

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE Mr.)
JUSTICE R. Raikes)

Thursday , THE 23^d DAY
OF May , 2023

B E T W E E N:

KOREY BANKS and ERIC ALLEN

Plaintiffs

- and -

MARK STEVEN COHON, THE CANADIAN FOOTBALL LEAGUE, B.C. LIONS FOOTBALL CLUB INC., EDMONTON ESKIMO FOOTBALL CLUB, CALGARY STAMPEDERS 2012 INC., SASKATCHEWAN ROUGHRIDER FOOTBALL CLUB INC., WINNIPEG BLUE BOMBERS, THE HAMILTON TIGER-CAT FOOTBALL CLUB, TORONTO ARGONAUTS FOOTBALL CLUB INC., COMPAGNIE CLUB DE FOOTBALL DES ALOUETTES DE MONTRÉAL, CAPITAL GRIDIRON LIMITED PARTNERSHIP c.o.b. as OTTAWA REDBLACKS FOOTBALL CLUB, CAPITAL GRIDIRON GP INC., THE GENERAL PARTNER OF CAPITAL GRIDIRON LIMITED PARTNERSHIP, OTTAWA RENEGADES FOOTBALL CLUB INC.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6

**ORDER
(Motion to Discontinue and Approve Notices)**

THIS MOTION, made by the Plaintiffs for an Order approving the discontinuance of the within action (the “Ontario Action”), approving the notices of discontinuance, and removing Eric Allen as proposed representative plaintiff was heard on April 6, 2023 at the Court House, 700 Christina St. N, Sarnia, Ontario.

ON BEING ADVISED that one of the proposed representative Plaintiffs, Mr. Eric Allen, has passed away and counsel have not been provided the required instructions to continue the litigation on his behalf; and


ON READING the Motion Records filed by the Plaintiffs, hearing the submissions of the Plaintiffs, and on consent of the parties to the Action:

- 1. **THIS COURT ORDERS** Eric Allen be removed as proposed representative plaintiff.



2. **THIS COURT ORDERS** the action is hereby discontinued, as against all of the defendants, on a without costs basis, pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
3. **THIS COURT ORDERS** that the short-form and press release notices of discontinuance (the “Notices”) are hereby approved substantially in the form attached hereto as **Schedule “A”**, pursuant to sections 19 and 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
4. **THIS COURT ORDERS** that the Plan of Dissemination of the Notices is hereby approved substantially in the form attached hereto as **Schedule “B”** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.

Date: May 23, 2023



The Honourable Mr. Justice Raikes

SCHEDULE "A"

LEGAL NOTICE AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

NOTICE OF DISCONTINUANCE OF THE CANADIAN FOOTBALL LEAGUE CLASS ACTION

ARE YOU A FORMER PLAYER IN THE CFL? IF SO, YOUR RIGHTS COULD BE AFFECTED.
READ BELOW TO LEARN MORE.

THE CFL CLASS ACTION HAS BEEN DISCONTINUED

A class action lawsuit was commenced in Ontario against the Canadian Football League ("CFL"), its teams, former commissioner and others on behalf of former CFL players who suffered concussion-related injuries while playing in the league ("Former Players").

Former CFL player Arland Bruce also filed a similar concussion-related lawsuit as an individual (not as a class action). After a hearing and appeals all the way to the Supreme Court of Canada, Mr. Bruce's legal claims were directed to proceed by way of labour arbitration rather than through the courts.

The class action lawsuit has now been discontinued (withdrawn) against all of the defendants. This is because it is likely that claims relating to Former Players' concussions are required to be resolved through labour arbitration rather than in the courts.

Arbitration is a private contractual dispute resolution process that occurs before a decision maker known as an arbitrator. In this case, the Arbitration process is driven by the Collective Bargaining Agreements ("CBA's") established between the CFL Player's Association ("CFLPA") and the CFL defendants over time.

YOU HAVE THE OPTION TO MAKE A CLAIM FOR CONCUSSION RELATED INJURY THROUGH AN ARBITRATION PROCESS

The CFL Defendants (the league, its teams and former commissioner Mark Cohon) have agreed to a labour arbitration process whereby Former Players alleging a concussion related injury as of [redacted] can seek to file a claim (known as a "Grievance" within the arbitration process). The arbitration process will be governed by the applicable CBA as follows:

- For claims that arise pre- May 2019 the 2014-2019 CBA will apply; and
- For claims that arise after May 2019, the subsequent CBA will apply.

The arbitration process provides, among other things, that:

- Former Players who were suffering from, or could reasonably be expected to have known that they were suffering from, a concussion-related injury as of [redacted] may initiate a Grievance under the terms of the applicable CBA;
- The scope of the claims and relief available to Former Players under the 2014-2019 CBA incorporates a tort law structure. That structure includes the capacity for Grievances concerning a duty of care, negligence, negligent misrepresentation and equitable treatment by the CFL and the teams toward Former Players in relation to player safety, well-being and treatment of concussion-related injuries;
- Arbitration imposes no monetary limits to compensation that a Former Player can seek pursuant to the CBAs;
- For the period from January 1, 2017 to [redacted] the CFL will not raise any timeliness argument and it agrees that no arbitrator has jurisdiction to consider any delay for that time period. The CBAs otherwise include a timeliness requirement that a Grievance must be commenced within one year of the time in which the basis for the claim was reasonably discoverable by the Former Player;
- Otherwise, the arbitrator shall determine all issues of timeliness and discoverability concerning a Grievance made by a Former Player. The claims of Former Players are subject to discoverability rules under the CBAs and at law, and in respect of the Former Player's ability to discover the existence of their claim including factors concerning their personal mental or physical competence. Former Players may also make arguments concerning tolling rights for the timeliness of their claims, if applicable, under the *Class Proceedings Act, 1992*.

There is no guarantee of success for any party in any legal proceeding including within an arbitration. Former Players and the CFL defendants retain all claims and defences that are available to them under the CBAs or at law.

To the knowledge of Mr. Bank's counsel and the CFL defendants, certain notices of arbitration for concussion related claims have been filed by Wishart Brain & Spine Law (contact details below) and by the CFLPA.

THE ARBITRATION DEADLINE

Former Players known to have suffered a concussion-related injury caused while playing in the CFL prior to [redacted] and wishing to file a Grievance to participate in the arbitration process **must file their Grievance(s) by [redacted], which is 6 months from [redacted].**

Former Players looking to file a Grievance may hire a lawyer of their choice to assist them.

WHAT HAPPENS IF I DO NOT FILE A GRIEVANCE?

If you know you suffered a concussion-related injury while playing in the CFL and do not file a Grievance by [redacted], you will not be entitled to file a claim at a later date.

MORE INFORMATION

For more information about the discontinued class action please visit [redacted] or contact:

Foreman & Company: Toll free at 1-855-814-4575 ext. 107 or e-mail at classactions@foremancompany.com; or
Camp Fiorante Matthews Mogerma LLP: Toll free at 1-800-689-2322 or e-mail at info@cfmlawyers.ca.

For assistance in filing a Grievance, please contact your own lawyer.

Robyn Wishart of *Wishart Brian & Spine Law* has also initiated Grievances for Former Players. Ms. Wishart can be reached at: Toll free at 1-855-947-4278 or e-mail at rlw@wishlaw.ca.

Canadian Football League (“CFL”) Class Action Discontinued

LONDON, ON - ●. A class action lawsuit launched on behalf of former Canadian Football League players against the CFL, its teams, former commissioner and others for concussion-related injuries has been discontinued (withdrawn).

Players who ceased being a member of an active CFL roster as of today (“Former Players”) can seek to advance their claims through labour arbitration for any disputes alleging concussion related injury pursuant to the CFL’s collective bargaining agreements (“CBAs”).

The class action has now been discontinued (withdrawn) against all of the defendants because: i) it is likely that claims relating to Former Players’ concussions are required to be resolved through labour arbitration rather than by the court and ii) the CFL defendants (the league, its teams and former commissioner Mark Cohon) have agreed to a labour arbitration process where claims for concussion-related injuries to Former Players can be made.

The arbitration process will be governed by the applicable CBA as follows:

- For claims that arose before May 2019, the 2014-2019 CBA will apply; and
- For claims that arise after May 2019, the subsequent CBA that is in force at the time of the claim will apply.


The agreement regarding the arbitration process provides, among other things, that:

- Former Players who were suffering from, or could reasonably be expected to have known that they were suffering from, a concussion-related injury as of ● may initiate a claim under the terms of the applicable CBA (claims in an arbitration are known as a “Grievance”);
- The scope of the claims and relief available to Former Players under the 2014-2019 CBA incorporates a tort law structure. That structure includes the capacity for claims concerning negligence, negligent misrepresentation and equitable treatment by the CFL and the teams toward Former Players in relation to player safety, well-being and treatment of concussion-related injuries;
- The arbitration process imposes no monetary limits to compensation that a Former Player can seek pursuant to the CBAs;
- The CFL will not raise any timeliness argument for the period between January 1, 2017 to ●; and,
- Otherwise, the arbitrator shall determine all issues of timeliness and discoverability concerning a Grievance made by a Former Player, including factors concerning discoverability and tolling rights, if applicable, under the *Class Proceedings Act, 1992*.

There is no guarantee of success for any party in any legal proceeding including by way of an arbitration. Former Players and the CFL defendants retain all claims and defences that are available to them under the CBAs or at law.

Subject to certain exceptions, the deadline for Former Players to file their grievances is ●. Former Players looking to file a grievance may hire a lawyer of their choice to assist them. **Important: if you know you suffered a concussion-related injury while playing in the CFL and you do not file a Grievance by ●, you will likely lose the ability to seek compensation for your injuries from the CFL defendants.**

To the knowledge of Mr. Bank's counsel and the CFL defendants, certain notices of arbitration for concussion related claims have been filed by Wishart Brain & Spine Law (contact details below) and by the CFL Player's Association ("CFLPA").

For more detailed information, including Court-approved Notice, please visit .

Please visit: Wishart Brain & Spine Law, Robyn Wishart Toll Free: 1-855-947-4278
(rlw@wishlaw.ca)

Media Contact: Foreman & Company, Jonathan Foreman (jforeman@foremancompany.com)

SCHEDULE "B"

Plan of Dissemination

The Notice of Discontinuance and Arbitration will be distributed in short-form and press release format (collectively the "Notices"). The Notices will be delivered via the following media:

1. The short-form notice, a copy of the discontinuance order and a copy of the Court's endorsement issued in relation to the discontinuance approval process will be posted on the respective websites of plaintiffs' counsel. A link to the websites, as appropriate, will be posted on Class Counsel's social media accounts (including but not limited to Facebook, LinkedIn and Twitter).
2. By distribution to major news and broadcast outlets across Canada through a press release on Canada Newswire with promotion through Canada Newswire's social media feeds.
3. The short-form notice will be provided to the CFL Alumni Association, requesting voluntary distribution to its membership and/or that a copy of the short-form notice or information about the discontinuance and arbitration process be posted on its website and social media channels, as applicable. The manner by which any Notices and/or information are distributed will be at the discretion of the CFL Alumni Association.
4. Within seven (7) days of the first publication of the Notices, the short-form notice will be sent by direct mail, fax and/or e-mail to:
 - a. all persons who have registered to receive updates from Class Counsel about the Ontario Action;
 - b. all Former Players disclosed to Class Counsel by the CFL Defendants that are currently in their possession or can be obtained through public means; and
 - c. all persons or organizations who request a copy.

KOREY BANKS et al.
Plaintiffs

v. MARK STEVEN COHON, et al.
Defendants

Court File No. 1046/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Motion to Discontinue and Approve Notices)**

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