

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SAMUEL BERG

Plaintiff

and

CANADIAN HOCKEY LEAGUE, ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, ONTARIO HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE INC., WINDSOR SPITFIRES INC., LONDON KNIGHTS HOCKEY INC., BARRIE COLTS JUNIOR HOCKEY LTD., BELLEVILLE SPORTS AND ENTERTAINMENT CORP., ERIE HOCKEY CLUB LIMITED, GUELPH STORM LIMITED, KINGSTON FRONTENAC HOCKEY LTD., 2325224 ONTARIO INC., NIAGARA ICEDOGS HOCKEY CLUB INC., BRAMPTON BATTALION HOCKEY CLUB LTD., GENERALS HOCKEY INC., OTTAWA 67'S LIMITED PARTNERSHIP, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED., COMPUWARE SPORTS CORPORATION, SAGINAW HOCKEY CLUB, L.L.C., 649643 ONTARIO INC c.o.b. as SARNIA STING, SOO GREYHOUNDS INC., McCRIMMON HOLDINGS, LTD. AND 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS., 1056648 ONTARIO INC., REXALL SPORTS CORP., EHT, INC., KAMLOOPS BLAZERS HOCKEY CLUB, INC., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., HURRICANES HOCKEY LIMITED PARTNERSHIP, PRINCE ALBERT RAIDERS HOCKEY CLUB INC., BRODSKY WEST HOLDINGS LTD., REBELS SPORTS LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP, 8487693 CANADA INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC., CLUB DE HOCKEY DRUMMOND INC., CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUEBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCEANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC., and CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, C.6

AFFIDAVIT OF BRENDAN O'GRADY

Sworn June 15, 2016

(Motion for Certification)

I, BRENDAN O'GRADY, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am a lawyer with the law firm Charney Lawyers PC, counsel for the plaintiff in this action and companion actions in Alberta and Quebec, and as such I have knowledge of the matters to which I hereinafter depose. Where I do not have firsthand knowledge, I have specified the source of the information and I hereby state that I verily believe such information to be true.

Articles, By-Laws & Constitutions of the Leagues

2. Attached hereto and marked as **Exhibit "A"** are the Articles of the Ontario Hockey League ("**OHL**").

3. Attached hereto and marked as **Exhibit "B"** are the By-Laws and Constitution of the Western Hockey League ("**WHL**"), adopted February 4, 2013.

4. Attached hereto and marked as **Exhibit "C"** are the Articles and By-Laws of Hockey Canada Effective 2009/10 Season.

5. Attached hereto and marked as **Exhibit "D"** are the Articles and By-Laws of Hockey Canada Effective 2014/15 Season.

Policies of Hockey Canada

6. Attached hereto and marked as **Exhibit "E"** is the Hockey Canada Canadian Development Model Parent Information Handbook. At page 5, the document explains how the Canadian Development Model ("**CDM**") is designed to keep the "best players in the Canadian system". At page 5, the document explains that "it is a priority to encourage

players to compete at the highest possible level within the system”. This is achieved by requiring all 15-year-olds to play midget hockey so they are eligible for the Canadian Hockey League (“CHL”) drafts, and allowing CHL teams to have four 16-year-olds whereas inferior leagues are only allowed two 16-year-olds.

7. Below I attach an article entitled, “Junior-A Leaders Feeling the Freeze” by Ken Campbell, published by the Hockey News on February 26, 2008. The article reports that Junior “A” clubs are critical of the CDM because it is only designed to make money for Major Junior clubs and leagues.

Parliamentary and Senate Hearings & Government Commissions

8. Attached hereto and marked as **Exhibit “F”** is the Report of the Committee on International Hockey, 1978 commissioned by the Federal Minister of State, Fitness and Amateur Sport. The Committee found the following:

It should be recognized that major junior hockey is a professional operation. Hence the individual player should be able to bargain for the team of his choice, remuneration...Frankly, we are chilled by the thought of 16 to 19 year olds traveling scores of thousands of miles to play as many as 100 games a season, from Portland to Flin Flon or even from Windsor to Sault Ste Marie to Ottawa. Do the entrepreneurial gains and the developmental worth of junior hockey justify such an exploitative arrangement?

9. Attached hereto and marked as **Exhibit “G”** is an article entitled, “Juniors will turn pro if Ottawa has its say” by Donald Ramsay, published by the Globe and Mail on October 28, 1978. The article describes a Report of the Canadian Hockey Review which recommended that major junior hockey be deemed minor professional hockey.

10. Attached hereto and marked as **Exhibit “H”** are sections from the Canadian Hockey Review: Interim Report on Minor Amateur Hockey in Canada, dated March 1, 1979, commissioned by the Minister of State for Fitness and Amateur Sport. The Interim Report indicates that major junior hockey will be studied in depth by the Review with particular emphasis on the moral and ethical dimensions of junior hockey. It also notes at page 94 that major junior hockey may be classified as “professional” rather than “amateur” for purposes of the *Combines Investigation Act*.

11. According to the *Law of Hockey* by John Barnes (Lexis Nexis, 2010) at page 323, sections 6 and 48 of the *Competition Act* were subsequently amended to clarify an exemption in the *Combines Investigation Act* for “amateur sport”. Citing senate committee hearings, Professor Barnes writes, “it is clear that Major Junior hockey leagues are regarded as professional organizations” and that the Act applies “to any league in which there is widespread payment to players of salaries for services.” The relevant pages of this text are attached hereto and marked as **Exhibit “I”**. The Act was also cited in argument in *Sheddon v OMJHL* (1978), 19 OR (2d) 1 (H.C.J.) with regards to transfer/trades between clubs.

12. Attached hereto and marked as **Exhibit “J”** are select passages of the Sixth Report of the Parliamentary Standing Committee on Canadian Heritage, Sub-Committee On The Study Of Sport in Canada, December 1998. At Table 5, the report indicates the following:

...With its 47 franchises in Canada, the CHL had an attendance of 4.5 million spectators in 1997-98, more than any major league sport in Canada. The charts at the end of this section compare attendance at Canadian Hockey League events and at professional sport league events in Canada and shows the evolution of attendance at Canadian Hockey League games since the 1979-80 season. According to the Canadian Hockey League, the direct and indirect economic impact of its activities is estimated at \$135 million annually.

13. Attached as **Exhibit “K”** are select passages of the transcript of a hearing before the Sub-Committee On The Study Of Sport in Canada held on November 5, 1998. David Branch, Commissioner of the OHL and President of the CHL, testified. He said the following at 1635:

On the video, you also saw the attendance numbers, which are quite interesting. When you look at the 1990s, we in junior hockey consider it a renaissance in junior hockey. There has been a tremendous explosion that has not only added additional teams across the country, but has seen increased interest and awareness, live spectator support, and ability to market and promote ourselves to a much greater and better extent. We have a new national TV contract that we were able to secure through the new cable channel, CTV Sportsnet, which will see some 65 nationally televised games this year, including the entire Memorial Cup tournament.

David Branch said the following at 1715:

... In the last two years we have seen the involvement of two junior leagues in the United States, and now there's a third. They have clearly said that in order for them to compete at the level we're at in Canada, to compete internationally, to compete in terms of the number of players going on to the NHL, we've come to realize that the best way to develop these young men is through having them playing in a program that's very demanding.

We are on the ice virtually every day of the week, and we get top-level coaching and top competition in order to meet the needs of high standards. In fact the Americans have taken it a step forward and now have a program in place in Ann Arbor, Michigan. They bring the top forty players from across their country into an intensive training program period. In speaking to Jeff Jackson, who runs that program on behalf of U.S.A. Hockey, I asked him if he was worried that this may even take away development opportunities in those areas from which a player is taken away—say, the top player from Edina, Minnesota—and what about those players left back there. He said I was right, but that what they're trying to do is initially create a spark that will show Americans they can

compete with us damn Canadians at a high level. Once they establish a better mindset, they will then push them all back to their club team programs.

Gilles Courteau, Commissioner of the Quebec Major Junior Hockey League (“QMJHL”), said the following at 1645:

For the 13th straight year, CHL attendance has increased. What are the ingredients of this success? With 47 Canadian-based clubs, the CHL has more teams than any other professional or amateur league in the country. We are really what can be called a national league at the junior level.

... There's also a great deal of interest in the community. Ninety percent of the players are Canadian and generally are from the same city or town where the team plays. It's entertainment where you see a lot of enthusiasm, it's very intense, very emotional because the team plays to its fans night after night.

14. Attached hereto and marked as **Exhibit “L”** is the transcript of debates at the Parliamentary Standing Committee on Finance on November 22, 2005 in the First Session of the 38th Parliament. Members of Parliament debated Bill 285, *An Act to amend the Income Tax Act (exclusion of income received by an athlete from a non-profit club, society or association)*. The bill sought to exclude Junior “A” hockey players (i.e. the tier below CHL players) from making contributions to Employment Insurance and Canadian Pension Plan from the weekly allowances they received from their team. Referencing CHL teams, MP David Anderson notes at 1555 that CHL teams already consider their players to be employees for tax purposes and render EI and CPP contributions. He said, “The junior A major hockey league teams are happy to have their players considered to be employees. They are paying EI and CPP; that's not an issue with them.”

15. Edward Short, Senior Officer of the Tax Policy Branch, Department of Finance, said at 1650 that the Canadian Revenue Agency had met with Hockey Canada to set out guidelines for rendering Employment Insurance and CPP contributions.

16. MP Brian Pallister notes that CHL players largely abandon their schooling to play at the highest level, while Junior “A” players prioritize their schooling and play at a lower level. He said the following at 1655:

There's a long-standing, shallowly guarded secret about hockey in this country that says if you want to play major junior or tier one junior hockey, you can put your education on the back burner. Many of the players who play at that level know that's the choice they're making when they play, in the hopes of big NHL contracts or whatever.

The tier two players, those you are trying to address with your bill, have made a conscious choice to try to keep their education at a higher priority level. Some of them arguably could play tier one in western Canada or in Ontario Hockey League hockey, but they're trying to keep education as a priority in their lives and they hope to play college hockey. Because of the skills they'll develop at this so-called lower level, they hope to be able to have some help in pursuing their post-secondary education. This is something that is a major concern to me if the CRA, in its efforts to swat a mosquito with a bazooka, is jeopardizing the future of several thousand young Canadians in the sense of their ability to pursue post-secondary education.

CHL Clubs Treat Players Like Employees for Tax Purposes

17. On November 24, 2000, the Tax Court of Canada held that WHL players on the Brandon Wheat Kings were employed under contracts of service with the Wheat Kings and were therefore engaged in insurable and pensionable employment pursuant to the *Employment Insurance Act*, *Unemployment Insurance Act* and the *Canada Pension Plan*. This decision is indexed as *McCrimmon Holdings Ltd v Canada (Minister of National Revenue - MNR)*, [2000] TCJ No 823. The Court held the following:

But, the business of the Wheat Kings is simply the business of hockey. It is a commercial organization – albeit beloved by the citizens of Brandon – carrying on business for profit. The players are employees who receive remuneration – defined as cash – pursuant to the appropriate regulations governing insurable earnings. It would require an amendment to subsection 5(2) of the Employment Insurance Act in order to exclude players in the WHL – and other junior hockey players within the CHL – from the category of insurable employment.

18. Kiara Sancler, a law clerk at Charney Lawyers, obtained the complete Court records from these proceedings. The Court maintained separate records for the *Employment Insurance Act* and *Unemployment Insurance Act* claims, and for the *Canada Pension Plan* claims.

19. Attached hereto and marked as **Exhibit “M”** is the complete record for the *Employment Insurance Act* and *Unemployment Insurance Act* claims, indexed as *McCrimmon Holdings Ltd and 32155 Manitoba Ltd v Minister of National Revenue*, Court File Number 2000-1538. Charney Lawyers is in possession of the complete record for the *Canada Pension Plan* claims, indexed as *McCrimmon Holdings Ltd and 32155 Manitoba Ltd v Minister of National Revenue*, Court File Number 2000-1540. It is almost identical to the record attached hereto.

20. Attached hereto and marked as **Exhibit “N”** is an article entitled, “Junior teams to get primer in tax law” by Allan Maki, published by the Globe and Mail on March 1, 2003. The article reports that Junior “A” teams must make Employment Insurance and Canadian Pension Plan contributions for money paid to players or their billets. This was also reflected in parliamentary transcripts discussed above.

21. Attached hereto and marked as **Exhibit “O”** are redacted T4 Forms for the 2010, 2011, 2012 tax years issued to a player on the OHL Ottawa 67's. Each T4 indicates that

the player received employment income from the Ottawa 67's. The player advised me and I verily believe that he only provided services as a hockey player, as set out in his standard player agreement, and he did not perform any additional tasks for the club. The T4 forms are redacted because the player allowed Charney Lawyers to produce these T4s only on the condition that his identity would remain confidential. He expressed to me his fear that his former club would likely denigrate and blacklist him if they discovered his cooperation with plaintiff's counsel.

22. Attached hereto and marked as **Exhibit "P"** are select passages from the Canada Revenue Agency Employers' Guide: Payroll Deductions and Remittances.

23. Attached hereto and Marked as **Exhibit "Q"** is an archived Canada Revenue Agency guideline entitled, "Athletes and Players Employed by Football, Hockey and Similar Clubs", effective September 4, 2002. The guideline provides that "a player's income from employment includes... living and travel allowances" as well as "honoraria".

24. Attached hereto and marked as **Exhibit "R"** is an article entitled, "Learning About the Western Hockey League and Major Junior Hockey" by Travis Hair, published by SB Nation on February 23, 2010. The article reports on an interview with Tyler Boldt, the WHL's Manager of Player Development and Recruitment who notes that all of the players' remuneration was at the time of the interview subject to tax deductions.

[Interviewer]: All of your players receive stipends. How much do the players get? Is it just enough to kick around town? Or is it a substantial amount?

Boldt: [laughing] It's about enough to go to the movies once a week. The amount changes year by year. A 16 year old player gets \$160 a month. So they get 80 dollar checks every 2 weeks less taxes. And then it goes up so that by the time you're 19 you get \$240 a month. Basically we call it an allowance because it's really just enough money so

that the players aren't bugging their parents for money too much. So they're not really making any money.

Major Junior Hockey Clubs are Businesses Interested in Maximizing Revenue

25. Attached hereto and marked as **Exhibit "S"** is an article entitled, "Franchise values a good indicator of a rosy future" by David Naylor, published by the Globe and Mail on May 20, 2005. The article reports:

Soaring franchise values, successful expansion, a thrilling product and eye-popping attendance. Those things may represent a wishful fantasy for the National Hockey League these days, but they paint a very accurate picture of the state of junior hockey.

...Overall 2004-05 regular-season attendance came very close to crossing the eight million mark for the first time, winding up at 7,993,705.

It wasn't that long ago that junior teams routinely sold for less than \$1-million. This past winter, however, groups lined up in Saint John and St. John's to buy \$3-million expansion teams.

In Ontario, two clubs – Belleville and Oshawa – were reportedly sold for \$4-million each last summer. And estimates as to the value of clubs such as Ottawa or London range toward \$10-million.

...The soaring franchise values in junior hockey is part supply and demand but also largely the story of a business model that works.

...Junior hockey teams pay most players between \$50 and \$150 a week, and pay for their accommodation with local families.

(Rare players such as Crosby earn as much as \$30,000 a year, while others are paid perks such as travel and accommodation for families or use of cars. Since the players who

receive such goodies generally sell lots of tickets, the leagues aren't heavy handed on such practices.)

...The WHL recently hatched the league's 21st franchise in Chilliwack, B.C., for \$2.2-million to a group that includes New York Rangers GM Glen Sather and former Vancouver Canucks GM Brian Burke.

..."With all due respect to the guys who built the sport, what we're finding is a more sophisticated breed of owner who has experience in other businesses," said [Ottawa 67's owner Jeff] Hunt, who made his fortune in carpet cleaning before buying the 67's in 1998.

"They bring a more sophisticated and better financed approach to their [hockey] businesses.

"They'll pump money into a facility or marketing or entertainment value. These are guys who invest first and look for a return rather than just hoping things improve."

The CHL has followed in the NHL's footsteps in plotting a very aggressive expansion strategy. However, the NHL focused its expansion on non-traditional markets where fans had to be sold on the game.

...The cost of buying an existing Canadian major-junior hockey team or obtaining an expansion franchise has risen dramatically over the past 30 years.

2005 - Chilliwack, B.C. *	\$2.2-million
2005 - Saint John Sea Dogs	*\$3-million
2005 - St. John's Fog Devils	*\$3-million
2004 - Belleville Bulls	\$4-million
2004 - Oshawa Generals	\$4-million
2002 - Saginaw Spirit	\$2.5-million
2001 - St. Michael's Majors	\$2.5-million
2000 - Vancouver Giants	\$2-million
2000 - Tri-City Americans	\$1.77-million

1999 - Red Deer Rebels	\$3.2-million
1998 - Brampton Battalion	*\$1.5-million
1998 - Mississauga Ice Dogs	*\$1.5-million
1998 - St. Michael's Majors	*\$1.5-million
1996 - Kootenay Ice	*\$750,000
1995 - Calgary Hitmen	*\$750,000
1991 - Gatineau Olympiques	\$550,000
1989 - Plymouth Whalers	*\$758,000
1975 - Windsor Spitfires	\$75,000
*Expansion team	

26. Attached hereto and marked as **Exhibit “T”** is an article entitled, “Junior-A Leaders Feeling the Freeze” by Ken Campbell, published by the Hockey News on February 26, 2008. The article states:

You’ll be pleased to know that 11 months before the puck is dropped, the 2009 World Junior Championship in Ottawa sold out of tickets, which will go a long way to fulfilling the \$12.5 million commitment the host city made to Hockey Canada when it bid for the event.

...Yes, times are good for Hockey Canada and the Canadian Hockey League, largely because Hockey Canada gets 50 percent of all profits and the CHL takes 35 percent.

Forget for a moment that nary a penny of this money will actually go the improving the lot of players who are generating it.

27. Attached hereto and marked as **Exhibit “U”** is a print-out from the CHL’s official website in March 2008. The webpage is entitled, “CHL Fast Facts”. It claims that “a record 9+ million fans attended games during 2005/06, a 9.4% on year growth and the 17th consecutive year of record growth. This represents 45% more fans than attended Canadian NHL games.” It also claims that “CHL teams are the premiere sports/entertainment attraction in 44 of the 50 Canadian Markets (NHL in 5).”

28. Attached hereto and marked as **Exhibit “V”** is a letter to David Branch in his capacity as President of the CHL, from William Daly, Deputy Commissioner of the NHL, dated September 10, 2012. The letter provides that a contract called “the CHL Agreement” is extended for the 2012/13 season. Further, the letter states that the NHL shall provide to the CHL a grant in an amount calculated according to a formula in the CHL Agreement which shall not exceed \$9,860,000. This agreement is commonly denoted in the media as the “transfer agreement” or the “CHL-NHL agreement”.

29. Attached hereto and marked as **Exhibit “W”** is an article entitled, “WHL hammers Portland Winterhawks for league violations” by David Ebner, published by the Globe and Mail on November 28, 2012. The article reports that the WHL fined the Portland Winterhawks \$200,000 plus nine draft picks for 54 violations of player compensation rules that were not reported to or approved by the WHL.

30. Attached hereto and marked as **Exhibit “X”** is a press release by the OHL entitled, “OHL Announces Fines / Sanctions”. It announced that the Windsor Spitfires were fined \$400,000 as well as draft picks for violations of the OHL player recruitment policies.

31. Attached hereto and marked as **Exhibit “Y”** is an article entitled, “Ousted Oshawa Generals president awarded \$450,000” by Jeff Mitchell, published by Metroland Media on August 21, 2013. The article reports that the court ordered damages for wrongful dismissal in the amount of \$450,000.

32. Attached hereto and marked as **Exhibit “Z”** is an article entitled, “Local auto dealer Mike Priestner now big wheel in WHL with Saskatoon Blades purchase” by Jim Matheson, published by the Edmonton Journal on September 5, 2013. The article reports

that the Saskatoon Blades were purchased for \$9 million and that the club's arena "holds more than 15,000. It's as big as the MTS Centre, home of the NHL Winnipeg Jets."

33. Attached hereto and marked as **Exhibit "AA"** is a white paper report entitled, "The Commercial Potential of Junior Hockey in Canada" by Mitch Thompson of Trojan One Consulting Group, dated November 2013. The following statistics are reported under the heading, "The Business of the CHL":

- the 2013 Memorial Cup Final averaged 575,000 viewers;
- regular season CHL games broadcast on Friday on Rogers Sportsnet averaged 200,000 viewers; and
- Canada's 52 CHL clubs sold 7 million regular season tickets per year.

34. Attached hereto and marked as **Exhibit "BB"** is a print-out from HockeyAttendance.com indicating the total attendance for the OHL from the 2005/06 season to the 2013/14 season, along with a breakdown of each club's attendance in the 2013/14 season. The Niagara IceDogs are ranked as the best attended team with average sales at 106.8% of capacity.

35. Attached hereto and marked as **Exhibit "CC"** is a print-out from HockeyAttendance.com indicating the total attendance for the WHL from the 2011/12 season to the 2013/14 season, along with a breakdown of each club's attendance in the 2013/14 season.

36. Attached hereto and marked as **Exhibit "DD"** is an open letter from Steve Bienkowski, COO and Governor of the Kitchener Rangers, dated July 28, 2014, enclosing the Kitchener Rangers Jr "A" Hockey Club Statement of Financial Position for 2014. Total assets for 2014 are reported as \$14,599,701. Total revenue for 2014 is reported as \$6,329,099.

37. Attached hereto and marked as **Exhibit “EE”** is an article entitled, “Business comes first for OHL” by Morris Dalla Costa, published by the London Free Press on October 29, 2014. Mr. Costa writes:

[Major junior hockey needs] to acknowledge that it is a business first, that most of its teams operate as a business first and as such, needs to give its young employees more options, both financial and in how they are treated.

...It would be difficult for anyone to argue that the OHL or teams like the Knights, Windsor Spitfires or Kitchener Rangers, don't operate as big business. The whining that other teams aren't as well off may be accurate but of no consequence. Like any business, you either survive or go under.

Pleading poverty when you are a partner in a business with a major television contract and major sponsors rings hollow.

It's just as difficult to argue that your hockey players aren't employees.

38. Attached hereto and marked as **Exhibit “FF”** is an article entitled, “Major Junior Leagues Under Fire from Disgruntled Ex-Players” by Rick Westhead published by TSN on November 1, 2014. The article reports that “players contend that they are receiving a pittance while playing for leagues that have become big business.” The article reports that managers of some clubs make between \$150,000 and \$200,000. The article quotes a player agent as follows:

“So why are players, 95 per cent of whom won't have long careers in the NHL, expected to work for free?” asked one NHL player agent. “The CHL and its supporters say, ‘fine, we'll pay minimum wage and you pay for your sticks and room and board.’ But that's a ridiculous argument. Does Ford make its workers on the line pay for tools? It's the cost of doing business.”

The article reports the following questions put to David Branch:

One question was: “Some OHL teams issued T4 slips for the 2013 tax year ... doesn’t that establish an employee-employer relationship?”

Branch replied on Oct. 24 that “we are not currently issuing T4’s and we are not certain what the past practices of our Clubs may have been. The teams are responsible for filing their own tax documents and the league doesn’t have access to their detailed information.”

While TSN has learned that the CHL also has a new TV contract with Rogers Communications that is worth at least \$5 million a season (the previous TV contract was a barter deal with no rights fee), Branch declined to discuss terms of the CHL’s TV contract.

39. Attached hereto and marked as **Exhibit “GG”** is an article entitled, “Financial success continues for Swift Current Broncos during 2014/15” by Matthew Liebenberg, published by the Prairie Post on October 9, 2015. The article reports that the Broncos, located in the smallest community in the WHL with a population of roughly 15,000 people, announced that it earned a profit of \$197,244 in the 2013/14 season and \$133,465 in the 2014/15 season.

40. Attached hereto and marked as **Exhibit “HH”** is an article entitled, “Graham Lee: WHL saviour, concert king, entrepreneur” by Mike Devlin, published by the Times Colonist on October 24, 2014. The article reports that the Victoria Royals’ arena was built as part of a public-private partnership between the club’s corporate owner, RG Properties, and the City of Victoria. RG Properties paid \$12 million into the venture in addition to ongoing annual fees of \$235,000 paid to the city. RG Properties also uses the arena as an events space, with concerts from Bob Dylan, Cher, Elton John and Rod Stewart.

41. Attached hereto and marked as **Exhibit “II”** is an article entitled, “Quebec Remparts sold for between \$20 million and \$25 million: Source” by Ken Campbell, published by the Hockey News on November 27, 2014. The article reports that the Quebec Remparts were sold for \$20 to \$25 million. The article reports the following:

Make no mistake, though, owning the Remparts is good business even without an NHL team. The Remparts draw an average of about 10,000 to the Pepsi Colisee, the former home of the Quebec Nordiques, and will host the Memorial Cup this spring, which should fill the coffers quite nicely. As we all know, costs of running a major junior team are low and when you get the kind of tickets sales and corporate sponsorship the Remparts get, it is a major cash cow.

42. Attached hereto and marked as **Exhibit “JJ”** is an article entitled, “CHL lawsuit symbolizes larger struggle in elite amateur sport” by Adam Proteau, published by the Hockey News on October 20, 2014.

When the CHL is profiting from relatively new revenue streams that include satellite TV and internet packages and has corporate partners that would make many other professional leagues jealous, does \$35 a week – as some QMJHLers make on the low end of the scale – constitute a fair return for the services rendered by its athletes?

43. Attached hereto and marked as **Exhibit “KK”** is an article entitled, “Ex-owner of junior hockey team to get \$1.4M from sale”, published by the Associated Press on August 12, 2015. The article reports that James Waters purchased the Erie Otters out of bankruptcy for \$7.2 million in July 2015.

44. Attached hereto and marked as **Exhibit “LL”** is an article entitled, “CHL has no intentions of changing underage rules, AHL exemptions” published by the Canadian Press on May 26, 2016. It explains how the “transfer agreement”, discussed above, prohibits top CHL players from playing in the higher-level American Hockey League

(“AHL”) after being drafted into the NHL. As a result, they are unable to graduate to a higher level competition and improve their skills. This prioritizes CHL ticket sales over player development.

45. Attached hereto and marked as **Exhibit “MM”** is an article entitled “Mitch Marner’s dominant season opens up debates on NHL-CHL agreement” by Kelly Friesen and published by Yahoo! Buzzing the Net on June 2, 2016. It covers the same topic. The article states:

“There are always at least a dozen 19 year olds in the CHL who would be better suited to play in the AHL instead of the CHL,” says an NHL scout of a Western Conference team. “Mitch Marner might be a great example of that depending on what he does in the offseason. There’s nothing more for him to do in junior hockey. If he can’t make the Leafs, he should get a chance to play for the Marlies (Toronto’s AHL team) next year. It would be better for his development to play in the AHL than to score 150 points in the OHL.”

...“The CHL-NHL agreement won’t change because of money,” says the NHL scout. “The league is a development league, but it’s also a business. Losing their top 19 year olds to the AHL will result in a less exciting game which will result in less tickets sold. That’s why it will never happen. It comes down to the money.”

46. Attached hereto and marked as **Exhibit “NN”** is a printout of the webpage for the OHL’s online streaming service to view games. Members of the public may purchase the video stream of any regular season game for \$3.99. Attached hereto and marked as **Exhibit “OO”** is a printout of the webpage for the WHL’s online streaming service. Members of the public may purchase the video stream of every game in the WHL season for \$149.95, every game of one team for \$99.95, every away game of one team for \$49.95, 10 games for \$54.95, 5 games for \$29.95 and individual games for unlisted prices.

47. Attached hereto and marked as **Exhibit “PP”** is an article entitled, “Tri-City Americans to Stay in Kennewick for another 5 years”, by Annie Fowler, published by the Tri-City Herald on October 15, 2015. The article reports that the Tri-City Americans general manager, Bob Tory, claims his club has an economic impact of \$10 million annually and has made charitable donations in excess of \$2 million since 2005.

48. Attached hereto and marked as **Exhibit “QQ”** is an article entitled, “Great Lake Loons, Saginaw Spirit pump \$38 million into region’s economy”, by Cheryl Wade, published by the Midland Daily News on January 28, 2015. The article reports that the Saginaw Spirit generate an economic impact of \$15 million per year which “includes overnight stays and spending on food, gasoline and other costs connected with visiting The Dow Event Center.”

49. Attached hereto and marked as **Exhibit “RR”** is an article entitled, “Mark Sutcliffe: Jeff Hunt adjusting to life as part of OSEG” by Mark Sutcliffe, published by the Ottawa Citizen on September 28, 2013. The article reports that the Ottawa 67’s are owned by the Ottawa Sports & Entertainment Group that “employs about 60 people at two office locations, with plans for a staff of close to 150 next year.” The article reports:

The energy within OSEG is like a rapidly growing high-tech company about to take its product to market. In the company’s sales and marketing department, a bell rings and staff applaud whenever a sale is closed.

Many of the new staff are working on all three of OSEG’s teams. Part of the benefit of owning multiple franchises is that experienced specialists on everything from social media to game-day operations can be hired. In the small front office of the 67’s, each employee pitched in wherever they were needed across the business.

50. Attached hereto and marked as **Exhibit “SS”** is a printout from the Katz Group of companies website that indicates how a subsidiary of the Katz Group of Companies, the

Oilers Entertainment Group, owns the WHL Edmonton Oil Kings and the NHL Edmonton Oilers. Subsidiaries of the Katz Group of Companies own other brands, such as Rexall Pharmacies.

51. Attached hereto and marked as **Exhibit “TT”** is a printout from the Calgary Hitmen’s website which indicates that the Hitmen are owned by the same companies and people who own the NHL Calgary Flames.

52. Attached hereto and marked as **Exhibit “UU”** is a chart compiled by Andra Dragoste, a law clerk at Charney Lawyers, on the instruction of Ted Charney. I am advised by Ms. Dragoste and verily believe that she researched the owners of CHL teams through online searches. Many of the teams appear to be owned by some of Canada’s largest corporations and wealthiest families. For example, the Quebec Remparts club is owned by Quebecor Inc. and the Desmarais family. The Erie Otters club is owned by the Waters family, who owned CHUM Ltd before its sale in 2006. The Moncton Wildcats are owned by the Irving family, who own Irving Oil. The Saint John Sea Dogs are owned by the McCain family. The Ottawa 67’s club is owned by Roger Greenberg of The Minto Group. Bill Gallacher owns the Portland Winterhawks.

53. Attached hereto and marked as **Exhibit “VV”** is the Hockey Canada 2014-15 Annual Report.

54. Hockey Canada’s marketing and communications efforts are reported at page 20. It is claimed that HockeyCanada.ca has received 25.9 million views, that Hockey Canada’s social media has made 1.15 billion impressions, that Hockey Canada’s Facebook page has 598,254 fans and its Twitter feed has 315,573 followers, as well as an average of 84,880 daily mentions on Twitter and 117,338 daily retweets.

55. Hockey Canada's business development and partnerships are reported at page 22. The following is claimed:

The 2014-15 season saw 29 leading consumer brands promote their association with Hockey Canada, reinforcing the strength and value of the Hockey Canada brand. Through national consumer promotions, grassroots programs, advertising, contesting, employee engagement and experiential activations, partners delivered outstanding Hockey Canada Experiences across the country.

The following brands are listed as partners: Esso, Nike, RBC, Telus, TSN, Air Canada, Bauer, Boston Pizza, Chevrolet, Delissio, Kraft Heinz, McDonalds, Molson Canadian, Old El Paso, Purolator, Pepsi, Lays, Gatorade, Samsung, SportChek, Canadian Tire, Mark's, TimberMart, Crown Royal, Hankook, Procter & Gamble, Starwood Hotels, Timex, and Wrigley.

56. Hockey Canada's branding and licensing efforts are reported at page 23. This section reports that merchandise was developed in 2014-15 with "more than 45 licensees" including Nike and Upper Deck. The merchandise spanned "14 primary product categories" including apparel, collectibles, cresting, electronics, equipment, eyewear, footwear, headwear, household products, luggage, media, novelties, timepieces, jewellery, toys and games.

57. Hockey Canada's financial position is reported at page 24. It is described as "on strong financial footing". Hockey Canada's Funding Partners are reported at page 25 and include the NHL, the Toronto Maple Leafs, federal government agencies and the Government of Alberta.

Teams Relocate to Become More Profitable

58. Attached hereto and marked as **Exhibit “WW”** is an article entitled, “Windsor businessman and land developer Rucco Tullio fulfilled a dream Thursday”, published by the Windsor Star on September 7, 2007. The article reports that the IceDogs were moved from Mississauga to St. Catharines in 2007. The article reports the following on Tullio’s purchase of the Oshawa Generals:

Tullio would not disclose the cost for him to buy into the Generals, but said it would be in line with recent sales of other teams. That would put his involvement in excess of \$4 million.

"Teams are so expensive," Tullio said.

But this is also a business venture. Tullio has business dealings from Windsor to Toronto and his ownership of the Generals will enhance his business contacts.

"I'm hoping it opens some doors," Tullio said.

... "I've known Rocco a long time and his business mind will be a fresh approach for a lot of guys in the OHL"[, said Spitfire’s owner Bob Boughner].

59. Attached hereto and marked as **Exhibit “XX”** is an article entitled, “WHL tries to explain Bruins move”, published by The Chilliwack Progress on April 20, 2011. It explains how the Chilliwack WHL club relocated to Victoria in 2011.

60. Attached hereto and marked as **Exhibit “YY”** is an article entitled, “Raiders proposed to bolster finances with private money” by Drew Wilson, published by Prince Albert Now on May 24, 2011. The article reports that the owners of the Prince Albert Raiders, seeking an influx of capital, entered into a business venture with a successful businessman, Gord Broda.

61. Attached hereto and marked as **Exhibit “ZZ”** is an article entitled, “OHL: Brampton Battalion moving to North Bay” by Daniel Girard, published by The Toronto Star on December 26, 2012. The article reports the following:

The Ontario Hockey League club announced Monday night it is planning to move to North Bay for the start of next season after the council in that city approved an agreement in principle which includes a \$12-million arena upgrade and expansion.

The 15-year deal, subject to approval by the OHL board of governors, is contingent upon the sale of 2,000 season tickets for a minimum three-year period.

62. Attached hereto and marked as **Exhibit “AAA”** is an article entitled, “Ownership suffering mounting losses on the ice and in the pocketbook”, published by the Toronto Sun on January 31, 2014. The article reports that the Sarnia Sting’s annual budget is \$2 million, that the club is losing \$250,000 per year and that the owners planned to sell the club. The club’s spokesperson is quoted as saying, “The [owners’] goal is to keep the team in Sarnia. If there are no local buyers they will have to look elsewhere.” Attached hereto and marked as **Exhibit “BBB”** is an article entitled, “Sarnia Sting sold to Darian Hatcher and David Legwand”, published by the Sarnia Observer on January 22, 2015.

63. Attached hereto and marked as **Exhibit “CCC”** is an article entitled, “Three franchises on move in busy day for OHL, AHL” by Mike Zeisberger, published by the Toronto Sun on March 12, 2015. The article explains how the Belleville Bulls were sold to Michael Andlauer, a shareholder of the Montreal Canadiens, who relocated the team to Hamilton.

Major Junior Hockey is not about Development – It’s About Generating Revenue

64. Attached hereto and marked as **Exhibit “DDD”** is an article entitled, “Junior stars must either suffer goons or quit” by William Houston, published by the Globe and Mail on April 11, 1998. The article quotes Howie Meeker, a former NHL player, who describes CHL clubs as “pirate slave traders”. The article reports the following:

Although junior hockey is deemed to be a development league, it is, foremost, a business. Local ownership is dependent on gate revenue and revenue production is dependent on playing games. Winning is the key to selling tickets, and for a coach, a winning season could be his ticket to the NHL.

65. Attached hereto and marked as **Exhibit “EEE”** is an article entitled, “How much money do junior hockey teams make?” by Ryan Kennedy, published by the Hockey News on July 30, 2014. The article reports that the Kitchener Rangers “earned \$316,419 in the post-season – a huge windfall for a handful of games.”

66. Attached hereto and marked as **Exhibit “FFF”** is an article entitled, “Westhead: Ex-OHL owner says clubs make millions on 'back of kids,' then 'wash their hands of them”” by Rick Westhead, published by TSN on November 17, 2014. The article reports:

Mario Forgione says Canadian Hockey League teams across the country have used teenaged players to inflate profits and have abandoned some players who don’t make it to the NHL and need help transitioning to a life after hockey.

Forgione said in an interview with TSN.ca that the OHL has become big business where many owners don’t do enough to help players after their playing career.

“Does the league wash their hands of them and say we are done with them? Yes. This is what they do,” he said. “Players are a disposable commodity. The league has a social

responsibility to look after these kids, but a lot of [former CHL players] haven't even finished Grade 12. Then what happens? Minimum wage jobs.

They say: 'Here's your education package, God bless you, off you go,'" Forgione said. "A lot of players fall through the cracks in the OHL. What happens after they play four years, they're 21. How many guys are going back to school at that point? The teams are supposed to have an educational consultant on the team, but let's face it, you've to keep on top of 30 kids, 16, 17, 18-year-old boys. It's hard enough to make sure one kid is going to school, let alone 30."

... "If the teams can't afford to pay minimum wage and they go out of business, so be it," he said. "If six teams fall out of the league, so what? Branch says, 'we're not going to be fair to anyone because it will affect our league... I think they do develop hockey players but they are also very focused on their own self-serving agenda, to have a strong league with financial viability (Editor's note: Forgione was speaking facetiously. Branch did not make the remark about fairness)."

"To me, the OHL should not be a mainstream, for-profit business venture," Forgione said. "Players and parents are afraid to speak out. What happens to a kid that knocks the coach or GM or league? He's blackballed. Let's be honest about this."

... "I don't know that [the CHL] can continue to make money on the back of players who are given a stipend that's as little as possible because it affects their team's bottom line," Forgione said. "If you want to be in the sports business, be in the business at a higher level where all the people involved understand all the implications. Then you have a fair and level playing field. I don't know that, if you are in the minor hockey business, that everyone understands the business."

Major Junior Hockey is Highly Professionalized

67. Attached hereto and marked as **Exhibit "GGG"** is an article entitled, "The WHL's Winter Wonderland" by Patrick King, published by WHL.ca on February 20, 2011. The

article explains how the WHL now stages an annual outdoor game modelled on the NHL's successful and lucrative outdoor "Winter Classic" game.

68. Attached hereto and marked as **Exhibit "HHH"** is an article entitled, "Sting Trade Chiarlitti" by Paul Owen, published by the Sarnia Observer on August 29, 2012. Attached hereto and marked as **Exhibit "III"** is an article entitled, "Giants, Hitmen complete massive five-player trade" published by Vancouver Metro on October 27, 2015. Attached hereto and marked as **Exhibit "JJJ"** is an article entitled, "Steelheads look to steal the show" by David Shoalts, published by the Globe and Mail on March 31, 2016. This article was the headline feature of the Sports section along with a full-size picture of a Steelheads player. These are typical of hundreds of articles in media outlets from across Canada that report on major junior hockey. The breadth, volume and nature of the coverage is reminiscent of articles about the NHL.

69. Attached hereto and marked as **Exhibit "KKK"** is an article entitled, "Junior Hockey growing like nobody's business" by Ryan Pyette and published by the Toronto Sun on October 19, 2012. Regarding the Erie Otters \$42 million "rink makeover", the article states:

That's no longer the finish line for CHL teams. In an era of \$2-million-plus budgets and competition against some of Canada's biggest hockey centres, those are simple building blocks that allow the average team to get into the race.

"There are no shortcuts anymore. With coaching and video as specialized as it is today, with the game at the level it's at now, if you're not fully prepared and ready to invest everything into this, your program will collapse on itself"[, said Sherwood Bassin, then-owner of the Erie Otters].

Mom and Pop have boarded up the shop and retired to Florida. Junior hockey is now a business in every sense of the word.

...The London Knights, now run like a pro franchise, are operated by the hockey-savvy Hunter clan, who took out mortgages on their farms to purchase the team a dozen years ago. They didn't start in the same tax bracket as former Mississauga owner Eugene Melnyk and current Brampton boss Scott Abbott, tycoons who have dealt with some of major junior hockey's lowest average attendances.

70. Attached hereto and marked as **Exhibit "LLL"** is an article entitled, "Call them hockey players or amateurs, but don't call them employees" by Ken Campbell and published by the Hockey News on May 19, 2015. The article states as follows:

- They are drafted as teenagers by one team in one league over which they have no control. They are allowed to negotiate only with the team that drafts them and if that is hundreds of miles away from home, so be it. But they're not employees.
- If they don't have a no-trade clause in their contracts, they can be dealt to any other team in the league, again with absolutely no say in the matter. But they're not employees.
- Of all of the events that occur in the arenas in which they play, they create wealth for the owners and everyone involved, the same way rock concerts, boat shows, evangelical revivals and Disney on Ice do. But they're not employees.
- They show up for work on game nights the same way popcorn makers, beer sellers, maintenance staff and Zamboni drivers do, but they're the only ones who are by law not required to receive at least a minimum hourly wage. Because they're not employees.
- They are required to show up every day, on time, for practice and games. But they're not employees.
- They're expected to represent their teams at charitable and community events that help raise the profile of the organization in the community and create good will with the paying customers. But they're not employees.

- They're expected to follow the boss's orders without question. If the coach tells them to go out and fight, they do it. They're expected to do whatever it takes within their power to help their team win games and they basically have no recourse if they disagree with the powerful men who control their careers and their lives. Because they're not employees.
- If they return in the middle of the night from a road trip and the coach isn't pleased with the way they've played, they can be required to immediately put on their equipment and practice. Because they're not employees.
- They can be sent home at any time for any reason. They can show up for work one day and find their belongings stuffed into a green garbage bag and receive no severance pay or compensation package or even an escort back home. Because they're not employees.
- Virtually every person they come into contact every single day with their team – from the GM and coach to the team secretary – is an employee of the team. But they're not employees.
- When they turn 18, instead of having the option to play in a league that's better suited to their abilities where they can make more money – such as the AHL – they are forced to go back to riding buses and playing with inferior players if they're not good enough to play in the NHL. Because they're not employees.
- They are expected to occasionally sacrifice class and study time for road trips, practices and team meetings. But they're not employees.
- They're expected to respect the team hierarchy and rules without exception, the same way anyone else in any other workplace would be expected to do. They're expected to pick up pucks after practice and sit in a certain part of the bus for no other reason than they're rookies on the team. But they're not employees.
- They have dreams of one day parlaying their hard work and sacrifice in junior hockey into a pro career, the same way most of the coaches, GMs and referees who work alongside them do. But they do it for a tiny fraction of the compensation. Because they're not employees.

- Actually, it's no wonder the legislators in Washington State came to the conclusion that junior hockey players are amateur athletes and not employees. After all, would any company in the world even dream of treating its employees like that?

71. The Hockey News is likely the leading publication on the topic of hockey. According to the 2014 Media Kit posted on their website, the Hockey News has a circulation of over 100,000 and a reach of 2.003 million per single issue. It devotes an entire section of each publication to CHL teams. According to their website, the author of this article, Ken Campbell, holds the title of "senior writer" and has worked for the publication from 1988 to 1998, and 2006 to present. Having reported on the CHL for decades with one of the industry's most prominent publications, Mr. Campbell is well placed to comment on the life of major junior hockey players.

72. Attached hereto and marked as **Exhibit "MMM"** is an article entitled, "Black & Blue" by Patrick O'Sullivan and published by The Player's Tribune. In 2000, the author was the first overall pick in the OHL draft. In 2003, he was a second round draft pick in the NHL draft. The author describes the CHL as follows:

Professional sports — and let's be honest, Canadian Junior hockey is professionalized — is a meat market. Nothing more, nothing less. It's all about performance on the ice.

73. Attached hereto and marked as **Exhibit "NNN"** is an article entitled, "Hockey's Puppy Mill: A former junior player takes the CHL to court" by Nicholas Hune-Brown and published by The Walrus Magazine on November 20, 2015. The article reports the following:

Describing players as "amateur" seems like wishful assertion rather than a reflection of reality. Buy a \$28 standing-room ticket to a Peterborough Petes playoff game, for instance, and you'll find yourself among people wearing \$120 jerseys and \$30 hats, watching a "Pizza Pizza Powerplay" followed by a "penalty kill brought to you by

Compute.” Between periods, a tiny blimp trailing a banner for the Brick furniture store woosily circles the rink while a Zamboni plastered in ads for Jack Link’s beef jerky resurfaces the ice. The atmosphere mirrors the professional experience in nearly every possible way. There are coaches, general managers, referees, and ushers. Teens sell beer and pizza. The only ones who aren’t paid? The players.

74. Attached hereto and marked as **Exhibit “OOO”** are three articles entitled “Inside the Ottawa 67’s”, Parts 1 to 3, by Shannon Proudfoot and published by Sportsnet on March 8, 2016, March 10, 2016, and March 15, 2016. The article reports on the intense pressures exerted on players by their clubs to perform at the highest level. The article describes the CHL as follows:

Junior hockey is a strange, intense waiting room—a real workplace that also functions a little like a boarding school, where the employees are hired as children and retire as men. It’s a place where teenagers who have been the best player on every team growing up have to come to grips with the gap between what they dreamed and the real life they’re going to live, a decade or more before most of us have to face that.

...The way [Jeff Brown, the Ottawa 67’s head coach,] describes a junior hockey team, it’s a workplace, but one not quite like any other. You need players to perform, and as a coach, if you don’t ask for more, you won’t get it. But these are kids. The ruthlessness of pro sports—or even a regular adult workplace—where you offload people who aren’t pulling their weight just doesn’t fit here. “You’ve given their family your word that you’re taking them, and you owe it to the kid to do as much as you can for them,” Brown says. “It’s a little bit different when you’re talking about a child who moved away from home and their entire dream is to play in the NHL.

75. Attached hereto and marked as **Exhibit “PPP”** is an article entitled, “Junior program springboard to NHL” by Matt Higgins, published by the National Post on April 25, 2016. The article reports the following:

Ask players, coaches, scouts and managers and it becomes clear that what the brothers Dale and Mark Hunter, and their partner Basil McRae, former hardnosed NHL players who bought the Knights in 2000, have done is to foster an environment that mimics the pros.

After noting how the Knights watch “hours of NHL game footage” to use in instructions to their players, the club’s assistant general manager and assistant coach is quoted as follows:

“Right now, we try to emulate Chicago a lot...A few years ago, we had a different team, where we more focused on Boston’s style of play and how they supported the puck.”

76. Attached hereto and marked as **Exhibit “QQQ”** is an article entitled, “The Time is Right for a Major Junior Hockey Players’ Association” by Jamie McKinven published on GlassAndOut.com. The author played in the East Coast Hockey League (“ECHL”), a minor adult professional league where players are recognized as employees and unionized. The article compares the attendance statistics and ticket prices of the CHL and ECHL, before concluding that they enjoy similar revenues. The article reports the following:

The NCAA (major junior’s major competition for prime grade beef) stipulates major junior as an organization employing professional athletes according to legislated Bylaw 12.2.3.2.4 and thus, deems any player who signs a major junior standard contract and competes in major junior competition as in violation of amateurism. This is where the war over 16-year-old kids begins between the CHL and the NCAA and why the birth of “School Boy” packages in the CHL was needed to maintain an edge in recruitment battles.

...The glaring differences between the CHL and ECHL, aside from age, are as follows:

- **Salary:** the ECHL has a \$12,400 weekly salary cap, amounting to \$347,200 in annual salary costs per team and an average annual player salary of \$17,360. (To

draw some comparison, On average, undergraduate students paid \$5,772 in tuition fees in 2013/2014 in Canada, amounting to what teams would compensate players in the form of a scholarship package per year of service. Also, keep in mind that the majority of major junior players don't end up using this money due to restrictions and other factors.)

- **Housing Costs:** (This is essentially a wash as both ECHL and CHL teams cover housing costs)
- **Travel:** ECHL road trips are notoriously long, with some teams like the Alaska Aces having to fly to all destinations
- **Limited Revenue Streams:** Absence of lucrative revenue streams like major multi-million-dollar events, multi-platform TV deals for the ECHL

It would seem pretty clear that while comparing the ECHL and the CHL, there doesn't seem to be a reason to suspect that CHL teams should be crying poor, at least not at a quick glance.

... They are teenagers who happen to be involved in a pro-style setting where the stakes are high and money is the major driving force.

... It is the "Old Boys" mentality of never showing weakness that has created a toxic culture in hockey. A PA would help to remove this stigma and provide players with the support they need to handle the rigors and stresses of what is essentially a pro hockey landscape. We need not look any further than the Terry Trafford tragedy of this past season to understand that support for mental health awareness and proper protocols are desperately needed to handle difficult transitions for young players.

77. Attached hereto and marked as **Exhibit "RRR"** is the NHL Standard Player Agreement, which is attached as Exhibit 1 to the Collective Bargaining Agreement between the National Hockey League and the National Hockey League Players' Association, dated September 16, 2012 – September 15, 2022.

Pressure on Players to Perform

78. Attached hereto and marked as **Exhibit “SSS”** is an article entitled, “Derek Boogaard: A Boy Learns to Brawl” by John Branch, published by the New York Times on December 3, 2011. The article reports:

[WHL] teams are not affiliated with N.H.L. teams, so player development is less a goal than profit. Fighting, an accepted and popular part of the game, is seen as a way to attract fans.

Efforts to ban fighting in the N.H.L. have long been stymied, in part by the popularity and tradition of it in the junior and minor leagues. Web sites are devoted to the spectacle, often providing blow-by-blow descriptions, declaring winners and ranking the teenage fighters.

Boogaard stepped into this culture when he was 16. The unwritten rules were well established.

... Boogaard’s first fight was the one-punch nose-breaking knockdown of the reigning tough kid during Regina’s first team scrimmage. But Boogaard, seen as a fighter, not a player, played little during the preseason.

...[His brother] warned Boogaard of a player named Kevin Lapp, rated as the league’s No. 2 fighter. Lapp was nearly 20. Boogaard was 16.

Moments into Boogaard’s first shift, Lapp asked if he was ready. Boogaard said he was. He was not.

He heard the older players in the back of the bus making fun of him on the way home. The next day, Boogaard was reassigned to a lower-division team in Regina.

79. Attached hereto and marked as **Exhibit “TTT”** is an article entitled, “Sutch: What we can all learn from Trafford tragedy” by Gregg Sutch and published by Yahoo! Buzzing the Net on March 17, 2014. The author is a former OHL player who signed an NHL contract with the Buffalo Sabres. He continued playing his final year in the OHL before reportedly becoming disillusioned with the sport and quitting altogether. He wrote this article shortly after the death of one of his Saginaw Spirit teammates. Mr. Sutch describes CHL players as “pawns in the Junior game”. He wrote the following:

How we treat hockey players must also change. I've been there myself. You make it to the OHL and now you're a pawn. You become a piece of the business, and if you're no good, you're gone. It's the dark side of the game.

There's not enough emphasis on helping the players grow as decent individuals as opposed to how much emphasis is put on the win column. *I can honestly say that I only know a handful of people in the hockey world that I worked with that truly cared about me as a person.* These individuals know who they are because I've gone out of my way to acknowledge them for what they've done for me. I wouldn't be who I am today without these men in my life, but to the rest, I was just a pawn.

If I didn't fit in with the team or your game plan, it was a quick fix to ship me off somewhere else or sit me out. Major junior touts itself as a league where you go and you're well on your way to the NHL. Let's just stop and think about that for a second. You do realize how few guys make the NHL, right? You realize just how hard it is, right?

Let me give you an example: I attended Buffalo Sabres training camp for two years. Everyone there was trying to make a team of 20-plus players out of 3-4 NHL draft years, AHL players, CHL players, NCAA players, and regular NHL roster players. Did I mention you only have two years to prove yourself to get a contract?

80. Attached hereto and marked as **Exhibit “UUU”** is an article entitled “Ex-NHL prospect Gregg Sutch explains how he fell out of love with hockey” by John Matisz and published by Postmedia on February 19, 2016. The article reports as follows:

“As soon as I joined the OHL, things changed,” Sutch wrote. “Big time.”

... “It’s all about business and that’s where my love for the game started to fade away,” he added later in the post.

...A myriad of factors made hockey feel like work when it wasn’t supposed to.

... You’re a level or two away from competing in the best league in the world, playing in front of thousands a few times a week. The lifestyle has many perks.

But, overall, the pressure that goes along with it can weigh heavily on teenagers. Sutch’s revelations, although not the norm, are not necessarily unique.

“Unfortunately, a lot of people make out a junior hockey player's life to be, ‘living the dream’ when it's really not,” Sutch said in the follow-up interview.

81. Attached hereto and marked as **Exhibit “VVV”** is an article entitled, “Tyler Boston and the Difficulties of Balancing Junior Hockey and Education” by Joshua Kloke, published by Vice Magazine on January 15, 2016. The article reports on Tyler Boston, a Niagara IceDogs player, who struggled to balance high school and his demanding CHL career. The article states:

[Dennis, a former goaltender with the Guelph Storm,] says a day in the OHL allows every player to be home by 6:30 or 7 PM during the school week. The onus is on players to complete necessary high school assignments and take advantage of that time.

... "The OHL takes a toll on your body and mentally, as well," admits Boston.

When it does come time to make use of the OHL scholarships, players are often forced to recognize their own lack of preparation.

"Getting into academic schools is hard," says Colleen Reed of American College Consulting, which works with elite athletes who want to attend post-secondary institutions. "It's a daunting prospect with not much positives to it. There's no guarantee that you're going to get picked up by a school. It's a lot of self-recruiting. A lot of kids really don't know how to do that."

The realization of time lost in the classroom because of time spent on hockey can also lead to mounting pressure, or worse.

"It can lead to some depression," Reed says. "When you're so used to being on a team and their team is their life, it's their whole social situation and everybody understands the commitment. But then all of a sudden you don't have that. If academics have never been a priority, it's hard to switch."

Boston was able to make the switch, but his tale is a cautionary one. With more and more NHL players coming in from abroad, the path to the NHL is not nearly as easy as it once was for young Canadian boys. There are likely hundreds of players like Boston across the CHL who cannot imagine a life beyond hockey, and the pursuit of that can come at the expense of an education.

Chances of an NHL Career

82. Attached hereto and marked as **Exhibit "WWW"** is a press release from the WHL entitled, "35 WHL Players Selected in 2015 NHL Draft". The article indicates that 35 players were selected in the 2015 NHL draft, as well as 37 in 2014, 33 in 2013, 32 in 2012, 33 in 2011, 43 in 2010 and 31 in 2009.

83. Attached hereto and marked as **Exhibit "XXX"** is a press release from the OHL entitled, "31 OHL Players Selected in 2015 NHL Draft". The article indicates that 31 players were selected in the 2015 NHL draft.

84. Attached hereto and marked as **Exhibit “YYY”** is a printout from NHL.com with tables indicating the number of players selected in every NHL draft between 2000 and 2014 from each OHL, WHL and QMJHL team. The table indicates that 41 OHL players were drafted in 2014, 37 in 2013, 48 in 2012, 46 in 2011 , 41 in 2010 and 45 in 2009.

CHL’s Response to Union Efforts

85. It appears that in the summer of 2012 an effort to unionize CHL players was underway. Attached hereto and marked as **Exhibit “ZZZ”** is a press release entitled, “Statement from CHL President David Branch”, dated August 22, 2012, posted on CHL.ca. It states the following:

There has been much media speculation in the previous two days surrounding the attempted organization of our 1,300 players by an organization called the Canadian Hockey League Players’ Association.

86. These unionization efforts were highly publicized. Attached hereto and marked as **Exhibit “AAA”** is an article entitled, “CHLPA or not, junior hockey needs to stop screwing its players, ban midseason trades” by Rob Granatstein, published by Postmedia on August 22, 2012.

87. The unionization efforts appear to have been continued through, or renewed in, late-2014 and early-2015. Attached hereto and marked as **Exhibit “BBB”** is a blog post from the president of Unifor, a major trade union, Jerry Dias, entitled, “Time to pay ‘amateur’ jr hockey players”, published on January 26, 2015.

88. I have reviewed the Affidavit of Kiara Sancler, sworn November 19, 2015, in the plaintiff’s supplementary record. It encloses as Exhibit “N” an article entitled “WHL looking at tweaks to player benefits” by Daniel Nugent-Bowman, and published by the

Saskatoon StarPhoenix on February 27, 2014. The article reports that the OHL had ratified changes to its player benefits package at a Board of Governors meeting in August 2013. The article quotes WHL Commissioner Ron Robison as explaining how the WHL plans to amend its player benefits package in conjunction with the OHL and QMJHL.

89. Attached hereto and marked as **Exhibit “CCCC”** is an article entitled, “Peterborough Petes’ Bob Neville new chairman, president of OHL board of governors” by Mike Davies, published by Sun Media August 13, 2013. The article reports:

As chairman, Neville said he chairs all meetings of the executive council and full board of governors. He also works closely with commissioner David Branch and sits on the CHL board as OHL rep.

He says the executive council has spearheaded projects in recent years to improve and standardize player scholarship packages; improved safety with concussion awareness initiatives and rules to decrease checking to the head and fighting; introduced drug education and testing programs and worked to crack down on violators of recruiting rules.

...“The league will announce in the next month some more initiatives that have been passed to enhance player environment,” he said.

...Neville believes the OHL and CHL are run almost as proficiently as major professional leagues. He says it’s partly because of the work of the governors but also of Branch.

90. Attached hereto and marked as **Exhibit “DDDD”** is an article entitled, “OHL ups the ante, makes significant changes to player benefit packages” by Sunaya Sapurji, published by Yahoo! Buzzing the Net on February 20, 2014. The article reports on changes to the OHL’s player remuneration:

There are new contracts being sent out and signed that will usher in some big, new changes to the Ontario Hockey League.

Yahoo Canada has learned that the two most significant amendments to its current program for players focuses on the OHL's education packages and a new monthly reimbursement plan – covering a number of items like gas, clothing and other incidentals like food – for up to \$470. OHL commissioner David Branch, said the initiatives were ratified by the league's board of governors in August and are now being implemented.

“We are constantly, regularly, always challenging how we can improve things for our players on and off the ice,” Branch told Yahoo Canada on Thursday. “We recognize that they are the most important people in the game.”

91. Attached hereto and marked as **Exhibit “EEEE”** is an article entitled, “Major junior hockey union new mission for player turned activist” by Robert Cribb and Rick Westhead, published by the Toronto Star on July 8, 2014. The article reports on changes to CHL policies in response to Unifor's attempts to unionize CHL players:

“There's no question the CHL has made changes because of the spectre of a CHLPA,” said Andrew Maloney, a player agent in Guelph who represents about 25 OHL players.

The CHL this year has increased the monthly stipend for players to \$450 from \$200, and has agreed to give each player \$1,000 to go towards off-season training.

In the past, the CHL voided that package if the player didn't go to school within six months, or if a player signed a contract with even a low-level pro team.

Now, a player can play in the American Hockey League or East Coast Hockey League without jeopardizing their scholarship, Maloney said.

92. I have reviewed the Affidavit of David Branch, sworn December 23, 2015, in the defendants' record. At paragraphs 180-181, Mr. Branch states that the OHL Standard

Player Agreement (“SPA”) was revised in August 2013 and partially implemented for the 2013/14 season. He attaches example versions of the pre-2013 and post-2013 SPA as Exhibits “HH” and “II”. Notably, the former characterizes players as independent contractors whereas the latter characterizes players as amateur athletes. The former also provides for payment of “fees” to players whereas the latter provides for “reimbursements”.

93. I have also reviewed the Affidavit of Kelly Mercer, sworn November 19, 2015, in the defendants’ record. It attaches as Exhibit “B” his OHL SPA. The term of his agreement begins in 2010 but it was executed in 2014. It provides for payment of “reimbursements” at a rate of \$50 per week for the 2010/11, 2011/12 and 2012/13 seasons, which is the same amount that Sam Berg was to be paid in “fees” during the 2013/14, 2014/15 and 2015/16 seasons. Mr. Mercer’s SPA provides for \$470 per month from March 2014 to the end of the season.

94. I have reviewed the Affidavit of Kruse Reddick, sworn November 12, 2015, in the defendants’ record. It attaches as Exhibit “A” his WHL SPA. That agreement provides for payment of an “allowance” to the player in the amount of \$160 per month in 2006/07, \$180 per month in 2007/2008, \$200 per month in 2008/09, \$240 per month in 2009/10, and \$600 per month in 2010/11 (overtime year). The WHL SPA of Lukas Walter, attached as Exhibit “C” to his Affidavit sworn May 1, 2015, provides for the payment of an “allowance” in the amount of \$200 for 2011/12, \$240 for 2012/13 and \$600 for 2013/14.

95. I have reviewed the Affidavit of Kiara Sancler, sworn November 19, 2015, in the plaintiff’s supplementary record. It attaches as Exhibit “O” a redacted WHL SPA which provides for payment of a “reimbursement” to the player in the amount of \$250 per month for the 2015/16, 2016/17, 2017/18, 2018/19 and 2019/20 seasons.

The CHL is Competing with the NCAA to Recruit Top Players

96. Attached hereto and marked as **Exhibit “FFFF”** is an article entitled, “Jason Gregor: WHL needs to change draft age” by Jason Gregor and published by the Edmonton Journal on February 10, 2016. The article criticizes how WHL players can be drafted at age 14, whereas other CHL leagues only allow 15-year-olds to be drafted. The article reports as follows:

So why is the WHL still drafting kids out of bantam?

Because no one wants to speak up. Parents are afraid their children will be blackballed, and often, they simply aren’t informed enough to realize it is unnecessary.

The WHL will argue they draft players so young because it allows the kids more time to plan their move away from home. It is laughable, yet parents and the hockey community keep allowing it to happen.

They draft the kids because they want them to sign a WHL contract right away. They are worried players might consider going the college route instead. It is a self-centred argument and does not benefit the kids.

97. Attached hereto and marked as **Exhibit “GGGG”** is an article entitled, “NCAA vs. CHL: Summer of Decommittments Rages On” by Chris Peters and published by The United States of Hockey on August 19, 2013. The article describes the competition between the CHL and the U.S. collegiate sports system in recruiting top players.

Nationality of Players

98. Attached hereto and marked as **Exhibit “HHHH”** is a memorandum composed by Andra Dragoste, a law clerk at Charney Lawyers, on the instruction of Ted Charney. It summarizes the number of Canadian players on WHL and OHL teams during the 2015/16 season. The vast majority of players are Canadian, even on the American-based

teams. Canadian players represent 69% of the Flint Firebirds, 83% of the Saginaw Spirit, 72% of the Erie Otters, 83% of the Everett Silvertips, 64% of the Portland Winterhawks, 88% of the Seattle Thunderbirds, 80% of the Spokane Chiefs and 79% of the Tri-City Americans.

Agreement between Counsel Regarding Jurisdiction

99. Attached hereto and marked as **Exhibit “IIII”** is a letter from Andrew Eckart, then a lawyer with Charney Lawyers, to Patricia Jackson, partner at Torys LLP (“**Torys**”), counsel for the defence, dated May 6, 2015. Mr. Eckart made inquiries into the defendants’ position on jurisdiction.

100. Attached hereto and marked as **Exhibit “JJJJ”** is a letter from Crawford Smith, partner of Torys, to Ted Charney, dated May 27, 2015. Mr. Smith expressed his clients’ agreement to litigate all claims against the WHL and its clubs in Alberta, and all claims against the OHL and its clubs in Ontario.

101. Attached hereto and marked as **Exhibit “KKKK”** is email correspondence between Crawford Smith and Ted Charney, from May 29, 2015 to June 1, 2015. Further conditions were added to the agreement regarding jurisdiction.

102. I am advised by Ted Charney and verily believe that he spoke with Crawford Smith on the phone around this time and made clear that the plaintiff would agree to litigate all claims against the WHL and its clubs in Alberta, and all claims against the OHL and its clubs in Ontario, on the condition that the defendants will not attempt to litigate the claims in any additional jurisdictions.

103. The defendants served Charney Lawyers with their record on December 24, 2015. This included the report of David Dunn, an American lawyer.

104. Attached hereto and marked as **Exhibit “LLLL”** is email correspondence between Crawford Smith and Ted Charney, dated February 4, 2016. Mr. Charney expresses concerns that the Dunn report appears to provide evidence that could be used to assist the defendants in challenging jurisdiction.

105. Attached hereto and marked as **Exhibit “MMMM”** is a memorandum composed by Ted Charney dated February 9, 2016 regarding his telephone communications with counsel about the Dunn Report and the agreement regarding jurisdiction.

Defence Counsel’s Contact with Putative Class Members

106. In or around August 2015, Ted Charney was contacted by a player who had been approached by lawyers at Torys. Ted Charney and I later spoke with this player on the phone. I have records of his name but I will not reveal his identity because he did not expressly provide his permission to reveal his identity. The player explained that he received a voicemail message from the Montreal office of Torys requesting that he attend their offices to discuss his experiences playing in the QMJHL.

107. Attached hereto and marked as **Exhibit “NNNN”** is resultant email correspondence between Emmanuel Laurin Legare, co-counsel for the plaintiff in the QMJHL action, and Sylvie Rodrigue, partner at Torys, dated September 4, 2015. Mr. Laurin Legare made inquiries as to the purpose of the requested meeting, the number of meetings that took place and whether the players were informed of their rights and the putative class action. Ms. Rodrigue responded that defence counsel are at liberty to communicate with putative class members.

108. Attached hereto and marked as **Exhibit “OOOO”** is a letter from Ted Charney to Patricia Jackson, dated September 16, 2015, and Ms. Jackson’s response, dated

September 18, 2015, discussing the same incident. Ms. Jackson articulates the same position as Ms. Rodrigue.

Berkeley Research Group – Canadian Hockey League Player Study

109. I have reviewed the report of Chester Hanvey entitled, “Canadian Hockey League Player Study”, dated June 15, 2016. I was the associate lawyer at Charney Lawyers who was in contact with the players about participating in the study. I also oversaw Andra Dragoste, a law clerk at Charney Lawyers, in her tasks relating to this study.

110. As per paragraph 16 of the report, I confirm that I did not screen or dissuade any players from participating in the survey, as long as they could confirm their identity and status as a current or former CHL player. Ms. Dragoste advised and I verily believe that she did not screen or dissuade any players from participating in the survey.

111. As per paragraph 17 of the report, I used the verbal script drafted by Mr. Hanvey when inviting players to participate in the interviews. I am advised by and verily believe that Ms. Dragoste also used the script. The script informed players that interviews were being conducted by a neutral third party and that players should answer all questions truthfully and honestly. The script also instructed us to verify the identity of each person as a current or former CHL player during the relevant class period.

112. As per paragraph 18 of the report, Ms. Dragoste then sent each participant a standard email in a form created by Mr. Hanvey. I was copied on all emails. The email repeated the instructions from the verbal script and provided the player with the URL link to join the online meeting for the interview along with instructions for joining the audio portion. The email also provided each player a unique verbal password to give the interviewer to confirm that their identity had been verified by counsel.

113. As per paragraph 19, when players wished to remain anonymous to Mr. Hanvey, Ms. Dragoste would, after confirming the participant's identity, provide him with a unique verbal password. Mr. Hanvey was given a list of the passwords which were correlated with specific interview time slots.

Insurance

114. Attached hereto and marked as **Exhibit "PPPP"** is AIG Insurance Company of Canada Not-for-Profit Individual and Organizational Insurance Policy Including Employment Practices Liability Insurance # 04 540 69 73 issued to Canadian Hockey Association dba Hockey Canada for the policy period of September 1, 2014 to September 1, 2017. The insurance limits are listed as \$10 million per year for three years.

115. Attached hereto and marked as **Exhibit "QQQQ"** is AIG Insurance Company of Canada, Director, Officers and Private Company Liability Insurance Policy Including Employment Practices and Securities Liability # 04 540 69 74 issued to Canadian Hockey Association dba Hockey Canada for the policy period of September 1, 2014 to September 1, 2015. The insurance limits are listed as \$10 million.

116. Attached hereto and marked as **Exhibit "RRRR"** is Chubb Insurance Excess Policy # 6803-0917 issued to Hockey Canada for the policy period of September 1, 2014 to September 1, 2017. The insurance limits are listed as \$10 million. Because this is an excess policy to the AIG policies, this may mean \$10 million per year for three years.

117. Attached hereto and marked as **Exhibit "SSSS"** is The Guarantee Company of North America Follow Form, Directors and Officers Liability Insurance Policy #120534-10 issued to Canadian Hockey Association dba Hockey Canada for the policy period of September 1, 2014 to September 1, 2015. The insurance limits are listed as \$10 million.


118. Attached hereto and marked as **Exhibit “TTTT”** is Encon PrivatePlus Private Entity, Management Liability Insurance Policy # PV-396351 issued to Halifax Mooseheads Hockey Club Inc. for the policy period of December 11, 2013 to December 11, 2015. The insurance limits are listed as \$1 million.

119. Attached hereto and marked as **Exhibit “UUUU”** is Encon PrivatePlus Private Entity, Management Liability Insurance Policy # PV-436076 issued to Ottawa Sports and Entertainment Group for the policy period of May 22, 2014 to May 22, 2015. The insurance limits are listed as \$10 million.

120. Attached hereto and marked as **Exhibit “VVVV”** is a letter from Ted Charney, to Patricia Jackson, dated September 18, 2015, inquiring as to whether other clubs had purchased insurance policies from Encon. I am advised by Ted Charney and verily believe that defence counsel never responded to this letter. I have reviewed my firm’s correspondence records and did not find a response to this letter.

121. Attached hereto and marked as **Exhibit “WWWW”** is a letter from Crawford Smith to Ted Charney dated June 2, 2016.

122. I swear this affidavit in support of the plaintiff’s motion for certification and for no improper purpose.

SWORN BEFORE ME at the)
)
City of Toronto, in the Province of)
)
Ontario, this 15th day of June, 2016)
)
)
)

(A Commissioner, etc.)



BRENDAN O’GRADY