presumed erosion of reliability in such recollections [including those found in autobiographies written long after an event], one that increases with time." Instead, by searching through popular sources during the late 1950s, including newspaper accounts and popular publications such as *Toronto Globe and Mail*, *New York Times*, *Maclean's*, and *Sports Illustrated*, direct quotations from various parties can be found. Because they are quoted, they are considered primary sources for purposes of analysis; they are from an individual directly involved with the event studied. Given that they are taken very close to the time of the event, they are arguably a more reliable source of data than interviewing the stakeholder today. In addition, the journalists who covered these events at the time were very involved and knowledgeable about the activities, and were often privy to information as a result of their positions. As such, their reports during the time period are a valuable source of information, and viewed as a stakeholder opinion. From an historical perspective, the researcher must attempt to get as close to an event or situation as possible, and rely on the use of primary sources. This view underpinned the selection and collection of data for this study. With this in mind, an initial attempt was made to collect as much general information about the business aspects of professional hockey since the 1950s. This involved the acquisition of newspaper articles, particularly

those with direct quotes from stakeholders, articles written by industry stakeholders, government and league-related documents, autobiographies, and studies of the business aspects of hockey in the popular and academic literature. Where a lack of databases precluded a search of these titles based on keywords, sources were examined surrounding critical dates in order to avoid the time and resources needed to accomplish a complete search of these sources from the late 1950s through today. For example, for some events, such as the expansion of the NHL from six to twelve teams for the 1967-68 season, newspapers were searched on microfilm surrounding the announcement of expansion, rather than searching completely through the entire year for information on that topic. This reduced the time requirements needed to obtain the requisite information regarding this event.

Several sources provided a rich supply of data that, upon first inspection, did not appear to be valuable. One example was Lautier and Polnaszek's (1996) book on the WHA. Lautier has been a journalist for over two decades, covering hockey. Polnaszek, at the time of publication, was the Hartford Whalers' public relations executive, was the former WHA statistician, and unofficial curator of the WHA library. Given their experiences, both were able to provide unique and valuable insight into the operations of this league. Their book also featured many passages, some up to several pages, of continuous direct quotes made by former WHA coaches, managers, agents, owners and players, many of which were obtained during the time of the WHA's operations. Thus, this book provided primary data that would otherwise not be available to the researcher. Similarly, Gary Davidson's autobiography (1974) was an excellent source, given that it was published two years after the WHA began operating, was written by the founder of the league, and also featured lengthy quotations by league stakeholders.

In addition, several other sources, which at first glance appear to be secondary, were treated as primary for this study. They were comprised of articles written in law and other academic publications by important stakeholders in the hockey and professional sports industry, such as players (Meggyesy, 1992), general managers (Burke, 1993); agents (Bartlett, 1993; Falk, 1992) union heads (Fehr, 1993), and sports lawyers (Cohen, 1993; Ehrhardt & Rodgers, 1988; King, Jr., 1993; Powers, 1994; Pulver, 1991; Ring, 1987; Roberts, 1992; Steinberg, 1991; 1992; Weiler, 1992). Similarly, books and

other popular sources written by players (Dryden, 1979; Howe, Howe & Wilkins, 1989), agents (Hendricks, 1993; Levine, 1993; Rosenhaus w/Yaeger, 1997; Simon, 1993; Trope w/ Delsohn, 1987; Woolf, 1976; 1989) and other stakeholders (Davidson w/ Libby, 1974; Eagleson w/Young, 1989; Gallner, 1974; Lautier & Polnaszek, 1996; Stein, 1997) were deemed primary sources for the purposes of data analysis. Other sources such as the *Heartland Policy Studies* (1995) featured the testimony of stakeholders and were also a valuable source of primary data. An exhaustive search of these types of sources resulted in a substantial amount of information that would not necessarily be available through traditional qualitative methods, due to economic and time limitations. While interviewing all these individuals would provide a suitable collection of data, it would have been virtually impossible to spend the time and resources to arrange to interview with them all. In addition, the views that might be expressed by many today would not necessarily be the same as the time the source was published.

Prior to the commencement of the thesis research, the investigator had already accumulated a substantial quantity of secondary literature on the professional sport industry in general, and on professional hockey specifically. In addition to these data, several major searches were undertaken for this study. One was to perform a search through available issues of *The Hockey News* (hockey's trade publication), to find articles on the business aspects of professional hockey. A noticeable increase in this coverage was identified during the mid-1980s, which has continued to grow through today. Issues available to the author covered the time period between 1982 and the present, and represented approximately 70% of all issues published during that period. In addition, a search of *Sports Illustrated* was facilitated using SPORT Discus, and issues prior to 1975 (not covered by the database) were sought using a *Sports Illustrated* index published during the late 1970s.

Industry documents were also actively sought. The *NHLPA/NHL Collective Bargaining Agreement* (CBA), and *NHLPA Regulations Governing Agent Certification* were obtained from the NHLPA, which supplemented CBA's already in the author's possession, including older NHL CBA's, and CBA's from other North American professional sports. The author also sought agent certification plans from US states to supplement state regulations and copies of ARPA-code of ethics (*Code of Ethics:*

Association of Representatives of Professional Athletes) found in Greenberg (1993). The author was unable to obtain all of the state plans, but was able to obtain documentation from nineteen states that have considered some form of agent regulation, along with copies of various attempts by US federal government committees to regulate agent behaviour (US Congress, 1996; 1997; *Uniform Sports Agents Act, First Draft*, May 2-3, 1997). Where available, the researcher also periodically searched state bills and changes to legislation on the internet to ensure that data on regulation was updated. In addition, issues of the *NCAA Newsletter* addressing agent regulation by that organisation were obtained. Finally other documents were sought to examine the industry as a whole, including publications by the Canadian government (*Task Force*, 1969; Canada, 1974), and several important legal cases involving professional hockey stakeholders (*Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., U.S.D.C. F.Supp. 462*, 1972). Versions of various professional codes of conduct, including the *Model Rules of Professional Conduct* in the US and *Rules of Professional Conduct* in Ontario were also obtained. Information on general industry trends, such as revenues, player salaries, and television contracts were gathered through all of the sources described above. While data is more readily available on these subjects today, data prior to 1990 was fragmented and difficult to obtain. Obviously, where different figures were obtained for the same year from different sources, the source considered more reliable, based on the criteria described later in this chapter, was chosen.

Interviews

Initial interviews were selected based on available contacts through the researcher and one supervisory committee member, and encompassed current and former players, agents, and management personnel. A snowball approach was used; after an interview was completed the subject was asked for other potential interview candidates, particularly those who did not fit the profiles of subjects already interviewed. From these initial subjects, parameters were set out to determine appropriate future interviews. This method can be described as purposive sampling, where the researcher uses knowledge of a group to select subjects to represent the population (Berg, 1989). Appendix A provides a summary of the different viewpoints sought in the interview process, and a description of the respondents. A total of thirteen interviews were completed with twelve different

subjects. Prior to the first interview, parameters were set out that the researcher hoped to cover through the process of interviews. This was done with the hopes that as many different viewpoints could be obtained from agents, players, and management. As each interview was completed, the parameters were checked to determine the target subject of the ensuing interview. Thus, while representativeness was sought in the interviews, the choice of informants was also determined by the conceptual questions underpinning the thesis (Miles & Huberman, 1994). Some subjects, based on their experience, were able to meet several of the parameters; for example, a player who is one of the top-paid players in the league today, but at one time was one of the lowest would be able to have a perspective on his association with agents that has changed greatly over time, and provided additional insight into how the relationship differs (if at all) based on the prominence of the player. In addition, several other industry stakeholders were sought, in consideration of expected bias that would be expressed by subjects falling into the player, agent, or management categories. As expected, some expressed displeasure toward other stakeholders (even those within their own classification); however, many were sensitive to other stakeholders' positions.

The in-depth interviews lasted between forty-five and ninety minutes, with an average interview time of one hour. Where permission was given by the interviewee, the interview was tape recorded and transcribed, which resulted in eight to eighteen pages of text for analysis. According to Henderson (1991, p. 73), in-depth interviews are chosen where "research interests are relatively clear and well-defined, the setting or people are not otherwise accessible, [and] the researcher has some time constraints." An agency framework had already been established *ex ante*, and problems with the availability of subjects for data collection were anticipated. This was due to the proprietary nature of the industry, and the fact that many in the industry are constantly asked to provide their time for other commitments. As such, interviews were chosen as the ideal means through which data from other sources could be supplemented. Given these considerations, there was significant *a priori* instrumentation for the interviews, and a semi-standardised, open-ended format was selected. Reflecting Miles and Huberman's (1984) discussion of interview instrumentation, coherent, concise questions were developed for two reasons: 1) with *ex ante* theory guiding the study, questions could be planned out in advance; and

2) without a focussed set of questions, too much superfluous information would be collected. The latter was particularly important for this study, as the researcher did not want to waste too much of the respondents' time. Standardisation was selected to provide a basis of comparison between subjects, and to corroborate or refute data from other sources. A sample of interview questions can be found in Appendix B. However, questions were open-ended to encourage interviewees to talk freely about their experiences, which would ideally result in new directions for the study and future interviews. Questions were changed, or new ones asked, based on the direction that the interview was taking. However, the interviewer was constantly aware of time considerations, and tried to ensure that key subjects to be discussed were covered, with tangential discussion occurring toward the end of the interview. Subjects were informed of the purpose of the interview, signed a consent form (Appendix C) and, in some instances, the theoretical foundations of the study were also discussed with the interviewee.

Data Analysis

Once the data had been collected using the above methods, a method of ranking the "value" of each source was developed. This was done to distinguish which types of data were more reliable and weigh data, especially where data from different sources resulted in a lack of corroboration. Obviously, information obtained through direct interview was valued highly; however, due to the extreme viewpoints taken by stakeholders, particularly management and players, consideration was given to the past experience of the interviewee. For example, one interview was done with an NHL general manager who was a former player, had used an agent *and* negotiated his own contracts, and dabbled in the player agent profession before taking on a management position with an NHL team. Therefore, it was expected that, while his views would be pro-management, they would also be affected by his previous experience on the other side of the bargaining table. In addition, particular value was placed on information taken from the sworn testimony of stakeholders in documents, as this was done under oath.

Data from sources were assigned to one of seven categories, ranked in order of validity: 1) direct interview by the researcher; 2) government documents, industry

documents, and testimony from stakeholders; 3) primary sources—written by stakeholders; 4) primary sources—a primary or secondary source containing a direct quote or information provided by a direct stakeholder; 5) primary sources—written at or near the time of an event by a direct observer; 6) secondary sources—in the academic literature; and 7) secondary sources—in the popular literature. The rationale for the rankings is as follows. Interviews rank first because, not only is the data primary, it was obtained expressly for the purposes of this study. The second involves the primary sources that are the result of the business operations of the industry, or contain quotes from stakeholders that are taken under oath. At times, testimony was considered more valid than interview data, given that the interviewee could choose not to respond to a question, or possibly provide false or misleading information; the likelihood of this occurring under oath was less likely. The third type of source involves direct information from stakeholders. However, this source is less valuable for the study by virtue of the fact that the stakeholder is choosing the type of data provided (inferior to #2), and at times the topics are tangential to the issues covered deliberately through the interview process (inferior to #1). The fourth type of source provided valuable data, particularly where the quote is taken during or directly after an important event has occurred. This is where a quote from thirty years ago is arguably more valid than an interview with that same stakeholder today, due to the bounded rationality of the interviewee, which causes an erosion of reliability. However, this type of source is limited by potential bias, particularly where the data is gleaned from a secondary source; this researcher is limited by the secondary author who is selectively including information, or providing only portions of a statement by a stakeholder to meet the requirements of the given topic or message. To account for this, any tendencies for a prominent journalist to express bias toward other stakeholders (i.e. pro-management or pro-labour) were taken into consideration when using data obtained from these sources. Secondary sources from the academic literature were also consulted, although there has been very little research done examining the business of professional hockey (which provided an initial impetus for this study). They are ranked ahead of #7 for one reason; one would hope that because they are written by scholars and are often refereed, there is an additional safeguard of rigor that might not be present in secondary popular works.

Due to the disparate views and interests of the various stakeholders in professional hockey, bias was another major consideration for this study. Consequently, all data had to be examined with these interests in mind, and it was expected that some parties would have completely different opinions on the same topics. However, it was also expected that the large body of data collected, from so many different sources and viewpoints, would allow for the researcher to provide new insight into the dynamics of stakeholder relationships in hockey. This follows Eisenhardt (1989b, p. 546), who reported that in doing case study research, “creative insight often arise from the juxtaposition of contradictory or paradoxical evidence.”

A Historiography of Sources

In addition to potential conflicting opinions from data sources on the basis of the source’s position or influence in the industry, it was also expected that some discrepancies in the data would also emerge on the basis of the time period that data was obtained from each source. In order to address this, and using the historical method, an analysis of the historiography of sources was developed that would aid in data analysis. Historiography can be described as “the history of history,” or “the history of history writing” (Brundage, 1989, p. 42). Alternatively, it is the ways in which individuals have chosen, over time, to represent the past. According to Brundage, (1989, p. 42), “an awareness of the historiography on your topic is an essential prerequisite to undertaking research and writing using primary sources.” Thus, one important consideration for the analysis of data from all sources used for this study was to take into account how changes to the business aspects of the hockey industry have affected the views of various stakeholders over time. For example, if one were to interview former player Gordie Howe during the late 1960s or read his biography (or autobiography) from that period, his responses to questions or general comments would be dramatically different than today, due in part to information that has come to light recently. This would include the behaviour of Alan Eagleson, the victory of former NHL players in getting pension funds back from the League, and the fact that Howe was an underpaid athlete in the 1960s, both in terms of the revenues of his team, and the amounts paid to his former teammates. Thus, if Howe was asked in 1975 about how good a job Eagleson had done as NHLPA leader, one might expect his answer to be very different than were Howe asked the same

question today. As such, it was important to determine a framework through which data could be scrutinised for reliability and validity, based on any potential influences of historiography. The framework was based on the comments of players, agents, management, owners the media, and other stakeholders, and an awareness of certain influential incidents that have occurred over the years. Data was obtained through interviews, documents, newspapers, biographies, autobiography, and other academic and popular literature. For example initially, players were represented as good-hearted, good-natured athletes who played hockey for what was called “the love of the game.” However, as time has gone by, and various sources and incidents have pointed out that owners and managers exploited this for financial gain, the representation of players in these sources has changed (Cruise & Griffiths, 1991). Instead, retired players are now often described as naïve and exploited (Conway, 1995; CP-Vancouver, 1994; Dowbiggin, 1993) and today’s players are portrayed as greedy and self-serving (Verburg, 1994). In other words, the same events and people are now recalled in a different way today. Thus, because players have been represented in differing ways over time, there may be some bias by stakeholders toward the motives of players in their interactions with other stakeholders. As noted by Shafer (1980, p. 31), “even when the person under study leaves testimony as to his motives, we cannot be sure that he is trying to tell the complete truth.” By examining the representation (historiography) of individuals over time, we are also able to be more critical of sources by further scrutinising the source. Using Shafer’s example above, not only might this person’s testimony be flawed because he/she is deliberately misrepresenting the truth, he/she might also subconsciously have a biased view of an event or individual, based on the way that event or individual was represented at the time the testimony was given. Thus, it was paramount that data were collected from a wide range of time periods to remove the likelihood of results being affected by historiographic influences.

Similarly, agents have been represented in different ways. Literature that appeared in the early to mid 1970s described the player agent profession as an exciting and lucrative career path (Gallner, 1974; Kennedy, 1975). Agents could make money by associating themselves with athletic celebrities, which was a focus of the merits of pursuing this profession. Shortly thereafter, from the late 1970s and through the 1990s,

agents were represented as parasitic, incompetent, self-serving individuals, which coincided with the growth of agent regulation in sport (Crandall, 1981; Shropshire, 1990). However, in recent years, the value of agents has been more acknowledged as concerns for player welfare surround selecting a *good* agent, rather than avoiding agents altogether (Cheski, 1993). The effects that this would have on data collected for this study would be obvious. For example, take a player interviewed in the early 1980s about his perceptions of the agent profession, and another interviewed in the late 1990s. If the same questions were asked, and the experiences of each player were identical, we might find that the former player would consider agent opportunism to be more of a problem based on the way agents had been represented by industry stakeholders, particularly the media.

Finally, the representation of owners and managers has changed considerably over the years. As recently as the 1980s, ownership and management were portrayed as decidedly patriarchal occupations (“Conn Smythe,” 1951; Imlach w/ Young, 1969; Selke w/ Green, 1962). These were cigar smoking, individualistic entrepreneurs who were often involved in sport for the “love of the game,” (Brower, 1977; Kowet, 1977) and not any apparent financial motivation. However, as revenues and salaries increased through the later 1980s, the business aspects of professional sport and hockey could no longer be ignored. Instead, there has been a trend to scrutinise the business of professional hockey, and owners and managers are now represented more heavily in two ways: 1) as manipulative individuals who often operate without consideration for fan or player welfare; and 2) as corporate partners in an expanding global entertainment community (Bernstein, 1998; Cousens & Slack, 1996; Ostrowski, 1998). By applying the concept of historiography scrutinise sources for this study, an additional basis through which data obtained from articles and other documents could be subjected to internal criticism was established. Internal criticism involves evaluating any potential bias that can be established for a given source, and taken into account or, as Shafer (1980, p. 41) explained, “internal criticism determines the meaning and value, or credibility of evidence.” Thus, in addition to bias based on the position that a stakeholder held in the industry, another consideration was the time period from where the source arose. For this reason, data from as wide an array of sources and time periods as possible were sought.

In addition, several primary sources were not relied upon heavily for this study (Eagleson w/Young, 1991; Stein, 1997). This was due to an anticipated lack of reliability of the authors as a result of their behaviour in other endeavours, and historiographic influences described above.

While there was no explicit line of demarcation set out in the process of data analysis to consider the historiographic implications of the sources used, each source was scrutinised on the basis of where it might fit on the continuum described above for each stakeholder. For example, due to the frequent outcry of agent abuses during the late 1970s and early 1980s, it was anticipated that sources discussing agent opportunism from this period might overemphasise this type of agent behaviour. For this reason, less emphasis on opportunism found in more recent sources might reflect both a general decrease in agent abuses *and* a decrease in the need to represent agents as self-serving opportunists. Since interviews were all completed over a one-year period, historiographic considerations for this type of source were less important. However, the positions that each interviewee held in the industry, combined with the time that the subject had been actively involved in the industry were taken into account. Data obtained through interviews were analysed as follows. Initially following each interview, the interviewer developed field notes on various thoughts regarding the interview, particularly on aspects such as the tone of the interview, interviewee reaction to some questions, and evasiveness (if any). For interviews that were not recorded, this was done in much greater detail, and consisted of specific answers to questions brought up in the interview. Following this, taped interviews were transcribed. Using the questions asked during the interviews and from topics emerging from less standardised portions of the interviews, a key was created. From this list, a shortened-form key was developed (see Appendix D), which was then used for more extensive analysis of the transcriptions. The transcribed interviews were then re-read, and coded according to the shortened-form key list. Each interview was then summarised with a list of codes that emerged.

While interview questions were used to obtain data germane to all three studies (chapters four through six), the use of specific sources and data analysis differed for each paper. Please see the method sections of each chapter for discussions of data collection and analysis specific to each study. Because the first paper attempted to identify the

agency factors specific to the hockey industry that have influenced the player-agent relationship, there was a greater emphasis on historical documentation. An initial list of possible factors was made which became more refined as the agency model was introduced into analysis (see chapter four). However, initial data collection, particularly of secondary sources, was done to gain insight into the dynamics of the professional hockey industry. This follows Morse (1994, p. 26), who reported that “the researcher should learn everything possible if he or she is to avoid reinventing the wheel.” Guided by this first list of possible influences, a search was undertaken to obtain as much information (and, as described above, as many different sources) as possible regarding the NHLPA, the changeover of leadership of the NHLPA, the operations of the WHA, growth in industry revenues and revenue streams, player salaries, and the NHLPA’s agent certification program. In the meantime, the theoretical overview led to some assumptions by the author of possible effects created by changes to the agent market, and salary disclosure (information asymmetry). According to Morse (1994, pp. 26-27) “the theory obtained from the literature is a template for comparison so that the researcher may recognise what is new and exciting.” Thus, possible factors were identified at the onset of data analysis by identifying possible influences on information asymmetry, environmental munificence, and the agent market which, according to agency theorists, should all have an impact on the principal-agent dyad. The degree to which these factors influenced the professional hockey industry and the player-agent dyad would emerge from the process of data analysis.

Checklist matrices were used to classify information on environmental factors, possible industry effects, and direct effects on the agency relationship. In some instances, a matrix contained possible bipolar results; for example, the matrix examining the effects of salary disclosure could have several possible results for effects on performance-contingent compensation, based on the data obtained for each source. For example different stakeholders might have different views on the effects of salary disclosure, based on their personal experiences, their positions within the industry, and possible historiographic influences. Thus possible results from the data could be an increase, no change, or decrease in P-C usage. In addition, each of these areas was further reduced to reflect data obtained from different industry stakeholders, to identify bias and any

conflicting results. In order to do so, “cells” were created within a matrix that reflected the viewpoints of different stakeholders. Through the process of “sifting” through the various sources (Morse, 1994), each cell was filled to reflect each factor’s influence, and the degree to which each stakeholder refuted or corroborated the opinions of other stakeholders. As the researcher was able to fill certain cells, evidence supporting each factor emerged.

The following provides a more detailed description of this process, which was done for all three studies. After an initial review of the collected data, each source was classified and put into one of the seven categories described earlier (and in chapter three). Once classified, these sources were more thoroughly examined, with emphasis placed on each source depending on its category. Select pieces of evidence that fit into a particular matrix were then transcribed onto a recipe card, verbatim, with a reference to its source. Where possible, direct quotes were used to remove any additional research error that occurred through the process of data reduction (paraphrasing could possibly result in the evidence losing its original meaning or being misrepresented when examined later). Each piece of evidence on a recipe card was then put into the matrix (appearing as a number between one and seven to represent its category), with the intent that every “cell,” or stakeholder viewpoint, would be filled. The recipe cards containing the evidence (or data) were then grouped according to where they fit into the matrix and some were later used to provide examples of the types of support found in this study. Through inputting data from the various sources, results supporting, partially supporting, or not supporting the research questions emerged. Through the ongoing process of data reduction and display described above, this study facilitated the requisite data to investigate the established issues, which appear throughout this thesis. Due to the amount of data collected for this study, not all evidence was transcribed onto recipe cards. Instead, a number was inputted into the matrix based on a given source and, where data was determined to be representative of a given topic or issue, selected and transcribed to appear as an example in the write up of the thesis.

While the analysis of data was done to consider possible biases from sources, time periods, and stakeholder viewpoints, an interesting result from the first paper was the degree of corroboration between stakeholders. For example, virtually all stakeholders

considered the advent of salary disclosure to have a significant influence on the player-agent relationship. In addition, the effects of the NHLPA leadership change was attributed less to the abilities of the new leader (although recognised) and more to the fact that the previous leader was no longer in power.

The second paper (chapter five) employed a similar process of data analysis. Monitoring mechanisms emerged through an initial review of the literature on player agent regulation. The criterion for inclusion was simple; any deliberate attempt made to regulate agent behaviour by industry stakeholders that could possibly affect the player-agent relationship in hockey was identified. From this list, six distinct forms were identified, based on reviews of agent regulation in professional sport obtained from eight primary and nineteen secondary sources. Because many had been created by stakeholders concerned about agent opportunism in other sports, a matrix was created (which appears as Table 5.1) to identify monitoring problems both for the agency profession in sports in general, and hockey in particular. Using the same process of sifting and adding data to the cells on the matrix, the most significant problems emerged from the data. However, unlike the previous study, the data relied most heavily upon for this research were industry documents, particularly NHLPA, ARPA, state and federal regulation, and professional codes of conduct. These were critiqued for their value in regulating hockey agents specifically. The opinions expressed by stakeholders, particularly those directly affected by regulation were then consulted. Then, in using the agency model as a means of analysis, problems emerging from the process of data analysis were scrutinised to identify universal agency problems inherent in principal-agent dyads (please see the discussion section in chapter five). Thus, the agency model provided a way of creating criteria to evaluate the different monitoring mechanisms in hockey on the basis of any inherent agency problems that were apparent in each mechanism. Finally, the agency model provided an opportunity to suggest possible solutions to the existing mechanisms to increase their effectiveness in reducing opportunism by professional hockey agents.

The final paper used the results of the first two papers to identify those factors that potentially had the greatest effect on agent opportunism. The first paper used agency theory to identify and review potential influences on the player-agent dyad, while the

second used agency theory as a means of assessing the effectiveness of agent monitoring on reducing opportunism by professional hockey agents. The final paper used the player-agent dyad as a case study to test the assumptions of the agency model as proposed in the agency literature (that were discussed in chapter two), and the discussion that emanated from chapter four. Thus, the analysis of data was predicated on the basis of supporting or refuting the research questions on the effects of industry factors on reducing information asymmetry and/or reducing agent opportunism. Similar to the previous two studies, matrices were used to create a means of identifying issues and reducing the data into a manageable form. Relying on the factors identified in chapters four and five and the predicted outcomes suggested by the agency model, data were analysed on the basis of testing the outcomes predicted by the agency model. However, the process of data analysis did not end at this point. As explained by Morse (1994, p. 33), “the first step in theorising is to ask questions of the data that will create links to established theory.” As is shown in chapter six, the results of the study reveal that agency theory only partially explains changes to the player-agent dyad in hockey. In particular, the value of agency theory in providing prescriptive measures for stakeholders to reduce opportunism is discussed. To do so, alternative models are presented that might possibly explain any inconsistencies with the tenets of the agency model that emerged. This process is what Morse called “recontextualising,” where, in light of the findings emerging from the data of a study, possible changes are suggested to existing theory in the hopes that its predictive abilities are enhanced.

The above discussion provides a closer view of the means through which the data was analysed to arrive at the results found in each individual paper. As mentioned earlier, threats to the reliability of data for this study were addressed through a deliberate attempt to collect data from as many possible differing industry viewpoints and sources, over a wide period of time. In addition, the historiography of data regarding the hockey industry was also developed to provide another means to recognise potential bias, and gain greater insight into the player-agent dyad. A means through which potential threats to validity could be counteracted was through the triangulation of data, which requires the use of three or more data-gathering techniques (Berg, 1989). Triangulation provides a basis of validating existing measures by using alternative ones (Miles & Huberman,

1994). Thus the data obtained for this study were triangulated on the basis of *sources* and *method*. Sources were triangulated through using primary and secondary sources, from different stakeholders, various time periods, and different places. Method was triangulated through the use of different means of collecting the data; interviews, reviews of documents, and written primary sources (from conference proceedings, autobiographies, articles, and quotes in secondary sources), provided alternative means of collecting the data. This was also done to strike a balance between industry actors (players, agents, managers, and the state) and informed observers (media, academics). Each source was assigned a ranking, and where contradictory, weighed against one another. The result was a unique insight into the dynamics of the hockey industry. The researcher relied heavily on the use of matrices (Miles & Huberman, 1994) to reduce the data collected into a manageable form, and to address the research problems set out in each individual study. These matrices appear, in some form, as the tables that appear throughout the papers.

In addition, given the often bipolar and acrimonious relationships between stakeholders, the process of sociometry was employed during data analysis. According to Berg (1989, p. 122) sociometry “is a procedure that allows the researcher to make assessments about the affinity or disdain members of some group have toward one another.” In doing so, a means of measuring the social distance between groups is created, a valuable tool in evaluating potential bias in data sources, and explaining any confounding responses across groups. A checklist matrix was created that listed a number of stakeholders who would be influenced by the player agent dyad. These would include agents, players, team general managers, the teams themselves, the league as a whole, the profession (if any) that a stakeholder was related to (and therefore be held to any professional standards), the sport of ice hockey itself, and fans of the sport. Building on Kurland’s (1995) discussion of agency theory, in which she recognised that secondary principals exist that agents must interact with, each of the above stakeholders were assessed a numerical ranking according to the self-interests of each. For example, in an assessment of agents, agents received a ranking of one, while players and professional standards received similar rankings. The rationale for this is as follows. Due to the assumption of self-interest, agents will choose to act in their own interests first. Having

done so, they will try to act in the best interests of their clients (players), and obey the interests of the professions (such as law) in which they practice. In contrast, teams, general managers, and the league all received a lower ranking (as the agent will act contrary to the interests of these stakeholders in order to meet the needs of their own, their players, and their professions). However, the agent will have a slightly greater need to recognise the needs of the sport of ice hockey, as it is interest in the sport that is the basis for his/her livelihood. These rankings were created through an examination of the data on the basis of the source stakeholder group. This sociometric scale was not relied upon heavily through the process of data analysis. However, along with a historiography, it was deemed necessary to create in order to identify potentially conflicting results. In the case of the sociometric scale, conflicting results would occur between different stakeholders, whose opinions and experiences were shaped by their affinity or disdain for other stakeholders. Similarly, a historiography was developed to account for potential conflicting results, but instead of stakeholder bias, it attempted to account for conflicting information that occurred as a result of the time period in which the data emanated. Thus, these concerns resulted in the desire to rely on data obtained from as wide an array of stakeholders and time periods to provide the most objective view of the player-agent relationship in hockey and the changing environment in which it operates.

Thus following Miles and Huberman (1994), checklist matrices were created to reduce the data into a manageable form, identify any missing data, and determine and reconcile conflicting results from different stakeholder groups that were the result of sociometric and historiographic influences. In the process of data analysis, no effort was made to quantify the various bits of information obtained from the different sources. Because of the variety of sources and viewpoints and the means through which data was collected, it would be virtually impossible to obtain the necessary data to be able to quantitatively compare results across cells. Given the use of a qualitative research strategy, the relationships between different stakeholders were deemed too complex to be reduced to numeric values. Berg (1989, p. 26) noted that “a common mistake made by many inexperienced or uninformed researchers is to reduce qualitative data to symbolic representations and quantitatively computer analyse them.” Thus, although the interviews and other sources were coded during data analysis, it was done during the

process of reduction, and not meant to be used to assign a numeric value to a given opinion or viewpoint. In some instances, due to both a lack of data and a lack of support found in the data, some cells did not reveal any causation. However, in many instances overwhelming evidence, from varying sources and stakeholders, emerged to support the objectives of each study. Through this process it was determined at what point enough data had been collected and analysed to answer the research questions posed in each study. These results are identified and comprise the most valuable contribution of this thesis research. By virtue of collecting, analysing, and reducing data from all of the various sources, new insight into to relationships between stakeholders, particularly players and agents, emerged. As explained by Patton (1980, p. 339)

the task is to do one's best to make sense out of things. A qualitative analyst returns to the data over and over again to see if the constructs, categories, explanations, and interpretations make sense, if they really reflect the nature of the phenomena. Creativity, intellectual rigor, perseverance, insight—these are the intangibles that go beyond the routine application of scientific procedures.

Thus, it was the author's ability to synthesise the data that was collected for this study that has resulted in the findings that appear throughout this thesis. Thus, inference comprised an important part of this thesis research, which is the process of reasoning from facts that are not always connected, bridging gaps in the data, and connecting bits or classes of available evidence (Shafer, 1980). As explained by Shafer, (1980, p. 193), the process of inference "is to some extent intuitive, undemonstrable, partially free of fact; but it should cling to whatever facts are available."

Writing up the Findings

One concern in the writing up of this thesis research was the means through which the data, specifically proprietary findings, could be conveyed to the reader without compromising researcher-subject considerations. As discussed earlier, the questions posed in the interviews were deliberately designed to obtain more general views from the interviewees. Specific, personal questions were used but were deemed to be acceptable; only one interviewee declined to respond to some of the standardised questions. However, some data obtained from other sources were also relied upon heavily for this

study, which was provided with the expressed concern that it be used to corroborate findings but in no way would the data or any association with its source appear in the text of the thesis. For this reason, several conclusions are made in the body of the thesis that are made without direct reference to these sources. These conclusions are made by virtue of the data analysis from the sources described in the previous section *and* the information sources described above. Since these conclusions are made on the basis of this process, there would be no references made after they appear in the thesis. As such, supporting evidence from the published literature or interviews have also been included; the researcher wants to clearly state here that the conclusions are not made solely on the basis of these secondary sources, or anecdotal references made throughout the thesis. *They are made to provide examples, or to provide support for the findings of this study.* This practice is considered a major function of secondary sources; secondary data can be used to demonstrate original scientific findings (Black & Champion, 1976). Black and Champion (1976) also note that secondary data have two other uses in research, in providing auxiliary documentation and to verify previously established findings. These two other uses are also intended here.

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CHAPTER 4

INDUSTRY FACTORS AND THE CHANGING DYNAMICS OF THE PLAYER-AGENT DYAD IN PROFESSIONAL HOCKEY

During the 1950s and 1960s, despite generating significant revenues for teams, professional hockey players were not well paid, due to the bargaining imbalance between themselves and team owners. For example in 1957, the average National Hockey League (NHL) salary was \$8,000 per season. In comparison, the average teacher's salary was \$5,000, but players often had to maintain two different residences, and paid nine hundred dollars per season toward their pension fund (Cruise & Griffiths, 1991). Given their short careers (usually five years, on average), being a NHL player was not a financially lucrative career choice, and few players had any idea of what their legal or contractual rights were. The NHL was able to perpetuate this through refusing to allow players to examine their own contracts, and by discouraging players from furthering their education (Cruise & Griffiths, 1991; Dowbiggin, 1993; Kidd & Macfarlane, 1972). In this manner, the bargaining leverage favouring management could be maintained. As team owners and general managers exploited this information asymmetry during the mid 1960s, attorney Alan Eagleson befriended two Toronto Maple Leaf players, Bob Pulford and Billy Harris, and performed various legal duties on their behalf. Soon, Eagleson became a fixture in the social activities of many Toronto players (Cruise and Griffiths, 1991). In 1964, Carl Brewer of the Leafs asked Eagleson to negotiate his contract with the team, and by 1966, Eagleson represented thirty players (Deford, 1966). At this point, other agents slowly began representing players, and the player-agent, principal-agent relationship emerged in hockey. It was not long before Eagleson became involved in the creation of the NHLPA, and would become the most prolific agent in professional hockey for over a decade (cf Conway, 1995; CP Newswire, 1994; Cruise & Griffiths, 1991; Dowbiggin, 1993; Eagleson w/ Young, 1991; Houston & Shoalts, 1993).

Soon many other prospective agents became involved in the hockey industry; however, their early involvement has not been as well documented as Eagleson's. Capable agents helped players reduce the bargaining imbalance enjoyed by teams. As explained by former NHL player, Orland Kurtenbach, "there was tremendous pressure put on those individuals by the owners. Players had no idea what to ask for in

negotiations because there was no financial information available from the teams" (CP-Vancouver, 1994, p. A12). In contrast an agent, particularly one who represented a number of different players, had a much clearer idea of what the market for player services was like, and whether or not a team's offer was competitive when compared to other players.

Today player agents are an integral and influential stakeholder in the business of professional hockey (Gallner, 1974; Greenberg, 1993a; Narayanan, 1990). Along with the National Hockey League Players' Association (NHLPA), agents have helped players improve their wealth and bargaining power during their short but potentially lucrative careers (Cruise & Griffiths, 1991; Ehrhardt & Rodgers, 1988; Steinberg, 1991). With the help of agents, average NHL player salaries have grown from \$22 000 in the early 1970s (*Canada*, 1974) to over one million dollars annually today (*Sport Industry News*, June 26, 1998). Athletes have also been able to seek additional income through endorsements and other ancillary ventures (Quinn & Warren, 1983). Although players and their agents have developed a unique relationship, many characteristics are consistent with principal-agent dyads that exist in other settings. The player, as principal, hires the agent to perform a duty or service. In the context of professional hockey, this would involve negotiating a playing contract with the parent team on behalf of the player (Bartlett, 1993; Burke, 1993; Champion Jr., 1990; Faber, 1993; Falk, 1992; Greenberg, 1993b; Weiler, 1992). In addition, depending on the needs of the player and the abilities of the agent, other services can be provided. These include (but are not limited to): financial management and services; tax, estate, and other planning; seeking endorsement opportunities to supplement the athlete's playing income; representing the player in arbitration and/or litigation surrounding the player's contract; providing general counselling services, immigration, and drug and alcohol counselling; talent evaluation; and strength and conditioning (Baker, 1990; Cheski, 1993; Crum III, 1986; Ekmekjian, 1994; Johnson, 1988; McKenna & DiGiuseppe, 1991; Misey & Donato, 1998; O'Meara, 1992; Shefsky & Pappano, 1991; Sobel, 1987; Vausher, 1994; Yasser, McCurdy & Goplerud, 1990).

Since the arrival of agents in the mid 1960s, the professional hockey industry has experienced significant and turbulent growth. This change has dramatically affected the

relationships between many of hockey's stakeholders, including that of player and agent. Thus, the purpose of this paper is to identify and review the industry changes and factors in recent decades in hockey that have affected the relationship between player and agent. To do so, an agency theory framework is used, which provides a means of identifying characteristics common to principal-agent relationships, and the effects that environmental pressures have on them. Thus, in using the agency model as a tool to examine changes in hockey, the degree to which each factor has affected the player-agent relationship can be determined. Following a theoretical overview of agency theory and an explanation of the methodology used for this paper, a review of the precipitating industry changes and factors that have impacted the player-agent dyad is undertaken. Having done so, the agency model provides the basis through which the effects of these changing contextual pressures can be understood. Following this discussion, several predictions regarding the future of contracts between player and agent are made. Finally, a proposal is developed to alter the terms of the player-agent contract to reduce inefficient contract design. Thus, agency theory becomes a useful tool through which the behaviour of players and agent in professional hockey can be better explained, understood, and forecasted.

Theoretical Framework

An agency relationship occurs when one party or principal (in this case the player) contracts with another (the agent) to provide a service on behalf of the former (MacDonald, 1984). While each is guided by their own self-interest, the agent is expected to behave in a manner congruent with the interests of the principal while performing said duties (Jensen & Meckling, 1976). Due to the existence of bounded rationality, the principal can never be completely aware of the behaviour, abilities, and effort of the agent, which therefore provides the opportunity for the agent to act in a manner incongruent with principal interests without detection (Nilakant & Rao, 1994). As explained by Sharma (1997, p. 762), agent opportunism is "particularly significant in such commonplace business interactions as those of attorney-client, builder-owner, and doctor-patient, where knowledgeable agents serve less informed principals." In the case of professional hockey, players cannot be expected to have the necessary financial, legal, or negotiating backgrounds to be able to tend to the needs that skilled agents provide, nor

can they be expected to have the time or desire to perform (or acquire the requisite training to adequately perform) such duties, given that their time would be better spent on improving their abilities to perform on the ice. As such, the opportunity for agents to act in self-interest in this setting is always present. For this reason, agents know more about their own behaviour and effort, which creates information asymmetry that favours them in their relationships with principals (Baker, 1992).

Agency theory is concerned with the means through which principals can lessen the opportunity that agents have to act in ways detrimental to the interests of the principal (i.e. reduce information asymmetry favouring the agent), which reduces what are called agency costs. It also can be an effective tool for identifying inefficient contracts in organisations that create excess costs for firms and stakeholders, and examining the conditions surrounding the agency relationship. Agency costs are the resources spent by the principal (monitoring costs), and agent (bonding costs) in order to reduce the decrease in principal welfare caused by the agent's self-interested behaviour (residual loss), and to insure that agent monitoring and contract structure are suitable for a specific setting (Jensen & Meckling, 1976). There are two primary means through which the principal can reduce agency problems (Eisenhardt, 1989a); the first is to create monitoring mechanisms that provide more information regarding the agent's behaviour. Monitoring mechanisms decrease the information asymmetry that favours the agent in most principal-agent relationships (including that between player and agent) by allowing the principal to know more about the agent's abilities, efforts, and performance. In doing so, the principal is less likely to contract with an unqualified agent, and the agent who deliberately attempts to act opportunistically will have less incentive to do so for fear of being detected and punished. The second solution is to contract on the outcome of agent behaviour, which typically provides a financial incentive to the agent that is contingent upon his/her performance (a performance, or outcome-based contract). Quite simply according to agency theorists, a performance-contingent (P-C) compensation scheme will be an effective deterrent by increasing the agent's reward on the basis of increasing the principal's reward; this aligns the interests of principal and agent. Common examples of P-C contracts include commissions, which reward the agent directly on performance (such as negotiating a higher salary for a professional hockey player), or providing a

manager stock options, which rewards the manager on the basis of the performance of a firm. In the latter case, the manager then has a significant interest in maintaining and improving the organisation's productivity, which aligns the interest of the manager (as agent), and the other stockholders (as principals).

The two different solutions to agency problems are interrelated. According to agency theorists, in instances where it is difficult to verify agent behaviour or the agent possesses knowledge that the principal lacks, the use of a performance-contingent compensation system is most appropriate. By rewarding the agent on the basis of the outcome (such as a high salary for professional hockey players), the principal need not be as concerned with the means through which the agent obtained that outcome. However, in using a P-C contract, the principal transfers risk to the agent. For example, if an agent is to be paid a commission for his or her services (a percentage of the total salary obtained, or sale of a product), then the agent receives no reward for failure (such as a negotiation impasse, or a buyer who backs out of a transaction). The agent is then rewarded for an outcome for which he/she is only partially in control. In accepting this risk, the agent will demand a risk premium. Alternatively, the agent will demand a contract that is not completely performance-contingent. For this reason, the use of straight commissions occurs with less frequency in practice than in theory (Eisenhardt, 1988). In many professions, such as sales, an agent will contract on a part-commission, part-salary basis. In instances where an agent's behaviour is easily measured, there is no need to use a P-C contract and needlessly transfer risk to the agent; in this case, a behaviour-based contract (such as a salary) is more appropriate. Thus, "the proportions of performance-contingent and non-contingent compensation in an organisation's compensation structure will depend on the relative costs of transferring risk versus monitoring behaviour" (Kren & Kerr, 1993, p. 161).

The player-agent relationship in hockey has developed its own unique characteristics, while retaining basic qualities found in many types of principal-agent dyads. Consistent with many other principal-agent relationships that require some type of remuneration to the agent by the principal, there is an explicit contract that governs the player-agent dyad. Fama and Jensen (1983, p. 302), describe P-A contracts as "internal 'rules of the game' that specify the rights of each agent in the organisation, performance

criteria on which agents are evaluated, and the payoff functions they face." Similar to the Standard Player's Contract (SPC) (*NHLPA/NHL Collective Bargaining Agreement: Exhibit 1*, 1997) that is negotiated with the team by the agent on behalf of the player, there is a Standard Player-agent Contract (SPAC) between player and agent. The SPAC establishes the rights and responsibilities between player and agent, the period of service, exclusivity of representation, fee system, and if/how agent expenses are repaid (*NHLPA Regulations Governing Agent Certification: Appendix A*, 1997). All agents who represent National Hockey League (NHL) players must sign a SPAC. Unless an agent is a specialist in providing a specific service, such as financial planning, the agent will negotiate the SPC with a team on behalf of the player. In addition to negotiating a player's contract with a team, agents may provide a number of other services on behalf of players. These may include, but are not limited to: 1) legal counselling; 2) obtaining endorsement and other income for the athlete; 3) financial planning and management; 4) career planning and counselling; 5) improving the athlete's public persona; and 6) the resolution of disputes under employment contract, such as arbitration (Yasser, McCurdy & Goplerud, 1990). Agents are then compensated based on the services they provide, which can be done in any of four ways: 1) on an hourly rate; 2) a flat rate; 3) a percentage of the athlete's salary (a commission or performance-contingent fee); or 4) any combination of the above three methods (Schubert, Smith & Trentadue, 1986). 1) and 2) are examples of behaviour-based contracts, 3) is outcome-based (performance-contingent), while 4) may be either, depending on which combination of the first three is employed. By far the most popular means of compensation is using a performance-contingent compensation system, although agents providing specific services may often use a compensation scheme that is standard for their profession, such as attorneys who choose to bill at an hourly rate. Many agents do not represent players as a full-time occupation, and they perform services to other principals in the disciplines they have been trained in, such as financial planning or law (Brophy, 1994).

However, unlike other principal-agent dyads, the player-agent relationship in hockey has developed within a unique and rapidly changing industry that, according to agency theorists, should have implications for their relationship. The agency discussion above reveals that risk aversion, levels of information asymmetry, and contract structure

all affect the relationship that exists between a given player and agent. In addition, the player-agent dyad can be influenced by other factors. For example, the existence of competition between agents may affect agent opportunism. According to Alchian and Demsetz (1972), an agent is less likely to shirk his/her duties knowing that there are other agents willing to contract with the principal. Similarly, they contended that a decrease in agent rewards should occur as agents vie to provide services for a finite number of principals (Alchian & Demsetz, 1972). Thus, in order to understand the behaviour of agents in a given industry, the degree to which agents compete for clients must be determined, which may affect both the likelihood of opportunism and the form of the contract that governs the agency relationship. Another influence that affects principal-agent dyads is environmental munificence, which is the degree to which resources are available in a given environment (Castrogiovanni, 1991). When environmental conditions are prosperous, agents are less risk averse and therefore more willing to be rewarded on a performance-contingent basis (Parks & Conlon, 1995). This is because agents are less fearful of failing and receiving no reward. In addition, environmental munificence affects principals and agents by changing the discretionary resources available to each. Thus, market conditions may dramatically affect the contracts that agents seek in a given environment, and must be considered in any examination of a principal-agent relationship.

As discussed earlier, a solution for principals to agent opportunism is in creating monitoring mechanisms. These mechanisms reduce the information asymmetry that favour agents and incur monitoring costs for principals. However, in the case of professional hockey, a single-principal, single-agent player-agent relationship exists. A consequence of this is difficulties for both principals and agents to adequately monitor one another, due to both time and financial limitations. To combat this problem, principals and agents will unite to co-ordinate the monitoring function. In the case of a diffused group of stakeholders, a union becomes a means for them to achieve collective action in a firm (Hill & Jones, 1992). Thus, in the case of professional hockey players, the NHLPA acts as a means to monitor players' principals (team owners), and their own agents. Therefore, in order to understand the relationship between players and their agents in hockey, an examination of the role and operations of the NHLPA is necessary.

Another important consideration in examining principal-agent dyads is information asymmetry. As mentioned earlier, levels of information asymmetry will affect the type of contract that governs a player-agent dyad, and the likelihood that an agent will act in self-interest. When a principal is familiar with the behaviour of an agent, there is less of a need to use a performance-contingent compensation (P-C) scheme, which will unnecessarily transfer risk to the agent (Conlon & Parks, 1990; Demsetz, 1983). In this instance, the P-C compensation is inefficient, as the principal no longer needs to pay the associated risk premium that the agent demands for assuming the risk of receiving no reward (Conlon & Parks, 1990; Parks & Conlon, 1995), as the principal is familiar with the behaviour and capabilities of the agent. Therefore, analysing information asymmetry and any factor that may affect it is paramount to understanding the player-agent relationship in hockey.

This discussion of agency theory has revealed that there are a number of factors that should influence the development of the player-agent relationship in hockey. In particular, changes that have affected the information asymmetry that has traditionally favoured agents and allowed them to act in self-interest without detection must be identified. Similarly, factors that have determined market conditions, for both the agent profession and the industry as a whole, need to be examined to explain the evolution of agents and their relationships with players. In particular, levels of market munificence must be ascertained, along with the precipitating factors that have created munificence need to be recognised. In doing so, it is hoped that the tenets of agency theory will aid in contextualising changes to the hockey industry in recent decades, and explain any resulting changes to the nature of the relationship that exists between players and agents.

Method

As determined by the research problem, this study sought to identify industry factors that have occurred over the past three decades, and the degree to which each has affected the player-agent relationship in hockey. The preceding discussion of agency theory resulted in the identification of certain factors that must be considered when examining specific agency dyads. The following reviews the means through which data was collected and analysed in order to address the research problem. As explained by Eisenhardt (1989b, p. 534), “the case study is a research strategy which focuses on

understanding the dynamics present within single settings.” In particular, a rationale for using the hockey industry to examine a specific principal-agent relationship was the presence of turbulent industry changes. As such, the player-agent dyad was deemed an ideal site to use the agency model to understand the characteristics of a given agency dyad considering changes to information asymmetry, agent market competition, monitoring and environmental munificence. Delimitations were set for the study *ex ante*, and included the time period (between the mid 1950s through the present) and the geographic area (North America). Given these parameters, a historical research methodology was determined to be the best means to collect, classify and analyse data from sources. This was done in an effort to obtain primary sources as closely related to the actions, comments, and opinions of direct industry stakeholders as possible. Following historical research methods presented in Shafer (1980), this study relied heavily on a number of sources from various time periods, including data from industry documents, legal journals, popular and academic publications, and interviews. According to Marshall and Rossman (1995), there are two criteria by which qualitative research should be judged. *Informational adequacy* concerns whether the research strategy will elicit the requisite data for the study, while *efficiency* considers the least-cost means of data collection in terms of time, access, and cost to participants. Thus the sources sought for this study reflected a need to meet both adequacy and efficiency and, as will be shown in this section, resulted in a substantial set of data to analyse. Following Miles and Huberman (1994), data were triangulated by both source and method. By seeking data from different places, times, and individuals (stakeholders of the hockey industry), data sources were triangulated, while method was triangulated by using alternative means of collection, including interviews, written sources (quotes, articles, conference proceedings), and industry documents (bargaining agreements, salaries). Written sources are distinguished from industry documents by target audience; written sources typically express the opinion of the author(s), while industry documents are usually created for stakeholder use. In triangulating data in these ways (Berg, 1989), a detailed view of specific factors influencing the player-agent dyad was obtained. A more detailed explanation of this process can be found in chapter three of this thesis.

Data Analysis

There were two major steps to the process of data analysis for this study. First, a means of distinguishing the reliability of sources was necessary. Using the historical method, potential sources were divided into seven categories (see the data analysis section of chapter three for more detail), including personal interviews (primary), government and industry documents, and stakeholder testimony (primary), documents written by stakeholders (primary), data from sources containing direct quotes from stakeholders (primary), sources written at or near the time of event by a direct observer (primary), academic sources (secondary) and popular sources (secondary). From a historical methodological perspective, “the most important distinction is between material (written or other) produced by a *witness or participant* in events, and material produced by others” (Shafer, 1980, p. 77). With this criterion in mind, sources were divided into primary and secondary, and ranked based on a number of factors, including time of composition in relation to time of observation, audience for which the source was intended, and the intent of the composer (Shafer, 1980). Using this process, sources normally considered secondary for the purposes of qualitative research are designated as primary, and contain rich evidence for analysis. For example, many articles that have been published in the legal literature in recent decades have been written by agents or attorney-agents (Fraley & Harwell, 1989; Powers, 1994; Ring, 1987; Woolf, 1976; 1989) or, in fact, are transcriptions of presentations given at sports law conferences (Bartlett, 1993; Burke, 1993; Cohen, 1993; Falk, 1992; Fehr, 1993). In addition, several autobiographical popular press works by agents were examined (Hendricks, 1993; Levine, 1993; Rosenhaus w/ Yaeger, 1997; Simon, 1993; Trope w/ Delsohn, 1987); transcripts of testimony by stakeholders and government studies were also considered (*Canada*, 1974; *Heartland Policy Study*, Senate Committee, November 29, 1995; *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, U.S.D.C. *F.Supp.* 462, 1972; *Task Force*, 1969). The small body of literature that examines the business aspects of professional hockey was also considered (Beamish, 1991; Cruise & Griffiths, 1991; Gruneau & Whitson, 1993; Jones, 1976; Kidd & Macfarlane, 1972; Mills, 1991; 1995). Secondary sources such as *The Hockey News*, *Sports Illustrated*, and newspaper accounts were used, particularly those which featured direct quotes from

industry stakeholders (Adams, 1992; 1994; Allen, 1994; *Associated Press- New York*, 1957; Axthelm, 1967a; 1967b; Blumenstock, 1979; *Hockey 1977-78*, 1977). As noted above, direct quotes by stakeholders contained within secondary sources were classified as primary for the purposes of analysis. An example would be an article that appeared in *The Hockey News* (a secondary source) that contained a direct quote from a NHL agent. In this instance, data from the direct quote is categorised and weighed as a primary source for the purposes of analysis. Finally, popular books and articles written by journalists and other stakeholders whose insights were especially valuable given their prominence in the industry were examined (Conway, 1995; Davidson w/ Libby, 1974; Howe, Howe & Wilkins, 1989; Lautier & Polnaszek, 1996; McKenzie, 1985b; 1986a; 1986b; Weiler, 1992; Weiler & Roberts, 1993).

In addition to data obtained from documents, thirteen in-depth interviews were completed with twelve subjects in person or via the telephone, with each interview lasting between forty five to ninety minutes, averaging one hour in length. The interview method of data collection was appropriate for this study, as the research problem was clear and well-defined and, in most cases, those interviewed were not otherwise available (Henderson, 1991). A standardised, open-ended format was chosen as the researcher had a sense of the types of information sought. A series of questions were developed ex ante, which served as a guide throughout the interviews. Following Miles and Huberman (1994), informants were selected in order to represent a variety of viewpoints within the profession, and included current and former agents, players, and management. In addition, the insights of employees of the players' representative union and other industry stakeholders were also sought. An a priori list of research questions was used, which was adjusted for each specific interview in consideration of the position held in the industry by the informant. Questions were added or removed if each subsequent interview identified new areas to be discussed, or if questions were ineffective in eliciting responses. A description of the subjects and questions used can be found in Appendix A. The use of structured, open-ended questions was chosen to reduce interview time and avoid inconveniencing the subjects, and to obtain comparably measured responses from each informant (Miles & Huberman, 1994).

The second phase of data analysis involved using agency theory to identify factors specific to the hockey industry that would potentially affect the agency dyad, by influencing the agency conditions of information asymmetry (White, 1992), competition between agents (Alchian & Demsetz, 1972; McGuire, 1988), and market munificence (Bathala & Rao; Castrogiovanni, 1991; Parks & Conlon, 1995; Singh, 1986). In hockey, examples of a decrease in information asymmetry were witnessed by an increase in the involvement of players in their own contractual and business affairs. For this reason, the emergence of the NHLPA as a stakeholder acting on behalf of players was determined to be critical to the development and function of the player-agent dyad. Thus, a review of the development of the NHLPA was deemed crucial to this study. In particular, several of the NHLPA's initiatives were considered critical to changes to information asymmetry between player and agent. The first was the advent of salary disclosure, which allowed players to be aware of what other players were earning as a salary (reducing information asymmetry), and provided a basis of evaluating (and monitoring) the performance of their own agents. For similar reasons, the advent of the NHLPA's agent certification program was determined to be a potential influence on players and agents.

In addition, several other factors were identified *ex ante* as influences on the agency dyad. Because agency theorists contend that changes to the levels of competition between agents for clients affects both agent shirking and remuneration, an investigation into the number of practising agents (a factor influencing agent market competition) was required. Environmental munificence was considered by examining factors that affect the financial resources available to both agents and players, and opportunities for contracting between players and agent to occur. Thus, league expansion, revenue and salary growth, and changes to the supply of labour were all determined to be crucial factors influencing the degree of environmental munificence that could potentially affect the player-agent relationship. Finally, the World Hockey Association (WHA) was also examined, as it provided both a greater opportunity for player-agent dyads to arise (as there were more positions available for professional hockey players), and affected the player-agent dyad by giving agents an alternative club through which the players could contract with. Previous agency research has identified the importance of bargaining

alternatives (Pinkley, Neale, & Bennett, 1994), making an examination of the WHA critical to understanding the player-agent relationship.

Data were obtained on each of the factors (WHA, NHLPA, factors influencing environmental munificence, agent competition), and weighed by virtue of the seven categories (ranked according to primary and secondary sources) described earlier and in chapter three. The weighing of data was done so that, in the case of conflicting findings, information from sources scoring higher on a primary to secondary continuum (see chapter three) would be relied upon. An example would be where a newspaper article reported that a certain agent used a specified commission, but having the agent in question reveal a different amount during an interview. In this case, the amount given in the interview was considered more reliable, as it ranked higher on the continuum because the information was obtained directly from the stakeholder. In many instances, this was unnecessary as corroborative, supporting data were available from a number of sources. This process was done using data from all sources; for example, data from interviews were coded to facilitate data reduction and analysis (see Appendix D). Interview coding was done to reduce the transcribed interview text into a manageable form, which relied heavily on the use of matrices. A checklist matrix was created for each of the six major factors identified as possible influences on the player-agent relationship during data reduction. As evidenced by the discussion above using the agency model, these factors were: 1) the development and operations of the NHLPA (a collective effort by individual principals to monitor); 2) WHA (providing new opportunities for P-A dyads and a bargaining alternative); 3) market munificence (environmental conditions that may affect risk-aversion and principal-agent contract form; 4) the agent market (potentially influencing agent opportunism and contract structure); 5) salary disclosure (a deliberate attempt by principals to reduce information asymmetry); and 6) new NHLPA leadership (resulting in certification- a deliberate attempt by principals to increase monitoring). Guided by the agency model, each factor was then investigated based on the potential effects each might have on the player-agent relationship. In this manner, the impact that each factor had on the hockey industry, and then the player-agent dyad, emerged. While characteristics of each were investigated individually, they will be presented together, due to their cumulative effect on the player-agent dyad since the mid 1960s. In the next

section, a summary of the factors is presented, along with a discussion of specific findings of the study. To illustrate the results, examples of data obtained are presented, with an emphasis on using those sources ranked highest based on the seven source categories. These examples are not meant to be exhaustive and comprise only a small portion of the data used to support the results. The agency model then provides a means through which the implications of these changes and their effects on the agency dyad can be understood.

Results

Using the agency model, this study identified several factors that may have influenced both the hockey industry and the player-agent dyad. These included degrees of environmental munificence, competition between agents to contract with players, increases in monitoring (resulting in a decrease in information asymmetry favouring the agent), and the presence of bargaining alternatives for players. As described above, through the process of data reduction and analysis, six factors were identified in professional hockey as having a potential influence on the player-agent dyad. Table 4.1 describes these factors, and summarises the resulting effects that emerged from this study. All have had a significant effect on the player-agent dyad since the mid 1960s. Following the historical method, results are presented as a chronological-thematic narrative (Brundage, 1989). Results of each factor are displayed in, at times, overlapping periods since the 1960s and have had a cumulative effect on the player agent relationship. In other words, although the individual factors that may affect the player-agent dyad have been recognised separately, they are presented in a way that examines the manner in which they have interacted over the past few decades to influence players and their agents as a whole.

Insert table 4.1 about here

As agents began representing professional hockey players during the last few years of the 1960s, two critical developments occurred that would impact the professional hockey industry for decades to come. One was the development of the National Hockey League Players' Association (NHLPA) into an organised labour unit, and the other was

the expansion of the NHL in 1967. Just as the NHL players began seeking better working conditions, the league expanded from six to twelve teams, doubling the number of franchises that had remained constant since the Second World War. A result of expansion was new job opportunities for players, and the NHLPA had the potential to become a much larger and more influential labour organisation. The development of the NHLPA occurred during a time when unionisation had already become firmly entrenched in other industries, and even experienced a decline (Higgins, 1996; Kochan, McKersie & Cappelli, 1984). In contrast, players' associations continue to be powerful bargaining units in professional sports such as hockey. The adversarial relationships between players' associations and their respective leagues have been the cause of frequent work stoppages in sport in recent years. Player unions are different from other labour unions, in that they do not focus on establishing individual salaries in the process of collective bargaining (Crandall, 1981; Noll, 1982; Quirk & Fort, 1992). For this reason, agents have become an important part of the professional sports industry, while unions have focused on other means of increasing player salaries, by negotiating minimum salary levels and bargaining for mechanisms such as salary arbitration (Hopkins, 1992). Major League Baseball (MLB) Players' Association leader, Donald Fehr (1993), and other Association leaders have acknowledged that agents are more effective at negotiating players' salaries than unions, due to the disparity of the various athletes' playing skills (Weiler & Roberts, 1993). At minimum, agents negotiate employment contracts between players and teams (Champion Jr., 1990); with growing revenues, player contracts became increasingly complex, and expertise in areas such as taxation and investing became important components of an athletes' financial well-being (Baker, 1990).

Since the late 1960s, the NHLPA has represented the interests of all NHL players by collectively bargaining with the NHL. In doing so, specific criteria have been negotiated that establish the basis of the agency contract that exists between player and team. A standard player contract (SPC), arbitration procedures, limits on player mobility, pensions, and minimum salaries are examples of topics of negotiation between the NHL and the NHLPA. A symbiotic relationship between the NHLPA and agents has developed; player gains collectively bargained for have allowed agents to obtain higher salaries for players, while the efforts of specific agents have set salary benchmarks (after

the advent of salary disclosure) that are beneficial to all NHLPA members in ensuing contract negotiations. Through the 1970s and into the 1980s, the NHL and NHLPA featured a relatively peaceful labour coexistence (Pulver, 1991), which many have since attributed this to a suspicious relationship between former NHLPA head, Alan Eagleson and various NHL leaders (Conway, 1995; Papanek & Brubaker, 1984). In recent years, particularly since Bob Goodenow replaced Eagleson, collective bargaining between players and the NHL has been acrimonious (Caron, Jr., 1997). Despite some leadership shortcomings, the NHLPA has had a significant effect on professional hockey by virtue of gains made through the collective bargaining process, and individual players have greater bargaining power in negotiating playing contracts with teams. A result has been more income opportunities for both players and agents; therefore, being a professional hockey player or agent has become increasingly lucrative. However, these opportunities have been reduced by the behaviour of the NHLPA's former leader, Alan Eagleson, an opinion freely expressed by every stakeholder group considered for this study.

Through the early 1970s, as the NHLPA slowly developed into a credible bargaining adversary for the NHL, another development occurred that would impact professional hockey dramatically. In 1972 the World Hockey Association (WHA) was formed, which became an important catalyst for an increase in the bargaining power, mobility, and salaries of professional hockey players, the arrival of player agents, and a decrease in the profitability of the NHL. The fledgling WHA provided a contractual alternative for professional hockey players. One top NHL agent, who began representing players in the WHA, reported in an interview that "the WHA was a big factor, in that there was obvious added leverage." From the days of the National Hockey Association (the NHL's predecessor), professional hockey players had worked under the constraints of the reserve clause, which bound hockey players to their teams in perpetuity. In the absence of a rival league, and with the reserve clause in effect, a player would have no alternative other than to re-sign with his team, and thus have a very low reservation wage, which consists of the salary available to the player in the next best available opportunity (Morrison, 1996; Quirk & Fort, 1992). A player's rights would still be reserved when a player retired. As such, teams did not need to pay players close to their Marginal Revenue Product (the amount of wealth generated by them in playing for the team)

(Morrison. 1996). Labour restraints such as the reserve clause were unheard of in industries other than professional sport, and even the Canadian government had recommended that NHL players be freed from this antiquated labour restraint (*Task Force*, 1969).

When the WHA arrived in 1972, the first requirement for WHA teams was talented players necessary to produce the league product. To do so, teams began seeking the services of NHL players, many of whom were already under contract to play with NHL clubs (Beamish, 1988; Lautier & Polnaszek, 1996). A watershed moment in the development of the WHA occurred when the Winnipeg Jets signed NHL standout, Bobby Hull. Hull had been at a contract impasse with his team the Chicago Blackhawks, when the WHA's Ben Hatskin approached his agent, Harvey Wineberg. According to Wineberg, "I couldn't imagine Bobby getting involved or seeing him pulling up roots after 15 years [with the Blackhawks] and with only a few seasons left in him" (Lautier & Polnaszek, 1996, p. 12). In order to lure players from the established league, WHA teams were forced to offer high salaries to veteran professional players, and to talented young amateur players (Beamish, 1988), and Hull was the first major star to agree to switch leagues. The NHL attempted to thwart the efforts of the WHA by imposing the reserve clause. However, the WHA was able to challenge the reserve clause in a landmark legal case (*Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., U.S.D.C. F.Supp. 462*, 1972) and the players were able to increase their salaries by using each league as bargaining leverage against the other (Woolf, 1976). According to Jones (1976), the main impact of the WHA on professional hockey was to undermine the monopolistic and monopsonistic position that the NHL held in previous decades ("Peace on Ice," 1974). Players found themselves in a new position to realise the fruits of their labours, and an opportunity for agents to emerge in professional hockey arrived; in the absence of the reserve clause, players also began signing long-term contracts, where one-year pacts had been the norm under the reserve clause. As explained by one NHL general manager of the early 1970s, "you either played or knew it was back on the milk truck" (Lautier & Polnaszek, 1996, p. 11). Now, with the help of agents, players could obtain greater financial security and higher salaries.

With the challenge of the reserve clause, an option clause between player and team was introduced in 1974 (Barnes, 1996). With more complex and lucrative salaries, an agent's services were needed more than ever by players. Player salaries escalated rapidly in the NHL from an average of \$24 000 in 1972 (*Philadelphia W.H.C. v. Philadelphia H.C.*, 1972) to \$60 528 in 1974 (*Canada*, 1974). The WHA's operations had another effect on players besides rising salaries; with a larger number of teams, new opportunities arose for players to pursue professional careers. As explained by former Quebec Nordiques player, Garry Lariviere:

The WHA opened a lot of doors for players around the worldThe WHA was more than just an alternative for anyone negotiating a contract. The league was a great opportunity for many players, those who might have never been seen or those who would have been buried in the minors and never got the call to play major league hockey (Lautier & Polnaszek, 1996, p. 95).

Within a few years, major league hockey went from twelve teams in 1971-72 to thirty-two, and while bidding for players was promising for athletes, it did not bode well for the financial future of either the WHA or the NHL. Both leagues allegedly lost \$15 million during the 1976-77 season (Kirshenbaum, 1977). Davis (1979) reported that the thirty-two different WHA teams that operated throughout the league's existence paid out \$120 million dollars in salaries and cumulatively lost \$50 million. In particular, cities that hosted both WHA and NHL teams were hurt where the community was unable to adequately support two teams (Kirshenbaum, 1974; 1975; Mulvoy, 1973). The war between NHL and WHA finally ended in 1979 when the two leagues merged in what was conveniently described as an "expansion" to avoid potential antitrust issues. Thus, although operating for only seven seasons, the WHA has had an enduring effect on the hockey industry and the player-agent relationship. One of the most acknowledged effects has been in creating many new agency relationships; many players who had never used agents before sought out agents for representation due to the arrival of bargaining leverage, alternative teams to contract with, and more complex, multi-year contracts created by the existence of a rival league to the NHL.

Another factor that has influenced the hockey industry, that began during the WHA's operations, has been a transformation in the supply of labour. After the WHA commenced, the number of professional hockey franchises in North America grew substantially; each of these teams required talented players in order to produce a high-calibre product. At this time, teams began seeking foreign players in addition to the established practice of recruiting players from the Canadian junior leagues. For example, when Bobby Orr signed to play for the Boston Bruins in the mid 1960s, there was only one non-Canadian hockey player in the NHL. By the 1976-77 season, the NHL and WHA featured fifteen Swedish, seven Finnish, and sixty US-born hockey players (Gammons, 1976). With the political opening of eastern-bloc countries in the late 1980s and early 1990s, there has been an influx of Russian, Czech, Slovakian and other European players. To illustrate the impact of this shift, one need only look at the prevalence of Canadian-born players in the NHL since the late 1960s; for example in 1967, 97% of NHL players were Canadian (Weiler, 1992), by the 1996-97 season, this number was less than 63% ("Opening Night," 1996). One direct effect of this change in the supply of labour has been an increase in the number of services provided by agents. For example, many agents today must be conversant with tax laws in different countries, as well as be able to help prospective NHL players with immigration issues.

Following the WHA-NHL merger and through the early 1980s, as teams sought new ways of obtaining players and revenues, the business operations of professional hockey became more readily pronounced. As explained by Mills (1991, p. 193) "the business of hockey was far larger and more complex in the 1980s than it had been in the era of the six-team NHL" that had existed as recently as 1967. The league will have expanded from six teams in 1967 to thirty by the year 2000. Recently, the NHL has changed dramatically through corporate interlocks, expansion, and new media contracts. This has coincided with the arrival of Gary Bettman in 1993, after a tenure in management with the NBA (Joyce, 1994). Perhaps the most significant example of industry growth has been an increase in existing and the creation of new revenue sources ("NHL Enterprises," 1994). In the four years since Bettman was hired as League Commissioner, corporate sponsorship has grown from \$20 million to \$200 million (McKay, 1998), and licensing revenues have grown from \$200 million in 1990 to well

over a billion dollars annually (Jenish, 1994). Other activities, such as the sale of advertising on the boards surrounding the rink and on the ice surface, have become a lucrative revenue source for league clubs since they began rinkboard advertising in the mid 1980s (Jones, 1985; Ulmer, 1992). Teams have also benefited from new, state-of-the-art facilities that feature club seating, increased luxury suites, and other revenues sources, such as rights that corporations pay to have their name associated with a given facility (Finerty, 1991, Greenberg & Gray, 1996). The NHL has also sought to expose the league product to new markets world-wide, as evidenced by the opening of the NHL season in Japan, where the Vancouver Canucks and Anaheim Mighty Ducks played a two game series to commence the 1997-98 season (Pap, 1997).

In addition, the NHL has sought to expand the number of markets which host league games. In 1966, the NHL was a six-team league that operated in eastern Canada and the United States. After a dramatic expansion in 1967, the league doubled in size to include new franchises for an expansion fee of three million dollars per team (Beamish, 1988). The league steadily expanded over the years; after the WHA merger in 1979, the NHL had twenty-one franchises, fourteen in the US and seven in Canada. After a decade of stability, the NHL began expanding again in the 1990s, including two new franchises for the 1993-94 season. The Florida Panthers and the Anaheim Mighty Ducks were different, in that two established entertainment giants, Disney and Blockbuster owned both teams. The NHL hoped to tap into potential marketing and promotional synergism that could develop with such a partnership (Stein, 1997). As explained by New Jersey Devils' owner, John McMullen, "if [Disney] can teach us anything about their promotional capabilities, it's liable to increase the value of every franchise" (Dryden, 1992, p. 9). With continued growth and expectations for the League, the NHL announced it would expand by four more teams on June 25, 1997. The NHL will operate in 21 US markets by 2000; only 12 different US cities had NHL teams in 1990. The financial stakes have grown as well; new clubs have to pay an \$80 million expansion fee for the right to join with other NHL teams to produce the league product (McKenzie, 1997).

The changes to market munificence, as evidenced by rapid revenue growth and league expansion have had repercussions for the abilities of agents to represent players in negotiating with teams and providing other services on behalf of the players. According

to one journalist, "faster than you can say salary cap, the NHL has been turned into North America's biggest, free flowing automatic teller machine" (Dupont, 1993, p. 16). These changes have meant that teams have greater financial resources through which to pay professional hockey players; capable agents have been able to exploit this fact on behalf of players by demanding higher salaries and incentives for their clients. Only one fifth of league revenues in the early 1970s (Davidson w/ Libby, 1974), players' salaries now comprise well over half of total league revenues (Dryden, 1994). In addition, the creation of expansion teams has meant an increase in the number of positions available for players in the league.

The rapid and significant change that has occurred to the NHL's leadership and business operations pales in comparison to that which has occurred in the NHLPA. Bob Goodenow was hired by the NHLPA in the late 1980s, and by the beginning of the 1990s, had assumed the leadership role with the Association. As the expiration of the collective bargaining agreement approached, Goodenow travelled throughout the League to meet with team representatives to discuss issues and strategies for the upcoming talks with the league (Cox, 1991). A result of such practices was better-informed players. The most important change that Goodenow enacted was the NHLPA's decision to publish player salaries, which was already practised in the other professional sports leagues (McKenzie, 1985a). The NHLPA had been considering salary disclosure for several years (Fischler, 1987); doing so would reduce information asymmetry favouring the teams in negotiations and help agents to negotiate maximum salaries by using other players' salaries as a frame of reference. It would also reduce the advantages that established agents had in representing players; in the past, only agents who had negotiated a large number of contracts had a sense of what a fair salary would be for a player (Bulkeley, 1985). Since Eagleson also represented many NHL players while he was serving as the head of the NHLPA (Cameron w/ Jenish, 1994), he had little incentive to publish salaries and remove a competitive advantage he had over other agents. As suggested by Shropshire (1990), a players' association should provide access to all information for its players, which would ultimately lead to higher salaries, a more informed principal, and a greater ability for players to select competent agents. According to NHL agent, Steven Bartlett (1993), within a few years of Eagleson's departure players, agents, and the NHLPA freely shared

information on contracts, all of which would serve to reduce information asymmetry that favoured the teams for decades. It is no coincidence that player salaries have grown so dramatically in recent years, along with opportunities for new agents to enter the market.

Almost unanimously, stakeholders have recognised the impact that salary disclosure has had on the player-agent relationship. Salary disclosure has greatly reduced the specific knowledge that teams and some prominent agents had over individual players, while making the job of representing players easier for those agents who did not represent a large number of players (by creating a basis of comparison for the contract values of hockey players). Since the late 1980s, agents have been able to more capably negotiate for their players. Combined with other industry changes such as increasing environmental munificence, salaries have escalated at an unmatched rate. For example, average player salaries barely doubled during the 1980s, but have grown from \$232,000 in 1989-1990 to approximately \$1.3 million today. When discussing salary disclosure, one experienced agent recognised its influence on players and agents, reporting that "It's had a major impact. In one sense it has created a much more knowledgeable consumer of our services. We've got players who have a much greater understanding of what they should be earning, and the process that can be used in determining their worth."

Through the early 1990s, the changes that occurred in professional hockey had obvious results on players and agents, including more opportunities for player-agent dyads to exist, created by more teams (and more available roster spots). However, growth in the number of potential player-agent relationships has not matched the influx of agents into the profession which, as this study found, has very important implications for the player-agent relationship. During the mid 1980s, McKenzie (1986a) recognised an increase in the number of agents seeking to represent players, which has grown at an even greater rate very recently. In 1969, there were eleven full or part time agents representing professional hockey players, which grew to 41 by 1973 after the formation of the WHA. This number gradually grew until 1990, when ninety full time agents represented professional hockey players (Cruise & Griffiths, 1991). By 1995, there were 129 agents registered with the NHLPA (Campbell, 1995). The following year, when the NHLPA began its agent certification program, there were 170 agents (Stevens, 1997).

There are now 210 registered agents which, from an agency perspective, has several implications. One prominent NHL agent, who has represented hockey players for over twenty-five years, reported that “as hockey has moved into another financial strata, there’s more and more people who are wanting to get into the representation business. That includes some of the bigger agenciesSo the competition for clients is much more competitive than it’s ever been.” Similarly, one NHL general manager noted that “in the past fifteen or twenty years people have gotten involved [in becoming player agents] because there’s a lot of money to be made.” Pioneer agent, Bob Woolf (1989, p. 100), noted that the agent profession “went from zero competition to an industry in which everyone with a telephone could find a niche.” While the number of players has obviously grown with league expansion, this should not offset the increase in the agent population, as top agents often represent a disproportionately large number of players. In other words, they would absorb increases in player numbers. Instead, an increase in the number of practising agents (many of which have few or no clients) would result in a need for these incoming agents to have strong educational and/or experiential backgrounds to make them attractive to potential clients, therefore, raising the quality of services provided.

The factors described above have all had, and should continue to have, an impact on the player-agent relationship since the mid 1960s. There have been some obvious results to these changes, including the rapid escalation of players’ salaries. While the WHA created the initial impetus for salary growth, by far the greatest salary growth has been since the late 1980s, which coincides with several factors: 1) the changeover of leadership in the NHLPA from Eagleson to Goodenow (increasing monitoring); 2) revenue growth for NHL teams providing additional funds for player salaries; 3) a more competitive and qualified agent market; and 4) the advent of salary disclosure. Perhaps the most obvious result of these changes has been player salary growth. Figure 4.1 lists player salaries over the past few decades. As one can see, the WHA created an increase in salary growth by providing bargaining alternatives for players and challenging the reserve clause, which tapered off as the NHL and WHA merged in the late 1970s. After a period of stable salary growth through the 1980s, salaries skyrocketed in the late 1980s through today. This is due to several factors, most notably salary disclosure, the arrival

of Goodenow in the NHLPA, and increased revenues providing more money to be spent on player salaries.

Insert figure 4.1 about here

Another effect has been on the services provided by agents to players, which have changed according to the environmental pressures identified in this study. However, contract negotiation is still the most common service provided. Of the 210 agents registered with the NHLPA in 1997, only five do not negotiate player contracts. According to the NHLPA, the three other most common services are: 1) litigation and arbitration on behalf of the player; 2) providing financial, investment, tax, insurance, or other financial advice; and 3) obtaining appearances and endorsements for players, or providing licensing/marketing advice. However, many agents now provide other services, usually dependent upon their own background training or experience, such as strength/conditioning, drug and alcohol counselling, assisting players with immigration issues, general counselling, and media relations. All reflect the increasing bonding costs incurred by agents today. Figure 4.2 provides a summary of the services provided by agents:

Insert figure 4.2 Here

In order to perform the variety of services to players today, NHL agents must be cognisant of many issues surrounding the professional sport industry. Planning strategies (O'Meara, 1992), legal issues involved in creating personal service corporations (Vausher, 1994), rights to publicity (an athlete's ability to retain his right to his own name and likeness while agreeing to play for a team) (Quinn & Warren, 1983), tax planning (Crum III, 1986), and state and local income taxation of professional athletes playing outside of their residences (Baker, 1990; Ekmekjian, 1994) are all important issues that agents must be aware of in representing professional athletes. In addition, hockey agents must also be aware of issues specific to their sport that reflect the industry changes that have occurred, such as the application of the Internal Revenue Code to

Canadian-born athletes playing in the US (Misey & Donato, 1998; Shefsky & Pappano, 1991), and the growing internationalisation of the NHL, which today can involve complex transfer fees paid to foreign hockey associations to release players to play in the NHL (Weiler, 1992). As one can see, the duties performed by agents on behalf of players and an understanding of other business-related processes have become increasingly complex in light of the changes that have occurred in the industry.

Today, with increasing salaries, the ways in which agents are remunerated may be changing. While a performance-contingent fee continues to be the norm, agents and players have become increasingly creative when establishing agent compensation schemes, particularly top players and agents. One top agent reported that he was compensated in one of two ways:

At the real high end clients there might be a fixed fee arrangement in advance, which is pretty common in the legal profession now where there's just a fixed fee quoted and depending on the job involved My guess is that [when they are used,] percentages would run two to three percent for the players that are making significant money, and there may be some percentage arrangements that go higher than that depending upon the services being rendered Obviously as salaries have gone up, the percentages have gone down.

In summary, the cumulative result of industry changes in the past three decades on the player-agent dyad has been significant. Increasingly complex services are now provided to professional hockey players; more financial planning and management services are needed, due to higher salaries and more complicated contracts (which include conditions such as deferred payments). Given the increase in number of professional hockey franchises since 1967, more opportunities for principal-agent relationships exist today. Increased bargaining leverage for players and their agents in negotiating with teams has arisen due to the advent of the WHA as a bargaining alternative, the abolition of the reserve clause, gains made to player mobility made through collective bargaining by the NHLPA, and other NHLPA initiatives, such as salary disclosure. More lucrative salaries and a growing number of prospective clients has made representing professional hockey players a more lucrative career for player agents, resulting in an increase in agent market

competition. As a result of these influences, player-agent relations in professional hockey today have changed dramatically since agents began representing players in the late 1960s, a result of the factors described here.

Discussion

Following the basic tenets of agency theory, this study has determined that industry factors influencing environmental munificence, information asymmetry, agent monitoring and opportunities for principals and agents to contract may all significantly affect principal-agent relationships. Using the player-agent relationship in hockey as a case study, the previous section reviewed specific industry changes that have occurred since the mid 1960s that may potentially influence said agency factors and therefore the relationships between players and their agents. This discussion then revisits the agency literature to explain the impact these industry changes have had on the player-agent relationship, to try to predict future behaviour, and to suggest changes to the player-agent relationship.

An Examination of Industry Factors Using Agency Theory

From an agency theory perspective, the emergence of the NHLPA reflected a need by a diffused group of lay agents to more closely monitor the relationship between themselves and their principals (Alchian & Demsetz, 1972; Hill & Jones, 1992). In this case the players, as agents, who had contracted with various NHL team owners (acting as principals), needed to be able to more closely monitor the behaviour of the owners. This follows Fama (1980), who explained that certain institutions, such as unions, can be more efficient monitors than individual, independent agents. In the case of professional hockey players, team owners were able to exploit information asymmetry by keeping salaries private and discouraging players from learning more about the business aspects of the industry (Cruise & Griffiths, 1991, Dowbiggin, 1993). By uniting to perform the monitoring function players, through their union, were better able to monitor the behaviour of their clubs as a group, and reduce information asymmetry favouring ownership. Later, with the arrival of agents and the advent of salary disclosure, the NHLPA could perform a similar duty in monitoring their own agents.

However, the behaviour of the NHLPA's first leader, Alan Eagleson, revealed a flaw in using unions as a means of monitoring that has been identified in the agency

literature. While this study has not focussed on Eagleson's own examples of opportunism, it should be noted that his own self-serving behaviour has had a dramatic effect on many of the factors identified as being influential on the player-agent relationship. Many of the recent changes that have occurred in professional hockey since he left the NHLPA could be considered deliberate efforts by stakeholders to account for Eagleson's actions. This would include the advent of salary disclosure, NHLPA agent certification, and an increasingly adversarial position taken by the NHLPA in collective bargaining with the NHL. Despite the benefits of the NHLPA to professional hockey players, the Association fell under severe criticism during Eagleson's tenure. Ed Garvey, former head of the National Football League Players' Association, once described the NHLPA as "the least democratic labour organisation in sports" (Cameron & Shoalts, 1993, p. A4). Similarly, economists Quirk and Fort (1992) noted that the NHLPA was professional sports' weakest union. In recent years, media coverage of Eagleson's behaviour and legal problems have been highly documented (Cameron w/ Jenish, 1994; Conway, 1995; CP-Newswire, 1994; Houston & Shoalts, 1993; May, 1994; Ulmer, 1993; 1994b). It also is an example of a potential agency problem recognised by Alchian and Demsetz (1972, p. 790): "employees should be willing to employ a specialist monitor [in this case, the NHLPA, led by Eagleson] to administer hard-to-detect employer performance, even though their monitor has incentives to use pension and retirement funds not entirely for the benefit of employees." Thus, while players were collectively using a monitor (in this case Eagleson) to monitor the behaviour of teams and the NHL, appropriate mechanisms were not in place to insure players that the monitor was acting in their best interests. In other words, who was monitoring the monitor? Thus, in the specific case of professional hockey, agency theory reveals that, while having a strong impact on decreasing information asymmetry and increasing monitoring, the NHLPA did not necessarily have as great an impact on these agency factors as might be expected.

Once players became aware of the problem Bob Goodenow, a former player agent, began his role in replacing Alan Eagleson in the late 1980s. The fact that Goodenow was a former agent (and began new programs such as agent certification) was no coincidence. In discussing forms of monitoring available to principals, Sharma explained that (1997, p. 784), "another way in which lay principals [players] can handle

knowledge asymmetry problems [such as those that favour both teams and player agents] is by hiring or obtaining retainer specialists who understand the business of external agents." Thus, from an agency perspective, the ideal means through which the behaviour of agents can be monitored by lay principals (in this case, a dispersed groups of players, not all of which are conversant with the duties and services provided by agents), is by appointing a specialist monitor (Goodenow) who is familiar with the functions and standards of competency required to adequately serve as agent (he was formerly a successful NHL player agent). Goodenow's previous experience as agent has also helped agents perform more capably for their clients. While Eagleson was head of the union, he also served as a player agent and directly competed with other agents for players. Since Goodenow's arrival, agents are much better able to provide services to players due to increased co-operation with the union, and the sharing of information between agents and the NHLPA. With a more informed agent, the likelihood of agency problems created by agent ignorance (where the agent lacks the ability to perform the requisite services) is lessened (Lewis & Sappington, 1993). Thus, from an agency perspective, the changeover of leadership from Goodenow to Eagleson and the resulting implications on information asymmetry and monitoring (as evidenced by salary disclosure and the advent of agent certification) has likely had as great an impact on players and their relationships with agents as has the advent of the NHLPA itself. It also appears that since Goodenow's arrival, the NHLPA has been better able to serve its purpose of acting as a specialist monitor for a diffused group of stakeholders (players) who, in the course of their interactions with other stakeholders, act simultaneously as principals (to agents) and agents (to team owners).

In addition to the NHLPA, the World Hockey Association (WHA) has left a legacy on the player-agent relationship since the early 1970s, which can be better understood using the agency model. As shown in the results section, the advent of the WHA resulted in a bargaining alternative for professional hockey players that had not existed since the 1920s. Until the WHA began operating in 1972, no other comparable hockey leagues existed for players to contract with. Combined with limits on player mobility and the enforcement of the reserve clause, players had little choice but to accept the salaries offered by the teams that owned their rights to pursue hockey as a means of

livelihood, unless they chose another profession. According to Pinkley, Neale & Bennett (1994), the power that a party wields in a negotiation is contingent upon the quality or value of bargaining alternatives:

if the transaction costs associated with moving from the present negotiation to the alternative were sufficiently great, [which, in the absence of a rival league, would be another profession] or if a negotiator were to place a significantly high value on the act of reaching an agreement in the present negotiation [such as a player wanting to continue a hockey career], he or she may accept a negotiated outcome that was inferior to the objective value of his/her best alternative to a negotiated agreement (Pinkley, Neale & Bennett, 1994, p. 99)

For this reason, players would often continue to play hockey for low wages, some even lower than they might find should they have chosen other professions. However, the WHA provided an alternative party to bargain with, more positions for professional hockey players (due to an increased number of teams), and even challenged and abolished the reserve clause that bound players to their teams. Thus, from an agency perspective, perhaps the greatest impact the WHA has had on players and agents is in providing a bargaining alternative for players, allowing agents to drive up player salaries and agent compensation (if agents used a commission). By abolishing the reserve clause, the WHA also removed a contractual barrier that players, acting as agents, had in their ability to receive compensation for the services provided to professional hockey clubs.

As explained by the agency model, agent market competition also provides a means of reducing the likelihood of agent ignorance. In the case of professional hockey, there has been a noted influx of player agents over the past twenty years. As more prospective agents enter the industry, players are able to choose from agents who work harder to increase their abilities to represent players and distinguish themselves from competing agents. In doing so, agents incur greater bonding costs to insure players that they can adequately represent them for the variety of services required. While in previous decades incompetent agents may have been drawn to the industry by the glamour of representing sports personalities (Steinberg, 1991; Weiler & Roberts, 1993), such agents would not survive under today's conditions. Hockey agents have substantial

education and experience which, from an agency perspective, will ultimately result in more qualified agents, and less incidences of opportunism. Today, most NHLPA certified agents are highly educated, experienced and more than qualified to provide the various services needed by hockey players (see chapter five). For example, over half of agents representing NHL players have law degrees. While not eliminating agency problems such as shirking, it provides evidence that many agents have invested significant bonding costs in order to ensure that they have obtained minimum qualifications to oversee players' contractual matters. This process of increasing agent qualification and ability due to competition began as early as the mid 1980s. For example, one top NHL agent reported that "I don't know that if I was starting right now whether I could afford that one-year learning period I granted myself [when I started]" (McKenzie, 1986a). Market competition would suggest that agents who do not competently represent players will not survive, particularly as competition among agents for players increases. Thus, the agency model reveals that the recent increase in competition by hockey agents should result in a general increase in agent bonding costs (showing that a desirable level of competence has been achieved), and a subsequent decrease in agent opportunism (caused by ignorance, or shirking).

Agency theory also reveals how salary disclosure and the other changes described in the previous section have affected the P-A relationship that exists between player and agent. The greatest cumulative effect that these changes have engendered has been in decreasing the information asymmetry that traditionally favoured agents. Players today know more about the performance of their agents, and have been assisted by the NHLPA's efforts to inform the players more about the business aspects of professional hockey. The degree to which agents act in the best interests of the players is much more apparent, and mitigates the increasing complexity of agent services which provides agents a means through which to act in self-interest without detection. In addition, increasing salaries should also draw competent, skilled agents into the profession, as representing professional hockey players is a more potentially lucrative venture. The specific knowledge that favoured established agents such as Eagleson for so many years prior to salary disclosure is reduced, allowing new agents entry into the profession. In this manner, opportunistic agent behaviour can also be reduced through increased

competition for clients, which follows Alchian and Demsetz's (1972) notion that agents will not attempt to act in a manner detrimental to principal welfare knowing that the principal can easily contract with another competent agent. In addition, decreases to information asymmetry, increasing environmental munificence and a more competitive agent market should affect the way agents are compensated for their services. Given the information asymmetry that favoured agents, the traditional use of performance-contingent compensation (P-C) by professional sports agents is consistent with most agency relationships.

When the NHL first saw an influx of player agents during the late 1960s and early 1970s, player salaries were not widely known (they did not become public until salary disclosure in 1989), and players were less sophisticated regarding the business operations of the industry (the NHLPA was in its infancy, and did not distribute information to the same degree it does today) (Bulkeley, 1985; Cruise & Griffiths, 1991; Dowbiggin, 1993; Gould, 1992; King Jr., 1989; Papanek & Brubaker, 1984; Ulmer, 1994a). There were also no monitoring mechanisms in place to create information systems for players (such as agent certification programs). As this study has shown, information asymmetry favoured agents to a greater degree twenty to thirty years ago than today (Cruise & Griffiths, 1991). According to NHL agent Stephen Bartlett (1993), players have also become increasingly involved in their own contractual affairs, which also reduces information asymmetry historically favouring agents.

In addition, the uncertainty of services required by principals, combined with uncertainty regarding the abilities of the agents to perform meant that *ex ante*, players and agents had difficulty addressing what services were to be provided when setting the terms of the contract. Thus, the nature of the services provided was not easily specified in advance, and lacked *programmability*. Due to this lack of information, players were better off using a P-C compensation system. This follows Eisenhardt (1989a) who noted that task programmability is positively related to behaviour-based, and negatively related to outcome-based contracts. "Given that people are hired to perform behaviours, if behaviour can be evaluated, it makes sense for [principals] to pay directly for those behaviours via salaries" (Eisenhardt, 1988, p. 493). In the early 1970s, players had less knowledge of what agents did, how agents went about representing them, and how to

know if the agent did an adequate job. Thus, it was most appropriate for players to pay agents on the basis of something that they could evaluate, which was a higher salary. Therefore, from an agency perspective commissions were the ideal means to insure that agents were at least partly acting in the players' best interest.

Today, while some aspects of agent activities may still be difficult to determine *ex ante*, such as the degree to which the player will rely on the agent for counselling, many services are becoming increasingly apparent prior to the player and agent contracting. According to agency theorists, as duties provided for players (such as negotiating, arbitration, or financial planning) become more sophisticated and specified, and these behaviours are more easily set out *ex ante* when agents and players contract, there should be a decrease in outcome-based contracts and an increase in behaviour-based contracts. This would manifest itself by a tendency for players to remunerate agents using a flat fee or other behaviour-based compensation scheme, rather than a percentage of the players' total salary.

As explained by Eisenhardt (1989a), monitoring and agent compensation are interrelated. Information systems are positively related to behaviour-based contracts, and negatively related to outcome-based contracts. The NHLPA implemented its agent certification program to monitor agent behaviour more closely and reduce information asymmetry favouring the agent. A study by Kren and Kerr (1993) found the greater the use of behaviour monitoring, the lower the use of performance-contingent compensation systems. Thus, with increased player awareness of their business affairs and increased agent monitoring, agency theorists would predict a tendency for players to rely less on commissions. While this was the norm accepted in professional hockey decades ago, the player no longer needs to pay a risk premium and should no longer needlessly transfer risk to the agent. Thus the agency model would suggest a tendency for agents to receive less performance-based (commissions) compensation, and more behaviour-based (salaries, flat rates, and/or hourly fees).

Since the advent of salary disclosure, it would appear that players are now better able to evaluate the performance of the agents negotiating (task *measurability*) by comparing their own salaries with those of peer players. Eisenhardt (1989a) claimed that there is a negative correlation between task measurability and behaviour-based contacts.

However, in hockey, the industry has enjoyed a boom over the past decade (evidence of increasing environmental munificence), as salaries have skyrocketed. Teams have more money to pay for players' salaries due to increasing revenues, and new revenues sources such as licensing and state-of-the-art arenas. Thus, it is difficult to determine how much of the increasing salaries paid to players is due to the abilities of the agent, the influence of the NHLPA, and other factors such as salary disclosure. Thus, although the agent's services may be increasingly apparent *ex ante* (increasing programmability), the degree to which the agent's efforts have led to the outcome *ex post* is uncertain (decreasing measurability). Sharma (1997, p. 770) reported that "to the principal the agent's behaviour is opaque, and there is a great deal of ambiguity as to the true contribution of the agent's efforts on the observed outcome." Therefore, if it is not easy for the principal to evaluate an agent's performance, then a behaviour-based contract is most appropriate. As outcome measurability becomes more difficult (due to the ambiguous effects of environmental factors), a greater use of behaviour-based contracts should be present.

Finally, Parks and Conlon (1995) examined different contracts negotiated between principals during varying degrees of munificence and monitoring. They discovered that the relative share agents earn will be lower when principals can monitor agents than when they cannot do so. In the context of professional hockey, one should witness a decrease in the relative amount of compensation that agents receive as compensation as players become more aware of the activities of agents, regardless of the form of compensation (performance or behaviour-based) used.

Although this discussion using agency theory would suggest a trend toward the use of behaviour-based contracts, there would seem to be a tendency for agents in hockey to continue to rely on commissions. As agency theorists would suggest, there is less of a need for players to use P-C compensation, due to a reduction in information asymmetry traditionally favouring the agent. Given the changes to the industry, there is no longer a need for players to pay agents a risk premium through the use of commissions. However, environmental munificence may explain why most agents continue to rely on commissions. Given that salaries have continued to grow, there is little fear that an agent will be negotiating a contract for a player that results in a salary significantly lower than his previous salary, unless the player is at the end of his career, or suffered a significant

performance decrement. Thus, the agent worries less that a low contract will be negotiated that is beyond the control of the agent. For this reason, the agent is less risk averse and would be more willing to retain the practice of P-C compensation, and the resulting risk premium that accompanies an outcome-based contract. As such, the player may be paying an agent a higher salary than is necessary given the decrease in information asymmetry that has occurred since the commission became the established means of compensation for agents in the industry. The discussion above suggests that over the past three decades, various activities have occurred that should see a trend in players remunerating their agents using salaries or flat fees, rather than the traditional commission (outcome-based) method. In addition, one should see a trend for the relative amount of remuneration paid to agents decrease as players have greater knowledge of the efforts and abilities of agents.

Future Directions for the Player-agent Relationship

As salaries increase, and contracts become more complex, the various service needs of players should also continue to grow (Baker, 1990). As a result, several observers have suggested that players rely more on the abilities of specialists, and not any one agent. Sports and entertainment lawyers, Remick and Eisen (1986) observed that it has become increasingly difficult for one person to capably provide all the services required by professional athletes. In addition, as athletes become more knowledgeable with regards to their needs, they are more sophisticated in selecting appropriate agents, rather than relying on one individual (Wahl, 1993). From an agency perspective, this trend has two major repercussions that should reduce agency problems. First, due to decreased information asymmetry, the agent's services are more programmable, and will reduce the likelihood of adverse selection (having an incompetent agent contract with the player), or moral hazard (where the player contracts with an agent who shirks his/her duties). Players are also able to reduce potential agency problems by unbundling the services and hiring individual specialists. This follows Sharma (1997), who noted that this practice will reduce the potential residual losses for principals that one incompetent or unscrupulous agent could incur. An example of this would be a player who hires one agent to negotiate his playing contract with the team, and others for tax and financial planning. In this manner, potential residual losses created by any one unscrupulous or

incompetent agent are reduced. The player is able to ensure that a specialist is found to provide the services needed, rather than relying or expecting one agent to be capable of adequately performing all of the players' needs. In addition, these individual agents could be rewarded using behaviour or outcome based contracts depending on the programmability and measurability of each service provided.

Grosse and Warren (1991) have even suggested that players' associations eventually have their own group of specialists engage in contract negotiation and/or arbitration. Agents only negotiate those parts of the Standard Player Contract which have not been set out through collective bargaining, such as contract length, salary, and bonuses (Burke, 1993; Crandall, 1981). As baseball union leader, Donald Fehr noted, "if any of the union and the majority of players decide that it is no longer useful or helpful or in the best interest of the players to have agents at all, there would not be any (Fehr, 1993, p. 73). However, the agency model reveals one problem that may mitigate the effectiveness of having agent services provided internally by the NHLPA; thus, it is certainly in the best interests of players to use separate agents. For example, in collective bargaining, the NHLPA must meet the best interests of the majority of its members (White, 1986); the union represents players similar to other organised labour groups, with the exception of individual salaries (Noll, 1982). However, due to the disparity in players' salaries, the interests of a significant amount of the players may be impaired (Shulman, 1997) in order to meet the collective interests of all players. It would then be a conflict of interest for the union to represent the interests of one player if doing so compromises the interests of other players within the union. Thus players, as individual principals, must work to ensure that their own independent interests are met. In addition, the services of agents become even more important for players; as collective bargaining has become more hostile in the NHL (Santa, 1992), the agent must be able to work with teams in order to resolve contractual issues. Having one agent, the NHLPA, represent all player interests with ownership may only increase animosity between the labour and management. It also is appropriate for agents to deflect some of the criticism away from the players (and NHLPA) which has increased in recent years ("Fed up Fans" 1994; Korr, 1992; Morrison, 1996; Verburg, 1994).

Recent salary growth has also led to conditions that reinforce the value of player agents in the industry. Along with salary growth has come greater disparity in player incomes. With a greater disparity comes an increased opportunity for a capable agent to negotiate salary gains for players (Weiler & Roberts, 1993). Quirk and Fort (1992) reported that the NHL had the most equal distribution of incomes of the four North American leagues; however, in recent years, the gap between the lowest and highest paid players has widened (Shulman, 1997). Today, the typical NHL team roster features a highest-paid player receiving a salary fifty times that of the lowest ("NHL Agents. . ." 1997). For this reason, the NHLPA will have greater difficulty in meeting the needs of all of its members, which increases the importance of agents as players work to keep their own independent interests intact.

The discussion above suggests that the ideal means for which players can ensure that their interests are more closely met is through contracting with two distinct types of agents (the NHLPA and individual agents) and even choosing separate agents to provide the different services needed. Player agents will monitor NHLPA activities that may compromise the individual needs of players, while the NHLPA serves as a watchdog to ensure that agents do not act in ways detrimental to the interests of their union members. As explained by Barnes (1996, p. 247), "supervision [of agents] by players' associations reflects the suspicion that agents' interests are often tied to management and that agents have little commitment to the long-term welfare of all players: the agent is viewed as a talent placer whose business interests lie in ongoing favourable relations with teams."

Agency theory suggests that, while continuing to be the most popular means of agent compensation, the use of commissions in their current form may no longer be the most efficient way of remunerating agents in hockey. This is due to an increase in information to the players regarding the agents' abilities, duties, and performance. As a result, there is no need for players to pay agents a risk premium through the use of a performance-contingent compensation system. Although agency theorists would suggest that P-C compensation is no longer needed, many hockey agents continue to adhere to a commission-only policy; one player interviewed for this study was unaware that there was any other means to compensate player agents.

However, agency theory may suggest ways of altering the terms of the player-agent contract to reduce inefficiency and also try to insure that player interests are met. Although P-C contracts are typically viewed as problematic due to the risk aversion of agents, in a prosperous (munificent) hockey industry, agents have remained more than willing to continue to use commissions. Today, agents provide many different services and yet many still continue to be paid on the basis of the salary they negotiate on behalf of players. Thus a solution to reducing inefficiency in current player-agent contracts may be to alter the P-C contract that governs their relationship. For example, if a player was considered one of the ten best players at his position, and knew that the other nine players were paid an average salary of three million dollars a season, then the player would likely not want to agree to a contract that paid him much less than that amount. If the player was paid substantially less than three million dollars, he would perceive an inequity and therefore would not be satisfied with a contract less than that amount. This follows Barnes (1985, p. 36), who noted that “the athlete’s experience, ranking and ability often place him in a predictable contract range normally paid by teams. The agent’s fee should be based solely on the work done to improve that position.” Using this example and with a munificent market, it would not be unreasonable to assume that the player would receive at least an annual salary of three million (taking into account factors such as payroll, market size, etc.). Thus, an agent who negotiated a salary for two million dollars a season would not necessarily be doing a superlative job for his/her player; that amount might be the first offer made by the team. Despite this the agent, by virtue of using a commission, would be awarded a significant amount of money by the player annually (\$60,000 if using a 3% commission) for a salary that the market (and salary disclosure) has determined.

An alternative solution might be to set a standard (in this case, \$3 million), and pay the agent a substantial commission contingent upon the player salary that could be gained over and above that amount. An example might be to pay the agent a one-percent commission on any amount to three million (which in fact becomes a behaviour-based reward), and then 50% of any amount over three million. The one percent would be used to reduce the risk the agent might have of not meeting the \$3 million mark (a team unwilling to pay that amount, etc.) for reasons beyond the control of the agent. In fact,

this set amount would be a behaviour-based contract that would reward the agent for less tangible services provided, such as career counselling. The performance-contingent component of the reward would be used on a more measurable indicator of the agent's ability, which would be the amount of salary over and above what environmental factors, such as salary disclosure and revenue growth, have determined. This new formula would then pay the agent substantially for exemplary service, which is the amount the agent's skills and abilities could obtain over and above the "going rate" of three million. If an agent disagreed with the three million dollar standard, which could be determined by another party, such as the NHLPA, market competition between agents suggests that another agent would agree to that amount.

Conclusion

This chapter has identified the factors that have changed the professional hockey industry and the relationships between professional hockey players and their agents. In examining the player-agent dyad from an agency perspective, a reduction in the use of P-C compensation for player agents seems appropriate, given a reduction in information asymmetry that has traditionally favoured agents. However, the agency model also reveals that other factors, such as the agent market and environmental munificence have an influence on the contract that governs their relationship. Both have the effect of allowing principals to transfer risk to agents. Thus, while agents typically demand a risk premium for relying on a performance-contingent contract, an agent will be more willing to use a P-C contract if he/she risks losing the contract to a competing agent (Sharma, 1997). Due to market competition, an agent's experience or ability becomes less relevant when using a P-C contract, as agents who do not produce will be selected out on the basis of reputation (Kurland, 1991). Given the changes that have occurred in the industry, players will contract with more qualified, less opportunistic agents, be able to monitor their behaviour more closely, and have a basis of evaluating their performance. And although some changes have already occurred with regard to the form of compensation taken, the agency model also suggests that players no longer need to rely on a standard commission rate to remunerate their agents. As long as the terms of the contract are acceptable to both player and agent, the industry should witness more creative means of

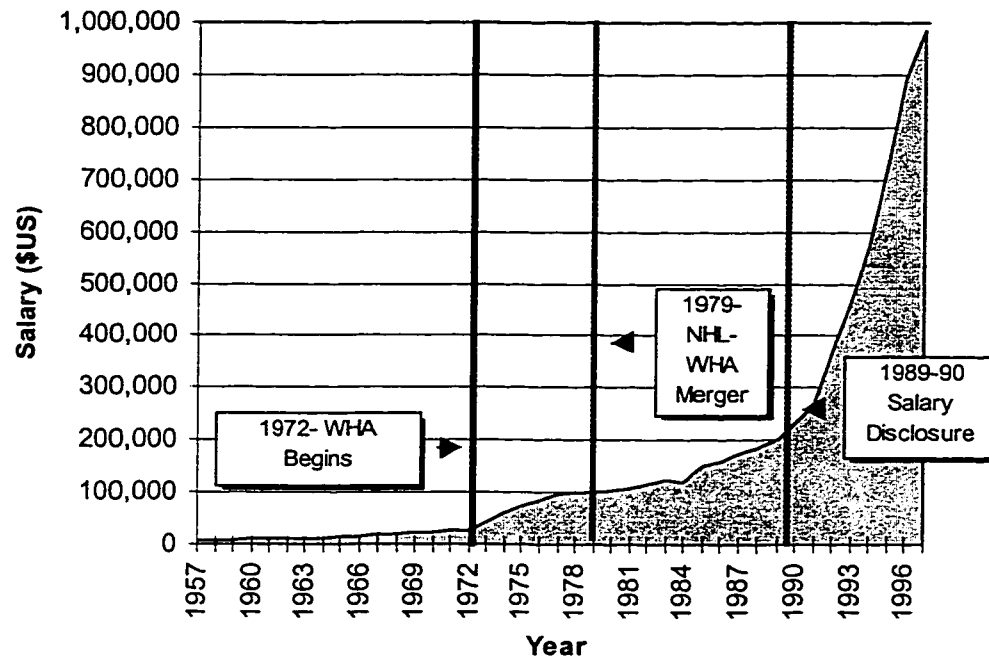
compensation that result in the agent's share of player salary reduced, and reflect the changes to information asymmetry that have been identified in this study.

Table 4.1
Factors Influencing the Player-Agent Dyad
(Presented Chronologically)

| Time Period | Factor | Industry Effect | Effect on P-A Relationship |
|--------------------|--|---|---|
| 1967-1989 | NHLPA Operations | <ul style="list-style-type: none"> • Increase bargaining power of players | <ul style="list-style-type: none"> • More income opportunities for players, agents |
| 1972-1979 | World Hockey Association Operations | <ul style="list-style-type: none"> • Abolition of Reserve Clause • Bargaining leverage = salary increases | <ul style="list-style-type: none"> • Greater need for representation • More opportunities for players, agents • Influx of agents |
| Ongoing | Environmental (Market) Munificence | <ul style="list-style-type: none"> • More jobs for players • More \$ for salaries | <ul style="list-style-type: none"> • More P-A relationships |
| Ongoing | Agent Market Competition | <ul style="list-style-type: none"> • Increasing number of player agents | <ul style="list-style-type: none"> • More competition = decrease in amount of P-C compensation • Decrease in agent opportunism |
| 1989-1990- | Salary Disclosure | <ul style="list-style-type: none"> • Salary increases • Increased information to players | <ul style="list-style-type: none"> • Income increase for players, agents • Decrease in amount of P-C compensation |
| 1989- (1996-) | New NHLPA Leadership (Agent Certification) | <ul style="list-style-type: none"> • Increased bargaining power of players • Increased labour strife | <ul style="list-style-type: none"> • Income increase for players, agents |

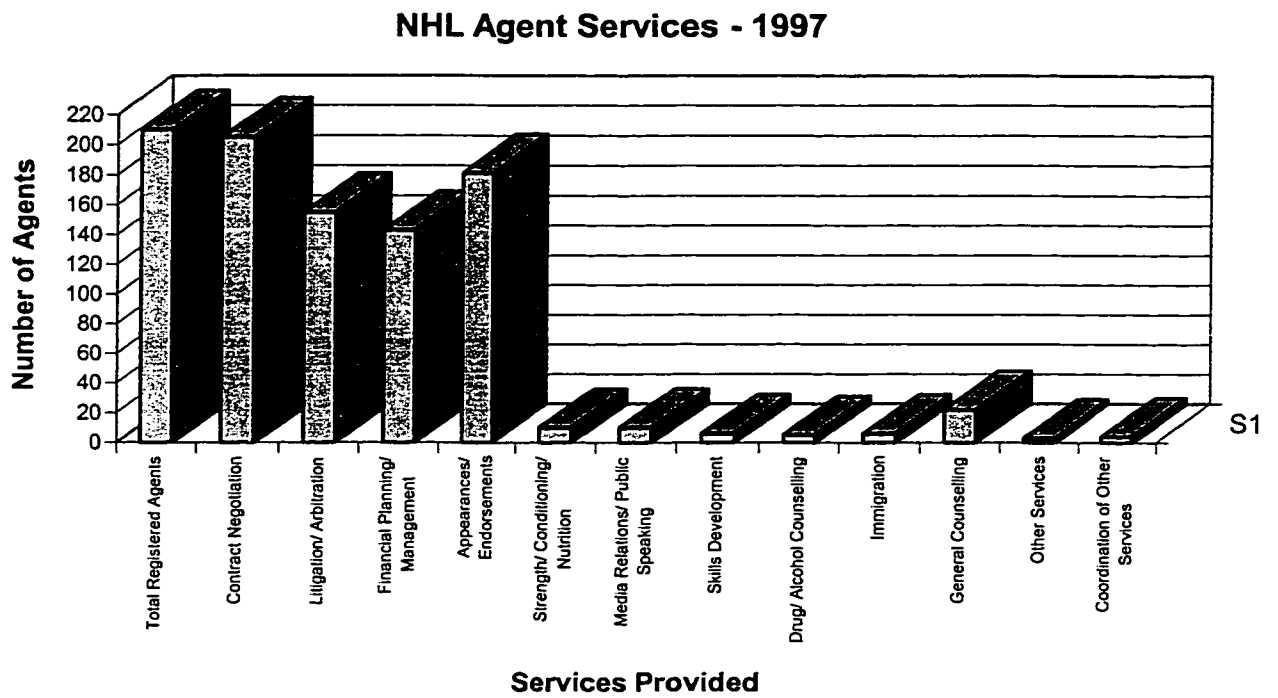
Figure 4.1

Average NHL Salaries



Sources: Canada (1974); Cruise & Griffiths, 1991; Dryden, 1985; Gruneau & Whitson, 1993; Kennedy & Williamson, 1978; National Hockey League Players' Association; *Philadelphia World Hockey Club Inc., v. Philadelphia Hockey Club, Inc.*, U.S.D.C. Eastern Pa., C.A. 72-1161, Opinion (Nov. 8, 1972); Phinizy, 1974; Scully, 1995; Staudohar (1989).

Figure 4.2



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CHAPTER 5

MONITORING MECHANISMS AS A SOLUTION TO AGENT OPPORTUNISM FOR PROFESSIONAL HOCKEY AGENTS

Since its inception, the National Hockey League (NHL) has developed into the premier professional hockey league in North America, if not the world. Although the NHL has operated since 1917, the last four decades have witnessed the most dramatic growth and change for the league and its stakeholders (Cruise & Griffiths, 1991; Deacon, 1995; Jensen, 1995). During this time, the NHL has expanded from six to twenty seven franchises, seen its labour force formally organised and become a bargaining adversary with management, and been the beneficiary of exponential revenue growth. Growth has been achieved through gate revenue and other newly-developing channels (Ulmer, 1992), such as merchandise and trading card licensing (Allen, 1993; Campbell, 1994; "NHL Enterprises," 1994; Williams, 1995), television revenues (Greenberg, 1985), and gate revenues from luxury boxes and club seats, which are built in new, state-of-the art arenas (Ostfield, 1995; Ozanian, Atre, Fink, Reingold, Kimelman, Osterland & Sklar, 1995). Within this context of growth, change, and increasing revenues another industry stakeholder has emerged, the player agent (Fraley & Harwell, 1989; Gallner, 1974; Gould, 1992; Grosse & Warren, 1991, Steinberg, 1991).

Starting in the mid 1960s, agents began representing players in contract negotiations with teams and providing other services such as financial planning and help in obtaining endorsements (Baker, 1990; Crum III, 1986; Ekmekjian, 1994; Vausher, 1994). Experienced and knowledgeable agents were invaluable to professional athletes, by helping to reduce a bargaining imbalance that has traditionally favoured team owners (Chalian, 1993), and ensuring that the financial future of the players was not compromised (Ehrhardt & Rodgers, 1988; McAllister, 1987; Ruxin, 1982). However, in some cases, agents harmed the clients they represented through incompetence or by acting in self-interest (Cox, 1992; Grosse & Warren, 1991), so much so that by the 1980s, the general perception of player agents was arguably poor ("Aren't Agents a Swell Bunch of Guys?" 1985; Gallagher, 1992; Shropshire, 1989). Sports lawyer Alec Powers (1994) attributed agents' bad reputation to three factors: 1) increasing dollars in the sports industry which led to a proliferation of agents of varying skills; 2) a lack of minimum

qualifications for agents; and 3) a lack of regulation. When agents did act opportunistically, players had little legal recourse (Grosse & Warren, 1991; King Jr., 1993; Narayanan, 1990). As one sports lawyer noted, "ultimately, the problem with agents is that they are allowed to get away with it" (King Jr., 1989, sec. 8 at 9).

By the late 1970s, there had been enough incidences of opportunistic agent behaviour that many of the professional sports industry's stakeholders sought to create monitoring mechanisms to try to reduce such behaviour (Benitez, 1986; Cohen, 1993; Cox, 1992; Crandall, 1981; Grosse & Warren, 1991; McKenna & DiGiuseppe, 1991; Ruxin, 1985; Shropshire, 1990). The primary reason attributed to the existence of agent opportunism was a lack of professional standards for agents (Burke, 1993; Crum III, 1986; Faber, 1993; Ring, 1987). By regulating agent behaviour, it was hoped that the minimum required skill levels and qualifications could be set for agents, resulting in a decrease in agent opportunism. As a result in 1978, a voluntary association, the Association of Representatives of Professional Athletes was formed by player agents themselves (*Code of Ethics: Association of Representatives of Professional Athletes*). This was done to add legitimacy to the profession and perhaps show that the agents were becoming increasingly concerned over the behaviour of some of their own (Greenberg, 1993). Since this time, professional baseball (in 1988), basketball (1986), and football (1982) players' associations have all created their own agent certification programs (*Code of Conduct for National Football League Players' Association Member Contract Advisors; Major League Baseball Players' Association Regulations Governing Player Agents; National Basketball Players' Association Regulations Governing Player Agents*). The NHLPA was the last of the four major professional sports leagues in North America to begin certifying its agents, and began doing so in January of 1996. The association-created plans typically require an annual fee, place a maximum fee restriction on agents, and hold mandatory annual seminars for agents (Shulman, 1997).

In addition to the agents and players themselves (as represented by their respective Players' Associations), other stakeholders have become involved in creating agent certification programs. For example in 1984, the National Collegiate Athletic Association (NCAA) began an annual registration program for agents (Kohn, 1988). Various US states also began setting up agent certification plans of their own. The first

state to do so was California in 1981 (*California Labour Code, §1500 -1547*), followed by Oklahoma in 1985 (*Oklahoma Stat. §70-821-61 to -67*). However, the effectiveness of these and subsequent programs in other states have been disputed, due to the fact that "the maze of differing statutory provisions among states enacting such legislation has led to uncertain results depending on the jurisdiction of the agent" (Grosse & Warren, 1991, p. 51). In addition, the US federal government entertained the idea of creating an agent certification program; for example, between 1982 and 1985, the National Sports Lawyers Association attempted to have Congress enact the Professional Sports Agency Act (PSAA) of 1985 (Powers, 1994). Despite this and other recent efforts, Congress has been reluctant to become more involved in agent regulation and these and similar attempts have been unsuccessful.

The wide array of efforts to control player agent behaviour suggests that there has been a significant concern by various stakeholders over the behaviour of agents in professional sports. However, many individuals directly involved with the professional sports industry have criticised the effectiveness and value of agent monitoring schemes. For example, Alec Powers (1994, p. 262), an attorney with experience with NBA Entertainment and as an NCAA Compliance and Legal Intern, reported that "while anyone involved in the sports industry has recognised the need for regulation of sports agents, attempts to regulate have either been unsuccessful, ineffective, or at best limited."

Consequently, the purpose of this chapter is to use the elite professional hockey industry as a case study to examine forms of agent monitoring, by identifying the most influential forms of agent monitoring used in the hockey industry (created by various industry stakeholders), and evaluating the effectiveness of these monitoring mechanisms in regulating agent behaviour. While the player-agent relationship in hockey is similar to the other major North American leagues, the hockey industry features several characteristics that differentiate it from other professional sports. First, while basketball and baseball franchises now operate in Canadian markets, the NHL has had a strong Canadian presence since its inception. In fact, its first US franchise was granted after the League had already operated in Canada for seven seasons. A majority of players are Canadian, and many agents practice out of Canada. In addition, the delivery system for players is heavily reliant on Canadian and Eurasian leagues. A result of these factors is

jurisdictional concerns that may mitigate the effectiveness of monitoring mechanisms created to police agents in sports whose players are almost exclusively US-born or trained, or are drafted from US colleges. For these reasons, the professional hockey industry provides a unique site to examine principal-agent relationships in sport.

To facilitate analysis, an agency theory framework is used. Agency theory examines monitoring problems in terms of bonding costs, monitoring costs, information asymmetry and contract enforceability. From an agency perspective, attempts to create agent certification programs to control agent behaviour can be seen as efforts to increase information to the principal (the player), by reducing information asymmetries that favour the agent. By creating agent certification plans, principals and other stakeholders are more aware of the background preparation of the prospective agent, and the agent's activities while acting on behalf of the player. In addition, it is intended that by regulating behaviour, an acceptable level of agent conduct is attained. However, the degree to which these goals have been attained cannot be determined without a thorough investigation of specific monitoring mechanisms and the effects each has on the player-agent relationship in hockey.

To address this research problem, the following section outlines the basic assumptions of agency theory. The agency model is introduced to develop a means of evaluating each monitoring mechanism on the basis of characteristics common to all principal-agent relationships, and to provide a way through which concerns regarding the effectiveness of agent monitoring in sport, raised by industry stakeholders, can be explained and understood. In other words, it is hoped that in using the agency model, problems associated with specific agent monitoring in hockey may be remedied by identifying agency problems consistent with monitoring in other agency relationships and suggesting solutions. Thus the agency framework may shed new light on monitoring problems in hockey. Having done this, the next section reviews the steps taken to collect and analyse the data, along with the method through which agency theory was used to facilitate the analysis. Following this discussion, the various types of monitoring mechanisms created to reduce agent opportunism by professional hockey agents are presented. The review of the mechanisms was facilitated by a thorough examination of industry documents (including the mechanisms themselves), and stakeholder opinion of

the effectiveness of the mechanisms obtained in legal documents, journals, the popular literature, and interviews with industry stakeholders. Once this has been achieved, agency theory is used to assess the effectiveness of agent certification and monitoring mechanisms, and address the concerns expressed by various industry stakeholders. In doing so, agency theory provides a means through which problems associated with agent monitoring mechanisms in hockey can be identified and potentially addressed in order to reduce future agent opportunism, and address problems with existing forms of monitoring.

Theoretical Framework

The theory of agency is rooted in organisational economics, and relies on two basic assumptions about economic actors: bounded rationality and opportunism (Barney & Hesterly, 1996). Bounded rationality recognises that individuals are unable to have complete information about all situations and circumstances, while opportunism identifies the possibility of actors acting in self-interest. In the absence of bounded rationality, individuals would have complete knowledge of all things, and without opportunism, all transactions could be achieved on the basis of promise (Barney & Hesterly, 1996). Given human limitations, neither scenario is possible, giving rise to the potential for agents to act self-interestedly for personal gain. Agency theory is concerned with self-interest within the context of principal-agent relationships.

A principal-agent relationship is created when an individual (the principal) contracts with another (the agent); the agent performs a duty or service on behalf of the principal and, in many instances, is rewarded on the basis of completing said task. The principal is often unable or unwilling to perform a certain duty, which necessitates contracting with the agent. However, given that the agent has a certain expected expertise that the principal lacks and the bounded rationality of the principal, the agent also has a greater knowledge of his/her efforts and behaviour. It is this knowledge that potentially allows the agent to act in self-interest while acting on behalf of the principal, at the principal's expense. When this happens, an agency problem arises, and solutions to opportunism and the agency costs they incur become the focus of agency theory (White, 1992). Thus, agency theory has practical value in identifying courses of action that ideally reduce inefficiencies in organisations.

In the context of professional sports, a number of principal-agent relationships exist within the matrix of contracting relationships that comprise the industry. For the purposes of this paper, the relationship that exists between players (as principals) and their agents is examined. The player acquires the services of an agent to perform various duties, including negotiating contracts with a parent team, seeking endorsement opportunities, providing various financial, estate, and taxation advice, and serving as a confidant and buffer between player and team during the negotiating process. In this instance, the agent's services are needed because the player lacks the knowledge and ability to negotiate and manage his finances, and/or would prefer to devote his time to developing his playing skills. Unfortunately for many players, agents have at times been unable to adequately serve their clients (agent ignorance), not put forth adequate effort in serving the player, acted with guile in order to divert player resources for personal use (moral hazard), or misrepresented their abilities to serve on behalf of the players in order to contract with the principal (adverse selection). The focus of agency theory is in understanding how to reduce the likelihood of agents acting in these ways.

In recent decades, the theory of agency has been widely employed and debated within the organisational theory and organisational economics literatures (Eisenhardt, 1989; McGuire, 1988; Nilakant & Rao, 1994; Perrow, 1986). Jensen and Meckling's (1976) seminal paper identified that principals are able to reduce agent opportunism by establishing appropriate incentives when contracting with agents, and by creating monitoring mechanisms that provide the principal with more information regarding the agent's behaviour. The latter is an important means through which information asymmetry (created by bounded rationality) that favours the agent can be reduced. In doing so, the principal incurs what are called agency costs, these are the costs associated with designing, implementing and evaluating contracts and/or governance mechanisms. Agency costs associated with monitoring are incurred both *ex ante* (developing the contract or governance mechanism), and *ex post* (enforcing and monitoring) (McGuire, 1988). Agency costs are incurred by both principals and agents. The costs borne by principals to create and enforce monitoring mechanisms are called *monitoring costs*. In contrast, agents incur *bonding costs*, which are the costs associated with abiding by monitoring mechanisms and showing principals that a certain level of competence has

been achieved. An example would be the cost of attending law school and paying fees to remain a member in good standing of a given state bar. Both monitoring and bonding costs are incurred in order to reduce the third type of agency cost—*residual loss*. Residual losses are created when the agent acts opportunistically and can be seen as the decrease in welfare to the principal that results from such behaviour. Thus, the reduction in residual losses caused by a given monitoring mechanism will ideally far exceed the monitoring and bonding costs incurred by principals and agents to implement it.

As mentioned above, the two primary means of reducing agent opportunism are 1) increasing monitoring; and 2) contracting on the outcome of agent behaviour. In the context of professional sports, player agents have traditionally charged the player a percentage of the player's contract in order to negotiate both playing and endorsement contracts (Greenberg, 1993). A commission or performance-contingent compensation system is a form of outcome-based contract that aligns the interests of principal and agent by rewarding both for a higher contract (the more money the agent gets for the player in negotiating with the team, the higher the reward for the agent). Thus, one of the two solutions to agency problems is already widely employed in the professional sports agency profession.

However, despite the prevalence of performance-contingent (P-C) compensation systems in the professional sport industry, there have still been widespread examples of abuse by professional sports agents. For example during the 1970s and through the 1980s, player agent malpractice was highly reported in both academic and trade journals (Crandall, 1981; Ehrhardt & Rodgers, 1988; Johnson, 1988; Mills, 1989; Nightengale, 1982; Ruxin, 1982; Trope w/ Delsohn, 1987). As a result, various sport industry stakeholders became involved in creating monitoring mechanisms to more closely regulate and control agent behaviour. From an agency perspective, given that performance-contingent compensation systems (commissions) were already widely used by player agents, the ideal solution to curbing agent opportunism was to increase monitoring mechanisms that reduce information asymmetry that favours the agent. In doing so, the principal is more aware of the activities of the agent; agents who act opportunistically can then be more easily detected and appropriate measures can be taken, and the agent has less incentive to shirk for fear of being caught by a more

informed principal. Positivist agency theory has "focused on identifying situations in which the principal and agent are likely to have conflicting goals and then describing the governance mechanisms that limit the agent's self-serving behaviour" (Eisenhardt, 1989, p. 59). Using a positivist approach, this paper reviews the governance mechanisms that have been created to reduce player agent opportunism in professional ice hockey, and then uses the agency model and characteristics specific to the hockey industry to establish a means of evaluating their effectiveness in monitoring and controlling agents.

Method

The following section will outline the method used to collect and analyse data for this study. As discussed earlier, the player-agent, principal-agent relationship in professional hockey was chosen due to a lack of previous research on agent monitoring in hockey, and specific characteristics that professional hockey has that might affect the worthiness of monitoring mechanisms that were created to reduce agent opportunism in sports in general. In addition, the hockey industry was chosen as a site to examine traditional agency problems for several reasons: 1) the life-span of the player-agent relationship is clearly discernible (from the mid 1960s to the present); 2) there are finite, identifiable player and agent populations; 3) many relationships involve simple single-principal, single-agent dyads; and 4) industry documentation concerning agent certification plans is readily available.

Data Collection

Data collected for this study were obtained through a variety of means and from number of sources, which are described in greater detail in chapter three. To fully examine the effects of monitoring specifically on professional hockey agents, the views and opinions of stakeholders directly involved in the professional hockey industry were sought. In particular, those involved directly with agent activities such as negotiations and arbitration, along with agent monitoring were considered. These included current and former players, agents, and team management and other stakeholders directly involved in the affairs of player agents. Data were obtained primarily through the following sources: 1) articles written by these individuals found in the legal, academic and popular literature; 2) phone and personal interviews with players, agents, team management and other industry stakeholders; 3) NHL, NHLPA, government,

professional, and other industry documents, such as *NHLPA Regulations Governing Agent Certification*, collective bargaining agreements, standard player contracts, and standard representation contracts. Although obtained from popular secondary works, direct quotes from stakeholders found in secondary sources were treated as primary sources for the purpose of analysis. In order to provide a basis of comparison with other sports, the information obtained via the above sources was supported by similar documents and sources concerned with the other three major North American professional sports leagues, the National Basketball Association (NBA), Major League Baseball (MLB), and the National Football League (NFL). The following describes the sources through which data was obtained.

Articles

Articles were used in combination with data from interviews and industry documents. They consisted of a variety of types, including those written by stakeholders, overviews of monitoring mechanisms, transcriptions of presentations at industry conferences, and popular sources, such as *The Hockey News*, *Sports Illustrated*, and major North American newspapers that featured direct quotes, comments, and other information directly attributable to industry stakeholders.

Interviews

Thirteen in-depth interviews were arranged with twelve individuals from all sides of the negotiation process. These typically lasted one hour, ranged from forty-five to ninety minutes and interviewees included current NHL players, managers and agents. In addition interviews were sought with a former highly recruited junior hockey player, an employee of the National Hockey League Players' Association, and a lawyer with experience in NHL-related labour issues. Questions followed a standardised, open-ended format and covered a number of topics related to the industry and the involvement of the interviewees (Henderson, 1991) (please see Appendix B for sample interview questions). A snowball sample technique was used to contact and solicit interviews. Despite limitations accessing industry stakeholders, a sample of interviewees was obtained that represented a variety of skill, training and experience in their respective positions. The goal of the interviews was to obtain as wide a representation of stakeholder interests as possible, the results of which would be combined with data obtained from other sources.

In particular, interviews were sought with stakeholders who, at one time or another, had experience/knowledge of the activities of other stakeholders. An example would be a former player who became an agent at the conclusion of his career and later acted as a negotiator on behalf of teams. Where permission was granted by the interviewee, interviews were recorded and transcribed. Each interview resulted in eight to eighteen pages of text for analysis.

Documents

The most crucial documents used for this study were the official certification programs developed by the various industry stakeholders. Copies of programs of nineteen of the twenty-seven states that have player agent regulation were obtained, along with documentation of attempts to create uniform federal agent regulation in the US. In addition, the code of ethics for the Association of Representatives of Professional Athletes, professional codes for the American Bar Association and Ontario Bar, and agent regulation documentation of all four major North American professional sports leagues were obtained for analysis. These primary sources provided the basis for identifying the monitoring mechanisms used to regulate agent behaviour, and the characteristics each had to regulate the behaviour of hockey agents. To provide a basis of evaluating the effectiveness of these monitoring mechanisms, the opinions of stakeholders, particularly those who have written critiques of agent certification programs found in the legal literature were sought, and provided a valuable primary source.

In using the variety of primary sources described above, the collection of data resulted in a large amount of information, from a wide variety of sources and time periods. For example, the views and opinions of agents were gleaned through interviews, quotes from newspapers, autobiographies, legal journals, and other academic and popular sources. In doing so primary data (either written by the agent, stated by the agent in interviews, or directly quoted in various sources over the years) were obtained from almost sixty different current and former agents. In this manner, a wide range of opinion regarding the effectiveness of agent monitoring mechanisms was procured. This process similarly occurred for players and management and, in some cases, the multiple views of the same stakeholder were obtained over a number of years. For example, Brian Burke, former player agent and Vice President of the NHL, and current general manager of the

Vancouver Canucks, was quoted freely throughout the 1980s in *The Hockey News* while acting as an agent. He later authored a manuscript titled “Sports lawyering: a practical guide,” for a sports law course offered at the University of British Columbia’s Faculty of Law, and published proceedings of a lecture given at a National sports law conference published in a legal journal (“Negotiations involving agents and general managers in the NHL”). Similarly, the views of other prominent industry stakeholders, including Bob Goodenow (former agent and current NHLPA head), Don Meehan (a top agent), and Alan Eagleson (former agent and deposed NHLPA leader) were readily available through a variety of documents.

Data Analysis

The following section will address issues associated with reliability and auditability (Miles & Huberman, 1984) for this study. To do so, this section will elaborate on the processes through which the collected data described above were analysed. At the onset of data analysis, two important functions were required: establishing a means through which data could be categorised and weighed for the purposes of analysis (in particular to compare potentially conflicting results from different sources), and developing a way to reduce the data into a manageable form or, as Miles and Huberman (1984, p. 21) explained, “selecting, focussing, simplifying, and transforming the ‘raw’ data.” At the conclusion of the collection process, data were first sorted into seven categories on a primary to secondary continuum. These categories were created using the historical method, and ranked sources according to source, intended audience, and recency. A more detailed discussion of this ranking appears in the method chapter, which was done to distinguish the reliability of sources, and to separate primary and secondary sources. Evidence from secondary sources, such as overviews of agent certification programs made by legal scholars, was used to corroborate and/or validate findings from primary sources. This follows Thorne (1994), who noted that secondary sources are valuable in qualitative analysis for the purposes of cross-validation, where existing data sets are used to confirm or discount findings, “and suggest patterns beyond the scope of the sample in which the researcher personally has been immersed” (p. 267). In this manner, the findings of the effects of agent monitoring on hockey agents derived from primary sources were then compared to general overviews and critiques of agent

monitoring found in the secondary literature. For example, several individuals involved directly with the professional sports industry (Falk, 1992; Fehr, 1993; Steinberg, 1992) and professional hockey (Bartlett, 1993; Burke, 1993; Pulver, 1991) have discussed player agent issues in the legal literature. These were compared with secondary sources examining agent monitoring written by legal and other academic scholars (Arkell, 1997; McKenna & DiGiuseppe, 1991; Miller, Fielding & Pitts, 1992; Sobel, 1987) that discussed problems and solutions specific to this issue. For the purposes of analysis, information from the former sources, combined with data from interviews and quotes from direct stakeholders were used to distinguish each monitoring mechanism presented in this chapter, and weigh the merits of each with regards to professional hockey. Information from the secondary sources were then consulted to corroborate the findings of this study and, because all but one of the secondary sources reviewed agent monitoring for professional sport in general, establish any differences between professional sport generally and hockey specifically.

In addition to weighing evidence on the basis of a primary to secondary continuum (as shown in chapter three), potential stakeholder bias was also considered within each category. For example, it was expected that some agents would find registration requirements restrictive, especially where bonding costs were high, and their opinions of the merits of agent regulation might not be the same as those expressed by other stakeholders, such as players or team general managers. To account for this, different stakeholder views were sought where possible within each category. In addition, the concept of sociometry (Berg, 1989) was introduced to assist the data analysis process by identifying the degrees of affinity or disdain different stakeholders in the hockey industry held for one another. For example, given the acrimonious relationship between managers and agents, managers might attribute behaviour by players and agents (such as a contract holdout) more to the agent's influence than the player's. This is because the manager has a stronger connection to the player (as an employee of the team) than the agent, who is essentially a talent placer acting on behalf of the player. As such, opinions expressed by the manager regarding actions of players and agents that are not in the interests of the team may overstate the influence of the agent. A more detailed discussion of sociometry is presented in chapter three. To

address these potential biases, for example, interviews were done with players, agents, team managers, and other industry stakeholders, to avoid collecting data that reflected the ethnocentrism of any one stakeholder group. Similarly, documents created by or expressing the views of certain stakeholders were scrutinised on the assumption that each stakeholder was intrinsically motivated by their own personal utility. An example would be the NCAA's agent regulation; while the NCAA is obviously concerned about the welfare of its athletes, it might be assumed that the involvement of the NCAA in regulating agent behaviour was also to shield member institutions from the potential loss of top athletes who are persuaded to forego their collegiate eligibility and play professionally. To attempt to overcome this and other problems associated with the internal validity of sources, an emphasis was placed on obtaining and analysing a heterogeneous variety of data sources, periods of publication of documents, and methods of collection. In doing so, it was hoped that data triangulation would be facilitated by data source and data method (Miles & Huberman, 1984). Sources were triangulated through obtaining data from different persons (stakeholders), times, and places. Data method were triangulated through the different means of collecting data (interviews, industry document review, and written primary sources from stakeholders, such as conference proceedings, articles, and quotes).

The methods described above provided the means through which data regarding the various monitoring mechanisms affecting professional hockey agents were collected and assembled for analysis. Data analysis consisted of two distinct processes; one was to use the information collected to identify monitoring mechanisms, their impact on sport and hockey agents, and determine their value and effectiveness as evidenced by specific rules and characteristics of each program, and the opinions of industry stakeholders. The other sought to use agency theory to further examine each mechanism on the basis of factors agency theorists consider crucial to the effectiveness of monitoring, which will be described later in this section. Thus it was hoped that the agency model would provide an alternative means to identify any inherent agency problems with each mechanism and suggest possible solutions to them.

Identifying Monitoring Mechanisms

The initial process of determining which monitoring mechanisms were to be assessed for this study was all-inclusive. Quite simply, any monitoring mechanism created deliberately for the purposes of restricting and/or governing any group of agents that could include professional hockey agents (of a significant enough number to influence player agent behaviour) was deemed worthy of investigation. At the onset of this study, twenty-seven review articles concerned with player agent regulation were found in the legal and academic literature. Nineteen were deemed secondary sources for the purposes of analysis (usually written by legal scholars), while the remaining eight were considered primary (written by individuals affected by agent regulation, such as practising agents, or those involved in the creation and/or enforcement of specific mechanisms). A checklist matrix was created to determine which mechanisms were identified in the articles, and deemed the most prominent and influential.

Following an initial review of the twenty-seven studies, nine different types of player agent monitoring were identified (in no particular order): 1) NCAA regulation; 2) US state; 3) self-regulation by agents; 4) US federal regulation; 5) professional standards, based on the agent's background; 6) players' association regulation; 7) ethical standards; 8) tort and contract law; and 9) criminal law. US state and players' association regulation were commonly recognised as influential forms of agent monitoring, while NCAA and professional standards were also identified in many of the studies. Federal and self-regulation also received support. Ethical standards were identified in some studies, but this was often couched in terms of codes of ethics, which fall under the professional standards category. While the personal, intrinsic ethical standards of agents would obviously provide some form of deterrent for opportunism, they are considered beyond the parameters of this study (which examines deliberate attempts by stakeholders to monitor and control agent behaviour). In other words, while utilitarian and altruistic ethical behaviour (Noreen, 1988) could be fostered in the professional hockey industry, there has been no apparent concerted effort on the part of principals or other stakeholders to affect the ethics of player agents in particular, by imposing external controls. In addition, while changes to the ethical behaviour of agents might reduce two types of agency problems, shirking and adverse selection, it would not appear to influence other

agency problems, such as agent ignorance. Therefore, personal ethical standards were not considered in this study as a monitoring mechanism. However, codes of ethics set out by bodies overseeing certain professions were, as these represented a tangible effort by stakeholders to reduce agent opportunism, and governing bodies also operate under the assumption that a certain level of education or experience (such as obtaining a law degree and practising law) has been attained by the agent. Similarly, tort, contract, and criminal laws provide a means through which agent behaviour can be controlled. However, because these legal avenues are available to all constituents within a given legal jurisdiction (regardless of the vocation), they were not deemed to be a monitoring mechanism created expressly for the purposes of regulating agents.

In reviewing the twenty-seven articles and eliminating certain types as described above, six types of monitoring mechanisms emerged: 1) US State; 2) NCAA; 3) self-regulation (by agents); 4) federal regulation; 5) professional standards; and 6) players' association (monitoring by principals). Primary sources were then used to identify specific characteristics that each had, problems associated with monitoring agents in professional sport in general, and problems specific to professional hockey. Results were then compared to those found in the review articles. This will be presented in greater detail in the results section of this chapter.

Assessing Monitoring Mechanisms Using Agency Theory

Having already identified and examined the characteristics of the six types of monitoring mechanisms, the next phase of data analysis involved using the agency model to develop a means through which player agent monitoring could be evaluated in more detail. In doing so, it was hoped that new light could be shed on agent regulation in professional hockey. The rationale for introducing agency theory was to try to further pinpoint problems traditionally associated with agent monitoring in sport (King Jr., 1989; Powers, 1994). In other words, while it is obvious that there are problems with player agent monitoring, as evidenced by the discussions throughout the twenty-seven review articles described above, it was hoped that the agency model might provide a better understanding of such problems by couching them in terms of common agency problems, rather than attributing them to any unique characteristics of the player-agent, principal-agent dyad in sport. In addition, it was hoped that agency theory would provide possible

solutions to problems associated with agent monitoring in hockey. As discussed in the theoretical framework, agency theorists recognise monitoring as one of two means through which agent behaviour can be regulated (Eisenhardt, 1989). Thus, in order to further examine each type of monitoring in hockey, agency factors were identified that could influence whether or not each specific monitoring mechanism adequately reduced traditional agency problems identified by agency theorists and previous agency research. Such factors included information asymmetry, self-interest, bonding costs, and monitoring costs, that were discussed in the theoretical framework. Having already reviewed the basic characteristics of each of the six mechanisms, along with the views and opinions of stakeholders of the merits of certain monitoring mechanisms, other factors were also introduced into analysis. These factors reflected the uniqueness of agent monitoring in hockey, and included the presence of other stakeholders (as opposed to principals) who have become involved in agent monitoring, the diffusion of players (as a group of lay principals), the diverse backgrounds of agents (resulting in widely varying bonding costs for agents), and the apparent lack of enforceability of several programs. By using agency theory and the characteristics of agent monitoring in hockey described above, six distinct factors were considered to have a potentially strong effect on the effectiveness of agent monitoring in hockey. These factors are 1) *stakeholder interests*; 2) *mechanism enforceability*; 3) *information asymmetry*; 4) *bonding costs*; 5) *breadth of enforceability*; and 6) *monitoring costs*. The rationale and development of each using agency theory will be discussed individually in greater detail below.

Stakeholder Interests

An interesting characteristic of agent monitoring in hockey is the existence of other stakeholders carrying the burden of agency costs. According to the established agency model principals alone incur such costs, which are incurred in an effort to reconcile principal and agent interests. Thus, from the perspective of agency theorists, agency problems arise due to the presence of self-interest, where interests differ between principals (as monitors) and agents. Individuals, in having differing utility functions, seek utility in varying ways; in other words, individuals do not necessarily derive utility from the same things. As such, the interests of individuals within or between groups (whether principal or agent) are often incongruent. An example from sport would be

where a player accepts a lower salary to play for a team that he/she considers a contender for a league championship. However, another player will play for the team that pays the highest salary. However, each is rewarded in the same way by the principal (in this case the team owner or general manager). An agency problem arises where, in the process of acting on behalf of the principal, the agent acts in a manner detrimental to the principal, such as when the owner's goal is profit maximisation and the player's is to win. In this case, the agent potentially compromises the utility of the principal in order to further his/her own. However, this problem exists within the confines of a principal-agent relationship. By introducing another party, such as stakeholders who seek to monitor agent behaviour, another set of (potentially incongruent) interests are introduced into the principal-agent relationship. Thus, potential problems may arise in having parties other than the principal monitor agents, as their own interests may complicate and/or confound the ability of the mechanism to ensure that player (principal) interests are being met. Thus, the presence of stakeholder interests becomes a factor which must be identified in evaluating the effectiveness of agent monitoring in hockey, as each must be scrutinised to determine the degree to which principal (player) interests are being met, as opposed to the interests of the stakeholder. In addition, the degree to which divergence between stakeholder and principal interests must also be determined.

Mechanism Enforceability

As shown above, agency theory identifies the interest conflicts inherent in some monitoring mechanisms, while acknowledging that monitoring, combined with using performance-contingent compensation, provides the means through which agency problems can be reduced. However, the effectiveness of monitoring can only be understood by examining the apparatus that detects and sanctions offending agents. In this case, a lack of compliance reduces the efficiency of the mechanism, unlike agency problems caused by conflicting interests between principals and those creating the mechanisms described above. Problems often occur because the certification program lacks the means to punish agents who do not abide by the rules. Therefore, it was determined that even if a monitoring mechanism was effective at identifying opportunistic agent behaviour, mechanism enforceability would be a key means of

evaluating the effectiveness of each specific monitoring mechanism in hockey, by providing a deterrent to opportunism through the threat of sanction to an offending agent.

Information Asymmetry

As discussed earlier in the theoretical overview, the goal of agency theorists in creating monitoring mechanisms is to reduce the information asymmetry that typically favours agents over principals, as the likelihood of agents acting in ways incongruent with principal interests is lessened when the principal is more aware of the agent's training, and behaviour. In this way, principals are less likely to contract with incompetent or unscrupulous agents (avoiding the agency problem of adverse selection), or incur residual losses that are the result of incompetence (agent ignorance), lack of effort, or guile (moral hazard). For this reason, monitoring mechanisms must be evaluated on the basis of the degree to which information asymmetry can be reduced. Therefore, another factor to be considered in evaluating agent monitoring mechanisms using the agency model must be the degree to which players, as principals, were able to obtain more information regarding agent behaviour. Given that many mechanisms in hockey have been created by other industry stakeholders, and agency problems are reduced by lessening information asymmetry favouring agents in their relationships with principals, a criteria for judging the success of a given monitoring mechanism should be its ability to increase information to principals, and not stakeholders. Thus, from an agency perspective, agency problems will not necessarily be reduced when information is provided to stakeholders, not principals, in stakeholder-developed monitoring mechanisms. In other words, if the mechanism only serves to provide information regarding the agent's behaviour to the stakeholder, then its value in reducing agency problems does not fall within the agency model as a solution, as it does not reduce asymmetry between principal and agent. In examining monitoring mechanisms in hockey this way, the lack of success of certain mechanisms and their benefits to players (as principals) may be better explained.

Bonding Costs

The degree to which the agent must invest financial and socio-emotional resources to abide by monitoring mechanisms also provides a basis of evaluating agent certification plans. Jensen and Meckling (1976) discussed a type of agency cost that is incurred to reduce agent opportunism--*bonding costs*. Like monitoring costs, bonding costs are

incurred in order to reduce residual losses incurred by principals. However, bonding costs are borne by the agents themselves. For most agents, including professional hockey agents, a reputation for incompetence or other unwanted behaviour is undesirable and ultimately unprofitable. An agent's profits will be systematically lowered as principals refuse to pay for what is perceived as sub-par agent services. "Consequently, an agent may be willing to incur personal [bonding] costs *ex ante* to credibly rule out the possibility of ignorance (Lewis & Sappington, 1993, p. 179). This explains why agents seek to abide by certification plans, and/or obtain additional education and accreditation to make themselves more marketable to potential principals (Hill & Jones, 1992). However, in professions where there are a number of regulatory bodies, such as that which player agents find themselves in, a criterion for evaluating each program must be the degree to which agents could be reasonably expected to incur the necessary bonding costs to abide by their regulations. Thus, for the purposes of this study, another means of evaluating a monitoring mechanism would be the degree to which each mechanism demands *reasonable* bonding costs from agents. By assessing each monitoring mechanism in hockey on the basis of what bonding costs are required of agents, the agency model may be able to pinpoint problems with specific mechanisms, and explain any lack of compliance.

Breadth of Enforceability

Not only must monitoring mechanisms have the power to sanction offending agents, they must also have the jurisdictional authority to do so as well. As discussed earlier, one characteristic of the hockey agent profession is the wide variety of experience that different player agents have. For example, many have legal training, can provide financial services, and some are former professional hockey players. As such, agents have incurred disparate bonding costs in order to gain the knowledge and experience to act on behalf of professional hockey players. In doing so, many practice under parent disciplines, such as the legal profession, which are regulated. Therefore, this type of regulation must be examined for its ability to deter agent opportunism by hockey agents as a group in order to be evaluated as a means of reducing hockey agent opportunism in general, and not simply for a specific profession such as law or financial services. In

considering breadth of enforceability, the weaknesses of certain monitoring mechanisms that affect hockey agents can be identified.

Monitoring Costs

The final factor to be considered in evaluating monitoring mechanisms in hockey are monitoring costs. Agency theorists consider agency costs in three ways. Residual losses are incurred by the principal as a result of agent behaviour incongruent with principal interests. Bonding costs are incurred by agents to show principals that a level of competence has been attained by the agent that will reduce residual losses due to agent ignorance. In the meantime, the costs of developing and enforcing monitoring mechanisms create monitoring costs. Using the traditional agency model (Eisenhardt, 1989; Jensen & Meckling, 1976), monitoring costs are absorbed by principals to reduce residual losses; principals will put resources into monitoring until the cost of monitoring exceeds the resulting reduction in residual losses. However, monitoring costs in the professional sport industry have often been borne by other stakeholders. As such, a final criterion for evaluating monitoring mechanisms in professional hockey becomes the degree to which stakeholders *should* incur costs associated with monitoring player agents. Thus, not only should monitoring costs be considered in terms of their economic costs and resulting reduction in residual losses for principals, but also whether it is even the place of these stakeholders to bear these costs at all.

The discussion above provided the impetus for the analysis of data for this study, which was comprised of two distinct parts. One was to identify monitoring mechanisms in hockey, characteristics specific to each, and assess their effectiveness as evidenced by a thorough examination of mechanism documents and the opinions expressed by those directly involved with, or affected by, each mechanism. The second phase involved further analysing the data, guided by several agency factors described above developed from the agency literature and a greater understanding of the characteristics of agent monitoring in hockey and professional sport. Data were gleaned simultaneously from both actual certification and regulation documents, guided by stakeholder criticism, praise, discussion, and quotes regarding agent regulation from interviews and documents, and supported by other industry data, including levels of compliance by agents for certain

programs, and breakdowns of the supply of labour. In this manner, specific problems were identified and attributed to each type of monitoring mechanism.

Results

Six distinct types of player agent monitoring were identified, and their various characteristics and influences on player agents in hockey are described below. Early forms of player agent regulation were developed by various industry stakeholders and not the players themselves (principals). Normally, the onus is on the principal to create (and incur the costs of) governing mechanisms to control agent behaviour. However, during the late 1970s and even into the early 1980s, player salaries in each of the four North American major professional team sports paled in comparison to that seen today, which created potential problems for principals who could not necessarily afford the financial burden of monitoring. In addition, many of the concerns about agent abuses revolved around the recruiting practices of certain agents on US college campuses, particularly those seeking to contract with professional football and basketball prospects. Given that these potential principals (the collegiate athletes) were still amateurs, it would be difficult, if not impossible for them to invest both the intellectual and financial costs of screening and monitoring agent behaviour. Instead, other stakeholders, including state and federal governments, interceded into the affairs of professional sports in order to reduce agent opportunism. This trend supports Sharma's (1997, p. 762) idea that "when principals themselves cannot afford the cost of information gathering (i.e. monitoring) devices, agency theory predicts that third-party institutions will arise to fill the gaps and lubricate economic exchange." The following table provides a summary of agent monitoring mechanisms identified in this study and the inherent problems specific to professional hockey that emerged from an analysis of each mechanism, the comments and opinions of stakeholders in the industry, and other industry data.

Insert table 5.1 about here

US State

In response to widespread claims of agent abuses in sport, state agencies began examining the possibilities of creating agent certification programs in the early 1980s

(Ehrhardt & Rodgers, 1988; McKenna & DiGiuseppe, 1991). By 1997, approximately thirty states had considered regulating player agent behaviour (Arkell, 1997). In many cases, the desire to regulate arose from recruitment practices on US college campuses (Johnson, 1988). Most states that have created certification programs require some form of registration, and the posting of bonds, although annual registration fees vary widely from state to state (Grosse & Warren, 1991), and are contingent upon the enforcement of the National Collegiate Athletic Association (NCAA) (Johnson, 1988). Despite the efforts of these governing bodies, many observers have criticised the value and/or effectiveness of state regulation. Agents simply ignore the registration requirements set out by the states (Gross, 1990), state regulation is too costly on a per-agent basis (Sobel, 1987), and state laws are too confusing, lack standards of competence, and conflict with the commerce clause of the US Constitution, which forbids state regulation of interstate commerce (Shropshire, 1989). As agent representation transcends state lines, it is also burdensome for agents to register in every state (McKenna & DiGiuseppe, 1991). It also became unclear as to which state has jurisdiction over an agent (Grosse & Warren, 1991). An example would be a Russian professional hockey player who lives in California in the off-season, plays games in the Province of Ontario, Canada, and is represented by an American agent from Boston. For this reason, critics claim that “player agents, especially those who are competent, ethical and successful, represent athletes nationally, not just locally. Therefore, the problems that regulation ought to prevent are problems of national scope; not unique to individual states” (Sobel, 1987, p. 780). In a recent article, Arkell (1997) noted that states rarely enforce their own regulations. Finally, Weiler and Roberts (1993) noted that state government bureaucrats lack the knowledge and experience to capably develop standards and review agent qualifications.

State regulation is particularly problematic for professional hockey agents. Although US colleges are a delivery system for professional hockey players, the majority of players are drafted from the Canadian Hockey League (CHL). Since the NHL Amateur Draft was created in 1969, there have been 6,276 players selected. Although a significant number (820) have been drafted from US colleges, 3,388 were drafted from the CHL, with the remainder from Europe, Asia and other North American leagues (National Hockey League Public Relations Department, 1997). While an agent who

practices in a state featuring agent legislation could easily contract with a CHL player, in most cases legislation has been created with the needs of collegiate athletes in mind, and therefore the agent-CHL player relationship would exist outside of the parameters set out by the regulatory program. For example, Florida's state regulation specifically addresses "student athletes" who participate in intercollegiate athletics in any post-secondary institution in that state (*Florida Statutes—Athlete Agents, Chapter 468, Part IX*). In addition, state regulation often involves co-ordination with NCAA agent regulations (*Nevada Stat. NRS 398.005 to 398.255*), or has been created specifically to restrict agent practices on college campuses (cf. *Indiana Code 35-46-4-2 to 4*; *Mississippi Code §73-41-1 to 23*; *Missouri Rev. Stat. Ch. 436, §436.200 to .212*; *Ohio Code §4771.01 to 4771.06*; *Regulation of Trade Practices-Minnesota, §325E.33*), which have no applicability to CHL players. Georgia's regulation defines "athlete" as "an individual who is eligible to participate in any intercollegiate sport and who is currently enrolled as a student at an institution of higher education" (*Code of Georgia, §43-4A-2 G*). By definition, Georgia's regulation would not include professional hockey players, even though the city of Atlanta will again host a NHL franchise in a few years. In addition, given that over half of drafted players come from Canadian leagues, a significant number of future professional hockey players would fall outside of the jurisdiction of any state legislation. Of 210 agents registered with the National Hockey League Players' Association (NHLPA), ninety-five are located in Canada. As a result, almost half of NHL agents may not be affected by state regulation (depending on amateur background of their clients), which is compounded by comments from one prominent Canada-based NHL agent, who reported that few, if any Canadian agents pay attention to US state regulation (Shulman, 1997). Of 210 agents registered with the NHLPA in 1997, only three reported that they were registered in a state agent certification program, which suggests two things: 1) hockey agents do not consider abiding by state regulations as being crucial to their abilities to represent professional hockey players; and/or 2) claiming an affiliation or adherence to any of the thirty state programs is not seen as providing a competitive advantage for agents in search of new clients. State regulation would seem to have little potential effect on the opportunism of professional hockey agents.

National Collegiate Athletic Association

Another stakeholder that has tried to control agent opportunism is the National Collegiate Athletic Association (NCAA), which created an annual registration for agents in 1984 (Kohn, 1988). NCAA regulations often work in concert with state regulation, and a motive for intervention by this organisation was to shield member institutions (Grosse & Warren, 1991; Hofmann & Greenberg, 1989) from an element that may disturb the financial “cash cow” that American collegiate sports--particularly basketball and football--have become. According to sports lawyer Gary P. Kohn (1988), the NCAA does not have the same clout as state legislation, and is virtually powerless to discipline agents who violate NCAA rules. Sports lawyer and Wharton Business School professor Kenneth Shropshire (1990, p. 90) supported this criticism, when he reported that “in contrast to the financial power over member institutions, the NCAA has only limited power over athlete agents.” Some forms of state regulation have also created provisions that require agents to notify NCAA institutions that they have contacted student athletes, which reduces the concerns of stakeholders such as the NCAA (Grosse & Warren, 1991). Given the NCAA's lack of enforceability toward agents, Kohn (1988, p. 17) explained that the NCAA's greatest “contribution toward curbing agent abuse is to organise career counselling panels and to disseminate information in an effort to educate athletes about agents.” Robert Ruxin (1982), a former vice president of the Sports Lawyers Association, noted that informing players should be a responsibility of universities and athletic conferences. With a more informed athlete, information asymmetry that favours opportunistic agents may be reduced, which will lessen the chances of principals being victimised by incompetent or unscrupulous agents. In doing so, the agency problem of adverse selection (where an agent misrepresents his/her ability to contract with a principal) is lessened.

The NCAA did not create agent regulations with the interests of collegiate hockey players in mind. Without a doubt, there have been many excellent hockey players who have emerged from the US collegiate ranks; however, it was concern over unscrupulous basketball and football agents that led to NCAA involvement. In addition, professional hockey relies more heavily on leagues other than the NCAA to supply hockey talent. Combined with concerns about the NCAA's ability to enforce its own regulations

(Greenberg, 1993), the impact that NCAA regulation has on player-agent relationships in hockey is limited. However, there is some evidence to suggest that the NCAA's jurisdiction over professional hockey players may be growing, as more players from the collegiate ranks turn professional. A study by US College Hockey revealed that in 1996-97, the percentage of NHL games played by former NCAA collegiate players reached an all-time high of 22%; in other words, of the total number of games played that season by NHL players, over one fifth had been trained in the NCAA. While the total percentage still pales in comparison to games played by the CHL (which comprised 55% of games played), the potential influence of NCAA and state regulation will continue to grow as collegiate teams become a more substantive supply of labour for the NHL. In Canada, the Canadian Interuniversity Athletic Union (CIAU) rarely sees its players join and remain with NHL teams. However, Sport Canada held a conference to examine the role of the agent in amateur sports (of all types) in the mid 1980s. (Barnes, 1985). Despite efforts such as this, according to Shulman (1997, p. 198), there is "no legislation in Canada that regulates sports athlete-agent relationships."

Self Regulation: The Association of Representatives of Professional Athletes

Coinciding with a general concern by various stakeholders over agent opportunism during the late 1970s was a concern from the agents themselves. As the player-agent profession developed a reputation as being unscrupulous, many competent, trustworthy agents realised that the behaviour of a few agents was hurting their profession as a whole. As a result the agents themselves sought to control and monitor behaviour within their own ranks. In 1978, the Association of Representatives of Professional Athletes (ARPA) was formed, and by 1988 had 400 members (Kohn, 1988). Like other forms of player agent regulation, ARPA lacked the ability to sanction offending agents, and the Association is now defunct. One prominent NHL agent, who was involved in ARPA, recognised the problems with ARPA's effectiveness, and other means of monitoring agent behaviour when he noted:

I became involved in ARPA because it was a self-governing thing, which I thought made sense. I didn't think it made sense for anyone else to tell me how to do my job but I wanted to be a part of establishing ethical standards which would govern the industry on a voluntary basis. But the problem with all of those things is that there is no policing mechanism. It's nice, I mean all we've done is create this incredibly comfortable sense of 'Wow! We have a regulatory program now!' A regulatory program without any policing ability, without any following up, without any investigating authority, so basically we've got guys out there advertising themselves as . . . registered agents, like that means something.

The statement above summarises the fundamental problem with ARPA's certification program; because the program was voluntary, unscrupulous agents could opt not to become involved. In the meantime, honest, competent agents, who organised the program to attempt to reduce opportunism in their industry, were then subject to the added inconvenience of registering and devoting time and effort to the Association. This problem was discussed by former NFLPA leader, Ed Garvey, who was instrumental in the formation of ARPA: "They held seminars, but could not enforce their ethics code because membership was voluntary. Agents who habitually violated the code refused to join. Athletes kept hiring agents who refused to join ARPA. It didn't work" (Garvey, 1984, p. 7). In addition, none of the professional hockey players interviewed for this study were aware of the existence of ARPA, which would eliminate any competitive advantages for agents who chose to become involved with, and abide by, ARPA's regulations. If unscrupulous agents did not become involved, then ARPA would have no effect on reducing agent opportunism or changing the perception of their profession. As a result of such problems, ARPA is now defunct.

Federal Regulation

Due to the ambiguity, jurisdictional concerns, and ineffectiveness of agent regulations raised above, there have been frequent outcries to have a comprehensive state program or a nation-wide, federal regulation program. The most common suggestion is that of agent regulation at a national level (Kohn, 1988; Narayanan, 1990; Powers, 1994), which would simplify the task of having agents comply with legislative intent (Grosse &

Warren, 1991). In 1977, *The Final Report of the House of Representatives Select Committee Inquiry into Professional Sports* concluded that incidences of agent opportunism were not frequent enough to warrant legislative intervention (US Congress, 1977). Instead, the *Committee* recommended self-enforcement. Between 1982 and 1985, the National Sports Law Association (NSLA) attempted to have US Congress enact the Professional Sports Agency Act (PSAA) of 1985 (Powers, 1994), another effort by agents themselves to reduce agent opportunism and lend credibility to their profession. Two other recent bills introduced in the US sought to prohibit sports agents from influencing student athletes (US Congress, 1996), or stop agents' solicitation of student athletes (US Congress, 1997). However, neither bill adequately addresses many problems specific to professional hockey agents, given their focus on protecting collegiate athletes. In a recent development, the *National Conference of Commissioners on Uniform State Laws* created a committee to draft a Uniform Sports Agents Act (*Uniform Sports Agents Act, First Draft*, May 2-3, 1997); this act will likely be voted upon at the Conference's annual meeting in July of 1999 (Gotthelf, 1998). However to this point, federal intervention has never come to fruition; it is also perhaps inappropriate for a small player agent profession to be scrutinised by an entity that could better spend its time and resources on more prominent public concerns. Furthermore, Benitez (1986, p. 218) suggested that "a major criticism levelled at the federal approach is that a new government bureaucracy, together with its attendant rules and regulations, will intrude upon another facet of American business." Another argument against federal involvement concerns those who comprise the principal population. While it is obvious that naive, inexperienced amateur athletes might be in need of some protection from amoral agents, today's professional athletes are much more sophisticated regarding the business aspects of professional sport. In addition, they are paid significant sums in contracting with teams, implying that the costs of creating and monitoring agent behaviour is well within their financial means, as is their ability to pay for the services of highly-skilled and reliable agents. As explained by Ruxin (1985, p. 84), "legislators must also face the issue of whether the public interest demands protection for well-paid athletes."

Professional Standards: Model Rules of Professional Conduct for Lawyers

ARPA was created by professional sports agents to foster trustworthy behaviour, lend credibility to the player agent profession, and set standards of competency for those involved in the industry. Similarly, some player agents are influenced by broader codes of conduct that both monitor and control agent behaviour. Player agents come from a variety of backgrounds which, although problematic for the profession due to a lack of minimum qualifications, can be advantageous in reducing opportunism. When an agent has been trained and practices in a broader field, such as law or accounting, that agent must also adhere to the standards of the parent discipline. Thus an agent who acts unscrupulously may find his/herself held to the scrutiny of a governing body that may result in a loss of license to practice in their given field. This provides a significant deterrent to opportunism by agents, particularly those who provide services to professional athletes as part of a broader business practice.

Other professions also feature codes of conduct, such as financial advisors (US Congress, 1998). However, this study focuses on attorney-agents and their specific regulation, due to the prevalence of agents with legal training in the industry. For example, 54% of NHLPA-registered player agents have legal training. Practising lawyers face additional constraints through their own professional standards; in the US, lawyers are bound by the code of the American Bar Association, which has standards of professional ethics (*Model Rules of Professional Conduct*, 1992). If a lawyer engages in conduct that violates such a code, the lawyer risks being disbarred, which provides an additional means of deterring sports agent opportunism. As one player interviewed for this study noted, “I wanted a lawyer for sure [because] there’s special ethics [such as the *Model Rules*] that they have to follow.” Similarly, another interviewed player stated that “you know [attorney-agents] are going to watch what they do or they are going to lose their licence.”

In addition, the *Martindale-Hubbell Law Directory* rates attorneys from all US states on the basis of reviews by peer attorneys from the lawyer's practising county (Garbarino, 1994). Thus, a player interested in contracting with a US attorney-agent could look further into the background of a prospective agent. For this reason, athletes are recommended to select agents who also practice law (Remick & Eisen, 1986; Ring,

1987). In particular, the *Model Rules of Professional Conduct* dictates that a lawyer achieve an adequate level of competence, diligence, communication, and confidentiality, while addressing other potential problems, such as conflicts of interest, and excessive fees. Similarly, The Law Society of Upper Canada has adopted *Rules of Professional Conduct* (1996) to regulate attorney practices in Ontario, a province that hosts twice as many NHLPA-registered agents (47) as any other state or province. Rule 17 clearly states that a “lawyer who engages in another profession, business or occupation [such as representing professional hockey players] concurrently with the practice of law must not allow such outside interests to jeopardise the lawyer’s professional integrity, independence or competence” (*Rules of Professional Conduct*, 1996, p. 33). This addresses any attorney agents who view their agency practice as unrelated to their legal careers. In addition, one player interviewed for this study revealed that using an agent who is a member of a parent profession has additional advantages. Not only do agents have to adhere to specific professional standards while a member of that profession, they also must obtain a certain level of competence to enter the profession. As such, the player revealed that professions and their various standards are “placed more there to keep people away that are going to screw up than it is for the people established now who might screw up.”

Players’ Association Regulation

As a result of concern over agent opportunism, Players’ Associations began examining the possibilities of creating their own agent certification programs, which becomes a means of exercising client control over agent behaviour (Sharma, 1997). The NHLPA was the last of the four major professional sports unions in North America to initiate an agent certification program, which it implemented in January of 1996. While having Players’ Associations police agent behaviour within their own sports removes the burden of regulation from other stakeholders, there are potential antitrust problems that may jeopardise the ability of players’ associations to regulate agents (Greenberg, 1993). For example, Lefferts (1984) examined the NFLPA’s program; she noted that the program allowed the NFLPA to deny certain agents certification. While unlikely, the NFLPA (or any other sports union) then has the ability to decertify agents for reasons other than incompetence, which would be anti-competitive, putting unnecessary restraints

on agents. In other words, should antitrust issues be raised, a players' association might lack the legal authority to deny or revoke certain agents' rights to represent players (Sobel, 1987). Similarly in Canada, restrictions on anti-competitive behaviour could be problematic for Players' Association regulations. However, law in both the US and Canada recognise that restrictions imposed by a union that have been bargained in good faith with the employer should be shielded from antitrust or anti-competition claims (Shulman, 1997). These legal opinions regarding players' association certification have yet to be challenged in a court of law.

The probable reason for hockey being the last of the major North American sports to regulate agents was problems associated with its former Players' Association head, Alan Eagleson (cf. Conway, 1995). Almost unanimously, players, agents and other stakeholders interviewed for this study attributed many of the problems associated with collective bargaining and low player salaries (in comparison to that of other professional leagues) to Eagleson's abuse of his position as NHLPA head and player agent. With more limited involvement by the NHLPA than that found in other sports, until very recently the reputation and performance of player agents in hockey profession remained more difficult to ascertain. Towards the end of the 1980s, NHLPA head Alan Eagleson was replaced by Robert Goodenow, a former player agent who had represented twenty two NHL players (AP-Pittsburgh, 1990). Unlike his predecessor, Goodenow began efforts to create an agent certification program, and held annual player agent seminars. In 1991, he had agents pay an \$800 registration fee and fill out a detailed questionnaire, for the purpose of avoiding "past situations where [agents] misused funds, and [to] help players find new agents". ("Secret Agents," p. 4). An NHLPA agent workshop was organised, and the meeting was addressed by prominent baseball agent, Randy Hendricks (Cox, 1991). Unlike Eagleson ten years earlier, Goodenow recognised the need for increased monitoring of agent behaviour and the sharing of information that would aid agents in representing NHL players. When asked about the approaching implementation of the NHLPA's certification program, Goodenow replied "the process is one the players want. It is part of a new business order" (Canadian Press, 1994, p. D2). In January of 1996, the NHLPA's agent certification program officially commenced with two major objectives: 1) to insure high quality service; and 2) to assist players in selecting agents

(*NHLPA Agent Certification Program: Regulations Governing Agent Certification*, 1996). The NHLPA has collectively bargained for the right of exclusive representation for its players by certified agents.

However, not every stakeholder has been satisfied with the NHLPA's new certification. Several prominent agents interviewed for this study considered regulation "cumbersome," or "just more hoops to jump through." One player thought that NHLPA agent certification was just "good publicity" for the union. In this instance, the Association's motives were to show that an effort was being made to represent the interests of NHLPA members. As one agent noted, "I think [the NHLPA] looked at the fact that they were the last sport to [have certification] and [decided] that they had better get into it."

Using Agency Theory to Evaluate Monitoring Mechanisms

The previous section reviewed the various monitoring mechanisms identified in this study that were created by industry stakeholders in recent decades to reduce agent opportunism in professional sport. An analysis of monitoring documents, the opinions and experiences of stakeholders directly affected by, or involved in the enforcement of these mechanisms, combined with support from other industry data reveals that many are problematic in reducing hockey agent opportunism, or controlling their behaviour. While most industry stakeholders have consistently claimed the need for agent regulation, many have also claimed that regulatory regimes are woefully inadequate. Thus, it was hoped that the agency model might provide new insights to support this apparent lack of adequacy. To do so, six factors were identified during the analysis of data as being crucial to the ability of mechanisms to adequately monitor agents in hockey, which were developed on the basis of the agency model, and consideration of characteristics of the hockey industry. The following table summarises the agency problems that exist for each of the agent certification programs as they relate to professional hockey specifically. It also identifies which factor is a concern for each, and provides possible courses of action that the agency model would suggest.

Insert table 5.2 here

Stakeholder Interests

As discussed in the method section, introducing the interests of a third party (that of a stakeholder) may compound interest conflicts between principal and agent. In the case of state, NCAA, and Federal regulation, the principal (player) does not incur monitoring costs; instead, they are borne by groups that are directly affected by player agent behaviour and have an interest in ensuring that agent opportunism is reduced. The impetus for the involvement of these stakeholders is admirable; collegiate athletes are often naive and have unsophisticated knowledge of the business aspect of sport. For this reason, these stakeholders seek to protect athletes (particularly collegiate athletes) from exploitation by unscrupulous agents. However, from an agency perspective, there are inherent problems with having these stakeholders regulate agent behaviour. For example, the NCAA has a vested interest in ensuring that athletes do not associate with agents, which may be incongruent with the athlete's own interests. Players, with the encouragement of agents, may forego their collegiate eligibility to pursue professional careers, which is certainly not in the best interests of the schools they play for and the NCAA, who reap the financial benefits of having talented athletes play collegiate sports. Thus, while it may be in the athlete's best interests to forego the remainder of his/her collegiate career to ensure financial security, the mechanism set up by the NCAA attempts to discourage players from doing so. This example does not suggest that the NCAA is deliberately undermining the interests of players to meet their own, only that there is the potential for this to occur in having parties other than principals monitor agent behaviour. In this case, the NCAA may be forced into a situation where a decision must be made that weighs NCAA interests against that of players.

Kesner, Shapiro and Sharma, (1994, p. 704) described this same problem as the negotiator's dilemma, where the stakeholder "must choose to use collaborative tactics that create value for all parties or opportunistic tactics that yield even greater value to themselves but little or no value for others [such as agents and athletes]." For this reason, just as principals can never fully align the interests of agents with their own, NCAA, state, or Federal regulation can never completely ensure that principal or agent interests are met, given the need to comply with their own interests. Similarly, US state and federal governments view intervention as part of serving the greater good of their

constituents. However, incongruence may emerge where in acting solely for the best interests of players or agents, these governments compromise the interests of their other constituents. For this reason, agency theory reveals that these mechanisms are, *ceteris paribus*, less effective than those created by the principals themselves.

In contrast ARPA, professional standards, and the NHLPA, while also introducing stakeholders interests, are less subject to potential conflicts. ARPA was created to encourage agents to “maintain the highest degree of integrity and competence in representing the professional athletes” (*Code of Ethics – ARPA*). Having agents adhere to ARPA’s canons is certainly in the better interests of professional hockey players, as are regulations determined by professions that seek to ensure that agents meet their fiduciary duty to their clients. Finally, although staffed by various agents, the NHLPA attempts to represent the collective will of its players (the interests of all NHL players); thus, these mechanisms do not have the same obvious conflicts of other stakeholders. Therefore, in using agency theory to identify the presence of self-interest and the degree to which each affects principals, one can see how, regardless of what each mechanism actually constitutes, some mechanisms appear more problematic at meeting the interests of players.

Mechanism Enforceability

Another factor determining the effectiveness of a given monitoring program is the degree to which the mechanism can deter agent behaviour incongruent with principal interests. This problem became apparent through a review of both the mechanisms themselves, and the opinions expressed by stakeholders obtained for this study. Even if a monitoring mechanism sets out proper standards of competency, legitimately represents the interests of the players, and threatens sanctions significant enough to deter opportunism, it will likely be useless if enforcement is not carried out. For this reason, the value of state, NCAA, ARPA, professional standards, and NHLPA certification are limited in their current form, as evidenced by criticisms expressed by many industry stakeholders. As discussed in the results section, most hockey agents simply ignore state regulation; many state programs have very low registration numbers for all sports agents. For example, a study by the NCAA’s Federal Relations Office revealed that of twenty-seven states with agent programs in 1997, eighteen had two or less sports agents who

actually were registered! According to Huggins (1997, p.4), “enforcement of the agent laws has not been a priority in many states.” With few exceptions, the NCAA is only able to sanction schools and not agents, which reduces the threat to opportunistic agents. ARPA, by design, was a voluntary association, removing its ability to police all agents. With regards to professional standards, many lawyers who also act as player agents mistakenly remove themselves from under the authority of the *Model Rules* when acting on behalf of athletes (Brown, 1994). This is because many attorney-agents feel that their services do not fall under the realm of their legal practices, and this allows them to solicit prospective principals more vigorously.

According to Stiglitz (1997), top agents who are attorneys and obey solicitation restrictions should not be adversely affected, as word-of-mouth should make players seek out the services such agents. However, it is a distinct disadvantage for new agent attorneys; “If they do not already know an athlete, there is virtually no legitimate way to break into the business as an attorney” (Stiglitz, 1997, p. 371). Therefore, attorney-agents might feel encouraged to violate the Model Rules or its Canadian equivalents in order to competitively solicit clients. The data supports this notion; the players interviewed for this study clearly noted that several prominent attorney-agents in hockey have and continue to actively solicit players as clients without any concern for adhering to any solicitation restrictions set out by the ethics of their profession.¹ To reduce the advantages that non-attorneys have in solicitation, Crandall (1981) suggested that ABA restrictions be relaxed for attorney player-agents. In the meantime, professional standards such as the *Model Rules* may be ineffective if attorney-agents in hockey continue to actively solicit clients. Finally, the general consensus among hockey industry stakeholders was that, while admirable, NHLPA certification was only valuable to young, naïve players, and agents needed a greater threat of decertification to deter opportunism. Thus agent opportunism may not be reduced when agents have no fear of being caught and punished for their actions. From an agency perspective it is then difficult to attribute any reduction in information asymmetry or agent opportunism (or lack thereof) to monitoring, as each program has problems with enforceability. Support for the theory

(i.e. recognising that creating these mechanisms has resulted in a reduction in residual losses for players) cannot be assessed adequately, as any lack of reduction could be the result of faulty monitoring, and not the fact that monitoring (of any kind) as a whole is an ineffective means of regulating agent behaviour.

Information Asymmetry

A goal of agency theory is in using monitoring to reduce information asymmetry that favours agents over principals to reduce the likelihood of agents acting in self-interest. Therefore, regardless of who creates and operates a monitoring mechanism in hockey, its effectiveness is contingent upon providing more information to players regarding the behaviour of agents and reducing the information asymmetry between them. Based on this criterion, only the NHLPA certification program ensures that players receive more information regarding agent activities, which is disseminated among players by the NHLPA. In contrast, while the other mechanisms can reduce information asymmetry, their goals are more for their own interests; information is provided to the stakeholder, and not necessarily the principal. For example, the NCAA attempts to gain more information regarding agent behaviour for student athletes, but does not do so solely to inform these athletes, but to protect its member institutions. Similarly, ARPA codes and professional standards ensure that agent behaviour is monitored in order to uphold standards of the profession which the agent is a member of, while state and proposed federal certifications provide information to government stakeholders, not players in particular. Thus, while some of these monitoring programs will reduce the likelihood of agents acting in self-interest at the expense of players, they are not as effective a means of reducing information asymmetry as when the principals do it themselves (collectively through the NHLPA).

Bonding Costs

Bonding costs are incurred by agents to show principals that an adequate level of skill and ability has been attained by the agent. One type of bonding cost would be the cost of registering and abiding by a given monitoring mechanism. Given the large number of different state regulatory programs, it would be prohibitively costly for agents

¹ The players did so with no knowledge that such practices were potentially in violation of any codes of conduct. The names of agents were given by players as they made general comments regarding their

to seek to abide by the various certification programs—hockey agents, particularly new ones with few money-generating clients, simply cannot afford posting the bonds and paying the various other fees associated with registering with various state programs (Roberts, 1995). These excessive costs may help explain why so few NHL agents have registered with state programs. Similarly, the failure of ARPA can be explained by the unreasonable bonding costs shouldered by its members. Because joining ARPA and adhering to its regulations (*Code of Ethics: ARPA*) was voluntary, only agents who agreed to abide by ARPA's codes incurred bonding costs, resulting in an advantage to those agents who did not recognise ARPA or its ethical code. Although agents who recognised ARPA hoped to reduce the residual losses that are incurred by principals as a result of agent opportunism, it placed bonding costs (such as time, effort, and money) upon them that other agents did not assume. Thus, excessive agency costs were placed upon the very agents who sought to reduce opportunism and lend credibility to their profession.

Another form of bonding cost is incurred through training and accreditation. In this instance, there is evidence to suggest that hockey agents are willing to incur bonding costs that ensure they have a desirable level of training that extends beyond that set out by any one individual monitoring mechanism. Only twelve of 210 agents registered with the NHLPA do not have post secondary education; of those twelve, five are former NHL players, a fact which may have precluded them from pursuing their education, and also gives them some experience that helps them in player representation that an education could not provide. Over half of agents registered with the NHLPA have legal backgrounds and/or are licensed to practice law in their given state/province. Many of them also have business and accounting experience. As a result, not only are many current professional hockey agents capable of providing the services required by their clients, they are also obligated to abide by the regulations and standards of their parent professions.

Industry stakeholders, too, see agents that are part of a parent profession (evidence of incurring bonding costs) as providing an additional safeguard against agency problems of ignorance; an agent must attain a certain level of skill in order to become a

experiences with their recruitment by agents.

member of that profession. Thus, it follows that a player who seeks a certain type of service, such as financial advising, would do well to contract with an agent who is established and trained in that profession. As one NHL general manager noted, “if [an agent] has an accounting background or a legal background, you would expect the his services would be better.” Thus, with a trend toward increasingly qualified and trained agents, the likelihood of opportunism (created by agent ignorance or adverse selection) should be lessened. It is likely that this increase in the education and experience of agents is due to increased competition between agents for clients, resulting in a need for agents to be able to provide better, more qualified services. Figure 5.1 provides a breakdown of the educational and professional experience of NHL agents. Given that a highly educated agent is emerging as the norm in hockey, it would not be unreasonable to expect new hockey agents to incur similar bonding costs to ensure quality representation of hockey players. For this reason, it may be appropriate for existing monitoring mechanisms (such as the NHLPA’s) to demand that a minimum educational standard be attained by prospective agents.²

Insert figure 5.1 about here

Breadth of Enforceability

Earlier in this section, monitoring mechanisms were evaluated on the basis of their enforceability; that is, the degree to which offending agents could be sanctioned for any transgressions. In addition, a monitoring mechanism can only be effective to the extent that it has jurisdiction over agents. A lack of breadth of enforceability also reduces the effectiveness of many agent certification programs, particularly when considering professional hockey. As discussed in the previous section, professional hockey players are not heavily recruited through channels influenced by the US collegiate system or US state jurisdictions. In addition 95 of 210 agents currently registered with the NHLPA practice in Canada; therefore state, NCAA, and any possible US federal regulations cannot fully influence all hockey players and all hockey agents. Thus, even if these

² Former NHL players who are agents could be exempted from a minimum educational standard. There are to reasons for this argument: 1) in playing professional hockey, a player may have foregone educational

programs could detect and forcefully punish opportunistic agents, they could never completely do so to all NHLPA registered agents. Similarly, professional standards may provide a significant deterrent to agent opportunism, but these regulations only apply to those agents who are members of the parent profession. Therefore, these mechanisms can never fully ensure that player interests are met and, from an agency perspective, can not provide a universal solution to agency problems inherent in the player-agent, principal-agent relationship.

Monitoring Costs

From an agency perspective, with the exception of the NHLPA, all other mechanisms discussed in this chapter are examples of industry stakeholders bearing the costs of monitoring. According to Hill and Jones (1992), *contracting costs* are the reduction in utility that stakeholders incur by channelling resources to support monitoring and enforcement structures. These costs are incurred over and above the monitoring costs of principals and, as discussed earlier, should not be relied upon exclusively as a means of reducing agent opportunism due to potential interest incongruence between stakeholders and principals (players). In contrast, the NHLPA has a more direct interest in reducing agent opportunism, as it collectively represents the will of all the independent players in the National Hockey League. Thus, the NHLPA and other professional union programs are examples of principals incurring monitoring costs to reduce residual losses. In their seminal analysis of principal-agent relationships, Alchian and Demsetz (1972) discussed how unions function as monitors for employees (in this case the players). While the NHLPA does do this by monitoring the affairs of teams, it also monitors player agent behaviour to serve the interests of the players. This follows Hill and Jones (1992, p. 142), who stated that "the institutional response to the problem of achieving collective action among diffused stakeholders [such as monitoring agents and teams for professional hockey players] has been the evolution of . . . structures that perform the co-ordination function."

The players (collectively through the NHLPA) have been able to reduce their own monitoring costs by transferring some of the costs of monitoring to the agents. As suggested by Whynes (1993), monitoring costs can be substantial for principals;

opportunities; and 2) being a former player brings additional experience that may offset a lack of education.

therefore, they will attempt to pass on costs to agents. The NHLPA has collectively bargained with the NHL the right to determine who may represent the players in negotiating contracts with teams. In order to become a certified agent, the NHLPA requires that agents pay an annual fee, which allows the players to pass along some of the costs of monitoring to the agents themselves. This fee is not prohibitively costly for agents, who also must attend a mandatory annual seminar. Other bonding costs (such as education or other training) would be dictated by the existence of market competition among agents. Thus from an agency perspective, certification programs implemented by Players' Associations appear the most appropriate means (of the available alternatives) through which information asymmetries between principals and agents can be reduced in professional sports. Monitoring costs are borne by the principals (not other industry stakeholders), and agents incur reasonable bonding costs.

Professional hockey players and their agents are remunerated at levels that do not preclude them from creating adequate monitoring mechanisms. For this reason, state and federal governments would perhaps be better off devoting their resources to meeting the needs of other constituents or focussing more on the interests of student-athletes in other sports, which already seems to be the case. Thus, while the NCAA and various state certification programs were created by stakeholders to protect amateur players who did not necessarily have the intellectual and financial resources to monitor agents, professional hockey players (as a collective unit) and their agents certainly do. NHLPA certification also does not suffer to the same degree from problems such as conflicting interests, breadth of enforcement, and adequately reducing information asymmetry to the principal that many of the other monitoring regimes do.

Conclusion

Using agency theory as a framework, this research has shown that all of the available monitoring solutions to agent opportunism in hockey are flawed, although NHLPA regulation appears the best alternative. Hill and Jones (1992, p. 137) recognised that over time “inefficient incentive structures and monitoring and enforcement mechanisms are selected out, while more efficient structures and mechanisms evolve to replace them.” In the case of professional hockey, this process of evolution has only begun, if it has at all. For this reason, agency theory may aid in this process of evolution

by recognising specific problems with each monitoring mechanism. This study has identified several for each, which reveals the basis for concerns expressed by many industry stakeholders regarding the efficacy of certain types of agent regulation. While the NCAA may provide a means of reducing agent opportunism, it does so with the intention of protecting its member institutions and collegiate athletes, which comprise only a small portion of professional hockey players. Programs such as the NCAA's may be effective for their own purposes, but from an agency perspective, they cannot be relied upon to ensure that the interests of all hockey players are met. By identifying factors crucial to agent monitoring found in the agency literature, it appears that the NHLPA ultimately provides the best available means through which player interests can be identified and represented. However, as discussed earlier, a lack of enforcement may reduce the effectiveness of NHLPA regulation in the long term. Whynes, (1993, p. 437) professed that "partial or incomplete monitoring will be unlikely to yield an outcome superior to that resulting from an absence of monitoring." Thus, NHLPA monitoring is an imperfect solution and also faces an additional agency problem.

Although the NHLPA acts to represent the collective interests of all players (principals), the Association is in fact an agent for the players. For this reason, the players-NHLPA, principal-agent relationship is subject to the same potential agency problems as would exist in any other P-A relationship, including that which exists between players and their agents. Individuals within the NHLPA are thus capable of shirking, adverse selection, or ignorance, all of which diverge from the interests of the players that the Association represents, and raises Alchian and Demsetz's (1972, p. 782) question: "who will monitor the monitor?" One does not need to look beyond the NHLPA to find an example; Alan Eagleson exploited information asymmetries to further his own interests, at times in directly contradicting those of the players (Conway, 1995; Houston 1993a; 1993b). In addition, while the union seeks to represent the best interests of all of its members, at times Association activities and decisions may not be in the best interests of specific players. While these factors may be problematic for monitoring hockey agents, agency theory has revealed that the other available means of monitoring have even more limited value in reducing agent opportunism. By increasing the threat of

sanction, the NHLPA may be able to increase the effectiveness of its certification program.

Despite the efforts of Players' Associations, individual US states, the NCAA, and the agents themselves, incidents of agent opportunism still occur in professional sport. As explained by Curtis Rypma (1990, pp. 477-488), an advocate for comprehensive state legislation, "while the various organisations and state legislatures have recognised the need for regulating sports agents and have attempted to remedy the situation, the remedies that they pose are simply inadequate." Similarly, Bart Ring (1987, p. 322), who has represented athletes in all four major sports leagues, reported that problems of agents acting to the detriment of players "can be directly traced to the overall lack of stringent guidelines that effectively eliminate ill-equipped representatives from entering the sports agency profession," an opinion held by many other agents in the profession (Narayanan, 1990; Steinberg, 1992). However, according to sports and entertainment lawyer, Gary P. Kohn (1988), the imposition of various types of regulation may serve to improve agent performance and ultimately enhance the perceptions of player representation as a profession.

A popular suggestion in discussions of agent monitoring in professional sports has been to create uniform guidelines governing the player-agent, principal-agent relationship in sport (Steinberg, 1992). However, uniform guidelines are made with the interests of all professional athletes in mind. In addition, the presence of a large number of player agents in Canada reduces the potential benefits of any comprehensive US federal legislation, and it is doubtful that the Canadian government would be overly anxious to intercede into the dynamics of the player-agent relationship in professional hockey. While various professional standards, including the *Model Rules of Professional Conduct* for attorneys and its Canadian equivalent should serve to reduce agent opportunism, they have no effect on agents that are not members of those parent professions. It is not known how much of an effect the NHLPA's program will have on curbing agent abuses; a criticism of Players' Association plans has been a lack of assertiveness in de-certifying unscrupulous or incompetent agents (Arkell, 1997). As one established NHL agent explained, the NHLPA's certification program "has made our job a little more onerous, but it hasn't changed it in any way." Agents also seem reluctant to allow the NHLPA

more control of their affairs; one top NHL agent considered the NHLPA's involvement to be just one more step in the Association's desire to control agents. Regardless, a comprehensive national program aimed to reduce hockey agent opportunism is not warranted, given the potential agency problems suggested here. Roberts (1992) reported that the problem of agent abuses in sport, combined with the small population of athletes and agents does not justify government involvement. Today players make significant amounts of money to play professional sport; in placing the onus of monitoring agents on Players' Associations, the players themselves can incur monitoring costs to ensure that agents act in their best interests. Other stakeholders such as the NCAA can create mechanisms to protect their interests, and governments at all levels can use their resources to focus on more pertinent public concerns. In having the NHLPA monitor and police agent behaviour (with more stringent regulations and sanctions) principals will incur appropriate monitoring costs, agents bonding costs, and a trend in decreased agent opportunism should occur in the future.

Table 5.1

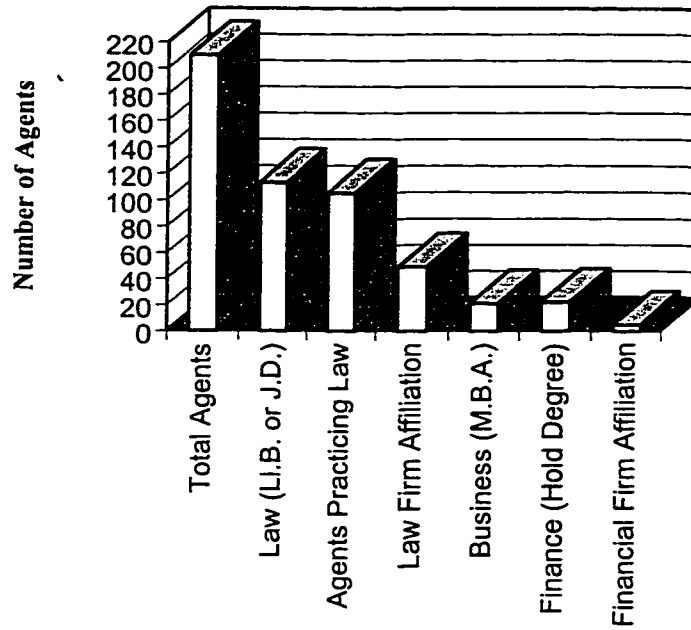
Monitoring Mechanisms for Hockey Agents

| Monitoring Mechanism | Problems | Problems Specific to Hockey |
|-------------------------------|--|---|
| US State | <ul style="list-style-type: none"> • Lack of standards • Too many registration requirements • Jurisdictional concerns • Conflicts with Commerce Clause | <ul style="list-style-type: none"> • Confined to US only • Applicability to foreign players, agents • Few hockey agents recognise/adhere to state regulations |
| NCAA | <ul style="list-style-type: none"> • Enforceability-teams and universities are punished, not agents | <ul style="list-style-type: none"> • Not designed with interests of hockey players in mind • Most players are unaware, unconcerned about NCAA regulation |
| Self Regulation | <ul style="list-style-type: none"> • Voluntary compliance • Enforceability | <ul style="list-style-type: none"> • Few in hockey industry aware of ARPA's existence • Additional burden to those who recognise ARPA |
| Federal Regulation | <ul style="list-style-type: none"> • Economic costs of creating a single, unified regulation program | <ul style="list-style-type: none"> • Applicability to non-US players, agents |
| Professional Standards | <ul style="list-style-type: none"> • Only applies to those in a given profession • Agents mistakenly remove themselves from the authority of professional standards | <ul style="list-style-type: none"> • Ambiguity of rules from different countries affecting agents • Evidence that many hockey agents do not adhere to them (solicitation) |
| Players' Association | <ul style="list-style-type: none"> • Antitrust issues in US • Anti-competition issues in Canada • Jurisdiction over non-association athletes • Lack of enforcement | <ul style="list-style-type: none"> • No fee restrictions • Not seen as an effective deterrent by hockey industry stakeholders |

Table 5.2

**Agency Theory and Monitoring
Mechanisms in Hockey**

| <i>Monitoring Mechanism</i> | <i>Agency Problems for Hockey</i> | <i>Agency Solutions for Hockey</i> |
|------------------------------------|--|---|
| US State | <ul style="list-style-type: none"> • stakeholder interests • mechanism enforceability • information asymmetry • bonding costs • breadth of enforceability • monitoring costs | <ul style="list-style-type: none"> • Unnecessary; no need to rely on this stakeholder • Time, money better spent on other concerns |
| NCAA | <ul style="list-style-type: none"> • stakeholder interests • mechanism enforceability • information asymmetry • breadth of enforceability | <ul style="list-style-type: none"> • Allow NCAA to continue to look after its own interests, but do not rely upon as a means of reducing opportunism in hockey |
| Self Regulation | <ul style="list-style-type: none"> • mechanism enforceability • information asymmetry • bonding costs | <ul style="list-style-type: none"> • Unnecessary • However, a new association with mandatory compliance would be more effective |
| Federal Regulation | <ul style="list-style-type: none"> • stakeholder interests • information asymmetry • monitoring costs | <ul style="list-style-type: none"> • Inefficient for hockey agents • Allow this stakeholder to spend time, money on other concerns |
| Professional Standards | <ul style="list-style-type: none"> • information asymmetry • mechanism enforceability • breadth of enforceability | <ul style="list-style-type: none"> • Effective for certain agents falling under standards • Do not rely on extensively due to inability to police non-member agents |
| Players' Association | <ul style="list-style-type: none"> • mechanism enforceability | <ul style="list-style-type: none"> • If penalties, sanctions for opportunism are increased, best means of monitoring hockey agents |

Figure 5.1**Professional and Educational Profile, NHLPA Registered Agents, 1997-98****Background and/or Affiliation**

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CHAPTER 6

HOW EFFECTIVE IS THE AGENCY MODEL IN PREDICTING PRINCIPAL-AGENT BEHAVIOUR? EVIDENCE FROM PROFESSIONAL HOCKEY

In the past three decades, the theory of agency has become one of the most frequently used and debated frameworks in the organisational literature (Barney & Hesterly, 1996; Eisenhardt, 1989; Perrow, 1986). Fifteen years ago, Jensen (1983) predicted that agency theory would have a profound influence on revolutionising the study of organisations. Since then, hundreds of theoretical explorations and empirical studies have built on and tested the assumptions of agency theory (cf Barney & Hesterly, 1996; Eisenhardt, 1989).

Agency theory is concerned with the relationship that exists between principals and agents—the services of the agent are acquired by the principal, typically because the principal lacks the abilities or time to perform the services personally (MacDonald, 1984). However, due to bounded rationality, the principal can never be fully aware of what the agent is doing while acting on the principal's behalf. This can be problematic when the agent acts in self-interest to the detriment of the principal (Nilakant & Rao, 1994). Thus, agency theorists are concerned with identifying when agents act opportunistically and how principals can reduce the likelihood of opportunism occurring. According to the agency model, this can be done in one of two ways: 1) contracting on the outcome of agent behaviour (by using a performance contingent compensation system) or 2) by creating governance mechanisms that more closely monitor agent behaviour (Eisenhardt, 1989). The former attempts to reduce opportunism by aligning the interests of principal and agent by rewarding the agent (for example, increasing agent compensation) on the basis of rewarding the principal (i.e. more profits for the firm). The latter reduces opportunism by decreasing information asymmetry that favours the agent, the idea being that the agent is less likely to act opportunistically when the principal knows more about what the agent is doing, and the chances of being detected and punished are greater. The relationship between principal and agent is governed by a contract, which is the central concept of agency theory that distinguishes it from classical and neo-classical economics (where market forces provide a disciplining mechanism for behaviour) (Tosi, Katz & Gomez-Mejia, 1997).

Agency relationships exist on many different levels within firms, and can involve single principal, single agent relationships through to more complex, multiple principal, multiple agent relationships. It is not uncommon for individuals to act simultaneously as principals and agents. For example, managers act as principals to employees (or subordinates) while acting as agents to a firm's shareholders (acting as principals to management). Within the realm of professional sport, managers act as principals by hiring the services of players (agents). However, players also act as principals in hiring agents to negotiate playing contracts and provide other various services. In this latter case, a single-principal (the player), single-agent relationship exists.

The player-agent dyad is one principal-agent relationship that has emerged in professional hockey since the mid 1960s, and has been influenced by significant changes within the industry since that time. According to the tenets of agency theory, these changes should influence the dynamics of the player-agent dyad, and the contract that governs their relationship (as discussed in chapter four). Thus, the purpose of this study was to investigate the assumptions of the agency model using the single-principal, single-agent relationship between players and agents in professional hockey as a case study. The hockey industry was chosen as the research site for a number of reasons. One was that the player-agent relationship mirrors the single-principal, single-agent model proposed by agency theorists, and is governed by the terms of an explicit contract. Thus, this industry provided a simple agency dyad with which the tenets of agency theory could be investigated. In addition, the P-A dyad has a definable life span (from the mid 1960s), and a distinct population of players and agents that can be identified through membership in the National Hockey League Players' Association and registration in the NHLPA's mandatory agent certification program. Another impetus for choosing to use professional hockey as a research site was the presence of several catalysts for change in the industry that could potentially effect the P-A relationship, including the presence of a rival league, rapid revenue and salary increases, and changes in labour relations dynamics (described in chapter four). These changes created a turbulent environment that might result in discernible changes to the agency relationship. Given that professional hockey has not been the site of economic analysis to the extent of other North American professional sports leagues (particularly baseball), it was hoped that this study would also contribute

to a more substantial body of work examining the business of hockey. In addition to a dearth of research, a final reason for choosing hockey over other professional sports as a research site was inroads and contacts already established by the author, that would facilitate the collection of data for this study.

Several research questions are developed based on the agency model and specific influences on the player-agent relationship, such as the advent of agent certification, salary disclosure, the competitiveness of the agent market and other factors identified in the previous two studies of this thesis. Following a discussion of agency theory, a series of propositions are made based on the agency framework and their potential effects on the factors above. These research questions are investigated by examining changes to the player-agent dyad and the explicit contract that governs their relationship, using data collected and analysed from various sources within the professional sports industry. Based on the findings of this study, limitations to the agency model are identified, and compared with existing criticisms found in the literature, where the shortcomings of the theory have been addressed by extending agency theory and/or using other theoretical frameworks to modify it. Possible adjustments to the model are then suggested based on the findings of this study. As a result of this analysis, it is hoped that a richer theory of agency will emerge.

Assumptions of the Agency Model

Agency theory has emerged within a body of theoretical work known as organisational economics (OE), or the new economics of organisation. “To OE scholars. . . organisations are neither collectivities nor coalitions. Rather, organisations are the set of institutional arrangements that govern the collectivity and, therefore, permit exchange among interest groups” (Hesterly, Liebeskind & Zenger, 1990, p. 405). Within this model, agency theory focuses on the relationships between specific groups of principals and agents, and the contract that governs those relationships. According to Hesterly et al. (1990), the OE definition of organisation also includes arrangements featuring a much more limited set of players, such as bilateral contracts. For the purposes of this study, the “organisation” could be considered the simple single-principal, single-agent relationship that exists between a player and agent.

The foundation of the agency relationship is the *contract* (Eisenhardt, 1989). This contract is implicit and/or explicit, and governs the relationship between principals and agents. Viewed in this manner, the professional hockey industry is seen as a series of interrelated contracting relationships (Jensen & Meckling, 1976) among parties who, at times, may simultaneously act as both principals and agents. As agency theorists contend, the contract between the two parties sets out the duties to be performed by the agent on behalf of the principal, and the means through which the agent will be compensated. In the case of professional hockey, the player delegates authority to the agent to negotiate contracts with the team holding the player's rights, a negotiation in which it is assumed that the agent has specific knowledge and skills that the player lacks. The contract between player and agent is governed by a Standard Player-Agent Contract that is set out by the National Hockey League Players' Association (NHLPA), which explicitly sets out agent fees, services, term of contract, and means of dispute resolution between player and agent (*NHLPA Agent Certification Program, Appendix A*). In addition, it is assumed that the agent also has greater knowledge of his/her abilities to perform the negotiation and the degree of effort he/she puts forth in representing the principal.

As discussed earlier, the need for a means of dispute resolution is predicated by the potential for agents to act in self-interest to the detriment of the player. This occurs in principal-agent relationships due to the existence of *information asymmetry*. In a typical agency relationship, it is the agent who is able to act in self-interest by exploiting a degree of information asymmetry that favours the agent; the agent usually has more information or knowledge about his or her own efforts or expertise. As MacDonald (1984) explained, studying the economics of agency is valuable, as it is rare that symmetrical information exists in principal-agent (P-A) relationships.

According to Barney and Hesterly (1996), a fundamental assumption of organisational economics and agency theory is the presence of self-interest. While all individuals can be expected to act self-interestedly, an agency problem arises when an agent, while acting on behalf of a principal, acts in self-interest in such a way that it decreases the well being of the principal. Similarly, the principal can exploit the agent through information asymmetries to act in self-interest. However, much of the research

on agency theory has centred on asymmetry favouring the agent, which is the focus of this research. Types of self-interested behaviour include 1) adverse selection, where an agent misrepresents his or her abilities so as to contract with a principal; 2) moral hazard, where the agent does not put forth adequate effort in performing duties for the principal (Eisenhardt, 1989); and 3) ignorance, where the agent lacks the abilities to adequately perform duties or services (Lewis & Sappington, 1993). Self-interested behaviour can be achieved unintentionally, or with deceit and guile, and creates a residual loss for the principal; this is the decrease in the principal's welfare as a result of the agent's opportunism (Jensen & Meckling, 1976). In the case of professional hockey players, this loss typically consists of a loss of money. It is important to note that agency theorists do not contend that opportunism will always occur; rather the potential for opportunistic behaviour exists based on the degrees of information asymmetry that exist between player and agent, and incongruence of principal and agent interests.

Professional hockey provides an example of P-A, player-agent relationship that has historically been marked by significant information asymmetry that favours the agent. From an agency theory perspective, there are two means through which information asymmetry can be reduced, which decreases the opportunity and likelihood of agents acting for personal gain to the detriment of the principal. The first is to contract on the outcome of agent behaviour (i.e. use a performance-contingent compensation system), and the second involves increasing monitoring mechanisms which reduce information asymmetry by providing more information regarding agent behaviour to the principal (Eisenhardt, 1989). In professional hockey (and other sports), the common means through which agents are compensated is through commissions (Greenberg, 1993); this performance-contingent (P-C) system rewards agents who negotiate a higher salary for players on the basis of that increase. Although using a P-C system transfers risk to the agent, the fact that a commission is the most accepted means of remuneration in this industry follows Alchian and Demsetz (1972), who suggested that agents who are too risk averse would choose another fee system or profession. As explained by Levmore (1993, p. 533), "self-reflection, according to risk preferences, sorts people into different industries." Hockey agents therefore acknowledge the risk of a P-C compensation system as an acceptable practice. In addition, a prosperous (munificent) market also reduces risk

aversion as agents have less fear of not being fairly rewarded due to poor market conditions beyond the agent's control. Therefore, in an industry such as professional sport, where revenues have grown substantially and market munificence exists (as shown in chapter four), agents would be less risk-averse to accepting a performance-contingent contract.

As discussed earlier, the means of compensation paid to the agent is set out in the explicit contract that governs the relationship between player and agent. In most principal-agent (P-A) relationships, several key factors influence the form the contract takes (which is either outcome-based or behaviour-based), and the frequency in which it occurs. Outcome-based contracts remunerate the agent directly on the basis of their performance (a commission). A behaviour-based contract is usually in the form of a salary; the agent is rewarded a set amount on the basis of achieving a minimum standard of competence. In many P-A relationships, a combination of outcome- and behaviour-based contracts is used. Using an example from hockey, players are sometimes paid a base salary plus bonuses on the basis of achieving performance outcomes, such as meeting a certain goal total during the course of a season. A goal of agency theory then becomes understanding the form taken by P-A contracts and their implications for the organisations in which they occur (McGuire, 1988).

Industry Predictions Based on the Agency Model

The following discussion presents several industry factors that have influenced the agency relationship between player and agent in professional hockey. The agency model is employed to suggest the ways in which the player-agent dyad should be affected. As shown in chapter five, industry stakeholders in professional sport have attempted to reduce agent opportunism through the creation of agent certification programs. This reflects a deliberate attempt to reduce the information asymmetry that favours the agent and ideally reduce the chances of agents creating residual losses for principals. Increasing monitoring allows principals and other stakeholders to screen potential agents, detect agent opportunism, and punish guilty agents. Creating governance mechanisms is one of the two solutions to agency problems suggested by the agency model (Eisenhardt, 1989). Therefore, according to the agency model (Eisenhardt, 1989), *as information available to the principal regarding agent behaviour increases*

(caused by increased monitoring), the agent is more likely to behave in the interests of the principal. In hockey, monitoring mechanisms have been created by US states, the National Collegiate Athletic Association, the Association of Representatives of Professional Athletes (the agents themselves), regulation by broader parent professions, such as law, and the National Hockey League Players' Association (NHLPA) (the players collectively) (Cox, 1992; Grosse & Warren, 1991; Kohn, 1988; Lefferts, 1984; Shulman, 1997). Typically these programs involve agents paying a fee and attaining a certain level of competence (creating bonding costs for agents). They often also feature the threat to sanction and/or deny the agent the right to represent principals. From an agency perspective, the creation of these programs should have two effects. One is to reduce the information asymmetry that favours agents, which allows principals to more closely monitor agent behaviour. The second result is that, because the agent finds it more difficult to act self-interestedly, agent opportunism is reduced. Thus, *the advent of effective monitoring mechanisms in hockey should result in a decrease in information asymmetry favouring the principal and, following the agency model, result in a decrease in opportunism by player agents.*

In 1989, players in the National Hockey League became the last of the four major North American professional team sports to have player salaries publicised. In doing so, all players would be able to know what their peers were earning, and have a basis of comparison when negotiating their own playing contracts with teams. In doing so, the information asymmetry that favoured both agents and teams with respect to players was reduced. An agent then knew what players of similar calibre were making, and an agent who represented only a few players was now able to understand the market value of his/her clients. In the past, only an established agent representing many players would have a basis of comparison. Players could also now compare their playing contracts, a practice once limited to agents with multiple clients. Therefore, *salary disclosure should reduce information asymmetry between player and agent, and allow players to select more qualified and scrupulous agents, which will result in a decrease in agent opportunism.*

Another factor that has influenced the player-agent relationship has been through increasing market competition between agents to represent players. As noted by

Sappington (1991), agent behaviour is policed by the existence of other prospective agents. In hockey, increased competition was brought about by an increase in average player salaries, which has made the player agent profession a much more potentially lucrative career, and drawn in a larger population of agents. From an agency perspective, there are two important implications for the increase in the agent population. One is that, on the basis of increased competition for clients, agents should be more willing to contract with players for less money; an agent will accept a lower level of compensation for fear that another agent would agree at a lesser rate. Therefore, *the greater the competition between agents, the lesser the share agents will receive for their services*. More specifically, agency theorists would contend that the reduction would manifest itself in agents receiving a lower level of *relative* compensation compared to the salaries earned by players. Thus, while an agent may be paid more today to represent players than fifteen years ago, the agency model would suggest that this amount has not grown at the same rate as player salaries. Thus, *player agents may receive greater compensation today (as a result of rapid salary increases for players), but this compensation will comprise a smaller relative share of player compensation due to the competitiveness of the agent market*. A final result of agent competition would be a reduction in agent opportunism; an agent will be more likely to act in the best interests of the player knowing that if detected, the player could choose to be represented by any number of other available agents. "Ultimately, the bad agents would be driven out of the market by competition from the good agents" (Hale, 1994, p. 125). It would then be in the agent's best interests to possess the ability to provide services for players, and to not act opportunistically for fear of losing clients. For this reason, *increased agent competition will result in an increase in agent ability and a decrease in the incentive to shirk, resulting in a decrease in agent opportunism*.

In addition, reputation would be an important consideration for players when selecting an agent, given the small population of players and agents (Mills, 1989), and becomes the means through which agents can be differentiated. As explained by Alchian and Demsetz (1972), a good reputation adds wealth to agents; in the case of hockey agents, where competition for clients is fierce and, according to former agent and current NHL general manager Brian Burke (1993), reputation may be what provides agents with

any wealth at all. In professional hockey, word-of-mouth would be an influential means for agent selection by players. Thus, developing and maintaining a strong reputation for honesty and capability would be paramount for player agents to obtain and maintain players as clients. For this reason, *a concern over reputation by hockey agents will reduce agent opportunism* (Mills, 1989).

A final consideration for this study was the frequency of use of behaviour- and outcome-based contracts. According to agency theorists, opportunism can be reduced by the deliberate manipulation of the contract between player and agent; agent opportunism can be reduced by contracting on the outcome of agent behaviour by rewarding the agent on the basis of increasing the wealth of the principal. However, in doing so, the principal transfers risk to the agent, who is only rewarded on the basis of successfully completing the task. For this reason, the agent will demand a risk premium for taking on the risk of possibly failing for reasons beyond the agent's control and receiving little or no reward. As explained in Eisenhardt (1989), the use of monitoring mechanisms and performance contingent compensation systems are interrelated. When the principal knows little of the behaviour or efforts of the agent it makes sense to reward the agent solely on the outcome, as this is the only factor that the principal can be sure of. However, as the principal gains more information regarding agent behaviour (through the use of monitoring mechanisms) the principal no longer needs to transfer risk to the agent (and pay a corresponding risk premium). In hockey, the traditional means of compensation for hockey agents has been commissions, which is a form of performance-contingent compensation. However, with a decrease in information asymmetry created by the factors described above, there should be a lesser need to use commissions or other forms of performance-contingent payment schemes in professional hockey. Therefore according to the agency model, *there will be a decrease in the use of commissions as a means of remunerating player agents in hockey, and an increase in the use of behaviour-based compensation, such as flat fees*.

Method

The issues identified and italicised above provided the impetus for data collection and analysis for this study. Thus, data were obtained on the basis of addressing these specific questions regarding changes within the hockey industry, as predicted by the

agency model. Because this study sought to identify general trends in changes to the player-agent relationship, a positivist agency theory approach was determined to be the appropriate approach for this study (Eisenhardt, 1989). Data were collected from a variety of means and sources, directly and indirectly related to the professional hockey industry. The views of industry stakeholders, including current and former player agents, players, managers, labour leaders, industry commentators, lawyers, and other industry-associated individuals were sought. It was anticipated that the views of each stakeholder group could and would vary greatly according to their positions within the industry. For this reason, data from as wide a range of sources and time periods were targeted. Data were obtained primarily through the collection of industry documents, such as collective bargaining agreements, agent certification programs, salary figures, and state and federal documents. In addition, a search through legal journals, trade journals, and other popular press sources was undertaken. An emphasis was placed on primary sources, and secondary sources that featured direct quotes from industry stakeholders (data from direct quotes were considered primary for the purposes of analysis). Where possible, views from the same stakeholders were sought across time periods to determine any changes and to test the reliability of each source.

At the onset of this study, several search engines were used to obtain every possible related article pertaining to the sport and hockey industries, with specific emphasis on player representation. To do so, Quicklaw, Sport Discus and Abi-inform databases were used. Using Quicklaw, a legal resource search engine, hundreds of articles associated with player agents, agent opportunism, and regulation were acquired, including those written by, or containing quotes from, direct stakeholders. This was done through using general keywords, such as “sport,” followed by more specific ones, such as “agent,” “regulation,” and/or “hockey.” SportDiscus and Abi-inform were also used to track similar articles in the sport and business literature. Copies of every article accessible by the author were obtained, and a thorough examination of approximately 70% of all issues of *The Hockey News*, the sport’s trade publication, since 1982 was undertaken. Other popular sources, including biographies, autobiographies, and newspaper reports, specifically those which contained direct quotes from those directly involved in industry affairs were obtained. Newspaper reports were viewed on microfilm

and the search was dictated by key time periods and geographic areas identified following an initial review of the literature. Finally, thirteen personal and phone interviews were arranged with twelve different industry stakeholders, including players, team managers involved in contract negotiations, agents and others directly involved in professional hockey. Interviews lasted between forty-five and ninety minutes, averaging approximately one hour. Where permission was granted by the interviewee, interviews were tape recorded and transcribed. Open-ended, semi-structured interviews were a means through which stakeholder opinions on trends in the compensation of agents and effects of the factors described in the previous section could be obtained. Combined with the other sources already mentioned, a substantive set of data was collected for analysis.

Data analysis for this research study was guided by techniques for qualitative research presented in Miles and Huberman (1984; 1994). As presented in the previous section, research questions were developed *ex ante*, based primarily on Eisenhardt's (1989) overview of agency theory, and conditions specific to the hockey industry identified in chapter four. With these questions in mind, data from the various sources were placed into one of seven categories. The categories were created based on the historical method, and were ranked according to consideration as primary or secondary sources (a more in-depth discussion of each category and a rationale for the creation of these rankings is presented in chapter three). This was done in order to weigh potentially disparate evidence from the various sources, and determine whether there was adequate data to support the research questions. In other words, where conflicting answers were obtained on the same issue, such as whether there has been any change in the use of performance-contingent compensation, a means of determining which source was more reliable was required. An example would be where a journalist, in a newspaper article, noted a reduction in the use of commissions by player agents, but an established agent, in an interview, reported little or no change in the use of commissions. By categorising the data by its source (as seen in chapter three), the agent's view would be considered more reliable.

In order to reduce and compare the data, checklist matrices were created which, as discussed in the preceding *industry predictions* section, included the effects of and effects on, agent certification, salary disclosure, agent market, agent reputation, and agent

compensation. Again using agent compensation as an example, a checklist matrix was created that contained possible results (such as a decrease in P-C compensation, an increase, or no change) to the research question. In this instance, the question would be whether there has been a decrease in the use of commissions in hockey. Through the process of data analysis, evidence supporting or refuting this prediction would be entered into the matrix, and put into an appropriate “cell,” in the form of a number representing the categorical weight of the source. In this way, support (or lack of support) for the agency theory prediction would appear and, where conflicting results existed, provided a means of distinguishing which results were more reliable. Evidence was sought primarily from three stakeholder groups: players, agents, and team managers, from a number of sources.

Given the frequent conflicts between these groups, some bias was also anticipated. Recognising this, a sociometric scale was developed to determine to what degree each stakeholder held concern for the interests of each other stakeholder (Berg, 1989). Thus, not only was the data analysed on the basis of the reliability of its source (category), it was also weighed on the basis of the stakeholder group that provided the information. For example, it was expected that agents were adjusting to the increased involvement of the NHLPA in player affairs. Thus, agents might have a biased view of the NHLPA’s efforts to reduce agent opportunism. As such, agents might downplay the effectiveness of agent monitoring, because the agents were unhappy with having their roles more restricted. To attempt to account for possible biases such as this, a sociometric scale was created that listed industry stakeholders and the degrees to which each would recognise the interests of other stakeholders (please see chapter three for a more detailed discussion). In doing so, data could be scrutinised to anticipate any bias stakeholders expressed toward one another. While this might seem intuitively obvious, by creating a scale that ranked the “social distance” (Berg, 1989) between group members, another means of examining the data and accounting for possible conflicting results emerged. In addition to the creation of a sociometric scale, another means through which data were examined to account for stakeholder bias was to also examine the views of other stakeholders, including sports lawyers, prominent journalists, and others directly involved in the sport and hockey industries. Where applicable, these sources were

included in the matrix to supplement evidence from players, agents, and team management.

After an initial review of the collected data, each source was classified and put into one of the seven categories described earlier (and in chapter three). Once classified, these sources were more thoroughly examined, with emphasis placed on each source depending on its category. Select pieces of evidence that fit into a particular matrix were then transcribed onto a recipe card, verbatim, with a reference to its source. Where possible, direct quotes were used to remove any additional research error that occurred through the process of data reduction (paraphrasing could possibly result in the evidence losing its original meaning or being misrepresented when examined later). Each piece of evidence on a recipe card was then put into the matrix (appearing as a number between one and seven to represent its category), with the intent that every “cell,” or stakeholder viewpoint, would be filled. The recipe cards containing the evidence (or data) were then grouped according to where they fit into the matrix and some were later used to provide examples of the types of support found in this study. Through inputting data from the various sources, results supporting, partially supporting, or not supporting the research questions emerged. Through the ongoing process of data reduction and display described above, this study facilitated the requisite data to investigate the established issues, which are described in detail in the following section.

Results and Discussion

The following provides a summary of the results that emanated from each factor matrix used in the process of data analysis. These are discussed in the context of the agency model. As determined by the use of the positivistic agency approach, these results emerged and are explained in broad, general terms. However, some examples from the various sources used during data analysis have been provided. Where possible, examples from those sources that were ranked the highest according to the seven categories separating primary and secondary sources (described in detail in chapter three) have been included, particularly those from stakeholder interviews. Direct quotes that appear throughout the results section that are not attributed to any written source were taken from direct interviews. These examples are not meant to be exhaustive, nor did they alone provide the basis for the conclusions this study has reached. Instead, they are

introduced to highlight the results and provide some additional insights into the player-agent dyad in hockey. The following table provides a précis of the five matrices used for data analysis, which summarises the findings of this study. Support for the model is expressed in one of four ways. A *yes* result means that there is substantial evidence from the hockey industry to support the results predicted by the agency model. *Inconclusive* support suggests that the data obtained for this study does not conclusively support the agency prediction. However, this result does not necessarily reflect a shortcoming of the theory; rather, it may be due to case-specific conditions of the hockey industry that have confounded the results, such as shortcomings of specific contracts or monitoring mechanisms. An inconclusive result thus means that requisite data are not available to determine the degree to which shortcomings of the theory *or* the effects of case-specific variables influenced the results. *Serendipitous* support suggests that the predictive power of the agency model does not hold in the case of the professional hockey industry, although industry changes may seem to support those set out in the agency model. This differs from inconclusive support in that the results may actually be as predicted by the agency model; however, results are attributed to factors that extend beyond the agency model, thereby revealing limitations to the theory in predicting behaviour within the player-agent relationship. Finally, *limited* support proposes that, while there would seem to be some evidence to support changes suggested by the theory, this change has not been substantive enough to provide strong support for the predictive powers of the theory.

Insert table 6.1 about here

Agent Certification

As predicted by the agency model, the creation of agent certification should have resulted in a decrease in information asymmetry (that favoured the agent) and a corresponding decrease in agent opportunism. However, in the case of professional hockey, the effects that agent certification has had in reducing agent opportunism are difficult to ascertain. Certainly, information asymmetry has been partially reduced through agent certification, particularly the NHLPA's program. Today, players know more about the education, backgrounds, and types of services provided by agents; this

information is made available to the NHL players through a directory each year (*NHLPA 1997-1998 Certified Player Agent Directory*). Unfortunately, for reasons discussed in chapter five, existing programs have not been completely effective in their current form. Therefore, given the shortcomings of the programs (i.e. in terms of breadth of enforcement, threat of sanctions, etc.), it is difficult to attribute any decrease in agent opportunism by professional hockey agents solely to agent certification programs created by industry stakeholders. In discussing his views of recent agent certification, one established agent explained that agent regulation

is necessary and valuable but the way they've done it gives absolutely no credibility to the sense that they are accomplishing their objectives [of reducing agent opportunism]. There's not one bad agent that's not getting registered. There's very few so-called 'bad agents' that are close to being investigated, because [the NHLPA and other programs] have no resources. It's just a joke.

One player expressed a similar view during an interview, saying that "I don't see how [regulation] is going to change anything." However, as discussed in chapter five, if proper changes were made, agent certification could provide a means through which information asymmetry could be reduced and the chances of agent opportunism decreased. However, this study has not been able to adequately attribute agent certification to a decrease in agent opportunism in professional hockey, due to shortcomings of existing monitoring mechanisms.

Despite these shortcomings, agent certification may be able to reduce certain types of agency problems. As explained by Eisenhardt (1989), two types of agency problems are adverse selection and moral hazard (shirking). Adverse selection occurs when agents misrepresent their ability in order to contract with principals, while moral hazard occurs when agents do not put forth adequate efforts when performing duties on the principal's behalf. Lewis and Sappington (1993) identified a third agency problem, agent ignorance, where agents simply lack the knowledge and/or ability to perform the duties contracted for with the principal. These three types are all considered examples of agent opportunism. However, when examining each type individually, one can see that agent certification may help in reducing certain forms of opportunism. For example, for

reasons described above, agent certification in hockey has not been shown to reduce shirking. Due to a lack of enforceability, agents do not have an incentive to act more in the players' interests. Therefore, agents inclined to shirk will continue to do so. However, in registering with the NHLPA's certification program, agents must provide evidence of professional preparation. While there are no minimum educational standards set (which would reduce agent ignorance), players can identify which agents are capable of providing certain services. Therefore, the likelihood of adverse selection, where the player contracts with an underqualified agent, is reduced. For this reason, this study provides inconclusive support for the agency model as a means of reducing agency problems in principal-agent dyads. However, more substantive support is difficult to determine due to the apparent ineffectiveness of existing monitoring. In other words, conclusive support for agency theory (which suggests that increasing monitoring reduces information asymmetry and opportunism) is limited by the ineffectiveness of specific monitoring in hockey. Thus, results from examining agent certification for this study do not necessarily reflect shortcomings of the use of monitoring as a solution to agency problems (and therefore to agency theory itself).

Salary Disclosure

In contrast, salary disclosure has had a more dramatic effect on decreasing information asymmetry in professional hockey. In doing so salary disclosure, combined with other factors to be addressed, has been responsible for a general decrease in agent opportunism in hockey over the past ten years. It also provided a means through which players could more accurately gauge the performance of their agents. For example, a discussion with one veteran NHL player revealed that he was unaware, prior to salary disclosure, that he was one of the lowest-paid players in the NHL. Because he was did not know what other players were earning, he was content with the services provided by his agent. In retrospect, he noted that "I don't know if my agent did that great of a job, looking at where my salary was compared to the rest of the league." Shortly after disclosure, the player switched agents, and soon became one of the highest-paid players in the NHL. Similarly, another established NHL player recognised the value of salary disclosure:

It's been better for us, really. I mean, you find out the salaries that others are making. It's out there, there's no lies or guessing, the numbers are there. . . .Whereas before. . .my agent was the only guy who knows. You kind of had to believe everything he says. [Salary disclosure] has made it easier for the agents and the players.

Thus, the decision to make players' salaries public in the late 1980s reflects a successful effort by principals (the players collectively through the NHLPA) to reduce information asymmetry favouring agents (in this case agents who represented a large number of players and therefore had specialised knowledge the players lacked). Prior to salary disclosure, experienced agents such as Bob Woolf kept meticulous records of player salaries based on their previous contract negotiations. In an interview in 1985, Woolf proudly displayed the files he kept on player salaries to a reporter from the *Wall Street Journal*, claiming that "these [files] make me a genius" (Bulkeley, 1985, p. 31). Thus, while Woolf would have a good understanding of the marketplace for player salaries, other agents and players did not. Salary disclosure removed the competitive advantage that established agents like Woolf had, allowing all agents to more capably represent players. In addition, salary disclosure has also reduced agency costs by allowing agents to perform their services for players more efficiently, and lessen the losses that players had received (acting as agents) in contracting with teams (the principals) due to information asymmetry traditionally favouring teams. As one experienced agent explained, salary disclosure "has made it easier, obviously. I know what the market is—[the teams] can't lie to me."

Finally, salary disclosure has been able to partly decrease agent opportunism by reducing the likelihood of agent ignorance (Lewis & Sappington, 1993), where agents create agency costs due to an inability to adequately perform their duties on behalf of principals. Prior to salary disclosure, an agent who represented few clients did not know what other players were making, and therefore did not know whether or not the player was being paid a salary commensurate with his abilities. In 1985, then agent Brian Burke explained that, due to a lack of salary disclosure in hockey, agents had a more difficult time providing services for players than in other sports, which had already established

salary disclosure (McKenzie, 1985). Since the advent of disclosure, all NHLPA registered agents have been able to more ably represent players in negotiating contracts with teams, which has resulted in a reduction in agency costs associated with opportunistic agent behaviour. This suggests strong support for the agency model.

Agent Market

As suggested by the agency model, an increase in market competition among player agents in hockey should have two results. One is to decrease the amount of agent opportunism and the other is to reduce the relative share of rewards that the agent receives. As predicted, competition between agents for players has risen sharply in recent years. A NHL agent who has represented professional hockey players for twenty-five years identified a recent surge in the number of agents, which he attributed to more opportunities to earn money in the profession. In addition, there is some evidence that market competition among agents has also resulted in decreased opportunism by agents. This can be summarised by a comment made by an established NHL player: "Competition for players means it doesn't pay [agents] to act in the worst interest of their clients." An NHL general manager supported this claim, noting that "I think the representation is better now than it has ever been, because there's a lot of competition out there now." This supports the tenets of the agency model; as Sharma (1997, p. 779) noted, "the market is a good master." For this reason, the data collected for this study provides some support for the agency model. However, unlike salary disclosure, market competition does not reduce opportunism and agency costs by providing more information regarding agent behaviour and performance to the principal. Instead, an agent is less likely to act opportunistically knowing that peer agents would be willing to replace him/her if the original agent was perceived of any actions incongruent with principal interests. Thus, market competition provides a strong disincentive for agents to shirk.

Another trend that has occurred that supports the agency model is a tendency for a reduction in the percentage fee agents charge players (if they use a commission). Thus, although the agents are still highly remunerated (due to increasing player salaries), they receive a far lesser proportion of total player salary in recent years. However, while a reduction in relative share is indicative of the agency prediction of the effects of

increased market competition, the value of this process to principals as a means of reducing agency problems is limited. This is because it would be difficult for principals to manipulate the degree of competition among agents without causing other agency problems. For example, competition may reduce shirking, but the influx of new agents came about as a result of the agent profession becoming a more lucrative profession, not any deliberate efforts by players to control the number of practising agents. As such, the only way principals could encourage agents to enter the market would be through reducing the minimum requirements that are needed to practice. However, a lack of standards has traditionally been pointed out as one of the major contributors to agency problems in the player agent profession (Gould, 1992; Kohn, 1988; Ring, 1987; Shropshire, 1990; Sobel, 1987). Therefore, any effort to reduce the agency problem of shirking may only increase other agency problems, such as agent ignorance or adverse selection. This problem will be discussed in further detail later in this chapter.

Agent Reputation

Using the agency framework, this paper hypothesised that agent opportunism would be reduced by agents' concerns for reputation. An analysis of the data collected for this study strongly suggests that reputation plays an integral role in the selection of agents by players, and a means through which principals evaluate agent performance. By far the most popular means by players of obtaining information regarding prospective agents is through other players. Because "word of mouth" so often provides a basis for players to evaluate the actions of their and other agents, reputation is crucial to agent survival in the industry. Former agent, NHL senior vice-president and current NHL general manager Brian Burke (1993) noted that word of incompetence or unscrupulousness spreads quickly in the NHL, and guilty agents will not survive. Therefore, concerns for reputation provide a substantial impetus for agents to avoid shirking. One top agent interviewed for this study noted that:

My first client, probably didn't trust me for five years after I got to know him because he had been ripped off so mischievously, if you like, by his previous agent. So I mean, other agents' behaviour, because so many of them aren't trustworthy, makes it difficult to gain and garner the trust of our clients initially.

For this reason, the reputation of an agent would be crucial to gaining new clients, particularly players that are choosing to switch agents during the course of their careers. For some players, reputation provides the basis for selecting an agent. When asked what steps he took in the process of selecting an agent, one player interviewed revealed it was "his reputation, and when he came to see me . . . he showed me he is one of the best agents in the world." This supports Champion Jr.'s (1997) observation that athletes are drawn to an agent's track record, and not any professional affiliation that the agent might have. Efforts to maintain or create a good reputation in the industry becomes a means of reducing opportunism; an agent will be less likely to shirk knowing that doing so could jeopardise his/her reputation and therefore opportunities to contract with future clients. As one player noted, "If [an agent] screws up, everyone is going to know about it, y'know?" Another player described how agents try to act fairly to their clients because they "don't want to burn their bridges." This follows Sharma (1997), who explained that an agent's concern for reputation and potential future business inhibits the likelihood of the agent acting opportunistically.

Developing and maintaining a good reputation is perhaps even more crucial to hockey agents than in other principal-agent relationships. Hockey agents are particularly aware of their reputations in a small profession with less than 1000 players and slightly more than two hundred agents. As explained by Shulman (1997, p. 203), "the network [of players and agents in hockey] is small and fraternal. A good reputation is critical to a agent's success because players share information with team mates, as well as opposing players." At first glance, the sharing of experiences with agents appears to be an effective means through which players can reduce shirking by agents. However, from a prescriptive standpoint, this finding provides only partial support for the agency model. While reputation may reduce agent opportunism, it is dependent upon the subjective views of individual principals, who by virtue of their own specialised need for utility,

may be seeking different services from an agent than a team mate. In addition, given the social environment that players exist in, the opinions of certain players may be ignored or overlooked depending on their prominence on a team or in the sport. For this reason, the sharing of experiences cannot be a completely effective means through which agent shirking can be controlled. Thus, while the agency model might be able to explain how concerns for reputation reduce agent opportunism, increased competition is influenced by a number of environmental factors, such as increasing league revenues and expansion, and player salaries. Thus, difficulty in deliberately controlling and manipulating the emphasis on agent reputation as a means of evaluating agent performance suggests that this is not an ideal solution for principals to agency problems that exist in hockey.

Agent Compensation

As noted earlier, the agency model predicted a trend away from the use of performance-contingent compensation schemes. However, despite the significant decreases in information asymmetry facilitated by salary disclosure and other factors, there would seem to be some resistance to using alternatives to P-C compensation. This may be due to a 3% commission rate being so firmly entrenched as an industry standard for contract negotiations (Bulkeley, 1985; Greenberg, 1993), an amount recognised virtually unanimously by industry stakeholders. However, there is some evidence of greater flexibility by agents in the fees charged players, but this study found that trends toward behaviour-based contracts have more to do with agent market competition than a deliberate effort of players to avoid paying the risk premiums associated with performance-contingent compensation schemes. For example, in lieu of losing a client, several agents have opted to use behaviour-based contracts, charging a flat fee that results in a lower pay-off for the agent. In many instances, a flat fee is used for top-paid players, whose high salaries would generate significant fees using the standard three percent commission. The flat fee is then used because the services provided by the agent do not justify the size of the commission. In all of these cases, the agent is more receptive to developing alternative player contracts due to the stronger competition between agents for clients. The player simply does not want to pay the agent too much; the decision has little to do with decreases in information asymmetry or a desire by the player to avoid

paying a risk premium to the agent, as the agency model would suggest. Instead, the trend to use a flat fee is indicative of rising player salaries.

Discussion

While this study has attempted to identify the impact of individual factors on the player agent relationship based on the agency model, their effects are often interrelated. Cumulatively, there has been a decrease in information asymmetry favouring the agent and a decrease in agent opportunism. As one veteran NHL player noted, “you don’t see the incidents of twenty years ago with [agents] walking away with all sorts of [players’] money.” Similarly, NHL agent Stephen Bartlett (1993) has noted that NHL players have become increasingly involved and informed regarding their contractual affairs.

Using the player-agent dyad in hockey as a case study, this research has supported several research questions developed from agency theory. However, two of the major influences on reducing agent opportunism, agent market competition and agent concern over reputation, do not fall into the two means of reducing agency problems proposed in Eisenhardt (1989), which are contracting on the outcome of agent behaviour and increasing information systems to reduce asymmetry favouring the agent. Thus, although agency theorists recognise the potential effects of market competition between agents on P-A relations, the model has not been able to suggest alternatives for principals and other stakeholders to intentionally manipulate such factors to reduce agency problems of adverse selection, moral hazard, and agent ignorance. As a result, the value of agency theory in suggesting solutions to agency problems is limiting for stakeholders of the professional hockey industry. Thus, while agency theory may have descriptive value in understanding the nature of relationships within organisations and recognising how some governance mechanisms can reduce certain types of agency problems, evidence from this study would indicate limitations in providing tangible solutions to agent opportunism for principals and other stakeholders. Since the undertaking of this study, several works have emerged within the organisational theory and organisational economics literature to address the apparent shortcomings of agency theory. The following section will discuss these works within the context of this study. In doing so, suggested alterations to the agency model are presented, along with a defence of the agency model in comparison to alternatives to the agency framework.

Criticisms of Agency Theory

One of the most common criticisms of agency theory is its use of self-interest to define the behaviour of individuals; while the theory is neutral, it has been accused of being too cynical of human nature (Brennan, 1994). However, the professional sports industry generally, and hockey specifically have witnessed numerous examples of player agent opportunism over the past three decades (Benitez, 1986; Brown, 1994; Cameron w/ Jenish, 1994; Conway, 1995; Cox, 1992; Crandall, 1981; Ehrhardt & Rodgers, 1988; Gould, 1992; Johnson, 1988; King Jr., 1989; Powers, 1994; Shropshire, 1989; 1990; Sobel, 1987). Thus, while certainly capable of altruistic behaviour, the results contained in the sources above suggest that professional hockey agents have provided strong support for the agency model premise of opportunism, the result of self-interest. Another criticism is that, because both principal and agent are driven by utility derived only from their own efforts and payoffs, each is not concerned whether the other works too hard or receives too little pay. As explained by Bohren (1998), the agency model would assume that agents would have no discomfort in using information asymmetry to act in dishonest ways toward the principal, as long as it was increasing the agent's own utility. Given these assumptions, some suggest that the agency model may provide too limited a view into the complex dynamics of the relationship between player and agent. For example in many cases, the player-agent dyad cannot be described solely in terms of the services provided and the contract that governs their relationship; instead, the two often become close friends, and the agent acts as a confidant to the player. These characteristics of the dyad cannot be set out in the terms of an explicit contract, nor could they be expected to be governed by regulation and/or monitoring mechanisms. Ramaswami, Srinivasan and Gorton (1997) support this, when they suggested that agency theory does not take into account the implications of the social relationships that develop among members of an organisation.

Another criticism of the agency model has been its focus on aligning the interests of principals and agents, without concern for other industry stakeholders. This problem became readily apparent in this study. From an agency perspective, an agent could act dishonestly toward other stakeholders while performing on behalf of the player, yet no agency problem would occur if this were done in the best interests of the principal.

Therefore, no mechanisms for monitoring and/or bonding would be necessary, as no agency problems would exist (Davis, Schoorman & Donaldson, 1997b). As one player explained, “as long as the agent is doing the best job he can for you, then that’s what’s important.” This sentiment was echoed by an agent, who stated that “hopefully, your focus [as agent] is the best possible job for your player. That’s it.” But what happens when this is at the expense of other stakeholders? An example would be an agent who, although aware that a player had an injury or substance abuse problem, did not disclose this to the general manager while negotiating the player’s salary with the team. Thus, the agent would be exploiting information asymmetry (between the agent and the club) in order to further the interests of the principal (by obtaining a higher salary for the player than would be otherwise possible). According to the tenets of agency theory, there would be no agency problem! Thus, can agency theory truly provide a means of understanding the actions of individuals in organisations with such a myopic view of human relationships? In anticipation of this potential shortcoming, questions concerning the degree to which other stakeholder interests were considered by agents and players were posed in interviews for this study. For example, one top agent was asked if he would mislead a manager to obtain a higher salary for his player, even if it meant threatening the financial stability of the team. To this, he replied “no problem. My problem is one-dimensional. If my client tells me that it is an issue for him, I will deal with it. . . . I am required to advise [the player] about the ramifications signing a particular deal, but I am not prepared to take care of [the team or its owners].”

Obviously, it should not be imperative for agents to ensure that management personnel are capably acting on behalf of teams; however, the animosity that many stakeholders hold for one another does not bode well for the future of the industry. One of the distinctive characteristics that professional sport has is the acrimonious relationships that exist between stakeholders (Caron Jr., 1997; Miller, 1991). One NHL player described the relationships between stakeholders, particularly management and labour: “I think it’s dog eat dog. I don’t think [stakeholders] really care [about other stakeholders]. I think players are trying to get as much as they can, and owners are trying to keep as much as they can. I think it’s vicious.” An agent just entering the profession expressed the same opinion: “I couldn’t care less [about the welfare of teams]. That’s the

team's problem. If they can't manage their finances, I don't care." However, although the behaviour and relationships in hockey may be congruent with the tenets proposed by the agency model, the degree to which solutions can be suggested to solve conflicts in the hockey industry may be better achieved through an alternative theoretical model.

This discussion ties into the concept of stakeholder interests (Freeman, 1984). The problem here is that many of the problems that have caused inefficiencies in the operations of the professional hockey industry cannot be recognised and/or remedied using the agency model in its current form. It also reveals an important question: at what point would/should a principal or agent recognise the interests of other stakeholders, and should the agency model account for them? (Hill & Jones, 1992). Identifying other stakeholder interests may lubricate economic exchange in professional hockey and allay the acrimonious relationships that many stakeholders currently have with one another.

The discussion above would suggest that criticism of agency theory reflects a need for the theory to expand to better accommodate conditions across industries and stakeholders. By its very nature, a theory requires the simplification of complex phenomena, and agency theory has been subject to animadversion due to oversimplification (Tosi, et al., 1997). However, agency theory's basic tenets have also been criticised. For example, Ramaswami, Srinivasan and Gorton (1997) identify one assumption that weakens the agency model—that is, supervisors (or other principals or stakeholders) can foresee all environmental contingencies that will allow them to build information and control systems that are comprehensive. Given that agency theory also works on the assumption of bounded rationality, this assumption is troubling, and this apparent contradiction may explain the consensus opinion among stakeholders that agent regulation has been unsuccessful in professional sport that has emerged from this thesis research. The creators of these governance mechanisms have been unable to create adequate information systems due to information asymmetries created by their own human limitations, and a lack of knowledge of how and why agent behaviour should be monitored and regulated. Therefore, bounded rationality dictates that agency problems can never be completely eliminated because information asymmetry can never completely be overcome. This problem is readily apparent when examining agent certification in hockey. As noted in the results section, there appears to be some evidence

that agent certification has decreased information asymmetry between players and agents, and therefore reduced potential agency costs associated with agent opportunism. However, this study has been unable to conclusively support the agency theory assumption that monitoring reduces information asymmetry and agent opportunism. This is due to specific problems with each form of agent certification, such as a lack of enforceability by the NHLPA's agent certification program (as shown in chapter five), which reflects the limitations (or bounded rationality) that the creators of agent certification in hockey are restricted by. Therefore, with regards to monitoring mechanisms such as certification, this study supports Ramaswami et al's (1997) criticisms of agency theory.

Another criticism of agency theory that may mitigate its prescriptive value for reducing conflict in organisations is its focus on extrinsic as opposed to intrinsic rewards to motivate agents (Davis et al., 1997a). Kreps (1997) argued that the use of extrinsic rewards can be counterproductive by destroying an employee's intrinsic motivation,¹ but also recognised that there is little empirical support for this assertion. In the context of this research study, which examined agent opportunism in hockey, efforts to reduce this behaviour, and the effects of industry changes on the player-agent dyad, changes were viewed in terms of the explicit contracts that govern their behaviour. Thus, while intrinsic motivation obviously affects the ways in which principals and agents interact, assessing any changes to this type of motivation was beyond the scope of this study. However, by focussing solely on extrinsic rewards, the agency model may allow only a limited view of the player-agent relationship, and provide only a partial solution to the agency problems associated with this specific dyad.

Comparing Agency with Other Theories and Alternatives to the Agency Model

With these problems in mind, the following discusses how various researchers have sought to account for agency theory's apparent limitations. One means of testing the prescriptive value of agency theory has been to use alternative models in conjunction with the agency model in empirical research. Ramaswami, Srinivasan and Gorton (1997) compared agency theory with social exchange theory by examining information asymmetry between salespersons and supervisors. They found that agency theory had

¹ This argument has been used by teams and commentators to decry salary increases in professional sport.

more limiting predictive ability with regard to information asymmetry than social exchange theory. Another debate that has arisen involves comparing agency and stewardship theories (Preston, 1998; Davis, Schoorman & Donaldson, 1997a). Unlike agency theory, which focuses on individualistic, opportunistic agents, stewardship theory views subordinates (agents) as collectivist and trustworthy. However, this approach is new in the organisation literature, and its theoretical contributions have yet to be established (Davis et al., 1997a). Eisenhardt (1988, p. 503) compared agency and institutional theory predictions of sales compensation in the retail industry. She found that both “contribute to the explanation of compensation policy.”

As noted earlier, stakeholder interests have traditionally fallen outside of agency discussions. To identify and reconcile stakeholder interests within the agency model, several discussions have arisen. One suggested by Mishra, Heide and Cort (1998) is a conceptual framework that considers multilevel agency relationships. They looked at the relationships that exist between suppliers, end customers, and service providers. Extending this discussion to professional hockey, we can see that various parties, including players, agents, and teams, are influenced by varying degrees of information asymmetry, risk aversion, and other influences in acting with one another. According to Jones, Hesterly and Borgatti (1997, p. 911), “many industries increasingly are using network governance--co-ordination characterised by informal social systems rather than by bureaucratic structures within firms and formal contractual relationships between them [as suggested by agency theory]--to co-ordinate complex products or services in uncertain and competitive environments.” In the case of professional ice hockey, agent behaviour seems to be more easily regulated by “word of mouth” than any deliberate attempt to regulate and/or monitor agent activities. Thus, network governance, which is derived from transaction cost economics and social network theory, may be a means to explain how an apparent reduction in agent opportunism has occurred, despite the apparent shortcomings of the two traditional agency means of reducing agency problems (contracting on the outcome of agent behaviour, or creating information systems) identified in this study. While the principals have become more aware of agent behaviour in professional hockey over the past few decades, this was not the result of a deliberate effort to reduce opportunism, as evidenced with problems associated with the

ineffectiveness of agent certification plans. However, it was the result of a deliberate effort to reduce information asymmetry, through the public disclosure of players' salaries. In lieu of deliberate efforts to reduce information asymmetry and alter agent compensation, "the network form of governance relies more heavily on social coordination and control, such as occupational socialisation, collective sanctions, and reputations, than on authority [enforced by the agency contract] or legal recourse (Jones et al., 1997, p. 913).

Another means of explaining the value of reputation in reducing agent opportunism may be *escalating commitment*, where the need to preserve self-image and reputation can, at times, outweigh any incentives that exist within the employment contract. (Hesterly et al., 1990). In this manner, the means of reducing agent opportunism suggested by the agency model would not be as effective as concerns for reputation, which the findings of this study would seem to support. However, this problem may be reduced by attempting to more effectively incorporate agent reputation into the agency model. Similarly, institutional pressures may also affect agent opportunism. For example, there has been a noticeable trend for individuals and firms from other, broader fields such as accounting and banking, to become involved in representing professional hockey players (Harris, 1998). These groups are bound by standards or duties of care that are established, maintained and enforced within their own professions. As such, they impose these normative standards in the contexts within which they operate (DiMaggio & Powell, 1983). Therefore, one might expect that a greater number of hockey agents today would hold themselves to these standards. Combined with increasing competition for clients (players), a significant deterrent to self-interested behaviour exists outside of traditional agency model solutions. Sharma (1997) attempted to reconcile this problem by suggesting a principal-professional, rather than principal-agent, relationship.

Adjustments to the Agency Model

Another apparent contradiction to the agency model identified in this study has been the continued use of commissions as a means of agent compensation. According to the agency model, there should be a decrease in the use of outcome-based contracts, as the principal no longer needs to transfer risk to the agent (and pay a risk premium) due to

the decrease in information asymmetry favouring the agent. To accommodate some of the conflicting results that have emerged from similar agency studies, there have been several attempts to either modify the agency model, or to combine agency theory with other models of organisation. For example, Wiseman and Gomez-Mejia (1998) have suggested that the agency model assertion that agents are risk averse and principals are risk-neutral is “too restrictive and naïve.” They discuss a burgeoning literature that identifies *risk-seeking* agents within organisations. These individuals would rather take on greater risk (i.e. a performance-contingent compensation system) in order to obtain the associated risk premiums. In addition, Wiseman and Gomez-Mejia (1998) also suggest that risk-aversion levels are unstable; that is, individuals’ own preferences may change over time. Instead, they introduce a Behavioural Agency Model (BAM) which combines agency theory with behavioural decision theory, to examine corporate governance in firms. Thus, in an environmentally munificent professional hockey industry, the large number of agents who are less risk-averse due to a munificent industry would be joined by a number of risk-seeking agents who would continue to seek performance-contingent compensation in any market conditions. This may explain the continued use of P-C contracts, despite the fact that the agency model would suggest otherwise (behaviour-based contracts would be more appropriate due to a reduction in information asymmetry favouring the agent, as described in chapter four). In addition to environmental munificence and risk-seeking agents, skill level might also be a determinant of risk aversion for agents, and also explain little reduction in the use of P-C compensation in professional hockey. In a review of agency and transaction cost studies, Kowtha (1997) revealed the results of several that found that agents with high ability often self-selected high risk/high return compensation packages. In professional hockey, a few select agents represent a disproportionately high number of clients. These highly skilled agents would not be averse to continuing using a commission (and collecting the associated risk premium), as they would have little concern of not obtaining a good salary for players when negotiating with teams. In doing so, the use of P-C compensation is perpetuated by these powerful agents, contrary to an increase in the use of behaviour-based compensation suggested by the agency model.

Is Agency Theory a Valuable Tool in Understanding P-A Relationships in Hockey?

The alternative theories described above might suggest that there might be other more appropriate models to underpin a study examining player-agent relationships in professional hockey. However, this industry has several key characteristics that support the use of the agency model. One concerns the acrimonious relations between stakeholders in hockey. As discussed earlier, proponents of stewardship theory assume that subordinates (or agents) are guided by a desire to act in the best interests of the organisation. Within the stewardship model, human behaviour is based on collectivist behaviours that result in a higher utility than do individual, self-serving behaviours (Davis, et al., 1997a). However, evidence from stakeholders in professional sport would suggest otherwise. Professional hockey players have very specialised skills with high specificity; they would not be able to obtain as high salary (or arguably, utility) by choosing another profession. In addition, their short career spans make it a high priority to obtain as much money (via playing salaries, endorsements, and other ancillary ventures) as possible to ensure their financial futures. As one player interviewed for the study explained, “why not try to get as much [money] as you can in the little time you have?” Thus, while monetary rewards are obviously not the only contributor to player utility, a player is cognisant that when his career is over there are few comparatively lucrative career alternatives. This is further complicated by the fact that in order to attain such a high level of ability players have to forgo many other opportunities, particularly educational pursuits. Therefore, the characteristics of their playing careers mean that there is an emphasis on improving personal wealth (i.e. self-interest).

In addition, many forms of contingent compensation for players are based on individual (i.e. player statistics), and not organisational (i.e. team performance) outcomes. For example, NHL players cannot be awarded any bonuses based on the performance of the team during the regular season, and personal bonuses can only be granted if a team wins the Stanley Cup championship--bonuses cannot be awarded on any other playoff successes (*NHLPA/NHL CBA-Exhibit 5*). These standards do not lend themselves to collectivist behaviours. While these provide some insights as to why agency theory is an appropriate tool to examine the relationships that exist between stakeholders in organisations, the agency model is also ideal for examining the discrete relationship

between player and agent. In this instance, the relationship typically involves a single principal and single agent. Therefore, the behaviour of the agent (as subordinate) is viewed in terms of its effects on a single principal. According to Davis et al. (1997a), the steward (agent)'s behaviour seeks the objectives of the organisation. Therefore, collectivist behaviour, in this instance, would only be done for the greater good of the player, as this relationship exists outside of the firm (in this case the team, or league).

Another possible alternative to examining relationships in organisations has been stakeholder theory. Based on Freeman's (1984) seminal work, stakeholder theorists view an organisation's purpose as not solely to meet the needs of a firm's shareholders; rather, a firm must operate with the interests of all (f)actors who are affected by the organisation's operations. Supporters of the stakeholder model have focussed on identifying and classifying stakeholders, and understanding the degree to which they are affected by firm operations (Rowley, 1997). Given the efforts of other stakeholders within the professional sport industry to control agent opportunism, such as the NCAA, and state and federal governments, the stakeholder model appears to be a reasonable alternative to agency theory.

However, based on the research goals of this thesis research, the agency model was deemed a more appropriate framework for analysis. The original impetus for this research was to examine a problem that has apparently plagued professional sports for decades—an overabundance of agent opportunism, efforts to control abhorrent agent behaviour, and resulting changes to the player-agent relationship. Agency theory's use of the contract metaphor to understand the dynamics of dyadic relationships in organisations is valuable in this instance. In contrast, the primary objectives of stakeholder research is identifying stakeholders and the types of influences they exert (Rowley, 1997). In the case of professional sport (and hockey in particular), identifying stakeholders was not central to the problem of examining agent opportunism. However, recognising other stakeholder interests may be necessary to remedy conflicts within the hockey industry.

As discussed earlier, agency theory is limiting in that it assumes that problems can be solved through the deliberate manipulation of various factors, such as the amount of information available to principals and agents, and the terms of the contract that governs their relationship. As explained by MacDonald (1984, p. 430), "that there is potential for

the theory of agency to contribute to understanding the way firms operate is practically beyond question." However, the theoretical value of the agency model becomes a concern when agency assumptions are "relaxed to accommodate the empirical reality [such as the player-agent relationship in professional hockey], [and] the key relationships and conclusions derived from the model no longer hold" (Worsham, Eisner & Ringquist, 1997, p.421). For this reason, MacDonald (1984) suggests that while agency theory correctly identifies major issues related to agency relationships, it may have limited predictive value. This study supports this assumption. External pressures, including competition in the agent market, pressures to retain the use of performance-contingent compensation schemes, and an agent's concern for reputation have had as significant an influence in reducing agent opportunism as have agent certification plans and other, principal-manipulated governance mechanisms. For this reason, market governance seems to have provided the least-cost means of managing economic exchanges (Barney & Hesterly, 1996) in hockey. Although market forces have always been recognised by agency theorists as a means of reducing agency problems (Jensen & Meckling, 1976), the value of the agency model is reduced when environmental factors less controllable by stakeholders (such as market competition) influence the agency dyad to a greater degree than do increasing monitoring or altering the nature of the contract between principal and agent. Although the fundamental goal of firms from an agency perspective is to minimise costs and maximise efficiency by manipulating monitoring levels and compensation strategies (Stroh, Brett, Baumann & Reilly, 1997) according to risk preferences and information asymmetry, the effects of market forces and munificence may more easily explain changes to the player-agent dyad in professional hockey.

Therefore future research in this area might consider frameworks that integrate external pressures more into organisational analysis. In addition, the implicit terms of agency relationships must be examined in more detail. With the complexity of agency relationships in reality in mind, Parks and Conlon (1995, p. 836) suggested that "the interests of research will be better served by an integrative approach through which researchers attempt to understand both economic as well as social factors, how they interact, and under what conditions each predominates." As a result, agency theory may be adjusted or adapted to provide both a richer understanding of principal-agent dyads,

and possible ways in which their relationships can be changed to result in more efficient organisations. These aims are certainly in the best interests of all stakeholders.

Table 6.1

**Factors Influencing Agent Opportunism
in Professional Hockey**

| Factor | Contr- ollable by P? | Agency Prediction | Outcome in Hockey | Support for Model | Explanation |
|--------------------------------|-------------------------------------|---|---|------------------------------|--|
| Agent Certification | Y | <ul style="list-style-type: none"> Decreased info asymmetry Decreased agent opportunism | <ul style="list-style-type: none"> Difficult to attribute to programs | Inconclusive | Ineffective or partial monitoring only, due to lack of enforceability |
| Salary Disclosure | Y | <ul style="list-style-type: none"> Decreased info asymmetry Decreased agent opportunism | <ul style="list-style-type: none"> Decrease in info asymm. Some decrease in opportunism | YES | Dramatic effect of reducing information asymmetry |
| Agent Market | N | <ul style="list-style-type: none"> Decreased agent opportunism Decreased agent share of agent rewards | <ul style="list-style-type: none"> Some decrease in opportunism Decrease in reward relative to player | YES | Dramatic effect, but of limited use due to difficulty in controlling by principals or stakeholders |
| Agent Reputation | N | <ul style="list-style-type: none"> Decreased agent opportunism | <ul style="list-style-type: none"> Strong evidence "word of mouth" | Serendipitous | Same as above |
| Agent Compensation | Y | <ul style="list-style-type: none"> Decrease in contingent compensation | <ul style="list-style-type: none"> Slight decrease, but due more to agent market | Limited | Players have not tried to use alternative (i.e. P-C) compensation schemes |

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CHAPTER 7 CONCLUSION

In recent decades, the theory of agency has become a popular tool for examining principal-agent relationships in the organisational economics literature (Barney & Hesterly, 1996), and has been applied to settings as diverse as public policy (Spiller, (1990), brokering mergers (Kesner, Shapiro & Sharma, 1994), and advertising (Ellis & Johnson, 1993). However, despite its prominence in the organisational literature, agency theory has been frequently criticised for several reasons (Perrow, 1986), including a focus on principal utility to the exclusion of other stakeholder interests (McGuire, 1988), too limiting a view of the social dynamics of agency relationships (Conlon & Parks, 1990), an excessive focus on financial gain as a means of human motivation (Barney & Hesterly, 1996), and a lack of predictive capabilities across research settings (MacDonald, 1984; Nilakant & Rao, 1994). With these potential problems in mind, this thesis research used the professional hockey industry as a case study to examine principal-agent relationships between players (as principals) and agents, and how stakeholders have employed monitoring mechanisms to reduce agent opportunism. In addition, the player-agent, principal-agent dyad was used to test several research questions identified in the agency literature. It was hoped that the results of this research would provide new insight into the theory of agency, and address concerns for the validity of its assumptions found in the literature by using a qualitative approach and examining an alternative agent dyad, between players and agents.

As discussed throughout the three papers that comprise this thesis, the agency model has provided a means to understand the relationship that exists between players and their agents. However, the results suggest that the traditional means of reducing agency problems (by creating monitoring mechanisms and contracting on the outcome of agent behaviour) do not always have as much of an influence on the agency dyad as do other external factors. For this reason, agency theory has limitations in its ability to provide alternatives for principals and stakeholders to reduce agent opportunism. The following provides a summary of each individual study.

Summary of the findings

The onset of this research project involved an overview of recent research and discussions using the agency model. This was done to both tie together the research being done in this area and provide the basis for the theoretical framework that underpinned the specific research undertaken within the thesis. Following the introduction and overview of agency theory presented in chapter two, the fourth chapter used the agency model to identify several key industry changes that have affected the player-agent relationship in professional hockey as it has developed since the late 1960s. Agency theory was then used to identify how the dynamics of the player-agent dyad would be affected. These were identified and explained in detail in chapter four, along with their implications for players and agents in hockey. In particular, the study found that the degree of information asymmetry that has historically favoured agents has been reduced which, according to agency theorists, should result in a reduction of agent opportunism. Using the agency framework, other predictions of the effects of these industry factors were presented in the discussion of that chapter.

The second paper, which comprised the fifth chapter of this study, used the agency model to identify the means through which various industry stakeholders have sought to reduce opportunistic agent behaviour in professional sport generally, and the hockey industry specifically. As explained in Eisenhardt (1989), there are two means through which the residual losses incurred by principals as a result of agent opportunism can be lessened according to the agency model. The first is by contracting on the outcome of agent behaviour (by using a performance-contingent compensation scheme), while the second involves increasing monitoring mechanisms which make it difficult for the agent to act in self-interest without detection. Given that performance-contingent compensation schemes were already widely used in the industry, the agency model suggested that information systems that reduce the information asymmetry favouring agents would be created. In the hockey industry, this involved the creation of agent certification programs, and the influence of professional codes of conduct. Thus, chapter five provided a review of these mechanisms, and an assessment of their effectiveness in reducing hockey agent opportunism using evidence from various industry stakeholders was presented. The agency model then allowed for a means through which a series of

criteria could be developed to determine the value of the programs in reducing agent opportunism for hockey agents. Combined with data collected from industry stakeholders, the merits and problems associated with agent certification programs in terms of the six criteria were identified, and solutions suggested.

The fourth chapter used agency theory to identify important catalysts that have affected the player-agent relationship in hockey since the mid 1960s. The next chapter then recognised concerns of agent opportunism and efforts to reduce self-interested agent behaviour by various industry stakeholders. The agency model then provided a means through which the merits of these programs could be evaluated. The sixth chapter built on the results of these studies to test the assumptions of agency theory; using research questions adapted from the agency literature, including Eisenhardt (1989), a series of predictions were made based on various effects, both deliberate and external, that have affected player-agent relationships. The results of the study provided some support for agency theory; while information asymmetry has been reduced (which has reduced agent opportunism), the use of P-C compensation systems are still the dominant means of compensation in hockey, which is contrary to the predictions of the agency model. According to agency theorists, a decrease in information asymmetry should result in a corresponding decrease in the need for performance-contingent compensation. As a result of this finding, agency theory was discussed in terms of existing criticisms of the agency model expressed in the organisational literature and efforts to alter the agency model to increase its predictive and prescriptive value.

Recommendations for future research

Due to both the limitations and delimitations of this thesis research, there remains significant opportunity for future research examining agency relationships in single-principal, single-agent settings such as that found between players and agents in professional hockey. This section seeks to identify areas of possible research that were beyond the scope of this thesis.

Professional Sport/hockey

As discussed in the introduction and methods chapter of this thesis, the sports industry in North America has been a site of economic and other scholarly analysis (Cairns, Jennett & Sloane, 1986; Neale, 1964; Noll, 1974; Noll & Zimbalist, 1997; Quirk

& Fort, 1992; Scully, 1995; Sheehan, 1996). Some sports, particularly baseball, have been more frequently examined than others (Jennings, 1990; Johnson, 1993; Sommers, 1992; Zimbalist, 1992) have. By comparison, hockey has not been used to analyse organisational or economic issues to the same extent, although a body of research has emerged due to the efforts of several researchers (Jones, 1976a; 1976b; Jones & Davies, 1978; Jones & Ferguson, 1988; Jones, Stewart & Sunderman, 1996; Jones & Walsh, 1988). In and unto itself, a lack of research on the hockey industry in the academic literature is not reason enough to justify future research. However, this study has revealed that the dynamic changes that have occurred in professional hockey over the past four decades provide a unique opportunity to test the assumptions of theories from the organisational literature that, to this point, have only been applied to other organisations and industries.

Another important justification for pursuing research in the professional sports and hockey industries is the presence of non-monetary rewards. For example, Atkinson, Stanley and Tschirhart (1988) found that team owners were motivated by other factors, such as winning, in addition to financial concerns, which has been supported in other research (Mason, 1997; Quirk & El Hodiri, 1974; Zorn, 1994). Thus, an opportunity to test economic approaches that emphasise wealth maximisation exists where non-monetary contributions to personal utility are perhaps even more pronounced than in other industries. Finally, the sport industry has seen a recent trend in shifting from competing within its own market to becoming a part of a burgeoning, global entertainment firmament (Euchner, 1993; Mason, 1998). For this reason, the implications of this change, and the organisational change that it engenders may provide new opportunities for research using sport and hockey as a case study.

Finally, it is important to recognise the impact that former player agent and NHLPA leader Alan Eagleson has had on the business operations of professional hockey. While not a focus of this thesis research, it was understood that many of the deliberate changes made by various stakeholders, particularly the NHLPA, were done so in an effort to atone for the Eagleson's behaviour. Perhaps future research may attempt to examine his impact more closely within the confines of academic research.

Future Agency Theory Research

Perhaps the most important contribution that this thesis has made to the agency literature is in identifying the limitations that the agency model, in its current form, has in providing solutions to agency problems. As explained by Worsham, Eisener & Ringquist (1997), “the descriptive accuracy of the original assumptions becomes a matter of concern if, after they are relaxed to accommodate the empirical reality, the key relationships and conclusions derived from the model no longer hold.” Within this thesis research, the agency model may explain how and why monitoring mechanisms have been created, and why some have been less successful than others, but have only in terms of the greater effects that environmental factors such as the agent market have on the agency dyad. As such, the model has little prescriptive value when factors having greater impact, such as competition between agents for player services, are difficult to manipulate by principals or other stakeholders.

Another problem that faces the agency model is its focus on monetary solutions to agency problems. Although beyond the scope of this thesis research, other contributions to agent utility (such as association with celebrity athletes) play a significant role in reducing agent opportunism. Similarly, ethical considerations (Noreen, 1988) will also influence opportunism beyond the traditional agency solutions to agency problems. For example, an altruistic agent may incur a significant decrease in personal utility in order to act in the best interests of a player, although some might argue that the feeling the agent gets from acting altruistically may result in an a subsequent increase in utility. Regardless, these considerations exist outside of the scope of the agency model, or at least provide examples of the implicit contract that exists between player and agent that, using the current agency model, would be virtually impossible to empirically examine. For this reason, future research using the agency model must not only investigate new settings, but also try to better account for the complexities of agency relationships. This follows Sappington, (1991, p. 63), who reported that the agency approach “may capture incentive problems most simply and starkly, but it avoids such issues as worker loyalty and pride which can be critical to a firm’s success.” A likely means through which this can be accomplished is by combining the agency model with other established organisation theories.

Another important consideration for future research using agency theory is in examining what actually comprises principal interests. As discussed above, it is difficult to determine the appropriate contract due to varying interests and utility functions between player and agent. This problem may be further complicated by principals being unable to contract on their true objective (Baker, 1992). For example, hockey agents are typically remunerated on the basis of a commission derived from the amount of salary paid the player that is negotiated with the team by the agent. However, many players are willing to be paid less money to play in a favourite city, on a winning team, or with certain other players. So how can the contract between player and agent reconcile this problem? While paying an agent a behaviour-based contract would be a first step, how could the player be sure that the agent is working hard enough if signing an appropriate contract with a team on the player's behalf involved significantly more work on the part of the agent? As the results of chapter six would suggest, this could be accomplished by the agent's fear of losing a disgruntled player to another agent, but how can the agent market be directly influenced by players, when an influx of agents might result in a decline in overall agent quality? These questions only reinforce the concerns expressed by critics of the agency model--the dynamics of the agent dyad are too complex to be defined by the basic assumptions of the agency model. However, by focussing on what principal objectives are, future research may be able to shed additional insight into problems associated with converging principal and agent interests, and explaining the success of certain agency dyads (where the agents and principals may be matching up due to similar interests and expectations).

Finally, although this study revealed that players were able to reduce the information asymmetry favouring traditionally agents in hockey, White (1992) showed that eliminating information asymmetries can never completely remove agency problems. For example, White (1992) identified three possible scenarios where agency problems are not reduced, even when monitoring can be achieved at zero cost. The first involves the deliberate misapprehension of agents, while the second involves accidental agent apprehension. The third is where there are limits to the magnitude of sanction for opportunistic agent behaviour. While the first two examples have yet to be studied in hockey, the third has been a problem associated with agent monitoring in professional

hockey and sport in general. For this reason, future studies examining agent certification programs in hockey and other sports might consider in more detail any or both of the first two scenarios in order to better explain the apparent ineffectiveness of virtually all types of player agent certification.

Alternative Approaches to the Agency Model

The discussion in chapter six identifies several alternatives to the agency model. One problem that emerged from this discussion was the emphasis that the agency model has on meeting the interests of the principal; when the agent acts in the best interests of the principal, there is no agency problem. However, chapter six also identified that in some instances, the agent may deliberately harm other stakeholders in order to ensure that principal interests are met, which may have long-term implications for the hockey industry. Building on this potential dilemma, Kurland (1995) suggested that the opposite side of a transaction (in the case of hockey, the team represented by the general manager) be considered a secondary principal, whose interests must also be recognised.

For this reason, a theoretical alternative to examining relationships in hockey (and other industries) may be stakeholder theory. Based on Freeman's (1984) seminal work, stakeholder theorists view an organisation's purpose as not solely to meet the needs of a firm's shareholders; rather, a firm must operate with the interests of all (f)actors who are affected by the organisation's operations. Supporters of the stakeholder model have focussed on identifying and classifying stakeholders, and understanding the degree to which they are affected by firm operations (Rowley, 1997). Given the efforts of other stakeholders within the professional sport industry to control agent opportunism, such as the NCAA, and state and federal governments, the stakeholder model appears to be a reasonable alternative to agency theory.

However, based on the research goals of this thesis research, the agency model was deemed a more effective framework for analysis. The original impetus for this research was to examine a specific relationship between players and agents, and both environmental effects and efforts to control agent behaviour through monitoring. Agency theory's use of the contract metaphor to understand the dynamics of dyadic relationships in organisations is valuable in this instance. According to Rowley (1997), the primary objectives of stakeholder research is identifying stakeholders and the types of influences

they exert. In the case of professional sport (and hockey in particular), identifying stakeholders was not central to the problem of examining agent opportunism, or the means of monitoring agents to reduce potential opportunism. Thus, this study recognised stakeholders and their influences, but used agency theory to assess the appropriateness and success of stakeholder intervention, by identifying environmental factors (chapter four), and deliberate attempts by industry stakeholders to reduce control agent behaviour (chapter five). While stakeholder theory views multilateral contracts among stakeholders (Freeman and Evan, 1990), this thesis research focussed on the relationships within one dyad (player and agent). Therefore, agency theory provided the most appropriate model to underpin this research.

However, as discussed in chapter six, agency theory is limiting in that it assumes that problems can be solved through the deliberate manipulation of various factors, such as the amount of information available to principals and agents, and the terms of the contract that governs their relationship. This study has revealed that other external pressures, including competition in the agent market and pressures to retain the use of performance-contingent compensation schemes have had as significant an influence on the P-A relationship as have agent certification plans. Therefore future research in this area might consider frameworks that integrate external pressures more into organisational analysis.

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APPENDIX A INTERVIEW CANDIDATE PARAMETERS

AGENTS

| | | | |
|-------------------------------|---|--|------------------------------|
| Industry Weight: | Multiple Clients M (More than 10 clients) | Several Clients S (4-10 clients) | Few Clients F (3 or less) |
| Establishment: | Long-time agent (17-plus years) (17 years, Pre WHA merger) | L Established agent (8-17) Newcomer (Less than 8 years) (8 years used, as pre salary disclosure) | E N |
| Possible Combinations: | ML ME MN SL SE SN FL FE FN | | |

PLAYERS

| | | | |
|-------------------------------|--|-----------------------|-----------------|
| Background: | Junior J | Collegiate or Other C | |
| Industry Weight: | Salary in top third \$\$\$ | Middle third \$\$ | Bottom third \$ |
| Establishment: | Over ten years professional V | 5-10 Years Pro A | |
| | Less than 5 years pro experience R | | |
| | (5 years used as line of demarcation because average career length is 5 yrs) | | |
| Possible Combinations: | J\$\$\$V J\$\$\$A J\$\$\$R J\$\$V J\$\$A J\$\$R J\$V J\$A J\$R | | |
| | C\$\$\$V C\$\$\$A C\$\$\$R C\$\$V C\$\$A C\$\$R C\$V C\$A C\$R | | |

MANAGEMENT

| | | |
|-------------------------------|---|--------------------------------------|
| Background: | Former Player F | No previous pro playing experience N |
| Additional Parameters: | Player who has switched agents | SW |
| | Player who has represented self in negotiations | SN |

INTERVIEWS LACKING FROM SAMPLE USED:

MN (could not determine any new agents fitting this criteria)
 SN (could not arrange interviews with anyone fitting this criteria)
 J\$\$\$R (new cap on salary virtually precludes any player from this criteria)
 J\$V (could not determine anyone fitting this criteria—most players who are able to play for over ten years can command a higher, or at least average salary)
 C\$\$\$R (see J\$\$\$R above)
 C\$\$R

NOTE: Some questions were set up specifically for certain subjects. For example, when interviewing someone in the management category who was a former player, questions were also asked regarding his experience as a player, which allowed the researcher to cover many parameters above.

INTERVIEWS AND PARAMETERS COVERED

INTERVIEWED:

| | | | |
|-----|--|--|---|
| #1 | as player: as agent: as manager: | C\$SA, CSA, CSR SN F | 2 interviews, 1 phone, 1 personal, both taped |
| #2 | as player: his agent: | JSR (FL) | direct interview, taped |
| #3 | as player his agents | J\$SV, J\$\$\$V, J\$SA, SW (ME), (SE) | direct interview, taped |
| #4 | ME his players | (C\$\$\$V), (J\$SR) | direct interview, taped |
| #5 | FN | | direct interview, taped |
| #6 | as player his agents | JSA, J\$SA, J\$SR, SW (ME), (SL) | direct interview, taped |
| #7 | N | | phone interview, taped |
| #8 | ML, SL his players | (C\$\$\$A), (C\$SV) | phone interview, taped |
| #9 | as player highly recruited by agents as a junior player phone interview, not taped | J (Never made it to NHL) | |
| #10 | prominent league stakeholder phone interview, not taped (by request) | | |
| #11 | sports lawyer informal interviews regarding state of industry, views on agents direct, not taped | | |
| #12 | FE informal interview, not taped | | |

APPENDIX B

SAMPLE INTERVIEW QUESTIONS: PLAYER AGENTS

History

What, in your opinion, led to the development of player agents in professional team sport?

What changes have occurred that have affected both the role of agents and their position in the industry?

How long have you been involved in the player agent business, and how did you become involved?

Do you work with other parties in order to provide services for your clients?

How do you acquire clients?

What training or experience did you have that made you feel capable of representing professional athletes?

Do/did you recognise and/or endorse any existing or defunct agent regulation programs (ARPA, state, NCAA)?

In your own opinion, how do you compare yourself with other agents, in terms of

number of clients
industry influence

How do you think your position within the industry affects your views? How would they be different from other agents?

Programmability

What duties do you perform for your clients?

Do the duties that you perform vary according to specific players?

How does this compare to other agents?

How are you compensated for your services?

Do you charge the same fee, or use the same fee structure for all the players that you represent?

In your opinion, what is the most widely used means of compensation?

Have your duties, and the means through which you are compensated changed since you began representing athletes? In what ways?

Measurability

How do you think players evaluate your own services? Other agents? The NHLPA?

Do the services that you provide for clients sometimes exceed that for which is initially specified or contracted for?

General

Have you noticed any changes to the industry since you began representing athletes, regarding:

bargaining position
fees
role of agents
competition for clients
opportunities to enter the profession

How have the relationships that you have held with your long-term clients changed over time?

Are the relationships that you develop with new clients different from already-established ones?

How has the advent of salary disclosure affected your ability to perform your duties as an agent?

Have changes to player mobility affected your relationships with your clients?

How has NHLPA certification affected you?

Are there other factors that have affected your profession?

Do you see these recent changes as helpful or harmful to your work?

Opportunistic Behaviour

The behaviour of certain agents--both good and bad--have been highly publicised. What is your own perspective on player agents as a profession, in terms of

media or public perception
actual perception

Do you feel that the industry has been fairly or unfairly criticised for the behaviour of certain agents?

As a whole, are most agents able to adequately serve their clients?

Do you think the presence of legal training has any effect on the perception, behaviour and performance of certain agents?

How has the behaviour of certain agents affected the industry, and your own ability to represent clients?

Have you taken additional steps to ensure existing and prospective clients of your capabilities, and if so, at what cost?

Regulation

Do you feel that agent regulation is necessary, and why?

Why do you think that the NHLPA decided to initiate an agent certification program?

Will it work? Why or why not?

How has the increased intervention of the NHLPA affected your relationship with your clients?

Are there alternative means of regulating agents that have not yet been considered?

Ethics

While you owe a fiduciary duty to negotiate on behalf of the athlete, do you feel any ethical obligation to act fairly towards the team, other agents, or any other stakeholders in the industry?

Do you feel that other agents share your opinion?

General

Do you have any general feeling about any changes that will occur in the future of the industry, that affect you personally, or agents in general, regarding:

- player mobility
- expansion
- agent services
- agent fees
- agent certification
- increasing revenues

Do you have any recommendations for further change that you can foresee helping the industry?

APPENDIX C

INFORMED CONSENT FOR THE RESEARCH PROJECT

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Investigator:
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Research Supervisor:
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Agency Theory and Athlete Representation in Professional Hockey

I, _____, agree to participate in the research project conducted by Daniel Mason to investigate the development, function, and conditions of player representation in professional hockey. Participation in this study will involve me in an interview that will last approximately one to one and a half hours. I am free to ask any questions before, during and after the interview, and may refuse to answer specific questions throughout the interview without having to withdraw completely from the study.

The questions asked will be about your views and involvement in the development of the player agent business. The information that you provide to us will be kept confidential and at no time will you be personally identified in any work that emanates from this study. The interview will be tape recorded, and erased after transcription. The only person who will see the transcript of your interview will be the investigator. If at any time you wish to withdraw from this study you may do so without consequence, by contacting the investigator at the above address. There are no risks or dangers to you being involved in this interview and if you have any questions about the research you may contact the investigator, Daniel Mason, at the above address or phone number.

The results of this study will provide further insights into growth and change in player representation in the professional hockey industry. Using the economic theory of agency, which analyses principal-agent relationships across many professions, a better understanding of the issues and any potential problems that underpin player representation in the professional hockey can be facilitated.

Consent:

I have read this document and agree to participate in this project. I may withdraw my participation at any time and for any reason without penalty or consequence. I will receive a copy of this signed document.

Signatures:

Subject _____

Date _____

Investigator _____

Date _____

APPENDIX D

INTERVIEW DATA CODING KEY

| | |
|--------|---|
| ILRT-H | Increased labour relations tension in hockey |
| ILRT | Increased labour relations tension |
| SD\$ | salary disclosure leads to increasing salaries |
| SD-I | salary disclosure leads to increased info to all parties |
| GOOD | Goodenow's arrival at NHLPA lead to increasing salaries |
| GT | Gretzky trade to LA leads to increase in salaries |
| IR-\$ | Increased league revenues lead to increased salaries |
| ODP | Overly defensive, even paranoid |
| IMC-A | increased market competition for agents |
| AUQ | agents underqualified to perform duties |
| CI-P | conflicts of interest, too many players |
| TP-F\$ | agents with too many players, favouring highest paid |
| CI-C | conflicts of interest, player-coaches |
| CI-SM | conflicts of interest, sport management firms |
| IPTY | increase in agent programmability |
| DPTY | decrease in agent programmability |
| IMTY | increase in agent measurability |
| DMTY | decrease in agent measurability |
| IU | increased uncertainty |
| DP | decreased uncertainty |
| OABI | agent origins from bargaining imbalance between player and team |
| HW | hockey worse than other sports in terms of the treatment of players by management |
| ASOI | agents in sport similar to other industries |
| ADOI | agents in sport dissimilar to other industries |
| PWAFA | Players want additional attention from agents |
| AOWIS | agent opportunism worse in sport to that of other industries |
| AOBH | agent opportunism less in hockey than in other sports |
| EBPW | Eagleson primary reason for player woes |
| 20-80 | 20% -80% rule (20 percent of agents represent 80% of the players) |
| SPC | use of PC contract is standard |
| SPC-A | use of PC contract standard for all players one agent represents |
| IPIB | increased player involvement in their own business affairs |
| IPRS | increase in players representing themselves in negotiations |
| AOTS | agent opportunism toward stakeholder |
| AOTP | agent opportunism toward principal |
| POTS | principal opportunism toward stakeholder |
| POTA | principal opportunism toward agent |
| PCIO | PC contract attributed to increased opportunism |
| PCDO | PC contract attributed to decreased opportunism |
| AB | agent as buffer |
| ADOIS | agents in sport different to from other industries due to services provided |
| ABIBC | agents acting in best interests of P beyond that for which is contracted for |
| ARP | agent reputation poor |
| WOM | word of mouth |
| WOM-DO | word of mouth decreases opportunism |
| II-P | increased information to principal |
| II-PCS | increased information to principal, based on career stage |
| II-A | increased information to agent |
| IAMY | info asymmetry more a problem for young players |
| AYP | agents more necessary for young players |
| ASP | agents more necessary for high \$ players |
| LNFA | less need for agent |

| | |
|-----------|--|
| DS-OP | agents delegating services to other parties |
| DIA-P | decreased information asymmetry traditionally favouring the principal |
| DIA-A | decreased information traditionally favouring the agent |
| RAL | active recruitment of players by lawyers (which may compromise their ethical code) |
| IPC | increased use of PC contracts |
| DPC | decreased use of PC contracts |
| D% | decreased % of PC contract |
| D-AI | decrease in agent ignorance |
| IO-A | increased opportunism, agent, over time |
| DO-A | decreased opportunism, agent, over time |
| IO-P | increased opportunism, principal, over time |
| DO-P | decreased opportunism, principal, over time |
| PL-NHLPA | evidence of toeing the party line, source NHLPA |
| PL-NHL | evidence of toeing the party line, NHL source |
| AOO-M | overstated agent opportunism, media related |
| AOO-S | overstated agent opportunism, stakeholder |
| AOO-A | overstated agent opportunism, agents |
| OSC-P | other stakeholder concern on the part of players |
| OSC-A | other stakeholder concern, agents |
| OSC-T | other stakeholder concern, team affiliated individuals |
| NSC-P | no concern, player |
| NSC-A | no concern, agent |
| NSC-T | no concern, team |
| LMC | lawyers viewed as more competent to represent players |
| LLC | lawyers less competent |
| LNDC | lawyers no different in competence |
| ILA | increase in use of lawyers as agents |
| AAIPA | approves of agent involvement in Labor relations, NHLPA business |
| DAAIPA | doesn't approve of agent intervention into PA affairs |
| NHLPA-IAM | NHLPA increasing monitoring of agents on players' behalf |
| AIM-NHLPA | agents increasing their monitoring of NHLPA on behalf of players |
| ARF% | agent resistance to fee changes |
| IAS-C | increased need for agent services, due to complexity |
| FR-HE | fixed rate for high-end players |

Monitoring discussions

| | |
|----------|--|
| R-NHLPA | NHLPA cert recommended |
| R-PA | PA cert recommended |
| R-S | state cert recommended |
| R-F | federal reg recommended |
| R-MR | model rules and other reg recommended |
| R-NCAA | NCAA rules recommended |
| R-CS, CF | comprehensive state or federal recommended |
| N-NHLPA | NHLPA not recommended |
| N-PA | PA not |
| N-S | State not |
| N-F | Federal not |
| N-MR | model rules not |
| N-NCAA | NCAA not |
| N-CS,CF | comprehensive not |
| CW | certification in general works |
| CDW | certification in general doesn't work |
| CDW-CF | certification in its current form doesn't work |