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Conciliation
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DEUXIÈME
VERSION RÉVISÉE

NATIONAL QUEBEC ASSEMBLY

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Section 1; L'opposition du WAIPU au projet de loi 176.1

Introduction pour qui parlera suivi de 3 lettres expliquant l'opposition du WAIPU au projet de loi 176.1

Section 2: Étude de recherche

Énoncé écrit de Phil Merrigan, suivi de son étude de recherche sur l'éducation et les sports, et quel est le meilleur résultat pour les deux.

Section 3: Affidavit de l'ancien joueur

Brandon Hynes, sa déclaration sur son expérience dans la LHJMQ, promesses faites, contrats, faux contrats et courriels.

Section 4: Droit du travail

Déclaration de l'avocat du travail Marc-Antoine Cloutier. Il déclare légalement pourquoi le projet de loi 176.1 est défectueux et doit être réexaminé.

Section 5: Documents à l'appui

a) **Hockey Canada Bylaws 2009-2010:**

La première ligne montre que la LCH est une « ligue professionnelle » selon la LCH et Hockey Canada avant le dépôt de la poursuite en recours collectif pour que les joueurs reçoivent un salaire minimum en 2014.

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b) **Veuillez prendre note : Les règlements de Hockey Canada APRÈS le dépôt de la poursuite en recours collectif ont été modifiés pour essayer de donner l'impression que la LCH était une ligue amateur.**

Règlements de Hockey Canada page 107, section 1 ; définition d'un contrat pro. Il est clair que les joueurs de la LCH qui ont été rédigés et qui ont signé des contrats de la LNH seraient considérés PRO parce qu'ils ont reçu un bonus de signature, ainsi que des primes de rendement dans leur contrat (voir salaire excel des joueurs de la LCH).

Hockey Canada page 120

Encore une fois, la définition après que le recours collectif a été déposé est changée en Non professionnel. Hockey Canada et la LCH auraient pu dire «amateur», mais elles ne le peuvent pas pour les raisons suivantes:

R. Les joueurs deviennent éligibles pour rejoindre la NCAA.
B. Les joueurs de CDN qui jouent sur des équipes basées aux États-Unis ne pourraient pas entrer aux États-Unis sur un formulaire Visa.

- *règlements généraux de hockey canada disponibles sur demande*

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c) Lettre de la filiale David aux propriétaires d'équipe - Mise à jour aux politiques administratives :

Après avoir reçu un avis du recours collectif. La Ligue s'est entendue avec les propriétaires afin d'éliminer l'apparence d'une relation employeur-employé en ordonnant à ses équipes d'arrêter de délivrer des feuillets T4 mandatés par le gouvernement.

Le mépris flagrant de la ligue pour les lois du Canada est démontré par ce document. Le tribunal de l'ARC avait statué à deux reprises que les joueurs étaient des employés et la ligue a accepté cette décision en ne faisant PAS appel de la décision du tribunal devant la Cour suprême.

La tentative de la ligue d'intimider ou d'intimider les agents de conformité de l'ARC est étonnante dans cette note par des déclarations telles que dans la section 12-14 de la note.

Comment un ordre de gouvernement peut-il permettre ce genre de comportement à toute entreprise au Canada?

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d) Déclaration du Québec pour un recours collectif contre les salaires des joueurs de la LHJMQ

C'est la déclaration des joueurs de la LHJMQ pour les pertes de salaire et les heures supplémentaires.

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e) Décision du juge Hall Justice

Il s'agit d'une décision de justice certifiant le recours collectif pour les revendications de salaires et de conspiration contre les équipes de WHL, réclamation par les joueurs de la WHL

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f) **La WHL fait appel des règles de la cour que les joueurs réclament, y compris des allégations de conspiration**.

Cette revendication est une fois de plus en faveur des joueurs de la WHL.

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g) Certification des tribunaux de l'Ontario pour les salaires des joueurs dans la Ligue de l'Ontario

Les revendications des joueurs en Ontario vont de l'avant sous la forme d'une poursuite en recours collectif.

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h) Le commissaire de la WHL, Ron Robison, a prêté serment sous serment (voir page 26 :110).

Malgré le témoignage du commissaire de la WHL, M. Robison, sous serment, affirmant que la majorité des équipes se coucheraient si la certification du recours collectif venait à se produire, alors qu'aucune équipe n'a encore plié et que la WHL parle d'élargir sa ligue !

http://www.independentsportsnews.com/2017/03/08/statement-whl-commissioner-ron-robison/

http://www.timescolonist.com/news/local/whl-vows-to-bring-team-to-nanaimo-if-new-arena-gets-nod-1.11215000

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i)

Documents complets de la Cour supérieure disponibles sur demande: Dossier de la Cour no. CV-14-514423

T-4 pour le joueur et le contrat complet de la LHJMQ:

Il s'agit d'un contrat de joueur de la LHJMQ et de T 4 Slip avant la poursuite en justice en 2014, les joueurs de 20 ans de la LHJMQ étaient en fait des employés des clubs (section 5.1) du contrat de joueur

Changer cette loi soulèvera une violation des droits de l'homme sur la discrimination fondée sur l'âge, sans parler des autres domaines de la loi pour les salaires.

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j) Salaires de CHL / QMJHL:

La section de la LHJMQ montre que 54 joueurs ont été rédigés ou signés et qu'ils sont actuellement sous contrat dans les matchs de la LHJMQ et ont reçu des salaires et / ou des primes à la signature de plus de 27 514 041 $.

Le synopsis ci-dessous vous donne une ventilation par ligue. Les primes de signature indiquées dans le sommaire indiquent que ces montants ont été reçus lors des matchs de la LHJMQ.

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k) Contrat du joueur WHL:

WHL et les ligues demandent aux joueurs de payer pour leurs sorties s'ils quittent la ligue pour aller dans d'autres ligues professionnelles. (La LHJMQ ne gère que légèrement différemment, elle permet à chaque équipe de mettre un prix dessus plutôt que pour la ligue.)

Cela ne ressemble-t-il pas à une entreprise ?

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l) <u>Accord de la LNH :</u>

La LCH est une esclave de la LNH, comme on le voit dans l'entente. La LNH paie les joueurs de la LCH pour l'éducation postsecondaire ainsi que les arbitres. La LNH verse également jusqu'à 175 000 $ (plus) par joueur et contribue 79 000 000 $ (soixante-dix-neuf millions de dollars) à la LCH.

Cela permet à la LNH de restreindre le commerce des joueurs, en permettant seulement aux joueurs d'accéder à la LNH en vertu d'un contrat avec la LCH.

La LNH gère 60 équipes en tant qu'équipe agricole pour moins de 150 000 $ par année par équipe.

SECTIONS POUR L'EXAMEN :

- A7: énonce les termes: la LNH contribue 79 000 000 à la LCH
- B1: NHL contribue un minimum de 750 000 $ pour les forfaits d'éducation
- B2: La LNH contribue au moins 255 000 $ pour les programmes de traitement de la toxicomanie
- B3: La LNH contribue 315 000 $ pour les blessures à la tête
- B4: La LNH contribue 775 000 $ pour les salaires des arbitres
- B5: La LNH contribue 500 000 $ pour le développement des compétences
- B8 (page 4): Les clubs de la LCH sont tenus d'exploiter au moins 50 clubs juniors chaque année pour cet accord
- Page 6 (e) : La LNH paiera un maximum de 175 000 $ pour un joueur repêché
- E: Joueurs de la LNH pour l'assurance des joueurs de la LCH
- G5: les parties de la LCH doivent être jouées sous

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m) <u>McCrimmon Holdings Ltd contre Canada - Ministre de la Revue nationale (M.N.R.):</u>

Section 22, page 8-9 : tous les joueurs de la LCH sont des employés des clubs. 17 janvier 2000 en cour d'appel.

Ce document montre que le gouvernement canadien a qualifié le hockey d'entreprise et que, en fait, les joueurs étaient des employés des clubs, c'est la décision d'appel que la LCH a perdue.

Summary of Sections and Pages:

Section 1; WAIPU's opposition to Bill 176.1
Introduction for who will be speaking followed by 3 letters explaining WAIPU's opposition to Bill 176.1

Section 2: Research Study
Written Statement from Phil Merrigan followed by his research study done on education and sports and what is the best outcome for both.

Section 3: Affidavit from former player
Brandon Hynes, his statement about his experience in the QMJHL, promises made, contracts, fake contracts, and emails.

Section 4: Labour Law
Statement from Labour Lawyer Marc-Antoine Cloutier. He states legally why Bill 176.1 is flawed and needs reconsideration.

Section 5: Supporting documents

a) Hockey Canada Bylaws 2009-2010:

The first line shows that the CHL is a "professional league" according to the CHL and Hockey Canada prior to the filing of the class action law suit for players to receive minimum wages in 2014.

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b) Hockey Canada Bylaws after the filing of the Class Action Law Suit in 2014:
Please note: Hockey Canada bylaws AFTER the filing of the class action law suit were altered to try and give the perception that the CHL was an amateur league.

Hockey Canada Bylaws page 107 section 1; definition of a pro contract. Clearly the players in the CHL that have been drafted and signed NHL contracts would be considered PRO because they have received signing bonus, as well have performance bonus in their contract (see excel salary of CHL players).

Hockey Canada page 120
Again, the definition after the class action was filed is changed to Non-professional. Hockey Canada and the CHL could have said "amateur" but they cannot for the following reasons:

A. Players become eligible to join the NCAA.
B. CDN players who play on USA based teams would not be able to gain entry into the USA on a Visa form.

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c) David Branch letter to team owners – Update to Administrative Polices :

After receiving notice of the class action law suit. The League colluded with owners to a scheme to and eliminate the appearance of an employer /employee relationship by instructing its teams to stop issuing Government mandated T4 slips.

The league's blatant disregard for the laws of Canada is shown by this document. The CRA court had ruled twice that players were employees and the league accepted this ruling by NOT appealing the court ruling to the supreme court.

The league attempt to bully or intimidate the CRA compliance officers is astonishing in this memo by statements such as in section 12 - 14 of the memo.

How can any level of government allow this type of conduct from any business in Canada?

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d) ***Quebec statement of claim for class action for wages by players in the QMJHL***

This is the statement of claim by players in the QMJHL for lost wages and overtime.

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e) ***Justice Hall court ruling***

This is a court decision certifying the class action for wages and conspiracy claims against WHL teams, claim by players in the WHL

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f) ***WHL appeals court rules players claims move forward including conspiracy claims.***
This claim is the once again in favour of the players in the WHL.

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g) ***Ontario court certification for player wages in the OHL***

Players claims in Ontario move forward in the form of a class action law suit.

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h) WHL commissioner Ron Robison sworn testimony under oath (see page 26:110).

Despite testimony by WHL commissioner Mr. Robison that was sworn under oath stating that the majority of teams would fold if certification of the class action law suit happened, as of yet no teams have folded and the WHL is talking about expanding its league!

http://www.independentsportsnews.com/2017/03/08/statement-whl-commissioner-ron-robison/

http://www.timescolonist.com/news/local/whl-vows-to-bring-team-to-nanaimo-if-new-arena-gets-nod-1.11215000

Full Superior Court Documents available upon request : Court file no. CV-14-514423

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i) ***T-4 for Player and full QMJHL contract:***

This is a QMJHL player contract and T 4 Slip that show prior to the class action law suit in 2014, 20-year-old players in the QMJHL, were in fact employees of the clubs (section 5.1) of the player contract

Changing this law will bring up a human rights violation on age discrimination, not to mention other areas of law for wages.

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j) ***CHL / QMJHL Salaries:***

QMJHL section shows 54 players drafted or signed that are currently under contract participating in QMJHL games and have receives salaries and or signing bonuses more than $27,514,501.

The Synopsis below gives you a break down per league. The signing bonuses as indicated in the synopsis shows these amounts have been received while performing in the QMJHL games.

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k) ***WHL Player contract:***

WHL and leagues ask for players to pay for their releases if they leave the league to go to other pro leagues. (QMJHL handles this only slightly different, they allow each team to put a price on it instead of for the league.)

a. *Does this not sound like a business??*

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l) NHL Agreement:

The CHL is a slave to the NHL, as seen in the agreement. The NHL pays for CHL players post-secondary education as well as referees. The NHL also pays up to $175,000(plus) per player as well contributes $79,000,000 (Seventy-Nine million dollars) to the CHL.

This allows the NHL to restrict players trade, only allowing players to go to the NHL while under CHL contract.

The NHL gets to run 60 teams as a farm team for less than $150,000 a year per team.

SECTIONS FOR REVIEW:

- *A7: lays out the terms: NHL contributes 79,000,000 to the CHL*
- *B1: NHL contributes a minimum of $750,000 for educations packages*
- *B2: NHL contributes a minimum $255,000 for substance abuse programs*
- *B3: NHL contributes $315,000 for Head Injuries*
- *B4: NHL contributes $775,000 for referee salaries*
- *B5: NHL contributes $500,000 for skill development*
- *B8(page 4): CHL clubs are required to operate a minimum of 50 junior clubs every year for this agreement*
- *Page 6(e) : NHL will pay a maximum of $175,000 for a drafted player*
- *E: NHL plays for CHL players insurance*
- *G5: CHL games are to be played under NHL professional rules*

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m) ***McCrimmon Holdings Ltd vs Canada – Minister of National Review (M.N.R.):***

Section 22, page 8-9: all players in the CHL are employees of the clubs. January 17 ,2000 in Appeals court.
This document shows the Canadian Government called hockey a business and in fact players were employees of the clubs, this is the appeal ruling that the CHL lost

L'honorable Assemblée nationale du Québec

Je suis Sandra Slater, présidente de l'association Word of IceHockey Players Unions, division nord-américaine, également connue sous le nom de WAIPU North America.

Nous sommes ici aujourd'hui pour dénoncer le projet de loi 176 en ce qui concerne les « athlètes » dans les modifications proposées.

Nous voulons également que le gouvernement du Québec envisage de réécrire ce projet de loi afin d'identifier clairement les joueurs de la LHJMQ en tant que joueurs professionnels de hockey sur glace et employeurs des clubs membres. Cela permettra également au gouvernement du Québec de maintenir une décision de la Cour d'appel fédérale canadienne de 18 ans qui a classé les joueurs de la LCH parmi les employés des clubs membres et que le « hockey » est une entreprise.

Nous sommes tous ici aujourd'hui à cause des jeunes joueurs / employés courageux de la LCH / LHJMQ, qui ont poursuivi leur employeur pour violation du salaire minimum. Tous les recours collectifs déposés par les joueurs ont été certifiés et ont résisté devant les cours d'appel à l'exception du Québec où les joueurs / employés attendent toujours une date d'audience.

Vous entendrez aujourd'hui un avocat du travail, Marc-Antione Cloutier, qui parlera des questions juridiques liées à l'adoption du projet de loi 176 tel quel. Vous entendrez également Brandon Hynes, un ancien joueur, parler de son combat pour les paiements d'éducation.

Dans la section 2 de votre dossier, nous avons soumis une importante étude réalisée par Phil Merrigan, professeur à l'Université du Québec et expert en économie du travail et de l'emploi à Analysis Group Montréal. Cette étude souligne non seulement l'effet « négatif » du système éducatif au sein de la LCH par les statistiques, mais présume également que le gouvernement du Québec et les contribuables en bénéficieraient, permettant au gouvernement d'obtenir des fonds supplémentaires pour subventionner le coût de l'éducation de tous les étudiants province de Québec.

Dans ce forfait, nous vous avons prouvé que la LCH est un « MEMBRE » de Hockey Canada et non un « PARTENAIRE ». Ceci est indiqué par la LCH dans les documents soumis. En tant que partenaire de Hockey Canada, un joueur doit jouer dans sa juridiction, ce n'est clairement pas le cas de la LCH.

Nous avons également fourni la documentation interne de la LCH et de la LHJMQ, incluant les contrats, les feuillets T-4, les visas de travail, les inscriptions gouvernementales, les règlements de Hockey Canada et les baux, ce qui prouve que la LCH est une ligue professionnelle de hockey sur glace. Une ligue amateur. Ceci est extrêmement important que vous compreniez leur schéma et leur relation très complexes.

La LCH et ses membres tentent de contourner les lois du travail et les procédures de contentieux civil. La LCH veut se présenter comme un club amateur pour éviter de payer des employés, ainsi que pour atténuer les pertes possibles dans le cas où les suites de recours collectifs sont gagnées.

Si Hockey Canada qui se classe comme l'organisme dirigeant du hockey au Canada ne reconnaît pas la LCH en tant que club membre et ne reconnaît pas le niveau de jeu de la LCH en tant qu'athlète amateur ou étudiant, aucun gouvernement, à quelque niveau que ce soit, ne devrait vouloir modifier classifieraient la LCH / LHJMQ comme quelque chose de différent alors que leurs propres contrats stipulent et que les tribunaux ont déjà statué.
Les joueurs passés et actuels devraient être consultés sur ce projet de loi important. À ma connaissance, il n'y a eu qu'une seule rencontre avec les joueurs sur ce sujet à Québec et, à ce moment-là, les joueurs n'étaient pas d'accord avec le changement de loi, mais il n'y a jamais eu de suivi formel.

Les faits dont vous êtes saisis montrent un modèle d'affaires extrêmement imparfait, mais brillant, qui génère chaque année environ 300 millions de recettes totales pour les équipes de la LCH, mais personne ne paye d'argent pour le talent de l'équipe, l'attraction principale, les joueurs ! Pourtant, les propriétaires, les directeurs et le personnel reçoivent des salaires et des primes totalisant des millions de dollars. Ce modèle d'affaires déplace les jeunes hommes loin de chez eux dès l'âge de 15 ou 16 ans, et comme ils sont échangés, ils continuent à changer d'école, ce qui arrive souvent avec beaucoup de joueurs.

De plus, veuillez considérer ceci; Les joueurs de la LHJMQ ne sont pas d'accord avec ce projet de loi parce que des milliers de joueurs, non seulement au Québec, mais partout au Canada et aux États-Unis, poursuivent leurs employeurs pour des pertes de salaire.

Nous avons également 2 présentations power point qui peuvent être utilisées pendant la partie de questions et réponses. Ils contiennent des informations précieuses ainsi que plus de documents.

Merci et maintenant Brandon parlera

Ci-dessous, je joins 2 présentations Power Point pour des informations pendant les 45 minutes de questions et réponses. Là, les points d'alimentation sont chargés d'informations et de documentation très importantes.

Vous trouverez ci-dessous quelques lettres que vous avez lues à la WAIPU pour expliquer pourquoi nous sommes contre le projet de loi 176.1 en ce qui concerne les « athlètes ».

Honorable Quebec National Assembly,

I am Sandra Slater President of the Word Association of IceHockey Players Unions, North American division, also known as WAIPU North America.

We are here today to speak out against Bill 176 as it pertains to "Athletes" in the proposed amendments.

We also want the Quebec Government to consider re-writing this Bill to clearly identify QMJHL players as professional Ice hockey players and employers of the member clubs. This as well will allow the Quebec Government to uphold an 18-year-old Canadian Federal Appeals Court ruling that classified the players of the CHL as employees of the member clubs and that "hockey" is a business.

We are all here today because of courageous young players / employees of the CHL / QMJHL, whom have sued their employers for minimum wage violations. All the class action law suits filed by players have been certified and have held up under courts of appeals with exception of Quebec where the players / employees are still awaiting a court date.

You will hear today from a labour lawyer – Marc-Antione Cloutier, who will speak out to the legal issues associated with passing Bill 176 as is. You will also hear from Brandon Hynes a former player, about his fight for education payments.

In section 2 of your package we have submitted an important study done by Phil Merrigan a Professor at the University of Quebec and an expert on labour and employment economics with Analysis Group Montreal. This study not only points to the "negative" effect of the educational system within the CHL by statistics, but also

surmises the Quebec Government and tax payers would benefit, allowing the government to obtain additional funding to subsidize the cost of all student's education in the province of Quebec.

In this package we have proven to you that the CHL is a "MEMBER" of Hockey Canada and not a "PARTNER". This is stated by the CHL in paperwork submitted. Being a partner of Hockey Canada, a player must play within his living jurisdiction, this is clearly not the case with the CHL.

We have also provided you with internal documentation from the CHL and QMJHL, which includes contracts, T-4 slips, work visa, government registration, Hockey Canada Bylaws and lease agreements, all which prove that the CHL is a Professional Ice Hockey league and NOT an amateur league. This is extremely important that you understand their very complex scheme and relationship.

The CHL and its members are attempting to circumvent labour laws, and civil litigation procedures. The CHL wants to appear as an amateur club to avoid paying employees, as well as mitigate possible losses in the event the class actions law suites are won.

If Hockey Canada who classifies itself as the governing body of hockey in Canada does not recognize the CHL as a member club nor recognize the level of play by the CHL as amateur or student athletes, no Government at any level should want to amend a law that would classify the CHL / QMJHL as something different then what their very own contracts state and the courts have already ruled on.

Past and current players should be consulted on this important Bill. To the best of my knowledge there has been only one meeting with the players on this topic in Quebec City and at that time the players did not agree with the Bill change but there was never a formal follow up done.

The facts before you show an extremely flawed, but brilliant business model that generates every year an estimated 300 million in total revenue for the CHL teams but no one paying any money to the talent of the team, the main attraction, the players! Yet owners, directors, and staff receive salaries and bonuses totaling in the Millions of dollars. This business model displaces young men away from their homes at the very young age of 15 or 16, and as they are traded, they keep switching schools, this happens frequently with many of the players.

As well, please consider this; the players in the QMJHL do not agree with this Bill because thousands of players not only in Quebec but across Canada and into the USA are suing their employers for lost wages.

We also have 2 power point presentations that can be used during the question and answer part of this. They contain valuable information as well as more documents.

Thank you and now Brandon will speak.

Below I am attaching 2 power point presentations for information during the 45 minutes of questions and answers. There power points are loaded with very important information and documentation.

Below are some letters for you to read that we at WAIPU have put together to explain why we are against Bill 176.1 as it relates to "Athletes".

World Association of IceHockey Players' Union

(North American Division) & WAIPU

"WAIPU" Presentation

to the

Government of Quebec

Presented: Tuesday May 29, 2018

Hockey Canada
&
USA Hockey

Canadian Hockey League ("CHL")

– Not a Member OF H/C Or USA Hockey –

Reasons why the Canadian Hockey League ("CHL"), (also known as *Major Junior Hockey)* *is* ***not*** *a* member of Hockey Canada; nor does it fall under the ***Amateur system*** in Canada.

The Following is excerpted from Hockey Canada's by-laws:

- ❑ The CHL is listed under "*partners*"
- ❑ The CHL is clearly listed as a partner-organization of Hockey Canada. The NHL is also listed as a partner-organization. One would not consider the National Hockey League ("NHL") to be an A***mateur league***
- ❑ Partners have no rights (**page 17 by laws)**

Definitions according to Hockey Canada

"***Amateur***": an amateur hockey player is one who is not participating in professional icehockey. *(Page 57 A.3)*

"***Associate***" means to put into existence a partnership between a club and a Major Junior, a Junior A, a Junior B and/or a Junior C Team in accordance with R*egulation E 12.* *(Page 57 A.4)*

"***Division***" Means the classes of hockey being operated within Hockey Canada. *These are as follows:*
Senior, Junior, Juvenile, Midget, Bantam, Pee Wee, Atom, Novice, Initiation and Division created under R*egulation B.2*

***Missing from Division* is *Major* Junior. Meaning the CHL does NOT operate within Hockey Canada.** *(Page 57 A .13)*

4

Hockey Canada's By-laws says: Competition (B) (Section B (Pg. 60)

1. Hockey Canada governs competition <u>in *Amateur*</u> <u>hockey</u> in the various divisions, *including*:

A. Senior, male and female: Open to players of any age.

B. (i) Junior Male: Open to players under 20 years of age.
(ii) Junior Female: Open to players under the age of 21

C. Juvenile, male and female: Open to 20 years and younger

ONCE AGAIN NO *MAJOR* JUNIOR LISTED UNDER AMATUER STATUS OF HOCKEY CANADA.

5

In junior male hockey the categories are as follows: (5.B ***(Page 61)***

MAJOR JUNIOR, Junior A, Junior B, Junior C

Clearly, distinctions are made in regards to *Major* Junior Hockey and *Junior* Hockey

6

May 29th 2018 to the
Quebec National
Assembly Bill

By-Laws • History • Regulations
Effective *2009 – 2010* Season

PRIOR TO THE FILING OF THE
187 Million Dollar
CLASS ACTION LAW SUIT

USAH / HC / CHL

Transfer & Release Agreement K2

By-Laws • History • Regulations
Effective *2009 – 2010* Season

It is agreed that CHL Teams are considered and treated by third parties as **being professional**. Therefore, the signing of a contract with a CHL Team is the equivalent of signing a **professional contract**. Further, that by signing a contract with a CHL Team, the player agrees to be bound by the terms of that contract, including the method of terminating the contract, which must be in accord with the terms contained in the contract itself.

Division North America
world association of icehockey players unions

May 29th 2018 to the
Quebec National
Assembly Bill

After the
$187M Class-Action Lawsuit
Amazingly they are now …
"NON PROFFESSIONAL"

By-Laws • History • Regulations
Effective *2017– 2018* Season

USAH / HC / CHL

Transfer & Release Agreement K2

2. CHL Team(s)/Player(s)

By-Laws • History • Regulations
Effective *2017– 2018* Season

2. CHL Team(s)/Player(s)

It is agreed that CHL Teams are considered the highest level of non-professional competition in Canada, administrated as a development program under the auspices of Hockey Canada in a member League of the CHL. Players with this program agree to participate in a member League of CHL and with a CHL Team by signing a Player agreement, the form of which agreement for each member League is prescribed by each such member League of CHL. Further, by signing an agreement with a CHL member Team, the Player agrees to be bound by the terms of that agreement, including its termination and transfer provisions.

In summary, if the Player executes the CHL agreement in accordance with the terms set forth above, the Player shall be bound thereby and he shall forfeit the opportunity to exercise rights contained in this Agreement, including, but without limiting the generality of the foregoing, Article III-Transfers Timelines and Article VI-Dispute Resolution for as long as such CHL Agreement remains in effect.

- **Hockey Canada's By-laws says:**
- **Competition (B) (Section B (Pg. 60)**

1. Hockey Canada governs competition in *Amateur* hockey in the various divisions, *including*:

A. Senior, male and female: Open to players of any age.

B. (i) Junior Male: Open to players under 20 years of age.

- (ii) Junior Female: Open to players under the age of 21

C. Juvenile, male and female: Open to 20 years and younger

- **ONCE AGAIN NO *MAJOR* JUNIOR LISTED UNDER AMATUER STATUS OF HOCKEY CANADA.**

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You might ask yourself, why does Hockey Canada not just say the CHL is amateur.

One may argue that Hockey Canada can ***NOT*** legally have teams from the CHL that run *for-profit business* and under the CDN grant process you have to have ***NON-profit status to obtain grants in most cases***.

The $5 million dollar annual grant given to Hockey Canada could be in jeopardy if it had ***for-profit business*** under its umbrella.

National Sport Organizations - 2015/2016 Funding ... *Cont'd*

Organization	Sport Support Program (SSP)	Athlete Assistance Program (AAP)	Hosting Program (HP)
Ice Hockey	$3,483,975.00	$1,334,313.77	$550,000.00
Judo	$1,308,000.00	$394,471.75	$120,000.00
Karate	$318,000.00	$102,040.20	$0.00
Lacrosse	$445,000.00	$0.00	$0.00
Lawn Bowls	$207,500.00	$0.00	$0.00
Luge	$0.00	$314,045.98	$50,000.00
Racquetball	$437,350.00	$82,326.85	$0.00
Ringette	$480,500.00	$0.00	$0.00

Cont'd ...

All teams must agree to play within Hockey Canada's by-laws and league rules

The CHL does not adhere to these policies they have their own by-laws and their own *Professional* icehockey rules they play under

NCAA student-athletes are amateurs and **cannot** have played for a professional sports team prior to enrolment. In hockey, specifically, this means that anyone who signs a contract with, or plays for a team in the Canadian Hockey League (OHL, QMJHL or WHL), forfeits their NCAA eligibility.

The NCAA Eligibility Center will certify each prospective student-athlete's amateur status prior to clearing them for competition at the Division I level.

Division North America
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May 29th 2018 to the
Quebec National
Assembly Bill

Summary

- CHL is a ***professional*** league with ***professional*** teams and players.
- CHL has a ***professional*** entry level draft not only in North America but also in Europe.
- CHL has ***professional*** player contracts.
- CHL has ***professional*** players who have also played in other pro leagues such as the NHL .
- CHL teams have lease agreements that say it uses arenas for ***professional*** hockey games.
- CHL players some of which have received signing bonus up to 92,500 per year.
- CHL's own *transfer agreements* say their players are ***professionals*** .
- CHL has TWO court rulings in Canada that identifies hockey is a business and players are *employees*.

After decades of saying player pro. Only now does the CHL attempt to try and say players are Student amateur athletics in order to avoid the payment of wages to employees.

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Power point below is from information received May 26th from the freedom of information act. It took 18 months to receive this information, because the CHL was trying to block it.

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May 29th 2018 to the
Quebec National
Assembly Bill

LETTER TO PEI HONOURABLE WADE MACLAUCHLIAN PREMIER OF PEI. DATED, FEBRUARY 3, 2016

The Issue

A class action claim has been commenced by a lawyer in Toronto that alleges that all CHL players are "employees" as defined by employment standards legislation in each province in Canada and in certain States in which the league plays in the United States. The claim is that 16 or 17 year old student athletes playing hockey are "working" and that they are covered by minimum wage, overtime, holiday pay and vacation pay provisions.

The CHL class action claim is for $180,000,000. Possible damages are mounting at a pace of as much as $17 million per year.

MISINFORMATON

- The claim is for ***all CHL*** players aged 16-19
- Players are not ***student athletics*** they are considered **NON professionals**

REGISTER NOW FOR MCDONALD'S U14 SOCCER LEAGUE

- **Schools are reminded that the registration deadline for the McDonald's U14 Schools League is March 31st**

Although we respect and recognize the importance of employment laws, no one involved in sport believes that employment standards legislation was intended to apply to student athletes.

- **The federal government already ruled that these players were *employees of the teams***

If the CHL class action suit succeeds, there will be a catastrophic impact on junior hockey and on all amateur athletics including the AUS. Virtually all AUS programmes and MHL teams will suffer the same fate as they have factually similar relationships between teams and players.

FACT:

- **There are NO similarities between *Major Junior Hockey* and AUS or *Junior Hockey***
- **The CHL has pro players that play on their teams who receive signing bonuses to play hockey**
- **Teams sell players to the NHL to make a profit**
- **Teams play for a business NOT for a school**

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May 29th 2018 to the
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MISLEADING STATEMENTS NON-FACT BASED

- All QMJHL Players are registered as amateur student athletes with Hockey Canada. The CHL, which comprises the Quebec, Ontario, and Western Hockey Leagues, is a registered not for profit Canadian amateur sports organization and is a member of Hockey Canada.

- All QMJHL Players have signed a Standard Player Agreement acknowledging they are amateur student athletes, not employees.

- QMJHL teams prefer a direct relationship with their players and believe there is no need for representation.

MISLEADING STATEMENTS NON-FACT BASED *(CONT'D)*

FACT:

- CHL is NOT a member of Hockey Canada
- There is no such registration card with Hockey Canada that is called a ***STUDENT AMATEUR ATHLETE***
- These types of statements are meant to ***mislead the government*** and to paint a picture of an *amateur hockey league*
- To date, there is zero letter of fact to support the claims made by the CHL or QMJHL other than statements

MISLEADING STATEMENTS NON-FACT BASED – *CONT'D*

The QMJHL is the Leading Supplier of Talent For...

- National Hockey League;
- Canada's National Teams (World Junior and Under 17/ Under 18);
- Canadian Inter-university Sport (CIS);
- Minor pro league;
- European hockey Leagues.

PLAY AT THE HIGHEST LEVEL OF THE CANADIAN SYSTEM WITHOUT COMPROMISING YOUR EDUCATION.

MISLEADING STATEMENTS NON-FACT BASED – *CONT'D*

FACT:

- CHL is not the number one supplier of talent to European leagues or minor pro, once again there is ***NO supporting study or documents*** to support these claims
- QMJHL players are actually disqualified systematically to education in the NCAA because the CHL is considered a PRO League by the NCAA
- This remedy be rectified, simply and according to the NCAA by removing the Major from MAJOR JUNIOR HOCKEY and the classification of pro or non professional in the Hockey Canada by-laws

MISLEADING STATEMENTS NON-FACT BASED – *CONT'D*

Canadian Hockey League:

- The Memorial Cup had been played for annually since 1919. Trophy dedicated to honour all those Canadian men and women who paid the supreme sacrifice.
- A member of Hockey Canada, the CHL is the governing body for major junior hockey and the highest level of amateur hockey on the Canadian system.
- Three Member Leagues: Ontario Hockey League (OHL), Western Hockey League (WHL), Quebec Major Junior Hockey League (QMJHL).
- 60 teams in 9 provinces and four states.
- 1,300 players aged 16-20.
- Key events: MasterCard Memorial Cup, CHL-NHL Top Prospects Game and International Series vs Russia.
- More than 50% of NHL players come from the CHL.
- More than 90% of CIS players come from the CHL.

MISLEADING STATEMENTS NON-FACT BASED – *CONT'D*

FACT:

- **The CHL is not a member of hockey Canada according to Hockey Canada by laws.**
- **The CHL is not the high level of amateur hockey in Canada**
- **MISLEADING fact is the CHL is called the *HIGHEST LEVEL OF NON PROFESSIONAL* … a major difference**

CITY CRIES FOUL IN FAILED QMJHL BID

MIKE CARSON (NEWSROOM@JOURNALPIONEER.COM)
PUBLISHED: JUN 03, 2011 AT MIDNIGHT
UPDATED: SEP 29, 2017 AT 9:44 P.M.

http://www.journalpioneer.com/news/local/city-cries-foul-in-failed-qmjhl-bid-52688/

P.E.I. Rocket and its President and Governor, ***Serge Savard Jr***. said the city management put the league in a situation to vote when there was no consensus from city council to do so.

> *"I am not responsible for not having a team in Summerside. In the Q, I am a member, I am a governor. I represent one-seventeenth of the league now that Lewiston is out. When we had a governors meeting, which Mr. Murphy did not attend, the number 1 purpose of every owner is to protect the existing markets. I made it clear from Day 1 that I knew if it would go to a vote it would be unanimous (against it). I know Summerside worked hard to get a franchise, but as long as the P.E.I. Rocket is on the Island there will never ever be two teams on P.E.I."*

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15 mai 2018

ASSEMBLÉE NATIONALE DU QUÉBEC

OBJET : PROJET DE LOI 176 (SECTION 1)

En guise d'introduction, nous sommes la division nord-américaine de l'UNION DES JOUEURS DE L'ICEHOCKEY DE L'ASSOCIATION MONDIALE (« WAIPU ») et nous vous demandons respectueusement de bien vouloir lire intégralement ce document et les pièces justificatives ci-jointes-Noté House Bill.

La WAIPU et tous ses membres écrivent ensemble cette demande pour un examen complet du projet de loi 176. Nous aimerions également vous fournir l'information dont vous avez grandement besoin pour vous aider à prendre une décision en toute connaissance de cause qui sera dans l'intérêt du employés / joueurs de la Ligue de hockey junior majeur du Québec (LHJMQ).

Nous croyons que la demande de la ligue professionnelle de hockey sur glace, LHJMQ, qui a exercé des pressions sur le gouvernement du Québec pour modifier l'AES, devrait être soumise à la plus haute norme de preuve. La LHJMQ doit prouver que les joueurs du club **ne sont PAS des employés** et qu'ils n'ont jamais été considérés comme des employés ou des joueurs professionnels par l'équipe ou la ligue en tout temps. Nous demandons également à la LHJMQ et à ses équipes de démontrer comment l'équipe et la ligue peuvent considérer que les joueurs ne satisfont pas aux critères d'admissibilité aux termes de la Loi sur les normes d'emploi (la « Loi »).

La WAIPU et ses membres demandent également à la LHJMQ de prouver que les joueurs sont des « étudiants athlètes amateurs ». Cette preuve devrait prendre la forme d'une liste de joueurs inscrits, étudiants à temps plein, inscrits à des cours à plein temps, tout en fréquentant un établissement scolaire à temps plein. Cette liste devrait être accompagnée d'un reçu officiel du centre universitaire.

Le gouvernement du Québec devrait insister sur la transparence complète de tous les documents financiers, sans se limiter aux revenus, aux ententes de commandites, aux ententes de la LNH et de Hockey Canada, aux contrats de télévision, pour démontrer au gouvernement du Québec que les équipes de la LHJMQ ne sont pas rentables.

Étant donné que la LHJMQ demande une modification radicale de la LNE, ainsi que des millions de dollars annuellement en recettes perdues sous forme d'impôts sur les salaires des employés, une transparence totale est essentielle.

Il est inconcevable que des équipes qui génèrent des revenus annuels de 5 millions de dollars ne puissent pas se permettre de consacrer 5% de leur budget de fonctionnement au paiement des salaires de leurs employés.

La ligue et les équipes se sont référées et ont conclu des contrats avec des tierces parties appelant leurs employés / joueurs **professionnels de hockey** sur glace depuis des décennies. Ce n'est qu'après avoir entendu le procès en recours collectif contre les équipes et la ligue, que la ligue et les équipes ont tenté d'essayer de changer les contrats afin d'éviter toute ramification légale de ceux-ci contrats. (Voir ci-joint, **les règlements de Hockey Canada et le contrat joueur / employé de la LHJMQ**). C'est après des décennies de contamination systématique des joueurs / employés d'être admissibles à des bourses de la NCAA en classant les joueurs comme des professionnels et / ou des joueurs juniors majeurs, dans leurs propres accords.

On peut supposer que, après des décennies, la ligue et les équipes ont travaillé ensemble pour restreindre l'éducation de ses joueurs / employés de hockey sur glace (junior majeur) à la NCAA, car les joueurs / employés sont limités pour passer à d'autres ligues dans le seul but de maintenir les joueurs / employés les plus talentueux de la Ligue canadienne de hockey (LCH) et de la LHJMQ dans un souci de gain financier et de profit, en sacrifiant davantage l'éducation et les salaires des jeunes joueurs / employés et LHJMQ. On ne peut nier que si les meilleurs joueurs / employés devaient aller à la NCAA, la ligue perdrait non seulement au box-office, mais risquerait aussi la perte d'un accord de soixante-dix-neuf millions ($ 79M) entre la LCH et la Ligue nationale de hockey (« LNH »). **(Voir l'entente de la LNH et de la LCH ci-jointe).**

La ligue veut maintenant que ses joueurs de hockey sur glace (junior majeur) soient appelés « athlètes amateurs » afin d'éviter de payer un salaire légal.

Maintenant que la cour a perdu deux décisions de justice canadiennes antérieures classant les joueurs comme employés des clubs dans l'ARC fédérale, les tribunaux de l'Ontario et de l'Ouest canadien ont certifié le recours collectif contre la OHL et WHL pour les violations de salaire et le complot.

La ligue et les équipes tentent maintenant honteusement de se soustraire aux lois de l'ESA en demandant aux propriétaires de l'équipe de ne plus délivrer de feuillets T4 au Canada et aux États-Unis dans un mémo à ses propriétaires. En plus de faire pression sur les gouvernements provinciaux pour qu'ils modifient l'ESA en se fondant sur des faits erronés et infondés **(voir la copie du mémo de la ligue de la filiale ci-jointe)** en indiquant ce qui suit :

> *"7. Clubs should no longer take and remit deduction commencing with the 2013-2014 hockey season if that has been there practice and T4 will be issued only for the portion of the 2012-2012 season relating to payments made in a calendar year of 2013.* ***For payments relating to the 2013-2014 season, the clubs will no longer take or remit deductions, make remittances or issue T4 (U.S tax form 1099) or any other government forms to the players for the reimbursements or their room and board. Clubs do not need to specifically notify CRA that they are no longer withholding and remitting deductions with respect to the players.***"

French translation of from official document below:

"7. Les clubs ne devraient plus prendre et remettre la déduction à partir de la saison de hockey 2013-2014 si cela a été fait et le T4 ne sera émis que pour la portion de la saison 2012-2012 relative aux paiements effectués au cours d'une année civile 2013. **Pour les paiements En ce qui concerne la saison 2013-2014, les clubs ne prélèveront plus ni ne remettront de déductions, ne feront plus de remises et ne délivreront pas de T4 (formulaire d'impôt américain 1099) ni aucun autre formulaire gouvernemental aux joueurs pour les remboursements ou leur chambre et pension. Les clubs n'ont pas besoin d'aviser spécifiquement l'ARC qu'ils ne retiennent plus et ne versent plus de déductions à l'égard des joueurs.**

Ce type de comportement ne devrait pas être toléré ou récompensé (dans la mesure où il deviendrait aussi un « précédent » dans les lois de l'ASE), quel que soit le niveau de gouvernement.

Les employés de ces équipes dans la LHJMQ ont des droits et ne devraient pas être victimes d'intimidation ou, par crainte de représailles, s'exprimer contre un tel mépris flagrant des lois sur l'emploi de chaque pays / province.

Le recours collectif de cent quatre-vingt-sept millions (187 millions de dollars) a été certifié au Canada et un juge au Canada a déclaré que la poursuite peut aller de l'avant avec ce qui suit, y compris une clause de conspiration :

> *Justice Hall certified all of the causes of action pleaded by the plaintiffs, including: **(1) breach of contract; (2) breach of contractual duties of honesty, good faith, and fair dealing; (3) breach of employment standards legislation; (4) negligence; (5) conspiracy; and (6) waiver of tort.***

French translation from above quote from official document:

Le juge Hall a certifié toutes les causes d'action invoquées par les demandeurs, notamment : **1) rupture de contrat ; (2) la violation des obligations contractuelles d'honnêteté, de bonne foi et d'utilisation équitable ; (3) la violation de la législation sur les normes d'emploi ; (4) la négligence ; (5) conspiration ; et (6) renonciation à un délit.**

L'ATHLÈTE AMATEUR / ARGUMENT DE LA LIGUE AMATEUR

Les équipes affirment que les joueurs et les ligues sont «cent (100%)% amateurs»; que les joueurs des équipes sont des «étudiants athlètes amateurs», donc pas des professionnels et ne doivent pas être considérés comme des employés. Nous ne sommes pas d'accord avec cette affirmation.

Les faits sont indéniables, comme en témoignent les documents ci-joints, la LHJMQ a des **joueurs / employés professionnels** qui jouent et ont signé des contrats de la LNH-Pro de plus de 27 314 501 $ et de **2 842 500 $** en primes de signature; De plus, les contrats comportent des primes de rendement supplémentaires de 6 842 500 $.

Avec trente-six millions de dollars (36 millions de dollars) en salaires et primes, comment une ligue, une équipe, un employeur ou un palier de gouvernement peut-il vraiment considérer ces employés comme des «athlètes amateurs» avec ce type de revenu?

On estime que 175 joueurs recrutés dans la Ligue nationale de hockey, mais qui jouent actuellement dans la Ligue canadienne de hockey, ont reçu des primes de signature estimées à **24 million de dollars** et ont conclu des contrats avec des salaires dépassant **250 million de dollars** et **60 autres million** dollars en primes de performance. Il est inconcevable que la Ligue canadienne de hockey et ses équipes membres puissent classer cela comme une ligue amateur **(voir la pièce jointe du salaire de la LCH).**

PEUR ET INTIMIDATION

La ligue et les équipes ont mené une propagande médiatique autour de la peur et de l'intimidation. Les déclarations publiques de la ligue et des équipes concernant les plis, les faillites et les avantages des joueurs sont vaines (si la certification du recours collectif a été couronnée de succès), les fausses menaces et les tactiques d'intimidation servent à intimider, à intimider et à sympathiser le public.

Sous serment, et au moyen de l'affidavit de **Ron Robison**, commissaire de la Ligue de hockey de l'Ouest (« WH »), déposé comme suit :

> ***"110. I anticipate that the result of certification would be that the teams and the league would have to re-examine and reduce the benefits offered to players beginning next season, in order to responsibly plan for this contingent liability. I also anticipate that the certification would result in the loss of the majority of our teams, who owners simply cannot shoulder the burden of the contingent liability of this lawsuit on top of annual losses or near break –even results. The size of the league would shrink, as would the opportunities available to talented young hockey players both from hockey development and educational standpoint."***

French translation from above quote from official document:

"110. Je prévois que le résultat de la certification serait que les équipes et la ligue devraient réexaminer et réduire les avantages offerts aux joueurs à compter de la saison prochaine, afin de planifier de façon responsable ce passif éventuel. Je prévois également que la certification entraînerait la perte de la majorité de nos équipes, les propriétaires ne pouvant tout simplement pas assumer le fardeau de la responsabilité éventuelle de cette poursuite en plus des pertes annuelles ou des résultats presque identiques. La taille de la ligue diminuerait, tout comme les possibilités offertes aux jeunes joueurs de hockey talentueux, tant du point de vue du développement du hockey que du point de vue de l'éducation.

Cependant, ce qui est plus inquiétant, c'est que, quelques semaines après la déposition de M. Robison, il a publié une déclaration publique le 8 mars 2017 à Nanaimo, en Colombie-Britannique, selon laquelle Nanaimo emprunterait 100 millions de dollars.) Des dollars pour construire une nouvelle aréna, la WHL s'engagerait pleinement dans une équipe à Nanaimo, en Colombie-Britannique.

> ***"The WHL remains fully committed to delivering a WHL franchise to Nanaimo, either through relocation or expansion, and will move forward to obtain the necessary final approvals should the residents of the City of Nanaimo vote in favour of a new events centre,"***

French translation from above quote from official document:

« La WHL demeure déterminée à livrer une concession de WHL à Nanaimo, soit par la relocalisation ou l'expansion, et ira de l'avant pour obtenir les approbations finales nécessaires si les résidents de la ville de Nanaimo votent en faveur d'un nouveau centre d'événements.

La ville a alors été informée du recours collectif en instance et les contribuables de Nanaimo ont vu à travers l'écran de fumée et ont voté « Non » à un emprunt d'argent de 100 millions de dollars durement gagné pour construire une aréna pour une ligue qui ne peut payer employés et pourrait même ne pas être une ligue.

Que doit-on croire ? La déclaration sous serment que la ligue va perdre ses équipes ? Ou la déclaration publique proposant fondamentalement un, ne vous inquiétez pas, "construisons-nous et nous viendrons" scénario, peu importe quoi ?

Ce genre de déclarations imprudentes d'un officiel de la ligue, qui n'a manifestement pas le meilleur intérêt des contribuables, des représentants du gouvernement ou du respect des lois, ne devrait pas être toléré ou devenir un précédent. Demander aux contribuables d'assumer ce

montant de dettes pour obtenir une équipe qui ne serait peut-être pas là est une déclaration incroyablement audacieuse.

À ce jour, aucune équipe ne s'est pliée. En fait, on a parlé de l'expansion de la ligue.

OPTIONS

Information:

L'équipe et la ligue ont d'autres options pour générer des revenus supplémentaires ou réduire les coûts afin d'atteindre le budget prévu, plutôt que de demander un document aux contribuables québécois. L'impact économique de l'adoption d'un tel projet de loi comme le projet de loi 176.1 serait une perte de revenus de millions de dollars annuellement en taxes et des millions de dollars de plus en impact économique, sans compter les joueurs / employés de la LHJMQ qui fréquentent l'école suivre des études postsecondaires.

Le manque de capacité à obtenir un revenu / salaire entre 16 et 20 ans créerait un préjudice économique pour ces jeunes hommes.

Statistiquement, moins de 35% des joueurs / employés de la LCH sont admissibles à l'éducation postsecondaire.

Cela dit, il existe de nombreuses restrictions et limites financières imposées aux trousses d'éducation fournies par la LHJMQ. L'un d'entre eux est ;

- **Si un joueur continue à poursuivre une carrière de hockey après avoir quitté la LHJMQ, il est forcé de renoncer à son forfait scolaire qu'il a mérité. Ceci est inacceptable.**

L'accord de la LNH qui paie maintenant 79,6 millions de dollars à la ligue peut être refait pour mieux refléter les dizaines de millions de dollars que la LNH économise chaque année en ayant le monopole de la LCH. Cet accord permet aux propriétaires de la LNH de tirer profit de la restriction du commerce des joueurs de la LCH et d'exploiter un système de ferme de 60 équipes.

Options plausibles :

1. Arrêtez de faire venir des joueurs importés de l'UE ou des États-Unis.
    - Sélectionnez les joueurs des zones locales, ce changement de modèle d'affaires permettrait d'économiser chaque équipe plus de 300K par an en dépenses. (Cependant, la ligue ne le ferait pas car ils ont leur projet de niveau d'entrée chaque année qui fait des millions de droits et des images de joueurs).
2. Réduire le salaire **du personnel**.
3. Demander aux niveaux locaux de gouvernement pour l'allégement fiscal qui compenserait les dépenses de salaire payant.
4. Avoir le partage des revenus avec d'autres équipes.
5. Réduire les coûts de déplacement - plus de jeux locaux et régionaux.

6. Meilleure entente avec le hockey de la LCH et des États-Unis sur les événements de la Fédération internationale de hockey sur glace (« IIHF ») qui génèrent des revenus de plus de deux cents millions (200 millions de dollars) par année.

7. Dans ce cas, réduisez le bail de l'aréna de moitié pour permettre de payer les joueurs. L'état serait mieux de collecter des impôts et ne pas modifier les lois de l'ESA.

CONCLUSION

On ne peut nier que les activités des équipes de hockey et de hockey sur glace sont importantes pour leurs collectivités et pour les joueurs et les employés qui les composent. Cependant, les succès qu'ils obtiennent ne doivent pas aveugler les propriétaires, la législature, le public et les joueurs / employés eux-mêmes du fait qu'il existe des normes du droit du travail qui (par la loi) doivent être respectées et respectées.

Au nom des joueurs / employés passés, présents et futurs de la LCH et de la LHJMQ, la WAIPU et ses membres demandent donc respectueusement que **le projet de loi 176.1 ne soit pas adopté** dans la mesure où il tente de limiter les obligations des équipes, pour payer à leurs joueurs un salaire minimum, mais au contraire doit appliquer les lois dans leur état actuel.

Ces joueurs / employés font des heures longues et dures, risquant leur santé physique et leurs blessures par des blessures potentielles et réelles dans ce sport très physique, de sorte que leurs équipes et leurs propriétaires peuvent réaliser des profits dans divers revenus. Les joueurs ne reçoivent pas de paie de vacances ; temps libre (sauf sur la « Liste des personnes handicapées » pour se remettre d'une lésion professionnelle subie) ; ou des prestations d'assurance en cas de blessure. Les tentatives visant à exclure les joueurs / employés de l'équipe de hockey sur glace des obligations de **salaire minimum** et à exclure les mineurs de l'ESA sont illégales et ne devraient pas être tolérées par la décision de l'Assemblée législative en la matière. Un précédent très cruel et dangereux évoluerait.

DES QUESTIONS :

- Avez-vous demandé à voir les livres complets des clubs, y compris **les sociétés écrans** ?

- En adoptant ce projet de loi, le gouvernement est-il prêt à imposer aux équipes de payer les arriérés de salaire dus aux joueurs / employés ?

- Le gouvernement du Québec est-il prêt à rembourser tous les joueurs qui ont soumis des déclarations d'impôt et des déductions avant de changer leur statut d'employé ? Les gouvernements du Québec et du Canada ne peuvent pas avoir les deux.

- Pourquoi la LHJMQ a-t-elle attendu quinze (15) ans après la décision de l'Agence du revenu du Canada (« ARC ») pour demander des changements lorsqu'un juge a informé la ligue que la seule façon d'être exempté serait d'obtenir des changements ? ***(see attached McCrimmon court ruling).***

La WAIPU demande que la LHJMQ et la LCH publient toutes les demandes d'immigration et de citoyenneté au Canada dans lesquelles les joueurs, les membres de la famille et les entraîneurs

sont entrés au Canada pour remplir des fonctions non limitées à ces équipes membres pour les 7 dernières semaines. Années.

La WAIPU et ses membres vous demandent de revoir ces documents et de revoir également ce documentaire vidéo, **notamment à partir de 37 : 30**, jusqu'à la fin et dans les crédits.

(Voir lien ci-dessous : hockey night jument au Canada)

https://www.youtube.com/watch?v=Uw5_Q_fKBs0

S'il vous plaît également consulter les liens suivants, ils sont de l'audience du Sénat de l'État de l'Oregon lorsque les WinterHawks de Portland ont essayé de changer l'ESA avec un projet de loi de la même manière que la LHJMQ essaie de faire.

Tyler Maxwell: https://www.youtube.com/watch?time_continue=6&v=J99Atr3_9sk

James McEwan: https://www.youtube.com/watch?time_continue=2&v=VJ8TXlnrIgk

Cette question ne concerne pas uniquement les salaires, mais aussi le droit des employés à un salaire équitable et à d'autres protections en vertu de la LNE. Si vous pouvez honnêtement vous dire après avoir regardé la vidéo et examiné les pièces justificatives, que vous toléreriez un tel traitement dans un lieu de travail pour votre propre fils ou votre propre fille, et que vous toléreriez l'intimidation, l'intimidation, l'abus psychologique hockey, alors je dirais respectueusement que nous jetons le livre des règles et laissons le chaos régner. C'est la norme, pas l'exception dans l'industrie du hockey, et c'est pourquoi les joueurs ont non seulement besoin de la protection de l'ESA pour les salaires, mais aussi d'un organisme indépendant qui accorde la priorité à la santé et à la sécurité des joueurs.

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En terminant, nous vous demandons de permettre à la WAIPU et aux voix des joueurs / employés d'être entendues pour exprimer les préoccupations concernant ce projet de loi 176.

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9 mai 2018

Membres du gouvernement du Québec

RE: Projet de loi 176

Contributions financières pour les trousses d'éducation.

La LHJMQ, une ligue de hockey professionnelle qui exploite 18 équipes dans la province de Québec et dans les provinces Maritimes, s'est vantée de sa contribution à l'éducation et de ses bourses d'études pour ses joueurs et ses employés.

Les dossiers financiers obtenus dans le cadre du recours collectif intenté contre la Ligue canadienne de hockey et ses clubs membres pour la Ligue de l'Ontario et la Ligue de l'Ouest (qui regroupent 42 équipes), indiquent les contributions suivantes :

Au cours de la saison 2015-2016, 42 équipes ont versé 2 195 926,00 $ à des programmes de bourses d'études pour les joueurs. Ces contributions s'élèvent à 52 283,95 $ par équipe.

- Compte tenu de ces chiffres, la contribution de la LHJMQ s'élèverait à 941 111,10 $ pour l'ensemble des 18 équipes de la LHJMQ pour la saison 2015-2016.
- Pour mettre cela en perspective, le coût moyen par joueur est de 1 742,79 $ pour l'ensemble de la saison 2015/16, pour 8 mois de travail, soit un total de 217,84 $ par mois.
- Cela signifie que chaque joueur de la LHJMQ a une moyenne de 52,81 $ par semaine.
- Si nous calculons cela pour une semaine de travail moyenne de 40 heures, les joueurs de la LHJMQ reçoivent 1,32 $ / heure. C'est un calcul très généreux compte tenu du nombre d'heures qu'ils consacrent vraiment à la pratique, aux jeux et aux voyages.
- Pour mettre les choses en perspective, un budget typique de bâtons de l'équipe de la LHJMQ serait de plus de 100 000 $ par année. C'est deux fois plus que ce qu'ils dépensent pour l'éducation et les salaires.

Nous devons aussi tenir compte du fait que 941 111,10 $ sont réservés aux bourses d'études, selon l'accord de la LCH / LNH, la contribution minimale de la LNH pour le remboursement des frais de scolarité est d'au moins 750 000 $ par année. La réalité est que la LNH paie la plus grande partie de cette dépense.

Si nous comparons les chiffres ci-dessus aux dossiers financiers des Winterhawks de Portland (soumis au tribunal), qui sont des compensations financières pour les traitements et salaires des agents, totalisant 2 119 898 $ selon les déclarations de revenus, ceci est une véritable révélation. Les Winterhawks de Portland paient plus à leurs officiers que les 42 équipes entières contribuent aux bourses d'études. Ces équipes profitent de dizaines de millions de dollars de bénéfices estimés au détriment des joueurs / employés.

Encore plus troublant est le fait que dans le contrat de joueur, il stipule que si un joueur choisit de quitter son équipe avant l'âge de 20 ans, il doit payer à son équipe des frais de libération de 500 000 $. (Voir ci-dessous)

ARTICLE 12 – PLAYER DEVELOPMENT

12.1 If the Player has not completed his eligibility to play in the WHL, the Player shall not, during the Term of this Agreement, enter into a contract to play hockey for a professional hockey team unless:

(a) the Player has obtained a written release from the WHL, and

(b) the Club has been paid the sum of $500,000.00 in the currency where the Club is located, either by the Player or the professional hockey team with whom the Player has entered into such a contract.

The foregoing provisions of this paragraph 12.1 do not apply in circumstances where the Player is released by the Club and, in accordance with the WHL regulations, enters into a contract to play for a professional hockey team that is a member of a league that has a written agreement with the WHL covering compensation for player development.

Le projet de loi 176 et plus particulièrement la section qui concerne les joueurs de hockey de la LHJMQ ne devrait en aucun cas être accepté, toléré ou même considéré comme faisant partie de la loi sur les normes d'emploi.

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8 mai 2018

À tous les membres du gouvernement du Québec,

OBJET : Projet de loi 176 Vote NON pour la section :

LOI SUR LES NORMES DU TRAVAIL
1. L'article 3 de la Loi sur les normes du travail (chapitre N-1.1) est modifié par l'insertion, après le paragraphe 5°, du suivant :
« 5.1° à un athlète dont l'appartenance à une équipe sportive est conditionnelle à la poursuite d'un programme de formation scolaire; ».

En guise d'introduction, nous sommes l'Association Mondiale de l'Union des Joueurs de Hockey sur Glace Amérique du Nord (twitter : WAIPU_NA, site web: www.waipu.ca) et nous sommes membre de l'Association Mondiale des Syndicats de Joueurs de Hockey sur Glace (WAIPU.ORG), qui représente joueurs de hockey de différentes ligues, y compris la KHL en Europe.

La WAIPU a pour mission de protéger les droits des joueurs et des employés ainsi que la santé et la sécurité et s'engage à faire preuve de professionnalisme et de transparence tout en protégeant les joueurs de hockey passés, présents et futurs dans la Ligue canadienne de hockey et la LHJMQ.

FAITS :

- Les contrats des joueurs de la LHJMQ ont dit que les joueurs étaient des employés des clubs.
- Les contrats juridiques des équipes de la LCH classent la ligue comme professionnelle
- L'organisme directeur de Hockey Canada classifie les équipes de la LCH en tant que PROFFESSIONNEL
- Les équipes de la LHJMQ ont des joueurs PRO qui ont signé des contrats pro en jouant maintenant
- Les joueurs de la LHJMQ ont conclu des VINGT-SEPT MILLIONS DE DOLLARS DE CONTRATS JURIDIQUES (27 514 491 $) et ont reçu 2,8 millions de dollars en primes à la signature.
- 98% des joueurs travaillent pour moins de 1 $ l'heure
- CHL a estimé les revenus annuels à 500 millions de dollars.
- Les franchises de l'équipe individuelle de la LHJMQ se sont vendues à plus de 25 millions de dollars, selon les médias.
- Les équipes de la LHJMQ sont une entreprise à but lucratif.
- Les équipes de la LHJMQ vendent des joueurs dans la LNH jusqu'à concurrence de 220 000 $ si elles sont rédigées par la LNH.
- Les équipes de la LHJMQ ne paient qu'une moyenne de 45 000 $ par année sur les forfaits d'éducation par équipe
- On estime que moins de 35% des joueurs sont admissibles à ces bourses d'études.
- **Si un joueur souhaite jouer au hockey après avoir quitté la LHJMQ, il perd sa bourse d'études qu'il a légitimement gagnée.**

En 2014, un recours collectif de 187 millions de dollars a été intenté contre les équipes de la Ligue canadienne de hockey. Les motifs de cette poursuite étaient que les propriétaires et les équipes ont sciemment violé les lois sur le salaire minimum au Canada.

En 2017, les tribunaux de l'Alberta et de l'Ontario ont statué en faveur du recours collectif des joueurs et ont certifié que les réclamations étaient recevables, ce qui signifie qu'une catégorie de joueurs a été touchée et a perdu des salaires; et que les joueurs ont prouvé qu'il y a une réclamation valide.

Le Québec pour les équipes de la LHJMQ attend toujours une date d'audience.

En réponse au dépôt du recours collectif, les propriétaires et les équipes de partout au Canada ont commencé à faire pression sur les gouvernements provinciaux pour qu'ils écartent le droit légal des joueurs de hockey junior majeur aux règlements sur le salaire minimum, la santé et la sécurité, p. les avantages sociaux et les cotisations de retraite, tout cela est votre droit légal, en tant qu'employé de votre club de hockey.

Le 29 mai 2018, dans la province de Québec, après des années de lobbying par les équipes et la ligue, le gouvernement du Québec tiendra une audience pour parler du projet de loi 176, qui enlève effectivement les droits des employés. Nous demandons au gouvernement du Québec de **VOTER NON au projet de loi 176. VEUILLEZ PROTÉGER LES DROITS DES JEUNES TRAVAILLEURS.**

Pour plus d'information, visitez-nous au www.waipu.ca

Cordialement,

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May 15, 2018

QUEBEC NATIONAL ASSEMBLY

RE: BILL 176 (SECTION 1)

By way of introduction we are the WORLD ASSOCIATION ICEHOCKEY PLAYERS UNION ("WAIPU") *North American Division* and as such, respectfully ask that you read in full this and the supporting documents attached hereto, prior to and in consideration of the proposed, above-noted House Bill.

WAIPU and all its members are together in writing this request for a full review of the proposed *BILL 176*. We would also like to provide you with much needed information that will help you come to a fully informed decision that will have the best interest of the employees/players of the (QMJHL) Quebec Major Junior Hockey League.

It is our belief that the application by the professional ice hockey league, QMJHL who have lobbied the Government of Quebec to amend the ESA, should be held to the highest standard of proof. The QMJHL must prove that the players of the club are **NOT *employees*** and have never been considered employees or professional players by the Team or the league at any time. We also ask that the QMJHL and its teams demonstrate how the Team and league can consider that the players do not meet the standard test to qualify as an employee under *The Employment Standards Act* ("ESA").

WAIPU and its members also request the QMJHL to show proof that players are "*student amateur athletes*". This proof should come in the form of a list of players who are registered, full-time students, enrolled in full time courses, while attending an academic facility *full-time*. This list should be accompanied with an official receipt from the academic facility.

The Quebec Government should insist on full and complete transparency of all financial documents, not limited to revenues, sponsorships agreements, NHL and Hockey Canada agreements & IIHF agreements, TV contracts, to demonstrate to the Quebec Government that QMJHL teams are not profitable.

Given that the QMJHL is requesting a dramatic change to the ESA, as well as millions of dollars annually in lost revenue in the form of taxation on salaries to employees, full transparency is essential.

It is inconceivable to have teams generating $5 million in annual revenues somehow cannot afford 5% of an operating budget to go towards the payment of salaries to their employees.

The league and the teams have referred to and entered into contracts with third parties calling their employees/players ***PROFESSIONAL ice hockey players*** for decades. Only after hearing of the One Hundred & Eighty-Seven Million ($187M) Dollar class-action lawsuit against the teams and league, did the league and teams then attempt to try and change the contracts to avoid any legal ramification(s) of those contracts. (See attached, ***Hockey Canada bi-laws and QMJHL player/employee contract***). This is after decades of systematically contaminating players/employees from being eligible for NCAA scholarships by classifying players as *professionals and/or major junior players,* in their very own agreements.

One can safely assume that after decades, the league and teams have worked in together to conspire to restrict the education of its *(major junior)* ice hockey players/employees to the NCAA, as players/employees are restricted to move to other leagues, all for the sole purpose of maintaining the top talented players/employees in the Canadian Hockey League ("CHL") and

QMJHL for the sake of financial gain and profit at a greater sacrifice to the young players/employees education and salaries, while in the CHL and QMJHL. There can be no denying that if the top, talented players/employees were to go to the NCAA, the league would not only lose at the box office, but also risk the loss of a Seventy-Nine Million ($79M) Dollar agreement between the CHL and the National Hockey League ("NHL"). ***(See attached NHL & CHL agreement)***.

The league now wants its (major *junior)* ice hockey players to be referred to as "student amateur *athletes*" to avoid paying legal wages.

Now faced with class-action lawsuits and no reasonable defence (considering the league has lost two previous Canadian court rulings classifying players as employees of the clubs in federal court CRA), Courts in Ontario and Western Canada have certified both class action lawsuit against the OHL and WHL for wage violations and conspiracy.

The league and teams are now shamefully attempting to contract out of ESA laws by instructing team owners to no longer to issue T4 Slips in Canada and USA tax Form 1099, in a memo to its owners. As well as lobbying provincial governments to change the ESA with misguided and unfounded facts ***(See copy of Branch league memo attached)*** *stating* as follows:

> *"7. Clubs should no longer take and remit deduction commencing with the 2013-2014 hockey season if that has been there practice and T4 will be issued only for the portion of the 2012-2012 season relating to payments made in a calendar year of 2013.* ***For payments relating to the 2013-2014 season, the clubs will no longer take or remit deductions, make remittances or issue T4 (U.S tax form 1099) or any other government forms to the players for the reimbursements or their room and board. Clubs do not need to specifically notify CRA that they are no longer withholding and remitting deductions with respect to the players.***"

This type of conduct should not be condoned or rewarded (inasmuch as it would also become *"precedent* "within the enactments of ESA laws), by any level of government.

The ***employees*** of these teams in the QMJHL have rights and should not be bullied, or, be in fear of reprisal to speak out against such blatant disregard for the employment laws of each country/province.

The One Hundred and Eighty-Seven Million ($187M) Dollar class-action lawsuit has been certified in Canada and a judge in Canada stated that the lawsuit can proceed with the following, including a conspiracy clause:

> *Justice Hall certified all of the causes of action pleaded by the plaintiffs, including:* ***(1) breach of contract; (2) breach of contractual duties of honesty, good faith, and fair dealing; (3) breach of employment standards legislation; (4) negligence; (5) conspiracy; and (6) waiver of tort.***

THE AMATEUR ATHLETE/AMATEUR LEAGUE ARGUMENT

The teams argue that the players and the leagues are "one hundred (100%) percent *amateur*"; that the players on the teams are "*student amateur athletes*", therefore, not ***professionals*** and should not be considered employees. We disagree with this statement.

The facts are undeniable, as seen in the attached documents, the QMJHL has ***Professional players/employees,*** playing games that have and signed NHL-Pro contracts in excess of

$27,314,501 and receiving ***$2,842,500*** in signing bonuses; as well, contracts have additional performance bonuses of $6,842,500.

With thirty-six million ($36M) dollars in salaries and bonuses, how can any league, team, employer or level of government truly consider these employees "*amateur, student athletes*", with that type of income and signed professional (NHL) contracts?

It is estimated that 175 players drafted into the National Hockey League but are currently playing in the Canadian Hockey League, have received an estimated ***24 million dollars*** in signing bonuses, and have entered into contracts with salaries more than ***250 million dollars*** and another ***60 million dollars*** in performance bonuses. It is inconceivable that the Canadian Hockey League and its membered teams can classify this as an amateur league ***(see CHL Salary attachment).***

FEAR AND INTIMIDATION

The league and teams have conducted media propaganda built around fear and intimidation. The league and teams' public statements of teams folding, going bankrupt and players' benefits being cut (*if in fact the class action certification was successful*) are empty, bogus threats and bullying tactics used to create intimidation, fear and public sympathy.

Under oath, and by way of the Affidavit of ***Ron Robison,*** Commissioner of the Western Hockey League ("WHL"), deposed as follows:

> ***"110. I anticipate that the result of certification would be that the teams and the league would have to re-examine and reduce the benefits offered to players beginning next season, in order to responsibly plan for this contingent liability. I also anticipate that the certification would result in the loss of the majority of our teams, who owners simply cannot shoulder the burden of the contingent liability of this lawsuit on top of annual losses or near break –even results. The size of the league would shrink, as would the opportunities available to talented young hockey players both from hockey development and educational standpoint."***

However, what is of greater concern is the fact that within weeks after Mr. Robison's deposition, he then issued a public statement on March 8, 2017 to the city of Nanaimo, BC, that if Nanaimo were to borrow One Hundred Million ($100M) Dollars to build a new arena, the WHL would fully commit to a team in Nanaimo, BC.

> ***"The WHL remains fully committed to delivering a WHL franchise to Nanaimo, either through relocation or expansion, and will move forward to obtain the necessary final approvals should the residents of the City of Nanaimo vote in favour of a new events centre,"***

The city was then informed of the pending class action and the taxpayers of Nanaimo saw through the smoke screen and voted "No" in a referendum to borrowing $100M of their hard-earned tax dollars to build an arena for a league that cannot pay its employees and might not even be a league.

What is one to believe? The under-oath statement that the league will lose its teams? Or the public statement basically proposing a, don't worry, "*build it and we will come*" scenario, no matter what?

These kinds of reckless statements by a league official, which clearly does not have the best interest of the taxpayers, government officials, or respect of the laws, should not be condoned or

become *precedent*. To ask the taxpayers to incur that amount of debt to secure a team that might not be there is an incredibly audacious statement.

To date no teams have folded. As a matter of fact, expansion of the league has been talked about.

OPTIONS

Information:

The Team and league have other options to create additional revenue(s) or cut costs to come in under budget, rather than asking Quebec tax-payers for a handout. The economic impact for passing such a bill like bill 176.1 would be loss of revenues of millions of dollars annually in taxes and millions of dollars more lost in economic impact, not including, players/employees of the QMJHL who attend school would still need financial assistance to attend post-secondary education.

The lack of ability of obtaining an income/wage during the ages of 16-20 would create economic harm to these young men.

Statistically, less than 35% of CHL players/employees qualify for post-secondary education.

Having said that, there are numerous restrictions and financial limits imposed on the education packages supplied by the QMJHL. One of which is;

- **If a player continues to pursue a hockey career after departing the QMJHL, he is forced to forfeit his education package he so rightfully earned. This is not acceptable.**

NHL agreement that now pays the league $79.6 Million can be redone to better reflect the tens of millions of dollars each year the NHL saves by having a monopoly on CHL. This agreement allows the NHL owners to profit off the restriction of the trade the players of the CHL and to operate a 60-team farm system.

Plausible Options:

1. Stop bringing in imported players from EU or the United States.
    - Select players from local areas, this one business model change would save each team over 300K a year in expenses. (However, the league would not do that as they have their entry level draft each year that makes millions off the rights and images of players).
2. Cut back on ***staff*** salary.
3. Ask local levels of government for tax relief that would off-set the expenses of paying wages.
4. Have revenue sharing with other teams.

5. Cut down on travel costs – more local and regional games.

6. Better deals with CHL and USA hockey on International Ice Hockey Federation ("IIHF") events that generate well over Two Hundred Million ($200M) Dollars a year in revenues.

7. In this case, cut the arena lease agreement in half to enable paying the players. The state would be better off collecting taxes and not altering ESA laws.

CONCLUSION

There is no denying that the business of hockey and ice hockey teams are important to their communities and to the players/employees within them. However, the successes they achieve should not blind the owners, the legislature, the public, and the players/employees themselves from the fact that there are labor law standards, which (*by law*) must be respected and adhered to.

On behalf of the players/employees, past, present and future, of the CHL and *QMJHL*, WAIPU and its members, therefore, respectfully request that **Bill 176.1**, as currently drafted, **not be passed** insofar as it attempts to limit the teams' obligations to pay their players a minimum wage, but instead must enforce the laws as they stand today.

These players/employees put in long, hard hours, risking their own physical health and harm via potential and real injuries in this very physical sport, so that their teams and owners may gain profits in various revenues. The players do not receive holiday pay; time off (*unless on the "Disabled List" to recover from a related work injury incurred*); or insurance benefits in case of injury. The attempts to exclude ice hockey team's players/employees from ***minimum wage obligations*** and to exclude minors from the ESA is illegal and should not be condoned by this Legislative Assembly's decision on the matter. A very cruel and dangerous precedent would evolve.

QUESTIONS:

- Have you asked to see the full books of the clubs including ***shell companies***?
- By passing this Bill, is the government prepared to enforce to have the teams pay the back-pay owed to the players/employees?
- Is the Quebec Government prepared to refund all of the players that have submitted income tax and deductions prior to the changing of their employee status? The Quebec and Canadian Governments cannot have it both ways.
- Why did the QMJHL wait fifteen (15) years after the Canada Revenue Agency's ("CRA") court ruling to ask for changes when a judge informed the league the only way to be exempt would be to obtain changes to the ESA? ***(see attached McCrimmon court ruling).***

WAIPU would like to you request that they QMJHL and CHL release all applications made to immigration and citizenship Canada in which players, family members and coaches have entered into Canada to perform duties not limited "to participation only" with these member teams for the last 7 years.

WAIPU and its members ask that you review these documents and review this video documentary, ***especially starting at the 37: 30 mark,*** *to* the very end and into the credits.

(see ***link below: hockey night mare in Canada***)

https://www.youtube.com/watch?v=Uw5_Q_fKBs0

Please also review the following links, they are from the Oregon State Senate hearing when the Portland WinterHawks tried to change the ESA with a Bill the same way the QMJHL is trying to do.

Tyler Maxwell: https://www.youtube.com/watch?time_continue=6&v=J99Atr3_9sk

James McEwan: https://www.youtube.com/watch?time_continue=2&v=VJ8TXInrIqk

This issue is not solely about wages its about the employees right to a fair wage and other protections under the ESA. If you can honestly say to yourself after watching the videos and reviewing the supporting documents, that you would condone such treatment in a work place for your own son or daughter, and to allow the bulling, intimidation, mental abuse that occurs in the business of hockey, then I would respectfully say we throw away the rule book and let chaos reign. This is the norm, not the exception in the business of hockey and it is why players not only need the protection under the ESA for wages but also an arms-length body that has the players health and safety as a priority.

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In closing at this time, we ask that you allow WAIPU and the players'/employees' voices to be heard to express the concerns about this Bill 176.

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May 9, 2018

Members of the Quebec Government

RE: Bill 176

Financial Contributions for Education Packages.

The QMJHL, a professional hockey league, which operates 18 teams in the Province of Quebec and the Maritime Provinces, has boasted about their education contribution and scholarship packages for their players/employees.

Financial records obtained in the class action lawsuit against the Canadian Hockey League and their member clubs for the OHL and WHL (which combined are comprised of 42 teams), indicate the following education package contributions:

- In the 2015/16 season, 42 Teams contributed $2,195,926.00 to player education scholarship programs. These contributions work out to $52,283.95 per team.
- Taking these numbers into account, the QMJHL contribution would be $941,111.10 for the entire 18 teams of the QMJHL for the 2015/16 season.
- To put this into perspective, the average cost of this per player is $1,742.79 for the entire 2015/16 season, for 8 months of work, which works out to a total of $217.84 per month.
- This works out to be on average for each QMJHL player to be $52.81 per week.
- If we calculate this out for an average work week of 40 hours, QMJHL players are receiving $1.32/ hr. This is a very generous calculation considering the number of hours they truly put in for practice, games and travel.
- To further put this into perspective, a typical QMJHL team stick budget would run more than $100,000.00 per year. This is twice as much as they are spending on education and wages.

We must also consider that of the $941,111.10, that is earmarked for scholarships, according to the CHL - NHL Agreement, there is a minimum contribution from the NHL for reimbursement of tuition fees that amounts to totals a minimum of $750,000 per year. The reality is that the NHL pays for most of this expense.

If we compare the above numbers to the Portland Winterhawks financial records (submitted in court), who's financial compensation packages for salaries and wages to officers, total $2,119,898 according to tax returns, this is a real eye opener. The Portland Winterhawks pay more to their officers than the entire 42 teams contribute to educational scholarships. These teams are profiting tens of millions of dollars in estimated profits at the expense of players/employees.

Even more troubling is the fact that in the Player Contract, it states that if a player chooses to leave his team prior to the age of 20 years old, he must pay his team a $500,000.00 release fee. (See Below)

ARTICLE 12 – PLAYER DEVELOPMENT

12.1 If the Player has not completed his eligibility to play in the WHL, the Player shall not, during the Term of this Agreement, enter into a contract to play hockey for a professional hockey team unless;

(a) the Player has obtained a written release from the WHL, and

(b) the Club has been paid the sum of $500,000.00 in the currency where the Club is located, either by the Player or the professional hockey team with whom the Player has entered into such a contract.

The foregoing provisions of this paragraph 12.1 do not apply in circumstances where the Player is released by the Club and, in accordance with the WHL regulations, enters into a contract to play for a professional hockey team that is a member of a league that has a written agreement with the WHL covering compensation for player development.

Bill 176 and specifically the section which pertains to QMJHL hockey players, should never, under any circumstances, be accepted, condoned, or even considered as being part of the employment standards law.

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May 8, 2018

To all Members of the Quebec Government,

RE: Bill 176 Vote NO for section:

LOI SUR LES NORMES DU TRAVAIL
1. L'article 3 de la Loi sur les normes du travail (chapitre N-1.1) est modifié par l'insertion, après le paragraphe 5°, du suivant :
« 5.1° à un athlète dont l'appartenance à une équipe sportive est conditionnelle à la poursuite d'un programme de formation scolaire; ».

By way of introduction we are the World Association of IceHockey Players Union Division North America (twitter: WAIPU_NA , website: www.waipu.ca) and we are member of the World Association of IceHockey Players Unions (WAIPU.ORG), which represents professional hockey players from different leagues, including the KHL in Europe.

WAIPU's mission is to protect players/employees rights as well as health and safety and is committed to conducting business professionally and in a transparent manner while protecting hockey players past, present and future in the Canadian Hockey League(CHL) & QMJHL.

FACTS:

- QMJHL players contracts once said that players were employees of the clubs.
- Legal contracts of CHL teams classify the league as professional
- Hockey Canada Governing body classifies CHL teams as PROFFESSIONAL
- QMJHL teams have PRO players that have signed pro contracts playing now
- QMJHL players have entered into TWENTY-SEVEN MILLION DOLLARS OF LEGAL CONTRACTS ($ 27,514,501) and have received $ 2.8 million in signing bonuses.
- 98% of the players work for less than a $1.00 an hour
- CHL has estimated revenues on a yearly basis of $ 500 million dollars.
- Individual QMJHL team franchises have sold for in excess of $ 25 million dollars, as reported in media.
- QMJHL teams are a for profit business.
- QMJHL teams sell players to the NHL for up to $220,000 if drafted by the NHL
- QMJHL teams pay only an estimated average of $45,000 per year on education packages per team
- It is estimated that less than 35% of players are eligible for these educational scholarships.
- **If a player wishes to play hockey after leaving the QMJHL, he losses his educational scholarship that he rightfully earned.**

In 2014, a $187 million class action lawsuit for wages was filed against the teams in the Canadian Hockey League. The grounds for this lawsuit was that owners and teams have

knowingly violated minimum wage laws across Canada.

In 2017, courts in Alberta and Ontario ruled in favour of the players class action and certified the claims to move forward, meaning that there had been a class of players that have been affected and have lost wages; and that the players have proven there is a valid claim.

The Quebec for QMJHL teams is still waiting for a court date.

In response to the filing of the class action, owners and teams across Canada began to lobby provincial governments to try and take away major junior hockey players' legal right to minimum wage, health and safety regulations, e.g. benefits, and pension contributions, all of these are your legal right, as an employee of your hockey club.

On May 29th, 2018, in the Province of Quebec, after years of lobbying by teams and the league, the Quebec government will be holding a hearing to talk about proposed Bill 176, which effectively takes away rights of employee. We ask the Quebec Government to VOTE **NO** to Bill 176. PLEASE PROTECT THE RIGHTS OF YOUNG WORKERS.

For more information visit us at www.waipu.ca

Sincerely yours,

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SECTION 2

DECLARATION DE PHIL MERRIGAN

La structure actuelle de la ligue de hockey junior majeure du Québec n'est pas favorable au succès académique. Je présente dans mon rapport des preuves qui démontrent qu'une diplomation tardive du secondaire, c'est-à-dire après plus de 5 ans au secondaire, diminue radicalement les chances d'obtenir un diplôme postsecondaire et donc de travailler comme adulte dans un secteur bien rémunéré. En effet, nous sommes dans une ère hautement concurrentielle pour les emplois de qualité alors que le diplôme postsecondaire devient la norme pour ce type d'emploi. La structure actuelle du hockey junior majeure convenait mieux à une époque dans laquelle le secteur manufacturier offrait des emplois bien rémunérés avec de généreux fonds de pension aux jeunes sans qualification. Il est extrêmement difficile pour les jeunes hommes, à cause des raisons évoquées dans mon rapport, de correctement évaluer leurs chances de devenir joueur de hockey dans la ligue nationale de hockey et de bien comprendre les risques énormes encourus à ne pas s'instruire pendant ces années cruciales pour l'investissement en capital humain. Une éducation de qualité est après tout la meilleure police d'assurance si la carrière d'hockeyeur professionnelle leur échappe.
Voilà pourquoi il est d'intérêt public que le hockey junior majeure soit finalement correctement intégré au réseau des Cégeps de manière à ce que le hockeyeur d'élite puisse évoluer dans un environnement éducatif bien structuré. Cela augmenterait radicalement les chances pour ces joueurs d'obtenir un diplôme postsecondaire. Du coup, les institutions collégiales du Québec pourraient bénéficier, comme par exemple les universités avec des équipes dans la ligue de football universitaire du Québec, des revenus associés à la billetterie, les droits télévisuels, l'internet et des commanditaires. Enfin, le calendrier des matchs serait organisé autour du calendrier scolaire et non l'inverse et les joueurs, grâce aux revenus générés par ligue, (pouvant aussi bénéficier aux autres athlètes collégiaux par l'intermédiaire de salles d'entrainement de meilleur qualité par exemple), obtiendraient enfin la compensation qu'il leur est due, grâce à de généreuses bourses d'études. Le système américain est une preuve éclatante qu'une telle réorganisation du hockey junior majeure est possible.

Améliorer le succès académique des jeunes joueurs de hockey

Philip Merrigan, Ph. D.

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1. Introduction

Le but de cette étude est de se pencher sur les retombées positives pour les joueurs découlant du remplacement de la Ligue junior majeure par une ligue universitaire ou collégiale (CÉGEP), ce qui devrait accroître leurs chances d'obtenir un diplôme d'enseignement supérieur. Cette nouvelle structure augmenterait les revenus des établissements collégiaux, des CÉGEP et des universités par l'entremise des ventes de billets et des droits de télédiffusion, ainsi que par l'apport de capital de la LNH.

Compte tenu de la structure actuelle du hockey junior majeur, qui implique un nombre élevé de matchs et beaucoup de déplacements, il est très difficile pour les jeunes joueurs de hockey de poursuivre une formation qui les prépare adéquatement à poursuivre des études supérieures s'ils ne font pas carrière au hockey professionnel, comme c'est le cas de la grande majorité d'entre eux. De plus, il a été clairement démontré que le fait d'obtenir un diplôme d'études secondaires (DES) à un âge plus avancé (plus de 17 ans au Québec et plus de 18 ans dans les autres provinces) nuit à leur réussite future, qu'il s'agisse de leur admission au collège ou à l'université ou encore de leur intégration au marché du travail, comparativement aux jeunes qui décrochent leur diplôme de fin d'études secondaires dans le cadre temporel normal de 6 ans (5 ans au Québec). Aux États-Unis, Heckman et Lafontaine ont constaté que les personnes ayant obtenu un « GED » (correspondant à un certificat d'équivalence d'études secondaires) ne réussissent pas mieux que les décrocheurs sur les plans des salaires et des revenus. Les diplômes de fin d'études secondaires décernés aux joueurs de hockey junior majeur étant des équivalences, leur rendement peut s'avérer très faible en comparaison aux diplômes de fin d'études secondaires réguliers. Nous présentons dans ce rapport un certain nombre de preuves démontrant que les certificats d'équivalence d'études secondaires du Canada ont un faible taux de rendement comparativement aux diplômes de fin d'études secondaires réguliers.

Nous illustrons aussi les différences entre les revenus moyens selon l'âge et le niveau de scolarité des hommes au Canada par l'entremise de données récentes tirées de sondages de Statistique Canada. Cette comparaison offre un aperçu des gains potentiels qui échappent aux joueurs en raison de leur accès limité à l'éducation postsecondaire.

Par ailleurs, des données indiquent clairement que l'écart entre les diplômés du secondaire et les diplômés universitaires s'est creusé de manière substantielle au cours des 40 dernières années et qu'il continuera de s'accroître à l'avenir. Cette tendance est susceptible de se poursuivre ultérieurement en raison notamment de l'automatisation possible des emplois exigeant peu de qualifications, un phénomène attribuable à la progression de l'intelligence artificielle dans la prochaine décennie.

Combien d'argent un joueur de hockey qui rallie les rangs de la Ligue junior majeure et cesse ses études aurait-il pu gagner de plus — en considérant l'ensemble de son existence — s'il avait plutôt choisi de poursuivre ses études? Voilà une question à laquelle il est très difficile de répondre. Nous n'avons pas les données pour formuler avec exactitude cette réponse, mais nous pouvons aborder la question sous l'angle de la personne moyenne en nous fondant sur les études statistiques réalisées au Canada et aux États-Unis. Nous démontrons que le gain potentiel peut être assez important tant pour la personne que pour la société dans son ensemble.

Nous traitons aussi des travaux de recherche portant sur les effets des préférences faussées sur les choix des adolescents, y compris celles relatives à l'éducation, qui ont des conséquences à long terme sur leur vie. On dispose d'une littérature empirique à la fois intéressante et déterminante (Lavecchia, Lu et Oreopoulos [LLO]) expliquant pourquoi les jeunes hommes en particulier sont plus enclins à faire des choix qui ne sont pas optimaux dans le cadre d'une visée à long terme.

La troisième section de l'article porte sur les avantages résultant de la modification de la structure du hockey junior majeur dans l'ensemble du Canada pour la remplacer par une ligue collégiale, ou par plusieurs ligues collégiales régionales. Les retombées éducatives bénéfiques chez les joueurs sont évidentes, ce qui est encore plus vrai aujourd'hui. Une bonne formation collégiale profitera à ces derniers tout au long de leur vie post-hockey qui, selon les projections, se prolongera en moyenne jusqu'à 90 ans. Puisque les collèges et les universités sont des organismes à but non lucratif, les sources de revenus qu'ils tireraient de la présentation des matchs, des droits de télédiffusion et de la LNH seraient réinvesties dans les établissements d'enseignement et dans des plans d'amélioration. Par exemple, les universités pourraient mettre à la disposition des joueurs de hockey des services de tutorat et d'orientation, améliorer les infrastructures sportives collégiales et universitaires, octroyer des bourses d'études aux étudiants-athlètes et décerner des prix spéciaux aux étudiants enregistrant de bons résultats sportifs et scolaires.

2. Formation

Écarts salariaux entre personnes ayant des degrés de scolarité différents

De nombreuses preuves attestent que la probabilité d'avoir un emploi est, en moyenne, plus élevée chez les détenteurs d'un diplôme d'études postsecondaires, et que, à titre de travailleurs, ces derniers obtiennent de meilleurs salaires, vivent plus longtemps, sont en meilleure santé et ont moins recours au filet social que les personnes n'ayant pas d'éducation postsecondaire. Cela s'observe dans l'ensemble des grands pays développés. Également, le fossé entre les personnes très scolarisées et moins scolarisées s'est creusé depuis les 30 dernières années. En effet, le revenu hebdomadaire moyen d'un homme titulaire d'un

B.A. et travaillant à temps plein (en âge d'occuper un emploi) était 32 % plus élevé que celui d'un homme titulaire d'un diplôme de fin d'études secondaires en 1980, et 40 % plus élevé en 2005. En outre, les revenus d'un homme titulaire d'un diplôme de fin d'études postsecondaires étaient inférieurs de 15 % en 1980 et de 20 % en 2005 en comparaison aux revenus d'un homme titulaire d'un B.A. (Boudarbat, Lemieux, Riddel, 2010).

Au cours des 40 dernières années, les personnes très scolarisées sont celles qui ont retiré les plus grands avantages des avancées technologiques, notamment celles issues des secteurs technologiques associés aux ordinateurs. En raison des tendances en matière de robotisation de la production, les personnes peu qualifiées verront leur salaire baisser, alors que les personnes plus qualifiées, à l'inverse, verront le leur augmenter. À mesure que la présence des technologies informatiques s'accroît au sein des collèges et des universités, l'écart entre les salaires des personnes très scolarisées et peu scolarisées pourrait s'intensifier dans les années à venir. En conséquence, la situation des joueurs de hockey ne faisant pas carrière dans ce sport et n'ayant pas de diplôme de fin d'études postsecondaires pourrait, dans un avenir rapproché, devenir plus précaire.

Nous avons tiré les revenus annuels d'environ 4 000 hommes canadiens âgés de 19 à 60 ans de l'Enquête sur les dépenses des ménages 2014 de Statistique Canada. Par une analyse de régression, nous avons établi un profil âge-revenu pour deux niveaux de scolarité différents. Pour chaque âge et chaque niveau de scolarité, nous avons dégagé de ces régressions la valeur moyenne des revenus et avons tracé la courbe des revenus en fonction de l'âge. Les deux niveaux de scolarité dépendent du plus haut diplôme obtenu : (1) sans diplôme de fin d'études postsecondaires, et (2) avec diplôme de fin d'études postsecondaires.

La figure 1 (en annexe) indique la corrélation pour chaque groupe de scolarisation. Nous n'avons pas pris les mêmes âges comme point de départ, car ces groupes font généralement leur entrée sur le marché du travail à des âges différents. Nos corrélations cessent à 60 ans, moment où plusieurs personnes commencent à prendre leur retraite. Nous remarquons que jusqu'à l'âge de 30 ans, les revenus annuels sont plus bas chez le groupe très scolarisé, mais qu'après 30 ans, un important fossé s'établit rapidement entre les deux groupes en faveur des personnes très scolarisées.

À partir de ces graphiques, nous calculons les différences de salaire entre chaque groupe pour la vie entière. Nous postulons que les années pendant lesquelles les personnes sont aux études ont une valeur de 0, ce qui, évidemment, n'est pas réaliste. Cependant, cette hypothèse fait en sorte que nos estimations des différences pour la vie entière entre chacun des groupes de scolarisation sont plutôt conservatrices. Nos résultats indiquent qu'à l'échelle d'une vie entière, les personnes très scolarisées gagnent presque

600 000 dollars de plus que celles qui sont moins scolarisées. Même si l'on soustrait les coûts de l'éducation, la différence des revenus pour la vie entière demeure très grande. Comme l'épargne est positivement corrélée avec les revenus, le groupe très scolarisé est plus susceptible d'épargner davantage, ce qui accentuerait encore plus l'écart de revenus entre les deux groupes.

Les tableaux 1 et 2 démontrent à quel point les personnes incapables de terminer leurs études secondaires dans les délais prescrits réussissent mal au sein du marché du travail en comparaison à celles qui terminent à temps ou qui décrochent éventuellement un diplôme de fin d'études postsecondaires. Le tableau 1 répartit en sept groupes un échantillon de jeunes Canadiens nés entre 1979 et 1981 faisant partie de la cohorte B de l'Enquête auprès des jeunes en transition (EJET) de Statistique Canada : (1) décrocheurs, (2) titulaires d'un diplôme de fin d'études secondaires dans les délais prescrits, (3) titulaires d'un diplôme de fin d'études secondaires avec 1 an de retard, (4) titulaires d'un diplôme de fin d'études secondaires avec 2 ans de retard ou plus, (5) collège ou autre, (6) diplômés universitaires, et (7) diplômés de l'enseignement universitaire supérieur. Nous calculons le taux d'emploi et les revenus de chaque groupe alors que leur âge se situe entre 28 et 30 ans. Les chiffres montrent que les personnes qui terminent tardivement leurs études secondaires, ce qui est le cas de la plupart des joueurs de hockey junior majeur, réussissent très mal au sein du marché du travail, même en comparaison aux décrocheurs. Le tableau 2 porte sur les personnes qui ont terminé leurs études secondaires et présente en pourcentage la proportion de diplômés en fonction du délai requis pour terminer ces études. Ici encore, les retardataires réussissent moins bien que les étudiants qui terminent à temps.

Citée dans le Toronto Sun, une note de service rédigée par le cabinet d'avocats Willig, Williams and Davidson pour le compte du syndicat explique « que le soutien pédagogique de la LCH (Ligue canadienne de hockey) est assujetti à de "nombreuses conditions" (*numerous qualifications*), dont celle d'avoir joué toute la saison avec l'équipe tout en demeurant "qualifié sur le plan scolaire" (*academically qualified*) et "en étant inscrit de manière consécutive aux trimestres et aux semestres" (*being enrolled over consecutive terms and semesters*) ». En raison de l'horaire très contraignant des joueurs, il leur est fort difficile de remplir les conditions requises pour avoir droit à un tel soutien pédagogique. L'article rapporte aussi le témoignage anecdotique de Richard Powers, avocat et chargé de cours à la Rotman School of Management de l'Université de Toronto, à propos des compétences universitaires d'anciens joueurs ayant fréquenté cet établissement d'enseignement. Il a prononcé ces paroles : « Nous avons eu des joueurs dans le passé qui ont tenté de le faire (remplir les conditions) et ils avaient du mal à suivre un ou deux cours. Ils n'auraient pas répondu aux critères, car ils auraient étudié à temps partiel. »

Poursuivre des études collégiales exige beaucoup de temps. Le tableau 3 présente la distribution du temps chez les étudiants collégiaux masculins de première année au Canada des années 2016-2017 qui est consacré à l'étude, à la lecture, aux travaux individuels et de laboratoire, à l'analyse de données, aux répétitions et aux autres activités scolaires à l'extérieur des cours. Cette distribution a été compilée dans le cadre du *National Survey of Student Engagement*. Environ 70 % des étudiants masculins accordent plus de 10 heures par semaine à de telles activités. Si nous ajoutons à cela le temps passé en classe, soit en moyenne 15 heures par semaine pour les étudiants à temps plein, ainsi que le temps consacré aux déplacements, nous concluons que ce rythme de vie est très éprouvant pour les joueurs de hockey junior majeur. Il est également notoire que lors des périodes d'examen et des fins de session, ce nombre augmente de façon frappante. Pour ces raisons, il est pratiquement impossible pour un joueur de hockey d'étudier à temps plein et de pratiquer ce sport simultanément si l'on tient compte du temps requis pour les entraînements, les matchs et les déplacements.

Retombées sociétales d'une meilleure éducation

En supposant un taux d'imposition moyen de l'ordre de 30 % chez les personnes peu scolarisées et de 40 % chez celles très scolarisées, nous constatons que les personnes très scolarisées payent presque 500 000 dollars de plus en impôt sur leurs revenus que celles qui sont peu scolarisées. Comme elles sont en meilleure santé, le fardeau financier relatif aux frais médicaux et aux autres dépenses de ce type couverts par le régime public d'assurance maladie est moindre. Enfin, les personnes très scolarisées sensibilisent leurs descendants à l'importance de l'éducation et mettent à profit leurs revenus plus élevés pour accroître le niveau de scolarité ainsi que la qualité de l'enseignement de ces derniers. Pour ce faire, ils fournissent davantage de ressources éducatives à leur ménage. Ainsi, le fait de rehausser le niveau global de scolarité d'une génération devrait rehausser également celui de la prochaine génération.

3. Leçons tirées de la psychologie comportementale

La subjectivité du présent

Les jeunes n'évaluent pas les effets à long terme de leurs décisions sur les résultats futurs de la même manière que le font les adultes. Des preuves empiriques démontrent qu'ils se concentrent trop sur le présent. C'est ce qu'on appelle un *comportement faussé par le présent*. Jouer au sein de la ligue de hockey junior majeur s'accompagne de sensations fortes immédiates et d'une célébrité instantanée dans la ville natale, la province ou encore le pays d'origine, et, avouons-le, est beaucoup plus amusant que d'étudier, de faire des travaux personnels ou de rédiger des rapports. Les retombées positives du volet

scolaire s'échelonneront sur plusieurs années et sur un avenir lointain. Ces gains futurs seront aussi fortement dévalorisés par les jeunes jouant au hockey. En effet, un sondage paru dans Sports Illustrated démontre à quel point l'avenir est grandement déprécié par les jeunes athlètes de haut niveau pratiquant un sport olympique. Le scénario suivant leur a été présenté :

On vous offre une substance interdite permettant d'augmenter la performance qui est assortie de deux garanties :

(1) Vous ne vous ferez jamais prendre; et
(2) Vous allez remporter toutes vos compétitions au cours des cinq prochaines années, puis vous mourrez à cause des effets secondaires.

Prendriez-vous cette substance?

Plus de la moitié des répondants ont répondu par l'affirmative.

Le comportement des jeunes étant faussé par le présent, il est facile de comprendre pourquoi ils choisissent d'accorder peu de temps aux études.

La routine

Les étudiants s'en remettent considérablement à la routine, celle des joueurs de hockey revêtant une dimension presque militaire. S'ils décident de poursuivre leurs études après la Ligue junior majeure, ils auront beaucoup de difficulté à le faire, car ils seront incapables de s'adapter aux nouvelles routines qui leur seront imposées. Comme l'écrivent LLO :

« Pour entrer au collège, il faut d'abord s'écarter de sa routine quotidienne afin de se préparer à aller de l'avant, notamment en trouvant du temps pour remplir des formulaires, rédiger des dissertations aux fins d'admission, choisir un programme d'étude, sélectionner des cours, et déposer une demande d'aide financière. Il faut aussi modifier sa routine en adoptant un nouveau trajet, un nouvel horaire d'étude et de travail, ainsi qu'un nouveau calendrier social… Quiconque est incapable de changer sa routine peut limiter ses options d'études collégiales ou complètement les ruiner. »

Puisque la routine associée au hockey junior majeur est radicalement différente de celle associée au collège, ces ajustements pourraient être impossibles à concrétiser.

L'identité

Les jeunes sont très facilement influencés par leurs pairs. S'ils se trouvent au sein d'un groupe qui ne s'intéresse pas à l'éducation, il y a de fortes chances qu'eux-mêmes ne s'intéresseront pas à l'éducation, ce qui contraste avec une personne entourée d'étudiants brillants.

L'information

De plus en plus de preuves permettent de croire que bon nombre d'enfants et de parents ne sont pas entièrement informés à l'égard des coûts de l'éducation, de ses avantages et des possibilités qui s'y rattachent. Cela vaut en particulier chez les personnes issues de milieux à faible revenu. De plus, les jeunes ont généralement de la difficulté à gérer un trop grand nombre de choix. Les ligues collégiales élites réduiraient donc l'ampleur des choix proposés aux joueurs de hockey de haut niveau.

4. Les avantages d'une structure collégiale pour les hockeyeurs de haut niveau

Les étudiants qui ne se consacrent pas sérieusement à leur formation scolaire lorsqu'ils sont âgés de 16 ou de 17 ans auront beaucoup de difficulté à accéder aux études supérieures. En conséquence, le fait d'étudier à temps partiel à partir de 16 ans et jusqu'à 20 ans dans certains cas anéantit presque tout espoir de décrocher un diplôme universitaire. L'adoption d'une structure semblable à celle de la NCAA tout en l'adaptant aux établissements d'enseignement canadiens augmenterait certainement la probabilité que les jeunes joueurs de hockey s'inscrivent dans les collèges et les CÉGEP du Québec et obtiennent un diplôme d'études collégiales.

Nous savons que les ligues affiliées à la LCH encaissent chaque année des revenus substantiels grâce à la vente de billets pour assister aux matchs, aux droits de télédiffusion et aux transferts provenant de la LNH. Selon les estimations, ces montants représenteraient environ 300 millions de dollars. Nous pouvons raisonnablement supposer que les revenus découlant de la télédiffusion et de la LNH ne varieraient pas de manière considérable si des ligues universitaires étaient mises sur pied pour remplacer la structure dont nous disposons aujourd'hui.

S'il s'avère plus complexe de prédire le nombre de spectateurs, la Ligue de football universitaire du Québec nous montre que les communautés peuvent être très enthousiastes envers leur équipe, comme c'est le cas des populations de Sherbrooke, Montréal et Québec. En moyenne, un match du Rouge et Or attire plus de 11 000 spectateurs, alors que ceux des équipes de Montréal et de Sherbrooke en accueillent en moyenne 5 000. Cela peut s'expliquer par la grande qualité des matchs disputés, ces équipes se

classant parmi les premières au Canada. En raison de l'attrait extraordinaire qu'exerce le hockey partout au pays, il n'est pas irréaliste de supposer que le nombre moyen de spectateurs serait élevé à l'échelle du Canada. Pour ce qui est du prix des billets des matchs de football, il est semblable à celui des billets des matchs de hockey junior majeur, variant de 20 à 40 dollars.

Voici quelques statistiques reflétant la réussite de l'équipe de football de l'Université Laval, le Rouge et Or. En 2009, le Rouge et Or, sans recevoir un sou d'une ligue de sport majeure, a enregistré des revenus de l'ordre de 5 millions de dollars, dont la moitié de cette somme provenait de l'équipe de football. De 2009 à 2012, 100 millions de dollars ont été investis dans l'infrastructure sportive; 15 millions de dollars ont été versés par l'université alors que les 85 millions de dollars restants ont été injectés par les trois paliers de gouvernement. La moitié du budget réservé aux activités sportives de l'université a été investie dans le club de football. La valeur de la marque Rouge et Or serait de l'ordre de 5 à 10 millions de dollars selon Influence Media. [http://www.lesaffaires.com/archives/generale/une-equipe-en-or-et-en-argent/520657]

Une ligue universitaire pourrait permettre le retour du hockey junior majeur à Toronto et à Montréal de même que la création de plus d'une équipe au sein de ces villes, compte tenu du grand nombre d'établissements d'enseignement qu'elles abritent. Des rivalités comme celles observées à Boston lors du *Bean Pot tournament* (un tournoi suivi de près par la presse dans le cadre duquel les finales sont disputées à guichets fermés à l'aréna TD de la capitale du Massachusetts, qui peut accueillir plus de 17 000 spectateurs) sont très profitables pour les quatre équipes.

Bien entendu, il y a la question des coûts. Encore une fois, la constitution de ligues collégiales ou universitaires présente plusieurs avantages. En ce qui a trait à l'équipement, nous supposons que les commanditaires continueront de fournir le matériel de hockey. Si les universités doivent se procurer des biens ou des services, elles n'ont pas à payer la taxe de vente. De plus, la participation de diverses facultés actives dans le monde des sports est une facette intéressante des ligues universitaires. Les étudiants tout comme les facultés de kinésiologie, de physiothérapie, de psychologie et de médecine du sport jouent généralement un rôle actif auprès des étudiants-athlètes. Cette dimension pourrait considérablement réduire les coûts de ces services, car plusieurs d'entre eux se servent de leur expérience avec la faculté des sports pour obtenir des crédits ou acquièrent simplement de l'expérience auprès des athlètes de haut niveau. Toutefois, cela serait plus difficile à appliquer au Québec, où ces formations ne sont pas dispensées dans les cégeps. Enfin, tous les autres emplois requis pour la tenue des matchs, comme la vente des billets, l'accueil et l'orientation des spectateurs, etc., peuvent être occupés par des étudiants.

Ces facteurs devraient permettre de maintenir les coûts bas et de rendre les profits attrayants aux yeux des établissements d'enseignement participants.

En outre, rien n'inciterait les propriétaires d'équipe à utiliser les revenus pour verser des dividendes ou pour se procurer des biens ou des services pouvant servir à des fins personnelles, comme des véhicules ainsi que des voyages au pays ou à l'étranger. Du côté des équipes de la LCH, on constate en revanche que tout profit généré par le hockey doit être réinvesti dans l'établissement collégial. À l'évidence, une proportion considérable des recettes doit être allouée à des bourses d'études destinées aux joueurs, à des services de tutorat pour que ces derniers réussissent leur programme d'études, et à des acquisitions visant à améliorer les infrastructures et l'équipement d'entraînement. Il importe de souligner que chaque amélioration apportée aux installations sportives profitera à l'ensemble des étudiants.

Il suffit de regarder les montants recueillis lors de la vente récente de 5 équipes de la Ligue de hockey de l'Ouest, lesquels varient entre 6 et 10 millions de dollars, afin de constater à quel point le hockey junior majeur est profitable. Pour ces motifs, il n'y a guère de raisons de supposer que la création de telles équipes ferait perdre de l'argent aux universités, collèges et cégeps. Au contraire, plusieurs raisons, dont celles discutées ci-dessus, nous portent à croire que les recettes seraient plus importantes que les coûts au niveau universitaire. Le gouvernement pourrait donc, par exemple, consentir des prêts aux universités pour qu'elles acquièrent les équipes de hockey junior majeur et faire en sorte que le remboursement de ces prêts soit conditionnel aux profits que les équipes génèrent. Même si les établissements universitaires n'engrangent pas des sommes considérables, les retombées positives seraient substantielles pour la société si des centaines de joueurs de hockey réussissaient leurs études collégiales au lieu de cesser leur formation après avoir obtenu un certificat d'équivalence d'études secondaires.

Les impacts possibles d'une certification

Si la loi contraint chaque ligue à considérer les joueurs comme des employés couverts par les normes réglementaires en matière d'emploi, cela pourrait entraîner des changements fiscaux spectaculaires touchant les joueurs qui seraient, à terme, assumés par les parents. La LCH affirme investir entre 30 000 et 40 000 dollars par année par joueur, selon la législation fiscale fédérale. Advenant qu'une portion substantielle de ces prestations soit imposable, le fardeau fiscal des parents, comme celui des employés, s'alourdirait. Si les joueurs étaient véritablement des étudiants-athlètes, ce qui serait le cas s'ils prenaient part à des ligues collégiales de hockey, le risque que les parents doivent porter un très lourd fardeau fiscal serait éliminé. Cela représente un avantage supplémentaire découlant du remplacement de la LCH par des ligues collégiales ou universitaires partout au pays.

5. Conclusion

Les différentes ligues qui constituent la LCH ont été conçues pour un monde où seul un faible pourcentage de gens a en poche un diplôme de fin d'études postsecondaires. Cela s'explique en partie par la rareté des établissements d'enseignement postsecondaires et par la grande demande de travailleurs du secteur manufacturier de l'époque, ce qui offrait des salaires décents et des régimes de retraite intéressants. Par conséquent, les joueurs mettant un terme à leur carrière de hockeyeur sans accéder au niveau professionnel n'étaient pas fortement désavantagés en comparaison aux autres. Il est même probable que la notoriété qu'ils ont acquise durant leur passage dans le monde du hockey junior majeur leur ait permis de jouir de certains avantages au sein du marché du travail.

Comme attesté dans ce rapport, la situation a changé de manière frappante depuis ce temps. D'abord, la demande s'est grandement accrue envers des personnes hautement qualifiées, alors que celle envers des personnes peu qualifiées pour pourvoir des postes bien rémunérés dans le secteur manufacturier a sévèrement chuté de façon concomitante. En moyenne, une faible scolarisation se traduit par des salaires beaucoup plus bas en comparaison à ceux des personnes disposant d'un diplôme de fin d'études postsecondaires. Par conséquent, les perspectives d'emploi des joueurs de hockey sans diplôme de fin d'études postsecondaires sont considérablement plus sombres qu'il y a 30 ans. Cela vaut aussi pour ceux qui n'ont pas obtenu leur diplôme de fin d'études secondaires dans les délais prescrits.

La LCH, elle, demeure prospère, comme le démontrent les ventes de franchises conclues récemment. Ces ligues permettent aux jeunes hommes de connaître l'exaltation de pratiquer leur sport favori dans un milieu hautement compétitif, ce qui leur procure à tout le moins une certaine notoriété locale et une chance, bien qu'elle soit mince, de grossir les rangs de la Ligue nationale de hockey. Cependant, ces sensations fortes éphémères, cette notoriété et cette chance de jouer dans les grandes ligues sont plutôt lourdes de conséquences. En fin de compte, ces jeunes renoncent à la possibilité d'obtenir un diplôme de fin d'études postsecondaires. Notre analyse démontre clairement que les heures d'étude requises pour réussir sur le plan scolaire et les heures de travail requises pour jouer dans la LCH compromettent la capacité d'un étudiant à terminer un programme de formation exigeant. Il en ressort aussi qu'une personne peut très difficilement entreprendre des études supérieures si elle ne s'est pas sérieusement investie dans sa formation scolaire pendant plusieurs années, ce qui est le cas des joueurs de hockey junior majeur.

La question qui se pose est donc la suivante : peut-on mettre sur pied une structure plus appropriée pour le hockey junior majeur qui permettrait aux athlètes d'évoluer dans un environnement compétitif de haut

niveau les préparant pour la LNH? Nous estimons que le vaste réseau d'établissements collégiaux et universitaires du Canada peut mener à la mise en place d'une ligue de hockey de haut niveau offrant aux jeunes en fin d'adolescence un milieu compétitif d'un tel calibre. Ces derniers auront aussi une plus grande chance de décrocher un diplôme de fin d'études postsecondaires et, pour certains, un diplôme universitaire qui leur ouvrira des portes au sein du marché du travail et réduira les coûts que doit assumer la société. De façon réaliste, ce ne sont pas tous les joueurs qui finiront par obtenir leur diplôme, mais les chances qu'ils y parviennent seront considérablement améliorées s'ils font partie d'une ligue articulée autour de l'éducation, et non l'inverse.

Annexe (tableaux et figures)

Tableau 1 : Revenus et taux d'emploi moyens selon le niveau de scolarité

		Diplômé du secondaire				Université	
Variable	Sans diplôme	Dans les délais prescrits	Tardif (1 an)	Tardif (2 ans et plus)	Collège/Autre	Premier cycle universitaire	Deuxième cycle universitaire
Revenu moyen	39 563 $	48 918 $	35 526 $	31 752 $	45 164 $	46 401 $	41 551 $
Taux d'emploi	84,2 %	90,3 %	77,1 %	83,6 %	90,1 %	89,4 %	84,0 %
Observations (pondérées)	55 959,36	47 684,43	17 169,86	31 641,67	207 057,29	202 096,98	55 470,02

Source : Enquête auprès des jeunes en transition, cohorte A.

Tableau 2 : Taux de diplomation postsecondaire selon le moment de la graduation au secondaire

Dans les délais prescrits	1 an de retard	2 ans de retard	3 ans ou plus de retard
68,4 %	60,1 %	46,0 %	22,3 %

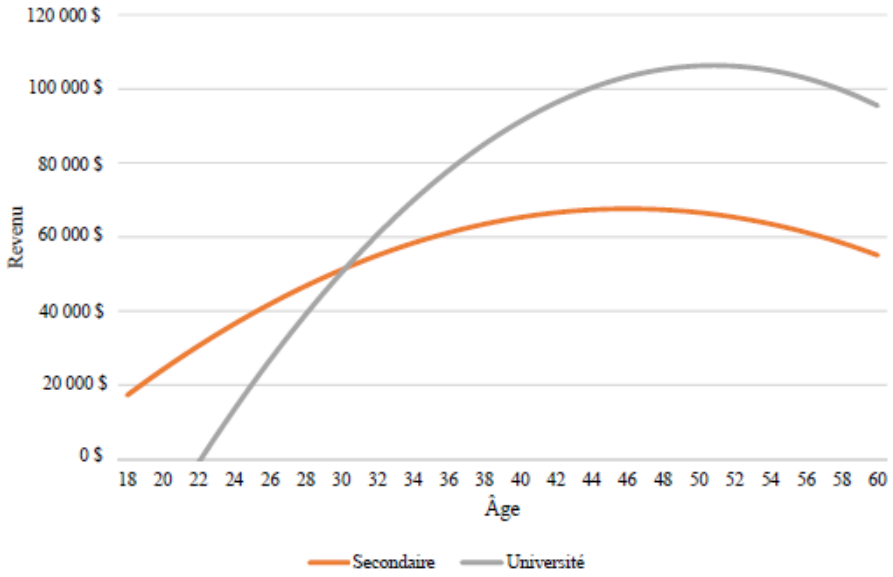
Source : Enquête auprès des jeunes en transition, cohorte A.

Tableau 3 : Heures consacrées à des activités scolaires (hors cours), étudiants collégiaux masculins de première année, Canada, 2016-2017

En moyenne, combien d'heures dans une semaine ordinaire de 7 jours accordez-vous à ces tâches?		
Heures	Nombre	Pourcentage
0	175	1 %
1-5	2 449	12 %
6-10	3 956	20 %
11-15	4 048	20 %
16-20	3 482	18 %
21-25	2 471	12 %
26-30	1 280	6 %
>30	1 990	10 %
Total	19 851	100 %

Remarque : Activités connexes aux études; préparation aux cours (étude, lecture, travaux individuels et de laboratoire, analyse de données, répétitions et autres activités scolaires). Source : *National Survey of Student Engagement*, Canada, 2016-2017.

Figure 1 : Revenu selon l'âge et le niveau de scolarité



Improving Young Hockey Players' Higher Education Outcomes

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1. Introduction

The purpose of this study is to discuss the advantages of replacing the major junior league with a university or CEGEP league for players. This should increase their chances of obtaining a degree in higher education. For colleges, CEGEPS, and universities, this new structure will increase their revenue, by way of ticket sales, TV rights, and contributions from the NHL.

Given the actual structure of major junior hockey, with its large number of games and extensive traveling, it is very difficult for young hockey players to receive an education that will prepare them adequately for higher education, if they do not manage to pursue a professional hockey career, which is the case for a large majority of players. Furthermore, there is considerable evidence that obtaining a high school diploma at a late age (greater than 17 in Quebec and greater than 18 in the other provinces) is detrimental to future success, either for admission to college and university or in the labor market, compared to receiving a high school degrees within the normal time frame of 6 years (5 in Québec). In the United States, Heckman and Lafontaine find that individuals with a GED (high school equivalent), do not perform better than dropouts in terms of wages or earnings. Since, high school degrees received by major junior hockey players are equivalencies, they may have a very low return compared to a regular high school degrees. We provide in this report some evidence that GEDs in Canada have a low rate of return compared to regular high school degrees.

We also show the differences between the average earnings by age and educational attainment for males in Canada using recent data from Statistics Canada surveys. This comparison provides an idea of the potential earnings that players are losing because of their limited access to post-secondary education.

Furthermore, there is strong evidence that the gap between high school graduates and university graduates has been substantially increasing over the last 40 years and that it will continue to increase in the future. This trend is likely to grow in the future in particular because low-skill jobs could be automated as result of progress in artificial intelligence in the coming decade.

It is very difficult to answer the following question: what would be the gain in lifetime earnings of a hockey player who joined the major junior league and stopped schooling if he had instead continued his schooling? We do not have the data to answer this question exactly, but we can discuss this topic for the average individual based on statistical studies performed in Canada and the United States. We show that the potential gain can be rather important not only for the individual but for society as well.

We also discuss research on how skewed preferences can affect teenagers when they make choices, such as those related to education, that have long-term consequences on their lives. There is an interesting and important empirical literature (Lavecchia, Lu and Oreopoulos, LLO) on why young men in particular are more prone to make choices that are not optimal for them in the long-run.

The third section of the paper discusses the advantages of modifying the structure of major junior hockey across Canada by replacing it with a college league, or several regional college leagues. The educational advantages for the players is evident, even more so today. A good college education will provide returns for all of their post-hockey lives, which given projections on life expectancy could be until, on average, they reach 90 years of age. Moreover, since colleges and universities are non-profit organizations, the revenues that they would acquire–from game attendance, TV rights and the NHL–would be used to reinvest in the institutions and make improvements. For example, universities may provide tutors and guidance for the hockey players, improve the sport infrastructure in the colleges and universities, as well as give scholarships to student-athletes and special awards to students who perform well in sports and academics.

2. Education

Wage Gaps between Individuals with Different Levels of Education

There is considerable evidence that individuals with a post-secondary education degree, on average, have a higher probability of being employed, and, given that they are employed, make better wages, live longer, be heathier and rely less on public support than individuals without a post-secondary education. This is observed in all major developed countries. Also, the gap between the highly educated and less educated has been increasing over the last 30 years. For example, average full-time weekly earnings of (working age) males with a BA were 32% higher than those with only a high school degree in 1980 and in 2005, that difference was 40%. Moreover, for a male with a post-secondary degree, earnings were 15% lower in 1980 and 20% lower in 2005 relative to the earnings of a male with BA (Boudarbat, Lemieux, Riddel, 2010).

Over the last 40 years, the higher educated have benefited most from technological advances, in particular from those technologies that are associated with computers. Because of the trends in robotisation of production, individuals with lower skills will see their wages go down, while the opposite will be true for better-trained individuals. As computer technologies are becoming more present in colleges and universities, wage gaps between the higher and lower educated could increase in the years to come.

Therefore, the situation for hockey players who will not pursue a career in hockey and with no post-secondary degree may become more difficult in the near future.

We obtained annual earnings from approximately 4000 Canadian Males aged 19 to 60 from Statistics Canada's 2014 Survey of Household Spending. Using regression analysis, we traced out an age-earnings profile for two different levels of education. For every age and level of education, we compute from the regressions, the average value of earnings, and then we plot these earnings with respect to age. The two levels of education depend on the highest degree obtained: (1) No post-secondary degree (2) post-secondary degree.

Figure 1 (see Appendix) displays the plots for each education group. We do not start at the same age to reflect the fact that these groups generally start their working careers at different ages. We also end the plots at age 60 when several individuals start retiring. We observe that until 30 years of age, annual earnings are lower for the higher-educated group, but after 30, a large gap opens rapidly between the two groups in favor of the highly educated.

From these plots, we compute the lifetime earnings difference between each group. We assume here that years when individuals are still in school are 0, which is of course not realistic, however this assumption makes our estimates of the lifetime differences between education groups rather conservative. Our results show that over a life-time, the higher-educated individuals obtain almost 600,000 dollars more than the less-educated individuals. Even if we subtract the costs of education, the difference in lifetime earnings is still very large. Furthermore, since savings is positively correlated with income, the higher-educated group is likely to save more, which would widen the income gap between the two groups even more.

Tables 1 and 2 show how poorly those who do not finish high school in the required time perform in the labor market compared to those who do finish on time or eventually receive a post-secondary degree. Table 1 separates a sample of young Canadians found in cohort B of the Statistics Canada Youth in Transition Survey (YITS) born between 1979 and 1981 into 7 groups: (1) drop-outs, (2) high school degree in required time, (3) high school degree, 1 year late, (4) high school degree 2 or more years late, (5) College or other, (6) University degree and (7) Graduate University degree. For each group, we compute the employment rate and their earnings when they are between 28 and 30 years of age. The numbers show that those who finish high school late, which is the case of major junior hockey players, perform very poorly on the labor market even when compared to drop-outs. Table 2 concentrates on those with a high school degree and shows the percentage that obtain a secondary diploma for several high school completion times. Once again, the late finishers perform more poorly than those finishing on time.

A memo written by the law firm Willig, Williams and Davidson for the union is quoted in the Toronto Sun and explains: "that educational support in the CHL is subject to "numerous qualifications" including playing a complete season with the team while remaining "academically qualified" and "being enrolled over consecutive terms and semesters". Given the very strenuous schedules it is very difficult for the players to qualify for educational support. The article provides also anecdotal evidence from Richard Powers, a lawyer and lecturer at the University of Toronto's Rotman School of Management concerning the academic skills of former players who attended the University of Toronto. He is quoted to have said: "We have had players in the past who tried to do this (meet the qualifications) and they'd be hard-pressed to keep-up with one or two courses. That wouldn't meet the test here because they'd only be part-time students."

Being a college student is a time intensive activity. Table 3 presents the distribution of time spent studying, reading, doing homework or lab work, analyzing data, rehearsing and other academic activities outside lectures in Canada for first-year male college students in Canada for the years 2016-2017 constructed from the National Survey of Student engagement. Approximately 70% of male students spend more than 10 hours per week in such activities. If we add time in class, which for full-time students is on average 15 hours per week, plus commuting time, we conclude that such a regimen is very taxing for major junior hockey players. It is also well-known that during exam periods and at the end of terms, this number will dramatically increase. Therefore, it is practically impossible for a hockey player to be a full time student and play hockey at the same time, if we count practice time, game time and travel time.

Societal Benefits to Increased Education

Assuming an average tax rate of 30% for the lower educated and 40% for the higher educated individuals, we find that the better educated pay almost 500,000 more dollars on their earnings than the less educated. They are healthier and therefore cost less in medical fees and other health related costs covered by publicly provided health insurance. Finally, they transmit the value of education to their offspring and use their higher incomes to increase their level of education as well as the quality of their education, by providing more educational resources in the household. Thus increasing the overall level of education of one generation should increase the level of education of the next generation.

3. Lessons from Behavioral Psychology

Present bias

Youths do not evaluate the long-term effects of their decisions on future outcomes in the same manner as adults do. There is empirical evidence that they focus too much on the present. This is called *present-bias behavior*. Playing major junior hockey provides immediate thrills, instant fame in the local town and maybe across the province or nation, and is clearly more fun than studying, doing homework or writing papers. The positive effects of the latter will be spread out over several years and a distant future. These future gains will be also highly discounted by youths playing hockey. A survey in Sports Illustrated shows how highly the future is discounted by young Olympic-sport elite athletes. They were presented with the following scenario:

You are offered a banned performance-enhancing drug that comes with two guarantees:

(1) You will not be caught; and,
(2) You will win every competition for the next five years and then die from the side-effects. Would you take it?

More than half said yes.

Given that youths are present-biased, the decision to spend little time in academics is easy to understand.

Routine

Students rely considerably on routine. The routine of hockey players is almost military. If they decide to pursue academic studies when they get out of the major junior league, it will be very difficult for them because they will not be able to adjust to the new routines that are necessary to perform. As written in LLO:

"Transitioning to college requires first deviating from one's daily routine to prepare to go, such as finding time to fill out forms, write entry essays, choose a program of study, pick courses, and apply for financial aid. It also requires changing routine, such as a new commute, study schedule, work schedule, and social schedule… Failing to modify routine for any one of them may close or limit college options."

Because the major junior hockey routine is radically different from college routine, adjustments could be impossible to make.

Identity

Youths are very easily influenced by their peers. If they are within a group that do not care about education, there are strong chances that they will not themselves care about education compared to an individual who is in a group of academic achievers.

Information

A growing body of evidence suggests that many children and parents are not fully informed about education costs, benefits, and options. This applies especially to those from low-income backgrounds. Also, too many choices are in general difficult to handle for youths. College elite leagues will reduce choices for elite hockey players.

4. Advantages of a College Structure for Elite Hockey Athletes

It is very difficult for individuals who forfeit serious schooling when they are 16 or 17 to progress to higher education. Therefore, part-time studying that may in certain cases last from 16 to 20 years of age almost negates any chance of graduating with a university degree. Adopting a structure that is similar to the NCAA, while adapting it to Canadian institutions will surely enhance the probabilities young hockey players enroll and graduate with a college degree or CEGEP degree in Québec.

We know that there are substantial revenues that the CHL leagues generate each year with tickets from attendance, TV rights, and transfers from the NHL. These amounts are estimated to be approximately 300 million dollars. It would be a realistic assumption that revenue from TV and the NHL would not change considerably if we had university leagues rather than the actual structure observed today.

In terms of attendance, it is more difficult to make predictions. However, there is proof from the Quebec university football league that communities can become very enthusiastic about their teams as witnessed in Sherbrooke, Montreal, and Quebec City. The Rouge et Or has an average attendance of over 11,000 spectators per game while in Montreal and Sherbrooke the average is around 5,000 spectators per game. This could be because of the high quality of the games played as these teams are ranked highly in Canada. Given the extraordinary appeal of hockey around the country, it is not unrealistic to think that attendance would be rather high on average all across Canada. As for the ticket prices, for these football games they are in the same range as for major junior hockey games, *i.e.* between 20 and 40 dollars.

Below are a few numbers from the success story which is the Rouge et Or football club at Laval University. In 2009, the Rouge et Or, without any money from a major sports league generated 5 million dollars in revenues, half of which came from the football team. From 2009 to 2012, 100 million dollars was invested in sports infrastructure, with 15 million dollars provided by the university and the remaining 85 million dollars from three levels of government. Half the budget from the university sporting activities was invested in the football club. Influence Media has estimated the Goodwill value of the team at 5 to 10 million dollars. [http://www.lesaffaires.com/archives/generale/une-equipe-en-or-et-en-argent/520657]

A university league could possibly see the return of major junior hockey in Toronto and Montreal and, given the large number of institutions in these cities, possibly more than one team. Rivalries such as those observed in Boston during the Boston Bean Pot tournament (where the final is sold out and played at the Boston TD arena which has a capacity of more than 17,000 seats, and is followed closely by the press) are very profitable for the four teams.

There is of course the issue of costs. Again, there are several advantages to having college or university leagues. In terms of equipment, we suppose that the sponsors would continue to provide hockey paraphernalia. If other types of goods or services are bought, universities are exempt from sales taxes. Also, the presence of other faculties that are connected to sports is also an interesting feature of university leagues. Students and Faculty in Kinesiology, Physiotherapy, Sports Psychology and Medicine are generally very involved with student athletes. This could considerably reduce the costs of these services as several use their experience in faculty sports for credit or simply to gain experience with elite athletes. This would be less true in Quebec where these subjects are not taught in CEGEPS. Finally, all other menial type of jobs done for the games such as ticketing, ushering, and so forth, can be provided by students. These factors should keep costs down and put profits at an interesting level for the educational institutions involved.

Furthermore, there would be no incentive for revenue to be used by team owners either for dividends or for items or services that could be used by them for personal consumption, such as vehicles or trips around the country or abroad. In contrast, with CHL teams, any profit from the operations must be reinvested in the college. Obviously, a considerable amount of the revenue must be used for scholarships for the players, tutoring to help them achieve academic success and purchases to improve infrastructure and training equipment. Importantly, these improvements in sport facilities would benefit all students.

The most revealing numbers concerning the profitability of major junior hockey are the recently observed sale prices for 5 teams in the western league ranging from 6 to 10 million dollars. Therefore, there is little

reason to assume that running such teams would lead universities, colleges or CEGEPs to lose money. On the contrary there are several reasons, including those discussed above, that lead us to believe that revenues would be higher than costs at the university level. But the main idea here, is that the government could, for example, make loans to universities to buy major junior teams and make repayments of these loans conditional on the profits that the teams generate. However, even if universities do not make considerable amounts of money, there would still be substantial advantages for society to have hundreds of hockey players graduating from colleges, rather than stopping their schooling with a GED in their hands.

Possible impacts of certification

If the leagues are finally compelled by law to recognize players as employees covered by Employment Standards regulations, this could lead to a dramatic income tax change for the players that will ultimately be paid by the parents. The CHL reports that they invest between 30000 and 40000 dollars per year on each player, according to federal tax laws, a considerable portion of these benefits could be deemed taxable, severely increasing the tax burden on both parents and employees. Obviously, if players were true student athletes as would be the case if they participated in College hockey leagues, the risks to parents of having to meet a very large tax burden would be eliminated, adding an additional benefit to the concept of replacing the CHL with College or University leagues around the country.

5. Conclusion

The different leagues constituting the CHL were designed for a world where a small percentage of individuals possessed a post-secondary degree. This was partly explained by the rarity of post-secondary institutions and the high demand for workers in the manufacturing sector which payed a decent wage and offered interesting pension packages. Therefore, hockey players who finished their tenure without accessing professional hockey were not strongly disadvantaged relative to others. It is even probable that the notoriety accessed through major junior entailed some benefits in the job market.

As documented in our report, the situation has dramatically changed since then. First, demand has strongly increased for highly skilled individuals, concomitantly demand for low skill well-paying manufacturing jobs has severely decreased. On average, being less educated means much lower wages relative to individuals with a post-secondary education. Therefore, the job prospects for hockey players without a post-secondary education are considerably bleaker than could be seen 30 years ago. They are also much bleaker for those who do not obtain their high school degree on time.

The CHL continues to prosper, as observed by some of the franchises recently sold. These leagues offer young men the thrill of playing their favorite sport in a highly competitive environment, which offers them at least some local notoriety and a chance, albeit rather small of playing in the National Hockey League. They pay however a rather considerable price for these short lived thrills, the notoriety, and the chance to play in the big leagues. They basically forfeit the chance of obtaining a post-secondary education. Our analysis clearly shows that any type of serious commitment education is precluded by the number of hours that are necessary for academic success and those necessary to perform in the CHL. It is also rather clear that it is very difficult to press the reset button for higher education once an individual has not consistently seriously applied himself to his studies for several years which the case of major junior hockey players.

The question is therefore, is there a better structure for elite major junior hockey that can be conceived which permits athletes to experience a high level of competition that will prepare them for NHL play. We believe that the expansive network of colleges and universities in Canada would permit the construction of an elite college hockey league which would provide the basis for both a very high level of competition for late teens as well as providing a much higher chance of graduating with a post-secondary degree and for certain a university degree which will considerably improve job market opportunities and reduce costs to society. Realistically, not all players would eventually obtain their degree, however, their chances should be much improved by being in league constructed around education and not the other way around.

Appendix (Tables and Figures)

Table 1: Average Income and Employment Rate by Educational Attainment

		High School Graduate				University	
Variable	No Degree	On Time	Late (1 Yr)	Late (2+ Yrs)	College/Other	Undergraduate	Graduate
Average Income	$39,563	$48,918	$35,526	$31,752	$45,164	$46,401	$41,551
Employment Rate	84.2%	90.3%	77.1%	83.6%	90.1%	89.4%	84.0%
Observations (Weighted)	55959.36	47684.43	17169.86	31641.67	207057.29	202096.98	55470.02

Source: Youth in Transition Survey, Cohort A.

Table 2: Post-Secondary Graduation Rate by High School Graduation Time

On Time	1 Year Late	2 Years Late	3 or More Years Late
68.4%	60.1%	46.0%	22.3%

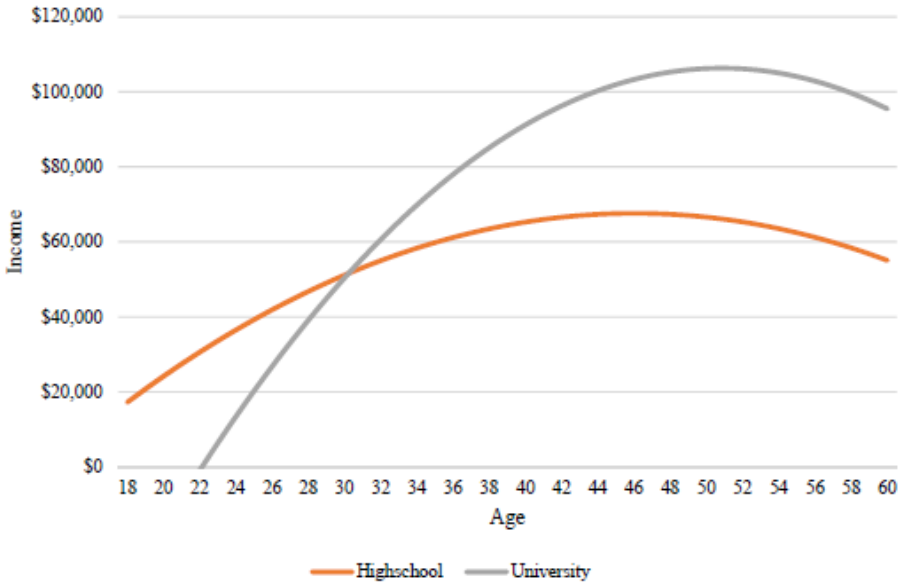
Source: Youth in Transition Survey, Cohort A.

Table 3: Hours spent in academic activities (out of class), First-Year Male College students, Canada, 2016-2017

About how many hours do you spend in a typical 7-day week doing the following?		
Hours	Count	Parentage
0	175	1%
1-5	2,449	12%
6-10	3,956	20%
11-15	4,048	20%
16-20	3,482	18%
21-25	2,471	12%
26-30	1,280	6%
>30	1,990	10%
Total	19,851	100%

Note : Academic related activities: Preparing for Class (studying, doing homework or lab work, analyzing data, rehearsing, and other academic activities). Source: National Survey of Student Engagement, Canada, 2016-2017

Figure 1: Income by Age and Level of Education



À PROPOS DE PHIL MERRIGAN

Philip Merrigan a reçu son doctorat de l'université Brown aux États-Unis en 1993. Il est professeur au département des sciences économiques de l'Université du Québec à Montréal depuis 1991. Titularisé en 1997, il a été directeur du département de 2002 à 2005. Économiste du travail et de la démographie, il se spécialise dans l'évaluation empirique des politiques publiques en particulier celles qui touchent la famille et les enfants. Ses travaux sont publiés dans des revues américaines de premier plan, telles le Journal of Labor Economics et le Journal of Monetary Economics. Ses travaux les plus récents concernent entre autres le développement du capital humain chez les jeunes, la production domestique et les techniques d'apprentissagemachine. Il a reçu le prix d'excellence en recherche du réseau des Universités du Québec en 2002. Il aussi été régulièrement professeur invité à Paris I Sorbonne et à l'université de l'île de la Réunion en France.

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EDUCATION

Degrees

1993	Ph.D., Economics	Brown University (Providence)
1986	M.sc., Economics	Université du Québec à Montréal
1982	B.sc., Psychology	Université McGill

Thesis

Family Labor Supply and the Life Cycle
Brown University (Providence)
Supervisor : Robert Moffitt

PROFESSIONAL CAREER

University

Period	Position	School
1997-	Full Professor (Chairman 2002-05)	Département des sciences économiques, Université du Québec à Montréal
Juin 2016	Prof invité	Université de Bordeaux
2011 à 2016	Invited Prof. (March)	Université de La Réunion (St-Denis, France)
2010-2013 (May)	Invited Prof.	Université de Paris I Panthéon-Sorbonne
2010 (May)	Invited Prof.	Université de La Réunion (St-Denis, France)

Period	Position	School
2009(March)	Invited Prof.	Université de La Réunion (St-Denis, France)
2006(March)	Invited Prof.	Université du Littoral (Dunkerque, France)
2001 (May)	Invited Prof.	Centre de recherche en économique et statistique, École nationale de la statistique et de l'administration économique, Bruz (France)
1999 (November)	Invited Prof.	Université Paris I Panthéon-Sorbonne
1997 (July)	Invited Prof.	Economics Department, The Central European University, Budapest (Hongrie)
1996-1997	Associate Prof.	Département des sciences économiques, Université du Québec à Montréal
1996 (July)	Invited Prof.	Economics Department, The Central European University, Budapest (Hongrie)
1994 (Fall)	Invited Prof.	Economics Department, The Central European University, Prague (République tchèque)
1991-1996	Assistant Prof.	Département des sciences économiques, Université du Québec à Montréal

GRANTS

1986-1990	Ph. D. fellowship	Conseil de recherche en sciences humaines du Canada
1986-1987	Ph. D. fellowship	Fonds FCAR
1984-1985	Master's	Fonds FCAR

RESEARCH

Prizes

Honorable mention, John Vanderkamp Prize, Best article in Canadian Public Policyl in 2002.

Prix d'excellence en recherche du réseau de l'Université du Québec (prize for excellence in research, network of Université du Québec), August 2001.

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Lavoie, Francine (U. Laval), Pierre Lefebvre (UQAM), Philip Merrigan et Jacques Joly (SOM inc.), « Étude longitudinale de suivi d'usagers et d'efficience lors de la modification apportée au milieu de vie des usagers de l'hôpital Louis-H. Lafontaine ». Rapport de recherche soumis au ministère de la Santé et des Services sociaux, avril 1996.

PRESENTATIONS IN MEETINGS

Pierre Lefebvre; Catherine Haeck and Philip Merrigan "The impact of a universal low-fee childcare program on the distribution of income and expenditures within the family," 53e Congrès annuel de la Société canadienne de science économique, Hôtel Manoir Victoria, Québec, 15-17 mai 2013. Annual Conference, Canadian Economic Association, HEC Montréal, Montréal, Canada, May 30-June 2. XXXèmes Journées de Microéconomie Appliquée, Université Nice Sophia Antipolis, Nice, France, 6-7 juin 2013., XXVII IUSSP International Population Conference, Busan, Korea, 26-31 August 2013.

Pierre Lefebvre; Catherine Haeck and Philip Merrigan "The distributional impacts of a universal school reform on mathematical achievements: A natural experiment from Canada," European Population Conference (EPC), University of Stockholm, Stockholm, Sweden, 13-16 June 2012

Pierre Lefebvre; Philip Merrigan and Pierre-Carl Michaud «Les comportements récents de retraite au Canada», Colloque sur le vieillissement ACFAS/CIQSS/ISQ, Palais des Congrès, Montréal, mai 2012

Catherine Haeck , Pierre Lefebvre and Philip Merrigan «Une réforme scolaire ambitieuse au Québec, mais de piètres résultats en mathématiques pour tous les élèves», (UQAM). 52e Congrès annuel de la Société canadienne de science économique, Hôtel Du Lac, Mont Tremblant, 9-11 mai 2012

Pierre Lefebvre and Philip Merrigan, "Québec's Childcare Universal Low Fees Policy 10 Years After: Effects, Costs and Benefits", 24th Annual Congress European Society of Population Economics, Hangzhou, China, June 16-18, 51e Congrès annuel de la Société canadienne de science économique, Hôtel Grand Times, Sherbrooke, 11-23 mai 2011, Colloque CIQSS/ACFAS, Université de Sherbrooke, Sherbrooke, 10 mai 2011. Grande Conférence CIRPÉE 2010: "Les effets redistributifs et comportementaux des politiques sociales", octobre 15, 2010, Pavillon La Laurentienne, Université Laval, Québec, 10e Conférence annuelle-Les Journées du CIRPÉE, octobre 1-2, 2010, Sainte-Adèle, Québec

Lefebvre Pierre, Philip Merrigan and Emmanuelle Bourbeau. « Returns to Education: Results from the Canadian Analytic Census files, 1991-2006", *Using Social Statistics to Illuminate the Issues, Processes and Outcomes in Higher Education: International Viewpoints, UQAM,* Dec 7-9 2009.

Lefebvre Pierre, Philip Merrigan and Matthieu Verstraete. « The Effects of Schools Quality and Family Functioning on Youth Math Scores: A Canadian Longitudinal Analysis", Canadian Economic Association Meetings, Vancouver, June 2008

Crémieux, Pierre-Yves, Dominique Latrémouille-Viau, Pierre Ouellette, and Philip Merrigan, « Les déterminants de la consommation de médicaments au Canada de 1994 à 2002 : une analyse économétrique ». Congrès international du médicament, Montréal, October, 2007.

Pierre Lefebvre, Philip Merrigan, Matthieu Verstrate and Nicholas Labelle-St-Pierre. « A Synthesis of the Effects of the Quebec Child Care Subsidy Program on the Labour Supply, Experience and Wages of Mothers and Child Development", Atlantic Research Data Centre and Dalhousie University, Research Data Centre conference, "Life Course Transitions of Children and Youth", Nova Scotia on October 12th and 13th, 2007.

Lefebvre Pierre, Philip Merrigan and Matthieu Verstraete. « Dynamic Labour Supply Effects of Childcare Subsidies: Evidence from a Canadian Natural Experiment on Universal Child Care", European Association of Labor Economists, Oslo, septembre 2007 and CLSRN Population, Work and Family Research Collaboration, Ottawa, December 2006.

Lefebvre, Pierre, and Philip Merrigan «Low-fee ($5/day/child) Regulated Childcare Policy and the Labor Supply of Mothers with Young Children: A Natural Experiment from Canada», Congress of the Econometric Society, Londres, August 2005.

Lefebvre, Pierre, and Philip Merrigan «Low-fee ($5/day/child) Regulated Childcare Policy and the Labor Supply of Mothers with Young Children: A Natural Experiment from Canada», JMA 2005, Hammamet, Tunis, mai 2005, European Society for Population Economics, Paris, Juin 2005, 61th Congress of the International Institute of Public Finance, Jeju Island, South Korea, August 2005.

Lefebvre, Pierre and Philip Merrigan « A 'Natural Experiment' on the Economics of Storks: Evidence on the Impact of Differential Family Policy on Fertility Rates in Canada». Communication présentée dans le cadre du European Econometric Society Meetings, Venise (Italie), 26-28 août 2002; des Journées de microéconomie appliquée, Rennes (France), 6-7 juin **2002**, 15th Annual Conference of the European Society for Population Economics, Athènes, (Grèce), June, 2001.

Gardes, François and Philip Merrigan «Individual Needs and Social Pressure : Evidence on the Easterlin Hypothesis on Canadian Repeated Cross-Sections». Communication présentée dans le cadre du Congress of the European Economic Association, Venise (Italie), 22-24 août **2002,** des Journées de microéconomie appliquée, Nancy (France), 6-7 juin 2001.

Crémieux, P., Kessler R., Greenberg P., Merrigan P., and Marc Van Audenrode « Employment, Income Supplements and Mental Health: A Controlled Experiment». Congrès annuel de l'Association canadienne d'économie, McGill University, Montréal (Québec), May-June 2001.

Lefebvre, Pierre and Philip Merrigan, « The Effect of ChildCare and Early Childhood Education Arrangements on Developmental Outcomes of Young Children ». Communication présentée dans le cadre de la conférence Families, Labour Markets, and the Well-Being of Children, UBC, Vancouver, June 2000.

Lefebvre, Pierre and Philip Merrigan, « Est-ce que le revenu familial, le travail des mères, les conditions et les horaires de travail ont des effets sur le développement des enfants et les pratiques parentales? ». Communication présentée dans le cadre du 5e Symposium de recherche sur la famille, UQTR, Trois-Rivières, Nov 1999; du 40e Congrès annuel de la Société canadienne de science économique, Université de Montréal, May 2000.

Lefebvre, Pierre and Philip Merrigan, « Conditions and Characteristics of Parental Work, Parenting Practices, and Children's Outcomes ». Communication présentée dans le cadre du 13th Annual Conference of the European Society for Population Economics, Turin (Italie), June 1999.

Lefebvre, Pierre and Philip Merrigan, « Maternal work and Young Children Developmental Outcomes ». Communication présentée dans le cadre de Investing in Children/Investir dans nos enfants, une conférence nationale sur la recherche, Hôtel Château Laurier, Ottawa, Oct. 1998.

Lefebvre, Pierre and Philip Merrigan, « Comportements d'utilisation du temps non marchand des familles au Canada et au Québec : une modélisation sur les micro-données du Budget-temps de 1986 et 1992 ». Communication présentée dans le cadre du 38e Congrès annuel de la Société canadienne de science économique, Université Laval, Québec, May 1998.

Dooley, Martin, Pierre Lefebvre and Philip Merrigan, « Lone Female Headship and Welfare Policy in Canada ». Communication présentée dans le cadre du 1997 Annual Meeting de la Population Association of America, Washington D.C., March 1997; du 37e Congrès annuel de la Société canadienne de science économique, HEC, Montréal, May 1997; du Congrès annuel de l'Association canadienne d'économie, Memorial University, Saint-Jean (Terre-Neuve), June 1997; of the 12th Annual Conference of the European Society for Population Economics, Amsterdam, June **1998**; and of the 54th Congress of the International Institute of Public Finance, University of Cordoba (Argentina), August 1998.

Gascon Stéphane, Pierre Lefebvre et Philip Merrigan, « La pauvreté des enfants au Canada de 1975 à 1993 : une analyse économique de la situation ». Communication présentée dans le cadre de l'ACFAS, Université McGill, Montréal, mai **1996**; du 36e Congrès annuel de la Société canadienne de science économique, Saint-Adèle, Québec. May 1996.

Lefebvre, Pierre et Philip Merrigan, « Welfare, Conjugal Union and the Single Mother in Canada : An Event History Analysis with Longitudinal Data ». Communication présentée dans le cadre du 35e

Congrès annuel de la Société canadienne de science économique, Lac Delage (Québec), 19-21 mai 1995; et des 13èmes Journées de microéconomie appliquée, Liège (Belgique), June 1996.

Merrigan, Philip, « Welfare Benefits and Incomes of Canadian Families : A Dynamic Analysis of Martial-Cohabitation Dissolution » et « An Econometric and Neoclassical Analysis of the Timing and Spacing of Birth in Canada from 1950-1990 ». Communications présentées dans le cadre du Ninth Meeting of the European Society for Populaiton Economics, Lisbonne, Portugal, June 1995.

Merrigan, Philip, « Family Labor Supply and the Life Cycle : Estimating the Browning, Deaton and Irish Household Mode ». Communication présentée dans le cadre des Journées de microéconomie appliquée, Strasbourg (France), June 1993.

Lefebvre, Pierre and Philip Merrigan, « Les déterminants des ruptures de mariages et d'unions au Québec : un modèle économique de durée ». Communication présentée dans le cadre du 33e Congrès annuel de la Société canadienne de science économique, Université du Québec à Montréal, May 1993.

Merrigan, Philip, « Family Labor Supply and the Life Cycle : Joint Estimation of Husband-Wife Relationship ». Communication présentée dans le cadre des Journées de microéconomie appliquée, Montréal, June 1991.

Invited presentations

"The distributional impacts of a universal school reform on mathematical achievement: a natural experiment from Canada", Université de Paris I (Panthépn Sorbonne), Maison des Sciences Économiques, 18 avril, 2013.

"The Impact of the Québec School Reform on Mathematics: Results from the NLSCY", 25 janvier, 2013, McGill University

Gardes, François and Philip Merrigan « Evaluating the effect of prices on smoking behavior: a natural experiment from the 1994 Canadian effort to fight the contraband market for cigarettes», Communication présentée à l'École nationale de la statistique et de l'administration économique (ENSEA), Bruz (France), 2004

Merrigan, Philip, « The Effects of Child Care and Early Education Arrangements on Developmental Outcomes of Young Children ». Communication présentée à l'École nationale de la statistique et de l'administration économique (ENSEA), Bruz (France), nov. 2000.

Merrigan, Philip, « Lone Female Headship and Welfare Policy in Canada ». Communication présentée à l'Université Paris I Panthéon-Sorbonne, mai 2000.

Merrigan, Philip, « Work Schedules, Job Characteristics, Parenting Practices, and Children's Outcomes ». Communication présentée au Centre de recherche en économie et statistique (CREST), Paris, nov. 1999.

Merrigan, Philip, « Family Background, Family Income, Maternal Work and Child Development » et « Stratégies empiriques en économie du travail ». Communications présentées à l'Université Paris I Panthéon-Sorbonne, nov. 1999.

Merrigan, Philip, « Family Background, Family Income, Maternal Work and Child Development ». Communication présentée à l'Université de Dijon, Institut de recherche en éducation (IRÉDU) (centre CNRS), déc. 1997.

Merrigan, Philip, « Weekly-Employee Hours, Weeks Worked and Intertemporal Substitution ». Communication présentée à la Banque du Canada, Ottawa, automne 1997; et à l' Université Paris I Panthéon-Sorbonne, Séminaire Cournot, déc. 1997.

Dufresne, Éric, Vivian Hamilton et Philip Merrigan, « Down and Out : Simultaneous Equation Model of Mental Health and Work ». Communication présentée à l'Université Queen's, Kingston, nov. 1996; à Barcelone (Espagne), sept. 1997.

Merrigan, Philip, « Conjugalité et fécondité des femmes canadiennes : un modèle dynamique estimé à l'aide de coupes transversales répétées ». Communication présentée à l' Université McMaster, Hamilton, 1996; à l'Université de Sherbrooke, 1996; et à l'Université Laval, Sainte-Foy, 1996.

Merrigan, Philip, « Down and Out : A Simultaneous Model of Mental Health and Unemployment ». Communication présentée à l' Université Queen's, Kingston, 1996.

Merrigan, Philip, « Family Labor Supply and the Life Cycle ». Communication présentée à l'Université Western Ontario, London, 1991.

Merrigan, Philip « Politiques familiales, investir dans le capital humain », Bâtissons un système intégré de services pour la petite enfance, 25 mai 2004 - Hilton Québec, Québec.

Lefebvre, Pierre and Philip Merrigan. « A New Deal for Families and Children: An Assessment of Existing Family Policy in Canada and the Changes Needed. Institute for Research on Public Policy», National Press Club, Ottawa, et Château Frontenac, Québec, juin et octobre, 2003.

Merrigan, Philip, « La politique familiale du gouvernement du Québec et ses effets sur la fécondité». Conférence présentée dans le cadre du Colloque Force Jeunesse, HEC-Montréal, octobre 2003.

Merrigan, Philip, « La politique familiale du gouvernement du Québec », réunion du *Pont entre les générations*, novembre 2003 Montréal.

Merrigan, Philip, « La politique de garderies du gouvernement du Québec ». Conférence présentée dans le cadre du Colloque spécial du Parti libéral du Québec, Hôtel Delta, St-Georges de Beauce (Québec), 1999.

Research Grants

2103-2015 FQRSC-Actions concertées.

"Inégalités de santé et de bien-être à la naissance et durant l'enfance : conséquences et impacts atténuateurs de certaines politiques sociales sur celles-ci"

Cochercheurs: Lefebvre, Pierre (responsable, UQAM), Catherine Haeck (UQAM), Philip Merrigan (UQAM). Nancy Mayo (McGill), et Pierre-Yves Crémieux (Analysis Group et UQAM)

2010-2011 Pfizer Canada

Les maladies chroniques et le chômage

Chercheur principal : Philip Merrigan
$40000

2010-2014 FQRSC

Dynamique des processus d'accumulation de capital humain des enfants et des jeunes, résultats, inégalités et contributions des politiques publiques

Co-chercheur : Philip Merrigan, M. Connoly-Pray et C. Japel (UQAM)
$430,000

2005-2009 FQRSC

Effets dynamiques du milieu familial et des institutions sociales sur le développement des enfants et les disparités des résultats.

Responsable : Pierre LEFEBVRE,

Co-chercheur : Philip Merrigan, S. Côté (Université de Montréal), et C. Japel (UQAM)
$367, 200

2004-2009 IRSC

Trajectoires de développement saines des nourrissons, des enfants et des adolescents.
Responsable : Richard E. Tremblay

Chercheurs principaux : Boivin, M., Merrigan P., Nagin, D., Perusse, D., Vitaro F., Turecki, G.
2,125,000$

2003 -2009

CRSH - subvention de recherche - Grands travaux de recherche concertée,
Projet : La chaîne des médicaments
Responsable C. Garnier (UQAM)
Cochercheurs Barthomeuf, C., Bataille, M., Beaulac-Baillargeon, L., Béliveau, R., Bertrand, M.A., Cohen, D., Crémieux, P.Y., Delanoë, D.D., Doise, W., Dorval, M. Druhle, M., Dufort, F., Ebrahimi, M., Keel, O., Legaul, J., Lévy, J.J., Lussier, M.T., , Merrigan, P., Niquette, M., Otéro, M., Perron, M., Pichette, A., Proulx, R., Robert, S., Scheiber-Meissner, P.M., Sidani, S., Somerville, M., Turcotte, M.F., van der Geest, S. , **2 500 000$**

2001-2006

FCAR Regroupements stratégiques et centres de recherche,
Centre interuniversitaire sur le risque, l'emploi et les politiques économiques, subventions de centre, **$450,000.**

2001-2004

FCAR — Soutien aux équipes de recherche : **129 000 $**
Développement du capital humain chez les enfants : déterminants, processus, rôle et effets des politiques publiques
Raymond Baillargeon (Hôpital Ste–Justine), Pierre Lefebvre (responsable, UQAM), Nicolas Marceau (UQAM), Philip Merrigan.

2001-2004
FCAR — équipement : **15 000 $**
Développement du capital humain chez les enfants : déterminants, processus, rôle et effets des politiques publiques
Raymond Baillargeon (Hôpital Ste–Justine), Pierre Lefebvre (responsable, UQAM), Nicolas Marceau (UQAM), Philip Merrigan

1998-2001
FCAR — Établissement de nouveaux chercheurs : **90 000 $**
Énigme de la prime de risque et mesures désagrégées de consommation et d'emploi
Philip Merrigan (responsable), Alain Guay (UQAM) et Michel Normandin (UQAM)

1997-2000
CRSH — Subventions ordinaires de recherche : **40 500 $**
Une analyse économétrique des choix familiaux avec des données longitudinales et des sections transversales répétées du Canada, de la Grande-Bretagne et des États-Unis
Philip Merrigan (responsable)

FCAR — Établissement de nouveaux chercheurs : **52 000 $**
Offre de travail et cycle de vie
Philip Merrigan (reponsable)

1995-1997
FCAR — Actions concertées : **70 454 $**
Une analyse économique intertemporelle des comportements de paternité : utilisation du temps, partage des tâches familiales et des responsabilités parentales, et effets de politiques publiques
Céline LeBourdais (INRS-Urbanisation), Pierre Lefebvre (responsable, UQAM) et Philip Merrigan

CQRS — Subventions générales de recherche : **33 000 $**
Une analyse dynamique de la pauvreté chez les enfants (0-17 ans) : tendances, facteurs, structures familiales et politiques publiques
Pierre Lefebvre (responsable, UQAM) et Philip Merrigan

1992-1995
FCAR — Soutien aux équipes de recherche : **96 000 $**
Familles, marché du travail et politiques publiques
Claude Felteau (UQAM), Pierre Lefebvre (responsable, UQAM), Philip Merrigan et Paul-Martel Roy (UQAM)

1992-1994
Fondation canadienne Donner — Subvention de recherche : **180 000 $**
Les effets des mesures de soutien économique à la famille au Canada sur la participation au marché du travail, la fécondité et le bien-être des enfants

Céline LeBourdais (INRS-Urbanisation), Claude Felteau (UQAM), Pierre Lefebvre (responsable, UQAM) et Philip Merrigan

Subventions de ministères

2003-2004
Ministère des Finances-CIRANO, études économiques sur le Québec : **40,000$**
L'impact de la politique des services de garde au Québec sur la participation, les heures travaillées et la rémunération des mères québécoises,
Pierre Lefebvre (UQAM) et Philip Merrigan

1997-1998
Développement des ressources humaines Canada : **20 000 $**
Effets du travail parental et des stratégies de revenu sur le développement de jeunes enfants d'âge scolaire
Impacts des caractéristiques d'emploi sur la performance et le bien-être des enfants
Pierre Lefebvre (UQAM) et Philip Merrigan

Subventions de l'UQAM et autres

2003

UQAM : **8,000 $**
Un portrait statistique juste du parc locatif du Plateau Mont-Royal, Service aux collectivités.
Philip Merrigan

1999
UQAM : **8,000 $**
L'évolution des coûts de l'énergie et autres dépenses essentielles pour les ménages à faible revenu, Service aux collectivités.
Philip Merrigan

1993-1994
UQAM — Programme d'aide financière aux chercheurs : **8 484 $**
Philip Merrigan

1992-1994
Emploi et Immigration Canada — Défi 94, Défi 93, Défi 92 : **4 890 $**
Trois subventions servant à payer une partie du salaire d'étudiants travaillant dans le cadre de projets de recherche subventionnés
Philip Merrigan

Consulting

Expert for the **Governement of Quebec in its suit against major tobacco companie**s, 2010-2018

Advanced Micro Devices, Inc., and AMD International Sales and Service, LTD., v. Intel Corporation and Intel Kabushiki Kaisha *District of Delaware* Supported multiple experts

American Express Travel Related Services Company, Inc. v. Visa U.S.A., Inc. et al. *United States District Court for the Southern District of New York* Supported multiple experts on liability, damages and industry issues associated with allegation of anticompetitive behavior

Microsoft I-V Cases *United States Superior Court of the State of California for the City and County of San Francisco* Supported several experts in an analysis of potential damages resulting from alleged anticompetitive acts.

United States of America v. Hoyts Cinemas Corporation and National Amusements, Inc. *United States District Court for the District of Massachusetts* Provided support for expert testimony on alleged violation of the American with Disabilities Act..

Referee for Academic Journals

American Economic Review, Journal of Business and Economic Statistics, Journal of Econometrics, Review of Economics and Statistics, Economic Journal, Journal of Human Resources, Journal of Population Economics, Journal of Money Credit and Banking, Journal of Labor Economics, Labour Economics, Canadian Journal of Economics, L'Actualité économique : Revue d'analyse économique, Statistica Neerlandica, Canadian Public Policy, Review of Household Economics, Social Science Quarterly, American Economic Journals: Applied Economics, Journal of Economic Behavior and Organisation, Economic Inquiry, Applied Economics, Scandanavian Journal of Economics.

SECTION 3

DÉCLARATION DE BRANDON HYNES - LE 23 MAI 2018 - ANCIEN LECTEUR DE LA LHJMQ 2008 À 2013

Chère et honorable Assemblée nationale du Québec,

Je m'appelle Brandon Hynes. En 2008, à l'âge de 15 ans, j'étais le 3e choix au repêchage général pour les Tigres de Victoriaville.

Ce qui a conduit moi et ma famille à signer avec Victoriaville.

- En 2007, ma mère est tombée gravement malade et a passé 260 jours à l'hôpital et avait 3% de chance de survivre. Elle a perdu tout son estomac et le reste de sa vie a été handicapée. Comme chacun d'entre vous le sait, le handicap ne paie pas bien. Cela nous a conduit à envisager un contrat avec Victoriaville. Ils nous ont promis le monde, y compris un paquet éducatif **GARANTI**. Parce que j'ai été rédigé # 3, cela a ajouté 12 000 $ à mon forfait éducatif totalisant 28 000 $ après 5 ans. Cela a scellé l'accord, car mes parents savaient qu'ils allaient avoir des fonds limités m'aider avec une éducation.

De 2008 à 2013, j'ai passé 5 longues années dans les autobus et à parcourir les routes du Québec et des Maritimes. Parfois, nous avons voyagé des semaines sur la route. Durant ces jours de voyage, nous n'avons pas eu à participer à des programmes d'études secondaires. Quand nous avions un match à domicile, encore une fois, pas d'école ces jours-là, nous devions nous concentrer entièrement sur le hockey. J'étais un joueur anglophone au Québec, mes « INSTRUCTEURS » pouvaient me parler en anglais, mais ça n'allait pas me donner d'éducation au lycée, la plupart des jours restaient sur mon ordinateur portable pour chercher « comment obtenir un diplôme école secondaire ». Disons que "google" est devenu mon meilleur ami et m'a aidé à réussir mes cours - j'ai été laissé seul. Quand nous avons eu 18 ans, on nous a dit que nous ne devions plus participer à l'école si nous ne le voulions pas. Pour ne pas mentionner quand nous allions à l'école c'était pendant quelques heures dans l'après-midi puis partez sur votre propre temps. En découvrant de nombreuses années plus tard, il y avait une clause dans mon contrat qui stipulait que je devais recevoir autant de crédits pour que mon programme d'éducation soit valide. Donc, ils nous ont encouragés à ne pas aller à l'école, sachant parfaitement que cela mettrait nos paquets éducatifs en danger, qui fait cela ? Cela ressemble-t-il à quelqu'un qui prend soin de votre bien-être et de vos droits et qui veille sur vous pour votre avenir ?

Je dois malheureusement dire qu'en raison de l'absence d'un programme officiel d'études secondaires et du fait que nous laissions aux enfants le soin de prendre des décisions concernant leur scolarité, j'ai dû améliorer mes études secondaires pour poursuivre mes études postsecondaires à un coût supplémentaire.

Quand j'ai terminé dans la LHJMQ, j'ai décidé d'essayer de vivre mon rêve et de continuer à jouer dans l'ECHL - une ligue professionnelle et j'ai signé un contrat avec les Greenville Road Warriors. Si vous regardez la clause 4.5 de mon contrat, vous verrez que je peux jouer une année et être admissible à ma bourse pour laquelle j'ai travaillé si fort. À Noël cette année-là, j'ai décidé d'abandonner mon rêve de la LNH et de profiter du programme de bourses d'études offert par Victoriaville. C'était quand mon prochain cauchemar a commencé. Mes "je" étaient pointés, "T" étaient croisés, donc je pensais et de 2013 à 2016 j'ai poursuivi mon programme éducatif "**GARANTI"**, seulement pour avoir la porte claquée dans mon visage. J'ai été ignoré, les appels ont été filtrés par eux, à un moment donné ils ont accepté de commencer à me faire des paiements, et puis tout s'est arrêté, et toutes les communications ont été

arrêtées, je me suis laissé traîner avec une ligne de crédit de 15 000 $. Les frais de scolarité, à l'exclusion de mes frais de subsistance et de la marge de crédit de 15 000 $ de mes parents pour d'autres dépenses. Je n'ai jamais reçu ce que j'avais promis. Et maintenant j'ai entendu, c'est commun, seulement 35% des joueurs peuvent utiliser leurs paquets éducatifs, ce n'est pas juste. Rien de tout cela n'est juste. Chaque semaine, ils vous promettent le monde mais 85% d'entre eux sont des mensonges, vous vivez un rêve qui pour la plupart d'entre nous n'arrive jamais. Nous nous retrouvons avec du stress, des dettes, des blessures, des maladies mentales, donc certains propriétaires peuvent nous faire de l'argent et ne pas tenir nos promesses, même si nous avons des contrats qui, à 15 ans, ne comprennent pas ce que vous signez. PhD pour comprendre les paragraphes contradictoires dans les contrats. Vous signez votre vie au diable.
Je veux que tout le monde remarque aussi que mon contrat a été modifié, ils ont essayé de m'envoyer un contrat qui n'était pas ce que nous avions convenu. Ceci est inclus dans la paperasse, quel genre d'entreprise qui dit avoir le meilleur intérêt des joueurs dans le cœur ?

Merci pour votre temps,

BRANDON HYNES STATEMENT – MAY 23, 2018 – FORMER QMJHL PLAYER 2008 THRU 2013

Dear and Honorable Quebec National Assembly,

My name is Brandon Hynes. In 2008 at age of 15, I was the 3rd overall draft pick for the Victoriaville Tigres.

What drove myself and my family to sign with Victoriaville.

- In 2007, my mother became seriously ill and spent 260 days in the hospital and had a 3% chance of surviving. She lost her entire stomach resulting in the remainder of her life on disability. As any of you know disability does not pay well. This drove us to consider a contract with Victoriaville. They promised us the world, including a **GUARANTEED** Educational package. Because I was drafted #3, this added $12,000 to my educational package totaling $28,000 after 5 years. This sealed the deal, as my parents knew they were going to have limited funds help me with an education.

From 2008-2013 I spent 5 long years on buses and traveling the roads of Quebec and the Maritimes. Sometimes we traveled weeks on end on the road. On these travel days we did not have to participate in any high school education programs. When we had a home game, again, no school on those days, we had to fully focus on hockey. I was an English-speaking player in Quebec, my "INSTRUCTORS" were able to speak to me in English, but that was not going to get me a high school education, most days left there on my laptop to search up "how to graduate high school". Let's say "google" became my best friend and helped me pass my courses – I was left on my own. When we players turned 18, we were told we no longer had to participate in school if we did not want to. Not to mention when we attended school it was for a couple hours in the afternoon then leave on your own time. Finding-out many years later there was a clause in my contract that stated I had to receive so many credits for my education package to be valid. So, they encouraged us not to go to school, fully knowing this would put our educational packages at risk, who does this? Does this sound like someone who is taking care of your wellbeing and your rights and looking out for you for your future?

I must sadly say, because of the lack of a formal high school education program and leaving it to us kids to make decisions about our schooling, I had to upgrade my high school education to pursue my higher education post-secondary at an added cost.

When I was done in the QMJHL, I decided to try and live my dream and continue playing in the ECHL – a pro league and signed a contract with the Greenville Road Warriors. If you look at clause 4.5 in my contract you will see I can play a year and still be eligible for my scholarship I worked so hard for. At Christmas that year I decided to give up on my dream of the NHL and take advantage of the scholarship program offered to me by Victoriaville. This was when my next nightmare started. My "I's" were dotted, "T's" were crossed, so I thought and from 2013 thru 2016 I pursued my "**GUARANTEED**" educational program, only to have the door slammed in my face. I was ignored, calls were screened by them, at one point they agreed to start making payments to me, and then it just never happened, and all communication stopped, I had been duped, left hanging with a $15,000 line of credit just for my tuition, not including my living expenses and my parents $15,000 line of credit for other added expenses. I never received what I was promised. And now I have

heard, this is common, only 35% of players can use their educational packages, this is just not right. None of this is right. Every week they promise you the world but 85% of it is lies, you're living a dream that for most of us never happens. We end up with stress, debt, injuries, mental illnesses, so some owners can make money on us and not follow through with any promises even if we have contracts, which at 15 you really do not understand what you are signing, you need a PhD to understand the conflicting paragraphs in the contracts. You are signing your life away to the devil.

I want everyone to also note, that my contract was altered, they tried to send me a contract that was not what we agreed to. This is included in the paperwork, what kind of a business that says they have the players best interest at heart does this?

Thank you for your time,

Signature d'un accord original avec Victoriaville Tigres et la famille du joueur / joueur
Signed original agreement with Victoriaville Tigres and player/player's family

Agreement between the Tigres de Victoriaville and [redacted]

1. **Disability insurance** : For the whole duration of his Major Junior stay, the Tigres commit to assume the cost of a disability insurance of two hundred thousand (200 000$) in the name of [redacted]. This insurance will have to be purchased by [redacted] parents and will be refunded by the Tigres, on presentation of justificatory documents.

2. **Summer training** : For the whole duration of his Major Junior stay, The Tigres commit to refund his summer training expenses to [redacted] up to two thousand (2000$) per year, on presentation of justificatory documents.

3. **No-trade clause** : At no time, the Tigres can conceed [redacted] rights to another QMJHL team without his consent.

4. **University scholarship** : The Tigres commit to pay to [redacted] a scholarship of up to twelve thousand (12 000$) for his University studies. This amount will be guaranteed as soon as [redacted] plays his first game in the QMJHL.

4.1 To be eligible to the 4th clause, [redacted] must first qualify to obtain the QMJHL scholarship of a total amount of sixteen thousand (16 000$). [redacted] 20071006.pdf

4.2 If [redacted] receive a scholarship from a Canadian University, the amount of this scholarship will be deducted from the scholarship mentionned at clause 4.

4.3 There will be a possibility of a 10% increase to the amount mentionned at clause 4 in case of school fees rise, up until the end of [redacted] Major Junior stay.
(In 2008, the University fees for the obtention of a baccalaureate in a Canadian University were 28000$)

4.4 Every scholarships given by the Tigres to [redacted] throughout his Major Junior stay will be deducted from the amount mentionned at the clause 4.

4.5 At the end of his Major junior stay, [redacted] will be able to, for a season, try out for a place in a professionnal hockey league, and this, without compromising the obtention of his scholarships (QMJHL and Tigres) as mentionned in the QMJHL scholarship program 4.1.4

4.6 If [redacted] signs a professionnal contract(NHL, AHL Europe, the 4th clause is automatically canceled.

5. **Parents visits**: The Tigres commit to offer [redacted] parents (mother and father) the possibility to come visit their son throughout the season. The Tigres will take care of the expenses (transport, accommodation and hockey tickets) for a maximum of 3 stays, totalizing 12 days.

5. **Salary supplement**: The Tigres commit to double [redacted] weekly salary throughout his Major Junior stay except for his 20-year-old season. The payment of the additional amount will occur with the agent in the form of two annual payments.

7. **Performance bonus**: The Tigres will reward [redacted] with bonus related to his efficiency throughout the year.

a) **Player of the week QMJHL 50$**
b) **Player of the week CHL 50$**
c) **Player of the year CHL 200$**
d) **First-team All-Star QMJHL 100$**
e) **Second-team All-Star QMJHL 50$**
f) **MVP QMJHL 100$**
g) **NHL draft 1st round 500$**
h) **NHL draft 2nd round 250$**
i) **NHL draft 3rd 4th 5th round 150$**
j) **NHL draft 6th 7th 8th round 100$**
k) **Membre Team Canada Junior 100$**

8. **Confidentiality clause**: This agreement must remain confidential at all time between both [redacted]

Signed in Victoriaville Date: Sept 02 2008

[redacted]
Player

[redacted]
General Manager

[redacted]
President

→ the tigres will buy a max pass to. Brandin every year.

Marketing/ Exposure/ Communication

The Club will use its best endeavors to market, promote and advertise the Player as a potential NHL prospect.

The Club Coach/ GM will willingly and regularly discuss with the Player Representative, the progress of the Player both on and off the ice.

Educational Package

The Club will, according to its standard policies and bylaws, provide to the Player an Education Package (the "Club Package") over and above the "League Package", which will total $2500 per season (Total $1500 League + $2500 Club = $6000 per season). It is understood that the Player will receive the educational funding known as the "League Package" on an annual basis during the term of this agreement to a maximum of 5 years, for a maximum total of $30,000 (Thirty Thousand Dollars). The QMJHL educational package is currently valued at $3,500.00 CAD (Three Thousand Five Hundred Dollars) per season played. In addition to the "League Package" money, a total of $2500 CAD (Two Thousand Five Hundred Dollars) per season played shall be kept in escrow for the Player. This money will be held for the purpose of satisfying the "Club Educational Package" mentioned above. If the Club Educational package increases in any of the seasons mentioned in this agreement, the total Educational Package shall be adjusted upward for the Player to reflect team policy. While playing for the Club, all educational expenses are the responsibility of the Club, and should not be deducted from the "Educational Packages".

Once the Player plays **ONE** QMJHL game for the Club, the Full Value ($30,000 CAD) of the Educational Package shall be guaranteed by the Club from that date forward. If the Player is traded at any time by the Club, the Full Educational Package shall remain the responsibility of the Club.

If, during the term of this contract, the Player signs an NHL contract that will pay him in excess of $100,000.00 USD (One Hundred Thousand Dollars) total Signing Bonus, the Club will be released from the "Club Package" obligation, but the "League Package" will remain in effect. In any other situation, the Educational Package shall remain available to the Player for two years (24 Months) following the immediate September 1st following

the end of his Junior eligibility.

In order for the Player to be eligible to receive the "Club Package" or the "League Package" he must qualify under the QMJHL Scholarship Criteria. The Player will educate himself on the rules of the QMJHL educational package prior to entering into an agreement with the Club.

In-Season Education Costs

-

The Club will cover and provide the enrollment costs of the Player attending a suitable academic institution, including, if necessary, reasonable costs of a tutor, during the term of this agreement.

Living Accomodations (Billeting)

-

The Club will provide to the Player, for this entire period of stay, a suitable billet family.

It is understood that what constitutes being suitable is in the Player and the Club GM's discretion and includes, but is not limited to: the billet family being bilingual, non-smoking and having internet access.

In the event that the Player and his family will move to the Club's city, the Club shall be responsible for reasonable moving expenses, including transportation and travel. If the Player resides with his family during the QMJHL season, the Club shall reimburse the Player's family in the same manner it reimburses all billet families. If the family does not move to the Club's city, the Club will offer 3 Season tickets to the family.

Medical

Proposition de Victoriaville - envoyée après avoir fini de jouer pour Victoriaville - Note: différence dans la section 4. Le mot garantie est enlevé. Vous pouvez voir que cela n'a jamais été signé aussi.

Proposition from Victoriaville – sent after finished playing for Victoriaville – Note: difference in section 4. The word guarantee is removed. You can see this was never signed as well.

Agreement between the Tigres de Victoriaville and I

1. **Disability insurance** : For the whole duration of his Major Junior stay, the Tigres commit to assume the cost of a disability insurance of two hundred thousand (200 000$) in the name of This insurance will have to be purchased by ; parents and will be refunded by the Tigres, on presentation of justificatory documents.

2. **Summer training** : For the whole duration of his Major Junior stay, The Tigres commit to refund his summer training expenses to up to two thousand (2000$) per year, on presentation of justificatory documents.

3. **No-trade clause** : At no time, the Tigres can conceed rights to another QMJHL team without his consent.

4. **University scholarship** : The Tigres commit to pay to a scholarship of up to twelve thousand (12 000$) for his University studies.

4.1 To be eligible to the 4th clause, I must first qualify to obtain the QMJHL scholarship of a total amount of sixteen thousand (16 000$). http://www.lhjmq.qc.ca/navcache/getcontents.php?currentpath=/root/Education/Programme_bourses_20071002.pdf

4.2 If receive a scholarship from a Canadian University, the amount of this scholarship will be deducted from the scholarship mentionned at clause 4.

4.3 There will be a possibility of a 10% increase to the amount mentionned at clause 4 in case of school fees rise, up until the end of Major Junior stay.
(In 2008, the University fees for the obtention of a baccalaureate in a Canadian University were 2800O$)

4.4 Every scholarships given by the Tigres to throughout his Major Junior stay will be deducted from the amount mentionned at the clause 4.

4.5 At the end of his Major junior stay, will be able to, for a season, try out for a place in a professionnal hockey league, and this, without compromising the obtention of his scholarships (QMJHL and Tigres) as mentionned in the QMJHL scholarship program 4.1.4

6. **Salary supplement** : The Tigres commit to double weekly salary throughout his Major Junior stay except for his 20-year-old season. The payment of the additional amount will occur with the agent in the form of two annual payments.

7. **Performance bonus** : The Tigres will reward with bonus related to his efficiency throughout the year.

a) **Player of the week QMJHL 500$**
b) **Player of the week CHL 500$**
c) **Player of the year CHL 2000$**
d) **First-team All-Star QMJHL 1000$**
e) **Second-team All-Star QMJHL 500$**
f) **MVP QMJHL 1000$**
g) **NHL draft 1st round 5000$**
h) **NHL draft 2nd round 2500$**
i) **NHL draft 3rd 4th 5th round 1500$**
j) **NHL draft 6th 7th 8th round 1000$**
k) **Membre Team Canada Junior 1000$**

8. **Confidentiality clause** : This agreement must remain confidential at all time between both party.

Signed in _____ Date : _____ 2008

_____ _____

Player General Manager

_____ _____

Father President

Email envoyé du directeur général de Victoriaville à l'agent du joueur puis transmis au joueur - 20 mars 2014 avec le contrat ci-dessus non signé lui disant de regarder la clause 4 - 4.1 - 4.2 - ce n'était jamais un contrat signé qu'ils renvoyaient au joueur.

Email sent from Victoriaville general manager to player's agent then forwarded to player – March 20,2014 with above unsigned contract telling him to look at clause 4 – 4.1 – 4.2 – this was never a signed contract that they sent back to player

From: J
Date: March 20, 2014 11:13:29 AM CDT
To: "A
Subject: contract

Hi

Following our discussion, here is the contract of . Take a close look to clause 4 - 4.1 - 4.2

Feel free to contact me for more infos

Best regards

DG / GM Tigres de Victoriaville LHJMQ

Voici un courriel du directeur général de Victoriaville à l'agent de joueur puis au joueur, ceci montre un plan de paiement convenu en 2014 pour le forfait éducatif «garanti» qui n'a pas encore été payé.

Below is an email from Victoriaville general manager to player agent then onto player, this shows an agreed to payment plan in 2014 for "guaranteed" educational package that to this day has not been paid.

From:
Date: April 5, 2014 at 3:16:09 PM EDT
To:
Subject: Hynes -

Al

Here is what i think to finalize this situation

The Tigres will reimburse an amount of 1500$ per semester of in St FX or any Canadian University in the next 4 years (for the 1st semester it will be 2000$)

1st semester - 2000
2nd semester - 1500
3rd semester - 1500
4th semester - 1500
5th semester - 1500
6th semester - 1500
7th semester - 1500
8th semester - 1000

For a total of 12 000 $ as it's write in clause 4 of the personal contract.

For every semester , we will need receipt (send by)

If quit the university for any reasons, this agreement will be void.

The Tigres will send the cheque (order to) directly to StFx university (to Mr)

** Please confirm the reception of this email and if you agree or not

*** If you agree we will need an email write by to us , to and also to the CHLPA to let everybody knows that we have reached an agreement.

Come back to me as soon as possible with your thoughts

SECTION 4

MARC-ANTOINE CLOUTIER

La présente vise à émettre des commentaires d'ordre juridique sur le ***Projet de loi nº 176 : Loi modifiant la Loi sur les normes du travail et d'autres dispositions législatives afin principalement de faciliter la conciliation famille-travail***, et plus spécifiquement sur l'article 1 du projet de loi.

Nos commentaires se concentreront sur l'article 1 du projet de loi, soit le fait que la Loi ne s'appliquera pas à « *un athlète dont l'appartenance à une équipe sportive est conditionnelle à la poursuite d'un programme de formation scolaire* ».

Nos commentaires se diviseront en 3 parties. Tout d'abord, nous analyserons cette modification sous l'angle de l'objectif de la ***Loi sur les normes du travail***. En deuxième lieu, nous regardons la constitutionnalité de la disposition et ses possibles effets discriminatoires. Finalement, nous regarderons les effets aléatoires de la loi et les incongruités que cela pourrait produire.

1) L'OBJECTIF POURSUIVI PAR LA LOI SUR LES NORMES DU TRAVAIL

L'article 93 de la ***Loi sur les normes du travail*** est clair :

> ***« 93. Sous réserve d'une dérogation permise par la présente loi, les normes du travail contenues dans la présente loi et les règlements sont d'ordre public. Une disposition d'une convention ou d'un décret qui déroge à une norme du travail est nulle de nullité absolue »***.

La Loi est d'ordre public et il s'agit d'un ordre public de direction. Comme l'a noté d'ailleurs la jurisprudence dans *Commission des normes du travail* c. *7050020 Canada inc.*, 2013 QCCQ 10004 (CanLII) :

> ***« Le contexte de l'adoption de la LNT, en 1979, laissait certains doutes quant à l'intention du législateur, il apparaît assez clairement que par l'adoption des modifications de 1999 consacrant la sanction de la nullité absolue pour une disposition contractuelle qui contrevient à une norme***

de travail prévue à la LNT, le législateur a voulu intégrer cette loi au régime de l'ordre public de direction.».

L'ordre public de direction signifie que cette loi est adoptée dans l'intérêt général de la société et que nulle ne peut y déroger, même avec son acceptation.

Les tribunaux d'arbitrage qui ont eu à se prononcer sur la question sont arrivés à ce constat :

> ***« Je retiens de l'ensemble de ces autorités, que la Loi sur les normes du travail est une pièce législative d'importance à laquelle l'on ne peut déroger et ce tel qu'édictée à l'article 93. Ainsi, sous réserve d'une dérogation permise par la Loi, un salarié ne peut renoncer ou déroger même individuellement à une norme minimale de travail définie à la Loi sur les normes du travail. Toute entente contraire à une norme prévue à cette loi est en conséquence nulle de plein droit »***[1]

La ***Loi sur les normes du travail*** est donc dans l'espace législatif québécois une pièce importante qui vise une protection majeure des travailleurs où nulle ne peut s'exclure. Il est selon nous incompatible avec l'esprit de cette loi de vouloir exclure un *« athlète dont l'appartenance à une équipe sportive est conditionnelle à la poursuite d'un programme de formation scolaire »* sans donner des explications précises et rationnelles de cette exclusion.

L'esprit de la ***Loi sur les normes du travail*** et ses effets d'ordre public commande plutôt d'élargir sa portée plutôt que d'en diminuer les effets. Le choix du législateur d'avoir donné un caractère d'ordre public de direction par l'adoption de l'article 93 de la Loi nous incite à croire que cette loi vise à augmenter le niveau de protection des salariés au Québec et non pas à diminuer la portée de la protection offerte par la loi.

L'article 1 du projet de loi n'est selon nous pas justifié et ses impacts positifs versus la diminution des droits n'ont pas été démontrés.

[1] Syndicat des infirmières, inhalothérapeutes et infirmières auxiliaires de Laval, SIIIAL (CSQ) c. Centre de santé et de services sociaux de Laval, 2016 CanLII 18646 (QC SAT)

2) LE CARACTÈRE POSSIBLEMENT DISCRIMINATOIRE DE LA LOI

La Loi vise l'exclusion des athlètes dont l'appartenance à une équipe sportive est conditionnelle à la poursuite d'une formation scolaire. Autrement dit, un athlète dont son appartenance à une équipe sportive n'est pas conditionnelle à la poursuite d'une formation scolaire pourrait continuer de bénéficier des effets protecteurs de la ***Loi sur les normes du travail***. C'est le statut d'étudiant qui fait donc perdre au salarié le droit à la protection de la ***Loi sur les normes du travail***. En effet, si ton appartenance à l'équipe sportive n'est pas conditionnelle à la poursuite d'une formation scolaire, la ***Loi sur les normes du travail*** continuera d'être opérante pour cette personne.

L'article 10 de la ***Charte des droits et libertés de la personne du Québec*** énonce :

> ***« Toute personne a droit à la reconnaissance et à l'exercice, en pleine égalité, des droits et libertés de la personne, sans distinction, exclusion ou préférence fondée sur la race, la couleur, le sexe, l'identité ou l'expression de genre, la grossesse, l'orientation sexuelle, l'état civil, l'âge sauf dans la mesure prévue par la loi, la religion, les convictions politiques, la langue, l'origine ethnique ou nationale, la condition sociale, le handicap ou l'utilisation d'un moyen pour pallier ce handicap.***
>
> ***Il y a discrimination lorsqu'une telle distinction, exclusion ou préférence a pour effet de détruire ou de compromettre ce droit. »***

L'effet indirect de l'article 1 du projet de loi est d'exclure les étudiants athlètes de l'application de la ***Loi sur les normes du travail***. Un athlète non étudiant, membre d'une équipe sportive, pourra bénéficier des effets de la ***Loi sur les normes du travail***. Or une autre personne qui elle, est étudiantes, qui pratique le même sport et qui pourrait même être dans la même équipe, ne pourra pas bénéficier des effets de la Loi.

Cette exclusion pourrait selon nous être considérée comme une discrimination basée sur la condition sociale de l'athlète, soit le fait d'être étudiant ou pas.

D'ailleurs la Cour d'appel a reconnu en 1988 que le fait d'être étudiant était une condition sociale au sens de l'article 10 de la ***Charte des droits et libertés de la personne du Québec***.

Dans *Lévesque c. P.G. Québec*, (1988) R.J.Q 223 (C.A), la Cour analyse la question et conclut de la façon suivante :

> ***« Étant acquise la primauté de l'article 10 de la Charte sur l'article 7 de la Loi sur l'aide sociale, il faut reconnaître que le statut d'étudiante de l'appelante est une "condition sociale" au sens de l'article 10 de la Charte. »***.

Le projet de loi a comme effet d'exclure de l'application de la ***Loi sur les normes du travail*** les étudiants membres d'un club sportif, tout en laissant aux non-étudiants les bénéfices de la Loi.

Ainsi le projet de loi, par son article 1, pourrait avoir des effets discriminatoires et être inconstitutionnelle. Non seulement une loi ne peut être directement discriminatoire, mais il est reconnu depuis longtemps qu'elle ne peut avoir d'effets discriminatoires. Autrement dit, même si la discrimination n'est pas directe, si les effets le sont, il pourrait y avoir discrimination au sens de la loi. Nous rappelons aussi qu'aucune disposition d'une loi, même postérieure à la Charte, ne peut déroger à l'article 10 de la ***Charte des droits et libertés du Québec***.

3) LES EFFETS ALÉATOIRES, DISCRIMINATOIRES DE LA LOI ET LES INCONGRUITÉS QUE CELA POURRA PRODUIRE

Il existe des concepts juridiques à la base de notre état de droit que sont la sécurité juridique et la *Rule of Law*. C'est deux concepts visent à assurer à chaque citoyen qu'il peut non seulement prévoir l'effet qu'aura le droit sur lui, mais aussi que la loi n'est pas arbitraire ni aléatoire.

L'article 1 du projet de loi créera des situations non seulement incompatibles avec ses grands principes, mais aussi avec l'application générale du droit du travail et les effets de la loi sur les normes du travail.

Pour illustrer notre propos, nous prendrons l'exemple de la Ligue de Hockey Junior Majeur du Québec (LHJMQ).

Le règlement de la ligue ne prévoit pas que tous les joueurs doivent poursuivre un programme scolaire pour appartenir à une équipe sportive.

Voici un extrait du règlement de la LHJMQ :

> ***« 2.10 Obligation de suivre des cours***
>
> ***Tous les joueurs, sauf les joueurs étrangers, doivent obligatoirement suivre des cours menant à un diplôme d'études secondaires, collégiales ou universitaire. Toute exception à cette règle doit être portée à la connaissance de la LHJMQ par un formulaire que l'équipe doit faire remplir au joueur et faire approuver par une autorité pa-rentale. Les joueurs étrangers doivent être inscrits à des cours de langues, d'informatique ou autres, reconnus par la ligue. »***.

Il existe donc deux exceptions. La première concerne les joueurs étrangers qui n'ont pas l'obligation de suivre des cours, et la seconde concerne un joueur qui en ferait la demande et qui serait approuvé par une autorité parentale. Autrement dit, même si la ligue prétend qu'une obligation de fréquentation scolaire est nécessaire, il existe un mécanisme pour s'y exclure.

Ainsi, si l'article 1 du projet de loi est adopté, des joueurs dans une même équipe pourraient être exclus de la ***Loi sur les normes du travail*** et d'autres joueurs pourraient bénéficier de l'effet de la loi. En effet, les joueurs étrangers, comme ils travaillent au Québec, seraient touchés par la loi, et leur coéquipier, puisqu'étudiant, ne bénéficieraient pas de la loi.

Ainsi chez un même employeur, deux personnes occupant les mêmes fonctions, faisant les mêmes tâches, occupant le même poste, n'auraient pas le même statut eu égard à la ***Loi sur les normes du travail***. Cette situation nous apparaît non seulement discriminatoire, tel qu'expliqué ci-haut, mais contraire aux principes généraux qui doivent guider les relations de travail au Québec, l'application de la ***Loi sur les normes du travail*** et les concepts plus généraux d'égalité devant la loi.

L'article 1 du projet de loi, tel que proposé, aura pour effet de créer différents types de joueurs et de donner aux joueurs étrangers plus de protection devant la loi que les joueurs québécois qui ont l'obligation de suivre une formation scolaire.

Enfin, un joueur pourrait commencer l'année comme athlète étudiant et en cours d'année, demander l'exception prévue au règlement de la ligue et ainsi ne plus être un athlète étudiant. Il aurait donc passé une partie de l'année non couverte par la ***Loi sur les normes du travail*** et une autre partie protégée par cette dernière.

Il nous apparait hautement improbable que le législateur souhaite arriver à pareille confusion.

Enfin, nous vous rappelons que contrairement au « sport-étude », les athlètes performant dans la LHJMQ ne choisissent pas leur lieu d'étude, ni même leur programme. Ils sont soumis à un processus de repêchage et doivent être disponibles pour l'équipe qui les a repêchés. Tout le processus n'est pas axé sur l'appartenance à une école pour déterminer le club sportif où l'athlète performera, mais plutôt le contraire. Il est sélectionné par une équipe et il doit par la suite faire ses choix scolaires en fonction de l'endroit où il joue.

Pour toutes ces raisons, nous croyons que l'article 1 du projet de loi ne doit pas être adopté. Non seulement il ne s'inscrit pas dans l'esprit de la ***Loi sur les normes du travail***, mais ses effets possiblement discriminatoires devraient convaincre le législateur de ne pas l'adopter. Enfin, adopter l'article 1 créera de l'insécurité juridique et amènera une confusion totale dans chaque équipe quant à savoir qui peut bénéficier des effets de la ***Loi sur les normes du travail***.

SECTION 5

a. Hockey Canada Bylaws 2009-2010:

La première ligne montre que la LCH est une « ligue professionnelle » selon la LCH et Hockey Canada avant le dépôt de la poursuite en recours collectif pour que les joueurs reçoivent un salaire minimum en 2014.

The first line shows that the CHL is a "professional league" according to the CHL and Hockey Canada prior to the filing of the class action law suit for players to receive minimum wages in 2014.

USAH/HC/CHL TRANSFER AND RELEASE AGREEMENT K2

2. CHL Team(s)/Player(s)

It is agreed that CHL Teams are considered and treated by third parties as being professional. Therefore, the signing of a contract with a CHL Team is the equivalent of signing a professional contract. Further, that by signing a contract with a CHL Team, the player agrees to be bound by the terms of that contract, including the method of terminating the contract, which must be in accord with the terms contained in the contract itself.

Provided however, that a player who signs a CHL Team contract which contains a provision that he may be traded to another CHL Team, must acknowledge his acceptance of that provision, by either signing or initialing adjacent to the trade provision portion of the CHL Contract , in order to be bound by any trade. If the player contract is executed in accordance with the terms set forth above, the player shall be bound thereby and he shall forfeit the opportunity to exercise rights contained in this Agreement. Absent an acknowledged trade provision, the player shall be free to exercise his rights as provided in Article II, Paragraph B (1), above, and further in this Agreement.

Provided further, that the CHL agrees to modify its standard form Player Contract to include a statement to the effect that the signing of this contract and competing for this team may have an effect on the eligibility of a player for competition in an NCAA sanctioned program. The player must acknowledge this provision by initialing or signing his name next to it. Absent the player's acknowledgement, the player is free to exercise his rights as provided in Article II, Paragraph B (1), above, and further in this Agreement.

In summary, provided that the CHL Player Contract has been executed in accordance with the terms set forth above in this sub-paragraph, then the player shall be bound by the terms of the CHL Player Contract and shall not be able to exercise any rights as contained herein, including, but without limiting the generality of the forgoing, Article III-Transfers Timelines and Article VI-Dispute Resolution.

D. Payment of Fees

In addition to Article II, Paragraph A, above, no player shall be eligible for competition under the jurisdiction of the three parties to this Agreement, unless, and until all required fees, both transfer and release, have been paid or satisfactory arrangements made therefore, as provided herein.

E. 16 year old player or younger, transferring from USAH to the CHL or participating as an affiliate player in the CHL

In the event that a player wishes to transfer to the CHL from USAH, or participate as an affiliate player, that player shall be required to complete the USA Hockey Parental Consent form, along with the standard transfer form and standard player release or player affiliation consent form. The consent form must be received ten (10) days prior to approving the USAH/HC transfer form or participating as an affiliate player.

Règlements administratifs de Hockey Canada après le dépôt du recours collectif en 2014 :

Veuillez prendre note : Les règlements de Hockey Canada APRÈS le dépôt de la poursuite en recours collectif ont été modifiés pour essayer de donner l'impression que la LCH était une ligue amateur.

Règlements de Hockey Canada page 107, section 1; définition d'un contrat pro. Il est clair que les joueurs de la LCH qui ont été rédigés et qui ont signé des contrats de la LNH seraient considérés PRO parce qu'ils ont reçu un bonus de signature, ainsi que des primes de rendement dans leur contrat (voir salaire excel des joueurs de la LCH).

Hockey Canada page 120

Encore une fois, la définition après que le recours collectif a été déposé est changée en Non professionnel. Hockey Canada et la LCH auraient pu dire «amateur», mais elles ne le peuvent pas pour les raisons suivantes:

R. Les joueurs deviennent éligibles pour rejoindre la NCAA.

B. Les joueurs de CDN qui jouent sur des équipes basées aux États-Unis ne pourraient pas entrer aux États-Unis sur un formulaire Visa.

* *règlements généraux de hockey canada disponibles sur demande*

b. Hockey Canada Bylaws after the filing of the Class Action Law Suit in 2014:

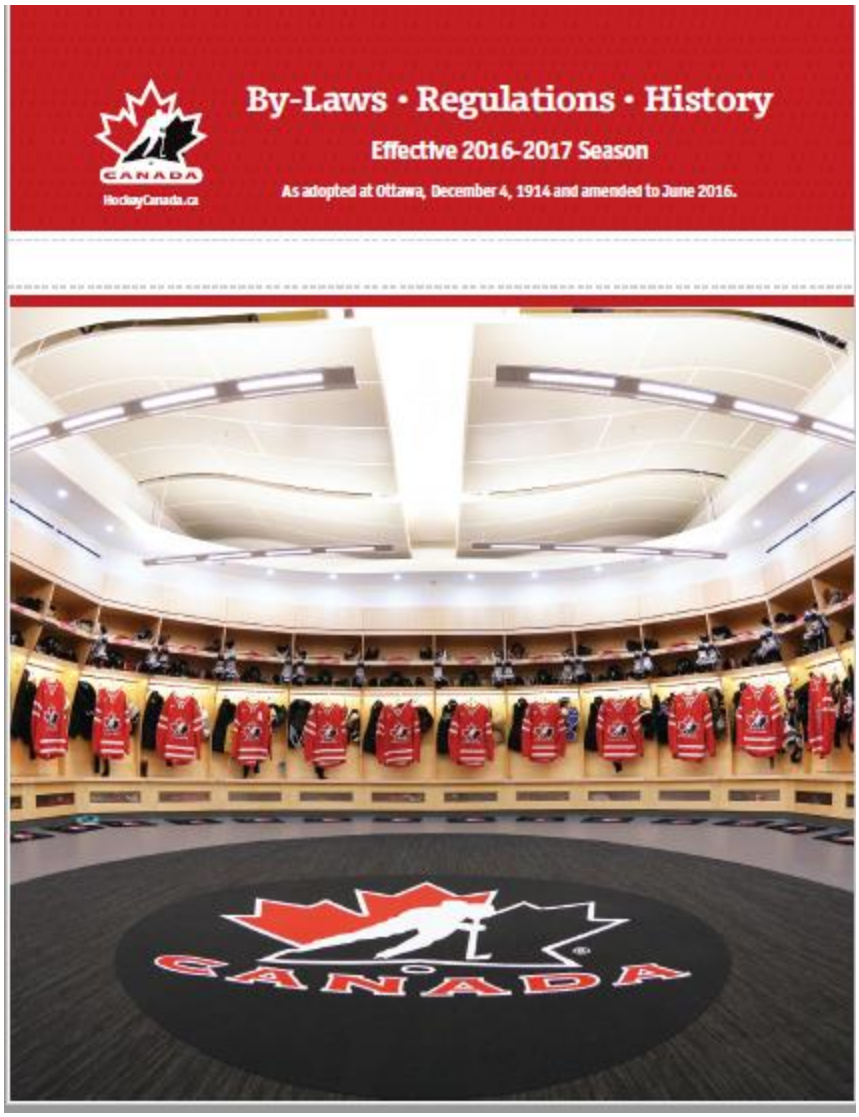
Please note: Hockey Canada bylaws AFTER the filing of the class action law suit were altered to try and give the perception that the CHL was an amateur league.

Hockey Canada Bylaws page 107 section 1; definition of a pro contract. Clearly the players in the CHL that have been drafted and signed NHL contracts would be considered PRO because they have received signing bonus, as well have performance bonus in their contract (see excel salary of CHL players).

Hockey Canada page 120

Again, the definition after the class action was filed is changed to Non-professional. Hockey Canada and the CHL could have said “amateur” but they cannot for the following reasons:

A. Players become eligible to join the NCAA.
B. CDN players who play on USA based teams would not be able to gain entry into the USA on a Visa form.


By-Laws • Regulations • History
Effective 2016-2017 Season
As adopted at Ottawa, December 4, 1914 and amended to June 2016.
CANADA
HockeyCanada.ca
CANADA

HOCKEY CANADA

BY-LAWS REGULATIONS HISTORY

As amended to June 2016

This edition is prepared for easy and convenient reference only. Should errors occur, the contents of this book will be interpreted by the President according to the official minutes of meetings of Hockey Canada. The Handbook is published every two (2) years and any changes to the constitution that are approved during even numbered Seasons will be incorporated in the copy posted on the web site.

The Playing Rules of Hockey Canada are published in a separate booklet and may be obtained from the Executive Director of any Hockey Canada Branch, from any office of Hockey Canada or from Hockey Canada's web site.

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organization Club to an IIHF member national association Club according to section I article 6.3.

1 Definition of "Professional Player Contract"

A professional Player under contract is a Player who has concluded a written contract with an ice hockey Club (signed by the Player and the Club) according to which he is compensated more for his ice hockey Player activity (taking part in matches and/or training sessions) than the expense he directly incurs through playing ice hockey. Contracts concluded between Clubs and Players must be of a specific duration.

2 Termination of Professional Player Contracts

2.1 A Player contract may be terminated (a) upon expiry of the term of the contract, (b) by mutual agreement, or (c) where there is a just cause.

2.2 Any contract provisions for early termination are considered to be mutually agreed upon.

2.3 Any other termination shall be considered as a breach of contract.

3 Consequences of a Breach of Contract

3.1 Sporting sanctions shall be imposed on Players found to be in breach of contract (a) during the first three years of a contract for Players aged up to and including 28 years of age, and (b) during the first two years of a contract for Players aged 29 and over.

The sanction shall be a four month suspension on playing in official national and international games during playing periods. These sporting sanctions shall take effect from the date as directed by the IIHF General Secretary in its communication. In the case of aggravating circumstances, the IIHF General Secretary may decide upon further disciplinary measures. The total period of suspension shall however never exceed six months playing period.

If a Player is found in breach of contract, he must either: (a) go back to his former Club, or (b) obtain a Release from his former Club. If neither action is taken within two weeks, sporting sanctions will take effect. The two week time period starts to run from the date the respective party receives the appeal decision.

3.2 A one Season ban on international transfers shall be imposed by the IIHF General Secretary on any Club found to be inducing a breach of contract. It shall be presumed, unless established to the contrary, that any Club signing a Player who has breached his contract has induced that Player to commit a breach. The period of ban shall commence on the day the IIHF General Secretary communicates its decision and last until the same date of the following Season. In the case of aggravating circumstances, the IIHF General Secretary may decide upon further disciplinary measures.

3.3 These regulations do not prevent any party from seeking appropriate compensation and other remedies before a competent body (such as civil courts or arbitration panels).

C. Players Who Are Involuntarily Moved

1. All Teams/Players Other Than CHL Teams/Players

Any properly Released and transferred Player who is subsequently and involuntarily traded to another Team within the Incoming Federation, must comply with the trade and then complete the Trade Consent Form accepting the trade, or refuse the trade, and complete the Trade Refusal Form. The Consent/Refusal Forms shall be filed with the Incoming Federation, with a copy also forwarded to the Outgoing Federation, within ten (10) days after the trade/movement is finalized or if not filed, the Player will be deemed to have refused the trade/movement. By refusing the trade, the Release and transfer of the Player is revoked and the Player may return to compete in his Outgoing Federation. Copies of the completed Trade Consent/Refusal Form(s) shall be forwarded by facsimile (fax) transmission or such other electronic means as may be agreed between the Federations.

Within five (5) days from the filing of the Trade Consent/Refusal Form(s), the Player who refuses the trade must return to the Outgoing registered Team on whose roster he last appeared, if he has remaining eligibility at that age level. If the Player no longer has age eligibility to play for that Team, or if the Player's previous Team fails to make arrangements to re-roster the Player within the five (5) day period set forth above, the Player shall then become a free agent. The Player movement provided for herein shall be subject, however, to the restrictions set forth in Article II, paragraph A, above.

2. CHL Team(s)/Player(s)

It is agreed that CHL Teams are considered the highest level of non-professional competition in Canada, administrated as a development program under the auspices of Hockey Canada in a member League of the CHL. Players with this program agree to participate in a member League of CHL and with a CHL Team by signing a Player agreement, the form of which agreement for each member League is prescribed by each such member League of CHL. Further, by signing an agreement with a CHL member Team, the Player agrees to be bound by the terms of that agreement, including its termination and transfer provisions.

In summary, if the Player executes the CHL agreement in accordance with the terms set forth above, the Player shall be bound thereby and he shall forfeit the opportunity to exercise rights contained in this Agreement, including, but without limiting the generality of the foregoing, Article III-Transfers Timelines and Article VI-Dispute Resolution for as long as such CHL Agreement remains in effect.

c. Lettre de la filiale David aux propriétaires d'équipe - Mise à jour aux politiques administratives :

Après avoir reçu un avis du recours collectif. La Ligue s'est entendue avec les propriétaires afin d'éliminer l'apparence d'une relation employeur-employé en ordonnant à ses équipes d'arrêter de délivrer des feuillets T4 mandatés par le gouvernement.

Le mépris flagrant de la ligue pour les lois du Canada est démontré par cedocument. Le tribunal de l'ARC avait statué à deux reprises que les joueurs étaient des employés et la ligue a accepté cette décision en ne faisant PAS appel de la décision du tribunal devant la Cour suprême.

La tentative de la ligue d'intimider ou d'intimider les agents de conformité de l'ARC est étonnante dans cette note par des déclarations telles que dans la section 12-14 de la note.

Comment un ordre de gouvernement peut-il permettre ce genre de comportement à toute entreprise au Canada?

David Branch letter to team owners – Update to Administrative Polices:

After receiving notice of the class action law suit. The League colluded with owners to a scheme to and eliminate the appearance of an employer /employee relationship by instructing its teams to stop issuing Government mandated T4 slips.

The league's blatant disregard for the laws of Canada is shown by this document. The CRA court had ruled twice that players were employees and the league accepted this ruling by NOT appealing the court ruling to the supreme court.

The league attempt to bully or intimidate the CRA compliance officers is astonishing in this memo by statements such as in section 12 - 14 of the memo.

How can any level of government allow this type of conduct from any business in Canada?

STANDARD PLAYER AGREEMENT

UPDATE TO ADMINISTRATIVE POLICIES

1. The Clubs will refer to the Players as amateur athletes and will ensure not to use any language in referring to the Players and their Clubs that would imply an employment relationship.

2. Clubs are not permitted to exceed the approved expense reimbursements for Players. The expense reimbursement will be a maximum monthly of $470.00 effective with the commencement of training camp each season.

3. Commencing with the 2014 off-season, Players will be eligible to be reimbursed up to $1,000.00 per year against documented receipts for the Player's off-season training/development program, in accordance with the OHL policy.

4. Commencing with those players signing an OHL Standard Player Agreement effective for the 2014-15 playing season and those players signing a revised OHL Standard Player Agreement within 30 days of implementation during the 2013-14 playing season, the travel allowance shall be a standard benefit for all players valued at $250.00/month incorporated into the maximum monthly reimbursement of expenses of $470.00/month.

5. Overage Players will receive an honorarium ($430.00 per month) in addition to their expense reimbursement ($470.00 per month). Players may also receive an honorarium where their Club is successful in the playoffs in accordance with the OHL Standard Player Agreement. Clubs are not permitted to exceed the approved schedule for honoraria. Clubs will be required to issue a T4A (U.S. tax form 1099) for honoraria payments made to players. Payments will be identified as honoraria under the Standard Player Agreement. The amount should be reported by the players as income.

6. Clubs will issue T4A's (U.S. tax form 1099) or other reporting documents to all Players for their scholarship payments during the year. The documents may differ for US residents or Canadian residents playing in the U.S.

7. Clubs should no longer take and remit deductions commencing with the 2013-2014 hockey season if that has been their practice and T4's will be issued only for that portion of the 2012-2013 season relating to payments made in calendar year of 2013. For payments relating to the 2013-14 season, the Clubs will no longer take or remit deductions, make remittances or issue T'4's(U.S. tax form 1099) or any other government forms to the Players for the reimbursements or for their room and board. Clubs do not need to specifically notify CRA that they are no longer withholding and remitting deductions with respect to the Players.

8. If Clubs have taken and remitted deductions for payments made relating to the 2013-2014 season ("excess deductions"), they should consult with their accountants to consider reducing future remittances by the excess deductions on the basis that the deductions were taken and remitted in error. Clubs should provide a payment to the players equal to the excess deductions that were taken from their payments.

9. If Clubs have not treated their players as employees and have not taken deductions from payments, there is no change in this regard. Clubs that have not issued T'4's in the past will not need to have any new communication to the Players as there will be no change to their administrative policies.

10. Prior to the start of the 2014-15 season, all new Players in the League will sign the new Standard Player Agreement, and current players will be given the option to sign the new Standard Player Agreement within 30 days of implementation.

11. Clubs are required to update their accounting records (general ledger accounts) to remove references to Player allowances/salaries and replace with an account called Player Expense Reimbursements. Honoraria for players should be accounted for separately as Player Honorarium Expense. Reimbursements for Player expenses or honoraria should not be processed through the Club's payroll system. By way of League policy, all payments to players is by way of check.

12. Clubs will not include the Player expense reimbursements on any WCB returns, government wages surveys or another any other returns or surveys where wage information is required.

13. Clubs will provide players with an expense reimbursement form and will reserve the right to request the completed form with expense receipts from the Players. This will put the Players on notice that being able to support their expense reimbursement is their responsibility.

14. If Clubs get any inquiry from Canada Revenue Agency (CRA) relating to Player status, their past payroll remittances or receive notification of a CRA Employer Compliance (payroll) audit, they should contact the League for direction. The League has decided that it is in the best interests of the Clubs and their Players to have a consistent and coordinated approach in dealing with CRA.

d. Déclaration du Québec pour un recours collectif contre les salaires des joueurs de la LHJMQ

C'est la déclaration des joueurs de la LHJMQ pour les pertes de salaire et les heures supplémentaires.

Quebec statement of claim for class action for wages by players in the QMJHL

This is the statement of claim by players in the QMJHL for lost wages and overtime.

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO:

SUPERIOR COURT
(Class Action)

[redacted], person residing at 25645 82nd Avenue, City of Langley, Province of British Columbia, Canada, V1M 2M8

Petitioner

v.

QUEBEC MAJOR JUNIOR HOCKEY LEAGUE INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 101-1205 rue Ampère, Boucherville, Québec, J4B 7M6

and

8487693 CANADA INC., a legal person duly constituted under the laws of Canada, having its principal place of business at 1181, Stacey Mill Crescent, Bathurst, NB, E2A 4W9.

and

CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 19 av. Marquette, Baie-Comeau, Québec, G4Z 1K5.

and

CLUB DE HOCKEY DRUMMOND INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 300 rue Cockburn, Drummondville, Québec, J2C 4L6.

and

CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED, a legal person duly constituted under the laws of Nova Scotia, having its principal place of business at 66 Wentworth Street, Sydney, NS, B1P 6T4.

and

LES OLYMPIQUES DE GATINEAU INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 125 rue de Carillon Gatineau, Québec, J8X 2P8.

and

HALIFAX MOOSEHEADS HOCKEY CLUB INC., a legal person duly constituted under the laws of Nova Scotia, having its principal place of business at 900 - 1959 UP. Water St., Halifax, NS, B3J 3N2.

and

CLUB HOCKEY LES REMPARTS DE QUEBEC INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 250 boul. Wilfrid-Hamel, Québec, Québec, G1L 5A7.

and

LE CLUB DE HOCKEY JUNIOR ARMADA INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 612 Rue Saint-Jacques, Montréal, Québec, H3C 4M8.

and

MONCTON WILDCATS HOCKEY CLUB LIMITED, a legal person duly constituted under the laws of New Brunswick, having its principal place of business at 100 Midland Drive, Dieppe, NB E1A 6X4.

and

LE CLUB DE HOCKEY L'OCEANIC DE RIMOUSKI INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 111 2e Rue O, Rimouski, Québec, G5L 4X3.

and

LES HUSKIES DE ROUYN-NORANDA INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 218 av. Murdoch Rouyn-Noranda, Québec, J9X 1E6.

and

8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, a legal person duly constituted under the laws of Canada, having its principal place of business at 46 Kensington Rd, Charlottetown, PEI, C1A 5H7.

and

LES TIGRES DE VICTORIAVILLE (1991) INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 400 boul. Jutras E, Victoriaville, Québec, G6P0B8.

and

SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, a legal person duly constituted under the laws of New Brunswick, having its principal place of business at 99 Station Street, Suite 200, P.O. Box 6370, Station "A", Saint John, NB, E2L 4R8.

and

CLUB DE HOCKEY SHAWINIGAN INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 1 Rue Jacques-Plante, Shawinigan, Québec, G9N 0B7.

and

CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC., a legal person duly constituted under the laws of Quebec, having its principal place of business at 810 6e Ave., Val-d'Or, Québec, J9P 1B4.

and

7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHEONIX, a legal person duly constituted under the laws of Canada, having its principal place of business at 360 rue du Cégep, Sherbrooke, Québec, J1E 2J9.

Respondents

MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES AS FOLLOWS:

GENERAL PRESENTATION

1. The Petitioner wishes to institute a class action on behalf of the following groups, of which he is a member (collectively, the "Classes" or "Class Members"):

   (a) All players who are members of a team owned and/or operated by one or more of the Respondents in the Province of Quebec (a "team") or at some point commencing October 29, 2011 and thereafter, were members of a team and all

players who were members of a team who were under the age of 16 on October 29, 2011 ("Quebec Class");

(b) All players who are members of a team owned and/or operated by one or more of the Respondents located in the Province of Prince Edward Island (a "team") or at some point commencing October 29, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 29, 2012 (the "PEI Class");

(c) All players who are members of a team owned and/or operated by one or more of the Respondents located in the Provinces of New Brunswick and Nova Scotia (a "team") or at some point commencing October 29, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 19 on October 29, 2012 (the "NB/NS Class"); and

(d) All players who are members of a team owned and/or operated by one or more of the Respondents located in the State of Maine, USA, (a "team") or at some point commencing October 29, 2008 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 29, 2008 (the "US Class").

or such other class definition as may be approved by the Court.

DEFINED TERMS

1. The following definitions apply for the purpose of this motion to authorize the bringing of a class action:

a. "**20 Year Old Contract**" means the current standard player agreement used by the **QMJHL** and the **Clubs** for all **Players** who are 20 years old or over at the time they signed;

b. "**Applicable Employment Standards Legislation**" means the legislation governing wages in the jurisdiction where a **Club** is domiciled including: the ***ARLS***; *Employment Standards Act*, S.N.B. 1982, c.E-7.2; *Labour Standards Code*, R.S.N.A. 1989, c. 246; *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2; *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1; Me. Rev. Stat. tit. 26, §664, as amended; and their respective regulations.

c. "***ARLS***" means *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1.

d. "**Class**" or "**Class Member(s)**" means the **NB/NS Class**, the **PEI Class**, the **Quebec Class**, and the **US Class**, as defined above.

e. "**Clubs**" means the teams participating, or who have participated, in the **QMJHL** who are or were owned and/or operated by the Respondents 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., Club de Hockey Junior Majeur Val D'or Inc, 7759983 Canada Inc. c.o.b. as Club de Hockey le Phoenix,

f. "**Contract**" or "**Contracts**" means the standard player agreement approved by the **QMJHL** to be used as the agreement for the provision of employment services by the **Players** for the **Clubs** and includes the **Former Contract**, the **Current Contract**, and the **20 Year Old Contract**;

g. "**Current Contract**" means the standard player agreement which is in effect as of September 2013 and includes the **QMJHL's** regulation known as R-11, "Rights and Obligations of Players"; Schedule "A" to regulation R-11 known as "Commitment Form for 16-to-19-Year-Old Players"; and the **QMJHL's** policy known as P-1, "Education Policy";

h. "**employee**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation;**

i. "**employer**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**;

j. "**employment contract**" means the **Contract** or **Contracts** which are contracts of employment within the meaning of **Applicable Employment Standards Legislation**;

k. "**Former Contract**" means the standard player agreement which was in effect until September 2013;

l. "**Player(s)**" means all persons who play or have played hockey for one or more of the **Clubs** and are **Class Members**;

m. "**QMJHL**" means the Respondent Quebec Major Junior Hockey League Inc.;

n. "**wages**" or "**minimum wages**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**;

THE PARTIES

The Petitioner

2. The Petitioner, [redacted]) resides in Langley, British Columbia, Canada. In the 2013-2014 season, Lukas played hockey for the Saint John Sea Dogs, a team owned and operated by the Respondent, Saint John Major Junior Hockey Club Limited (the "Sea Dogs").

The Respondents

3. The Respondent QMJHL is a corporation incorporated under the laws of Quebec. It operates a hockey league from its offices in Boucherville, Quebec under the supervision of the Canadian Hockey League ("CHL"), with teams in the Provinces of Quebec, Prince Edward Island, Nova Scotia, and New Brunswick. The QMJHL also had a team in the State of Maine, USA until it was dissolved in 2011. The teams playing in the QMJHL consist of the teams owned by the Clubs.

4. The Clubs are various corporations, partnerships, and limited liability companies formed in various jurisdictions. The Clubs all own or owned teams in the Leagues under various trade names. Through these trade names, the Clubs entered into the Contracts with the Players.

THE FACTS

Overview

5. The QMJHL oversees and is the governing body of eighteen hockey teams in Canada participating in the hockey league known as the QMJHL. The Players vary in age from 16-20 years of age and have all signed the Contracts.

6. The form and content of the Contracts are mandated, controlled, and/or regulated by the QMJHL who requires all of the teams to use the standard form Contracts when hiring Players, regardless of that Player's level or skill or experience or the team with which he signs. Once executed by the Player and team hiring the Player, the Contracts provide that they must then be approved by the commissioner of the QMJHL.

7. Under the terms of all of the Contracts, the teams, owned and operated by the Respondent Clubs, retain the rights of their Players for the life of the contract which generally covers all ages of eligibility in the QMJHL which is 16-20 years of age. Therefore, a Player who signs at the age of 16, signs a three year contract with an option for another year with the team.

8. The Former Contract was the standard player agreement until the season commencing September 2013 when all players were required to sign a Current Contract which is now the standard player agreement. The Current Contract purports to supersede and replace the Former Contract.

9. The Former Contract set a fixed fee for the Players' services which are either listed in a dollar amount, or by stating that the Players would receive a "league maximum" which was set by the bylaws of the QMJHL. The fees varied depending on the age of the player. Players age 16-19 received a fee of $60/week in the QMJHL under the Former Contract and continue to receive $60/week under the Current Contract, albeit the fee is

now described as an "allowance". Under all versions of the Contract, teams make applicable employee payroll deductions at source and remit them to applicable government authorities.

10. The Former Contract and the Current Contract include an "education package" which provides for payment by the team towards a Player's post-secondary education fees for each complete season that the Player played for that team. To be eligible for this education package under the Former Contract, the Player must enrol in a post-secondary education program within 18 months after completing a season with the team and must not sign a professional contract or participate in a tryout contract with a professional hockey team in the National Hockey League, American Hockey League, or with a European team.

11. The Former Contract contains a term under which the Clubs and QMJHL own the Players' images. The Former Contract states that:

> The Player hereby assigns irrevocably to the Club and the QMJHL and any licensees of the Club and the QMJHL on a non-exclusive basis, all rights to the Player's name, image likeness, signature, statistical record and biographical information (collectively the "Player's Image") and understands and accepts that the Club or the QMJHL may authorize, or otherwise license, any individual firm or corporation to take any pictures, films or any other images of the Player. The Player recognizes that all rights in such pictures, films and other images shall be the sole property of the Club or the QMJHL and that either the Club or the QMJHL may use or distribute such material in any manner as they see fit and that such use or distribution by the Club or the QMJHL may take place either during the Term or thereafter.

12. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the Former Contracts and the Current Contracts, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

13. Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the Players to meet the requirements of the education package, including maintaining a grade point average and enrolment in high school or online courses.

14. While the Contracts purport to be academically based, many of the Players while playing for a team have already graduated from high school or have already signed contracts with NHL teams.

15. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a team in the Western Hockey League ("WHL"), a league that is also operated under the supervision of the CHL, and a Player is one of employer/employee, stating, "[t]he 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."

16. In that case, the Court was asked to consider the relationship between the Player and the team based on the language of the Former Contract. The Court rejected the WHL team's argument that the remuneration was nothing more than an allowance paid to a student participating in a hockey program that offered scholarships subject to the pre-condition of possessing the ability to play hockey at a level permitting one to be a member of a WHL team. The Court found that the team operated a commercial organization carrying on business for profit and that the Players were employees. The requirement to play hockey was not found to be inextricably bound to a condition of scholarship since attendance at a post-secondary institution was not mandatory to stay on the roster.

17. Despite the Tax Court of Canada ruling made some fourteen years ago, the Respondents failed to rewrite the Former Contract until September 2013 or pay wages in accordance with Applicable Employment Standards Legislation.

18. Instead, the Respondents continued to include in the Former Contract a term where the relationship between the Players and the teams is described as one of "independent contractor".

19. In 2013, the Respondents redrafted the Contract to remove all references to a fee and to remove the term where the status between the Players and the teams was one of independent contractor. Instead, the Respondents' Current Contract recasts the $60.00 weekly fee as an allowance and redefines the status of 16 to 19 year old players as:

> Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as

hockey players whose goal it is to pursue the practice of hockey at the professional level.

20. While the Respondents have demanded that all Players ages 16 to 19 sign the Current Contract, in substance nothing changed in September 2013 with respect to the manner in which the teams operate or the degree of control exercised by the teams over the Players.

21. The predominant purpose of the Respondents in redrafting the Contract and in requiring Players to sign the Current Contract, was to avoid the application of Applicable Employment Standards Legislation.

The Former Contracts and the Applicable Employment Standards Legislation

22. The Former Contract is a standard form contract where the clauses relevant to wages and the terms of employment are identical or materially the same. The QMJHL required the use of the Former Contracts, and that contract only, which must be approved by the commissioner of the QMJHL before a Player is allowed to play hockey.

23. The clauses in the Former Contracts for the payment of wages all state that the Player is provided a set weekly fee. In the case of Players aged 16-19, this weekly fee is $60/week with no compensation provided on an hourly basis; no overtime pay; no vacation pay; and no holiday pay. The clauses in the Former Contract with respect to the payment of wages are identical or materially the same for each Class Member in each jurisdiction.

24. The Applicable Employment Standards Legislation for each jurisdiction in which the teams owned by the Clubs are domiciled is also materially the same in that it is mandatory that employers pay their employees minimum wage set by the legislation as follows:

(a) Section 40 of the *ARLS* states that "[a]n employee is entitled to be paid a wage that is at least equivalent to the minimum wage";

(b) New Brunswick's *Employment Standards Act*, SNB 1982, c E-7.2 contains regulations setting a minimum wage and section 9 requires that "Every employer...shall comply with the provisions of a regulation made under subsection (1)";

(c) In Nova Scotia, section 5 of the *Minimum Wage Order (General)*, NS Reg 5/99, Sch A, states "No employer shall employ an employee at a rate of wages less than the minimum wage fixed in this Order";

(d) Section 5(1) and (7) of the Prince Edward Island's *Employment Standards Act*, RSPEI 1988, c E-6.2 require a board to establish a minimum wage in PEI which "is binding upon the employer and employees";

(e) In the State of Maine, Me. Rev. Stat. tit. 26, §664, as amended, states that "an employer may not employ any employee at a rate less than the rates required by this section."

25. In addition to legislating a minimum wage, the Applicable Employment Standards Legislation in each jurisdiction also contains materially the same provisions which prevents employers from contracting out of their obligations under the Applicable Employment Standards Legislation:

(a) section 93 of the *ARLS* states, "[i]n an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null".

(b) New Brunswick's *Employment Standards Act*, SNB 1982, c E-7.2 states at section 4 that "this Act applies notwithstanding any agreement to the contrary between an employer and an employee";

(c) In Nova Scotia, section 6 of the Labour Standards Code, RSNS 1989, c 246 states that "This Act applies notwithstanding any other law or any custom, contract or arrangement";

(d) Section 2.1(2) of Prince Edward Island's *Employment Standards Act*, RSPEI 1988, c E-6.2 states that "A provision of a contract of service that confers upon an employee conditions or benefits less favourable than the conditions or benefits conferred upon the employee under a provision of this Act or the regulations is void and of no effect";

(e) In the State of Maine, Me. Rev. Stat. tit. 26, §672, as amended, states that "No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter". The subchapter referred to is the subchapter imposing minimum wage obligations on employers.

26. The Petitioner pleads on his own behalf, and on behalf of the Class, that the Former Contract is a contract of employment and therefore the pay received by each Class Member under the Former Contract was below the minimum wages prescribed by the Applicable Employment Standards Legislation and insofar as the Former Contract avoided the minimum wage obligations imposed by the Applicable Employment Standards Legislation, it is void and not a defence to this action.

The QMJHL Revises the Contracts

27. On July 1 2013, a new regulation for the QMJHL, referred to as the "Rights and Obligations of Players" or "R-11", came into force (the "Regulation"). The Regulation was subsequently amended September 6, 2013. Its objectives are stated as:

> to clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.

28. In addition to the Regulation, there is a Schedule "A": the "Commitment Form for 16-to-19-Year Old Players". The Regulation, Schedule "A", and the QMJHL policy P-1 known as the "Education Policy" are referred to herein as the Current Contract. The Respondents required all 16 to 19 year old Players to sign the Commitment Form whereby the Player agrees to abide by the constitution, the regulations (including the Regulation), the policies, and the directives of the QMJHL. The Current Contract provides, *inter alia*, that:

(a) The player acknowledges that this present agreement terminates, cancels and replaces any existing standard contract, if any, between the player and the club;

(b) Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as hockey players whose goal it is to pursue the practice of hockey at the professional level;

(c) The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their major junior career.

(d) The Player grants to the Club and to the League the right to authorize any person, firm, or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires [*sic*].

(e) During the regular schedule and the eliminatory schedule, the club will cover or reimburse the following expenses:...For expenses related to hockey practice and being away from home that is not otherwise reimbursed to the player, the club pays a fixed weekly allowance of $60.

29. Under the terms of all of the Current Contracts, the teams, owned and operated by the Respondent Clubs, retain the rights of their Players for the life of the contract which generally covers all ages of eligibility in the QMJHL which is 16-19 years of age. Therefore, a Player who signs at the age of 16, signs a three year contract with an option for another year with the team.

30. The Current Contract sets a fixed fee for the Players' services which are $60 a week. Teams make applicable employee payroll deductions at source and remit them to applicable government authorities.

31. The Current Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees pursuant to the QMJHL's "Education Policy", referred to as document P-1.

32. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the Current Contracts, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

33. Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the Players to meet the requirements of the education package, including maintaining a grade point average and enrolment in high school or online courses.

34. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a team in the Western Hockey League ("WHL"), a league that is also operated under the supervision of the CHL, and a Player is one of employer/employee, stating, "[t]he 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."

35. In that case, the Court was asked to consider the relationship between the Player and the team based on the language of the Former Contract. The Court rejected the WHL team's argument that the remuneration was nothing more than an allowance paid to a student participating in a hockey program that offered scholarships subject to the pre-condition of possessing the ability to play hockey at a level permitting one to be a member of a WHL team. The Court found that the team operated a commercial organization carrying on business for profit and that the Players were employees. The requirement to play hockey was not found to be inextricably bound to a condition of scholarship since attendance at a post-secondary institution was not mandatory to stay on the roster.

36. Despite the Tax Court of Canada ruling made some fourteen years ago, the Respondents under the Current Contract fail to pay wages in accordance with Applicable Employment Standards Legislation.

37. Instead, the Respondents have reworded the Former Contract to describe the fee as an allowance and to recast the status between the Players and Clubs as one of "student athletes" in an attempt avoid the application of the Applicable Employment Standards Legislation and the ruling in *McCrimmon*.

38. The Petitioner repeats paragraphs 24 and 25 above and pleads on behalf of the Class that the Current Contract is a contract of employment and therefore the pay received by the 16-19 year old Players during the 2013 season and the current season is below the minimum wages prescribed by the Applicable Employment Standards Legislation. Insofar as the Current Contract avoided the minimum wage obligations imposed by the Applicable Employment Standards Legislation, it is void and not a defence to this action.

The 20 Year Old Contracts

39. On July 1 2013, the Regulation came into force and was subsequently amended September 6, 2013. Its objectives are stated as:

> to clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.

40. In addition to the Regulation, there is a Schedule "B": the "Standard Contract - 20-Year-Old Player". The Regulation, the Schedule "B", and the QMJHL policy P-1, the "Education Policy", are referred to herein as the 20 Year Old Contract. The Respondents required all 20 year old Players to sign the 20 year Old Contract whereby those Players

agree to abide by the constitution, the regulations (including the Regulation), the policies, and the directives of the QMJHL. The 20 Year Old Contract provides, *inter alia*, that:

(a) The player acknowledges that this present contract terminates, cancels and replaces any existing standard contract, if any, between the player and the club;

(b) Players who are 20 years old and who are retained by a team are young adults who are called upon to exercise their leadership abilities and to act as mentors towards their teammates. They are considered to be salaried employees of the club and will be paid accordingly;

(c) The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their major junior career;

(d) The Player grants to the Club and to the League the right to authorize any person, firm, or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires [*sic*].

(e) All 20-year-old players must sign a standard contract supplied by the league and this contract must be registered with the league; he cannot sign any other contract that is not registered with the league;

(f) During the regular and playoff schedules, the club will cover or reimburse...the player's salary.

(g) This agreement is the sole understanding relating to the rights of the Player for his services as a 20-year-old player, and it supersedes or replaces any other prior verbal or written agreement or statement of intent.

41. The 20 Year Old Contract sets a fixed weekly fee for the Players' services which vary, but are capped by the QMJHL at $1,000 a week. Teams make applicable employee payroll deductions at source and remit them to applicable government authorities.

42. The 20 Year Old Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees pursuant to the QMJHL's "Education Policy", referred to as document P-1.

43. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the 20 Year Old Contract, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

44. The Petitioner repeats paragraphs 24 and 25 above and pleads on behalf of himself and the Class that the 20 Year Old Contract is a contract of employment and therefore the pay received by the Petitioner and the Class Members who signed the 20 Year Old Contract was below the minimum wages prescribed by the Applicable Employment Standards Legislation. Insofar as the 20 Year Old Contract avoids the minimum wage obligations pertaining to overtime pay, holiday pay, and vacation pay imposed by the Applicable Employment Standards Legislation, and to the extent the weekly fee or salary equates to less than 44 hours a week at minimum wage, it is void and not a defence to this action.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

45. igned a 20 Year Old Contract on or about September 10, 2013, as did the general manager of the team. I 's contract provided *inter alia* that in exchange for providing the services under the agreement, I would receive a fee of $476 weekly for one season commencing September 13, 2013. He would also receive reimbursement of $90

weekly for accommodation expenses. ...'s Contract was approved by the commissioner of the QMJHL on October 6, 2013.

46. Between September 13, 2013 and March 14, 2014, ... played a total of 53 games as a left wing for the Sea Dogs. As an "enforcer" for the team, I e was encouraged by his coach to play physically tough hockey and to drop the gloves and fight opponents. During that season, he spent a total of 141 minutes in the penalty box for his physically tough play.

47. On average, ... devoted about 5-6 hours per day, 6-7 days a week to providing services under the terms of the Contract including practicing, playing games, promoting, and travelling with the team. When the team was required to travel, he would devote longer hours, sometimes up to over 12 hours a day. Although e was classified in his Contract as an employee, he did not spend any additional hours or provide any substantively different employment services to the team compared to his teammates, including those Players who were 16-19 years old.

48. L... s hours varied but on average he supplied about 40 hours of services weekly and in some weeks over 44 hours, up to 65 hours per week.

49. L e was issued an employment T4 slip prepared by the Sea Dogs for the 2013 tax year. The Sea Dogs made payroll deductions from Luke's wages, including income tax at source, Canada Pension Plan contributions and Employment Insurance premiums. The Sea Dogs also made employer contributions to Employment Insurance and the Canada

Pension Plan. According to the T4, [illegible] e earned $8,314.29 in employment income in 2013.

50. On March 17, 2014, the Sea Dogs prepared a Record of Employment ("ROE") for [illegible], using the standard form issued by Human Resources and Skills Development Canada. The ROE was provided to [illegible] and submitted by the Sea Dogs to the Government of Canada. According to the ROE, the employer is listed as the Sea Dogs, the employee is listed as [illegible] and his occupation is described as hockey player. [illegible] s total insurable hours was calculated by the Sea Dogs and inserted into the ROE as 1048 hours worked. The Respondent also completed box 6 on the ROE entitled PAY PERIOD TYPE (inserting bi –weekly), box 10 FIRST DAY WORKED (inserting September 13,2013) and box 11 LAST DAY WORKED (inserting March 14,2014).

51. The ROE hours worked of 1048 hours amounts to forty hours a week during the six month employment period. [illegible] pleads his actual hours worked was much higher and varied each week depending on a number of factors, including traveling.

52. [illegible] bi-weekly pay was always the same, no matter how many hours each week he worked for the team. In some weeks, he did not receive a fee equivalent to minimum wage, nor did he receive any vacation pay, holiday pay or overtime pay as required under the Applicable Employment Standards Legislation, even when he worked on holidays or for in excess of 44 hours a week.

53. 's relationship with the Saint John Sea Dogs and the Contract he signed was a contract for service. He was an employee of the team. The facts in support of him being an employee and in support of the Class Members being employees are as follows:

(a) Under the Contract and in all dealings with the team, e was subject to the control of the team as to when, where, and how he played hockey;

(b) The QMJHL and the team determine and control the method and amount of payment;

(c) was required to adhere to the team's schedule of practices and games;

(d) The overall work environment between the team and was one of subordination;

(e) The team provided tools, supplied room and board and a benefit package;

(f) The team made payroll deductions at source;

(g) The team issued him an ROE at the end of the playing season;

(h) was not responsible for operating expenses and did not share in the profits;

(i) was not financially liable if he did not fulfill the obligations of the Contract;

(j) The business of hockey belonged to the team - not to ;

(k) The defendants used images of for their own profit, including, but not limited to selling the use of his image and name to video game companies for use in a video game which purchased at full price with his own money;

(l) The team imposed restrictions on social life including a curfew that was monitored;

(m) The team directed every aspect of his role as a Player, and the business of the team was to earn profits;

(n) The T4 and ROE establish that the team considered to be an employee and considered the team to be his employer; and

(o) The 20 Year Old Contract describes the relationship as one of employment.

54. : pleads that the team violated the *Employment Standards Act*, S.N.B. 1982, c.E-7.2, by failing to pay him minimum wages, holiday pay, vacation pay and overtime pay.

55. . . : claims damages against the Respondent, Saint John Major Junior Hockey Club Limited, for back wages, overtime pay, vacation pay and holiday pay in accordance with the *Employment Standards Act*, S.N.B. 1982, c.E-7.2 and against all of the Respondents who are jointly and severally liable with the Sea Dogs for those same damages as a result of the civil conspiracy described below.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

56. Each Class Member signed the same or substantially similar Contracts with one of the Respondent Clubs which was approved by the QMJHL.

Breach of Statute/Statutory Cause of Action

57. The Clubs entered into Contracts with the Class Members. Under the Contracts, the Class Members agreed to provide employment services to the Clubs in exchange for some remuneration.

58. The Clubs entered into an employer/employee relationship with the Class Members.

59. All Class Members devote an average of 35-40 hours weekly and in some instances up to 65 hours weekly to employment related services without being compensated on an hourly basis at prescribed minimum wage rates. Therefore, the Contracts violate the rights of the Players under the Applicable Employment Standards Legislation with respect to minimum wages, vacation pay, holiday pay, and overtime pay.

60. All Applicable Employment Standards Legislation also provides that any term of an employment contract that violates statutorily prescribed minimum wages, vacation pay, holiday pay, and overtime pay is void and unenforceable. By way of example, in Quebec, section 93 of the *ARLS* provides that "[i]n an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null".

61. Therefore, the terms of the Contracts requiring Players to perform all employment related services for a fixed weekly sum are null. The Players are entitled to be compensated at statutory minimum hourly wage rates in the Province or State where the Player was employed for back wages, and back overtime pay, and back holiday pay, and back vacation pay.

62. The Clubs are therefore liable to the Petitioner and Class Members for back wages at minimum wage levels, overtime pay, holiday pay, and vacation pay, in accordance with the Applicable Employment Standards Legislation.

Officers and Directors' Liability

63. The Petitioner pleads on his own behalf, and on behalf of all Class Members who were employed in New Brunswick, that the officers and directors of each Club in that Province are jointly and severally liable with the Clubs to the Class Members for unpaid wages, including back minimum wages, vacation pay, overtime pay, and holiday pay owed to the Petitioner and the Class Members by the Clubs.

64. In the event that the Clubs do not make arrangements to pay all outstanding wages to the Class Members and instead continue to hold back the wages owed to the Class, the Petitioner intends to add the officers and directors as parties to this proceeding.

65. With respect to the liability of the officers and directors, the Petitioner and Class Members plead and rely on s. 65.1 of New Brunswick's *Employment Standards Act*, S.N.B. 1982, c.E-7.2.

Conspiracy

66. The Petitioner claims that the Respondents unduly, unlawfully, maliciously, and lacking *bona fides*, conspired and agreed together, the one with the other, to act in concert to demand or require that all players sign a Contract which the Respondents knew was unlawful. The Respondents knew or recklessly disregarded the fact that the relationship between the Club and Class Members was one of employer/employee, and as such the Contracts contravened employment standards legislation, yet required the Contracts be

signed so as to avoid paying the Petitioner and Class Members minimum wages, vacation pay, holiday pay or overtime pay.

67. The Clubs and the QMJHL have access to legal opinions, judicial decisions, employment tribunal directives and decisions, and Canada Revenue Agency bulletins on the criteria for determining whether the Player/Team relationship is one of independent contractor, student athlete, or employment. The Respondents are well aware that the fees paid to the Players under the Contracts probably violate employments standards legislation and are well aware of the jurisprudence where Courts have construed the relationship between the Players and the Clubs as an employer/employee relationship. The Respondents make or direct that the Clubs make employee payroll deductions and remit them in their capacity as employer to government agencies.

68. The QMJHL controls the terms of the Contracts by requiring that the Clubs use only the standard form contract and by making each and every Contract conditional on approval by the QMJHL. The amount of fees received by the Players is set by the QMJHL and pursuant to QMJHL's bylaws and the Regulation; hence the QMJHL has unlawfully set the wages below the minimum legislated standards. The QMJHL directs that the Clubs must insist that Players sign the Contract as a condition of playing in the QMJHL.

69. The Clubs know, or ought to know, that the Contracts are unlawful pursuant to the Applicable Employment Standards Legislation, including the *ARLS*, but have agreed and conspired with the QMJHL to use the Contracts and the Contracts only. The conspiracy

between the QMJHL and the Clubs occurred in Quebec and continues to occur in Quebec where the head office of the QMJHL is located.

70. The Respondents were motivated to conspire, and their predominant purposes and concerns were to continue operating the QMJHL without incurring costs that were to be lawfully paid by the Clubs to the Petitioner and the Class Members in the form of minimum wages, overtime pay, holiday pay and vacation pay.

71. The conspiracy was unlawful because the Respondents knowingly caused the Petitioner and Class Members to enter into an unlawful contract and agree to receive wages in contravention of the Applicable Employment Standards Legislation and because the Respondents deliberately attempted to circumvent the Legislation by inaccurately characterising the status of the Players as independent contractors and in 2013 as student athletes and in 2013 by inaccurately characterizing the fees payable to the players as an allowance. The Respondents knew that such conduct would more likely than not cause harm to the Petitioner and the Class Members.

72. The acts in furtherance of the conspiracy caused injury and loss to the Petitioner and other Class Members in that the Players' statutory protected right to fair wages were breached and they did not receive minimum wages, vacation pay, holiday pay or overtime pay that was owed to them as lawfully required under the Applicable Employment Standards Legislation.

73. As a result of the conspiracy, which was committed by all Respondents together, all of the Respondents are jointly and severally liable for all monies owing to the Petitioner and the Class Members under the Applicable Employment Standards Legislation regardless of which team employed the Class Member.

Remedies

74. The Petitioner and each Class Member has suffered damages and loss as a result of the Clubs' breach of statute and the Respondents' conspiracy, as particularized above.

75. The Petitioner pleads that he and the Class are entitled to recover back wages, holiday pay, vacation pay, and overtime pay pursuant to the Applicable Employment Standards Legislation, together with interest.

76. The Petitioner seeks on his own behalf, and on behalf of the Class, an order that all Respondents must disgorge all profits that the Respondents generated as a result of benefitting from breaches of Applicable Employment Standards Legislation and the conspiracy.

Punitive Damages

77. The Petitioner seeks on his own behalf, and on behalf of members of the Class, punitive damages for the Respondents' conduct in violating the Applicable Employment Standards Legislation while they were aware that certain terms of the Contracts were probably void. The Respondents were lax, passive, ignorant with respect to the Petitioner and Class Members' rights and to their own obligations; displayed ignorance, carelessness, and

serious negligence; and such conduct was high-handed, outrageous, reckless, wanton, deliberate, callous, disgraceful, willful and in complete disregard for the rights of the Petitioner and Class Members.

78. The Petitioners plead that only a punitive damages award will prevent the Respondents from continuing their unlawful conduct as particularized herein.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

79. The composition of the Classes makes the application of Articles 59 or 67 of the C.C.P. impractical for the following reasons:

(a) Class Members are numerous and are scattered across several provinces and are estimated to be in the hundreds;

(b) The names and addresses of the Class Members are not known to the Petitioner (but are likely known to the Respondents);

(c) Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded;

(d) Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the Court system;

(e) A multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;

(f) These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action; and

(g) In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.

80. The claims of the Class Members raise identical, similar or related questions of fact or law namely:

(a) Are, or were, the Class Members employees within the meaning of the Applicable Employment Standards Legislation?

(b) Did any or all of the Respondents conspire to require the Class Members to agree to the Contracts, and the Contracts only, which they knew were unlawful? If so, when, where, and how?

(c) Is this an appropriate case for the Respondents to disgorge profits?

(d) Are the Respondents liable for punitive damages?

81. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

82. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages;

83. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the Petitioner's action against the Respondents;

DECLARE that the Respondents are liable to the Class Members for the following:

(i) breach of the Applicable Employment Standards Legislation; and

(ii) conspiracy.

CONDEMN the Respondents to pay the Class Members damages in the amount of $50 million, or such other sum as this Honourable Court finds appropriate;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

84. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal because the Class Members and Respondents reside everywhere in the Province of Quebec and in other Provinces;

85. The Petitioner, who is requesting to obtain the status of representative will fairly and adequately protect and represent the interest of the Members of the Group for the following reasons:

(a) He understands the nature of the action;

(b) He is available to dedicate the time necessary for an action to collaborate with Class Members; and

(c) His interests are not antagonistic to those of other Class Members.

86. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Petitioner's action against the Respondents;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

(a) All players who are members of a team owned and/or operated by one or more of the Respondents in the Province of Quebec (a "team") or at some point commencing October 29, 2011 and thereafter, were members of a team and all players who were members of a team who were under the age of 16 on October 29, 2011 ("Quebec Class");

(b) All players who are members of a team owned and/or operated by one or more of the Respondents located in the Province of Prince Edward Island (a "team") or at some point commencing October 29, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 29, 2012 (the "PEI Class");

(c) All players who are members of a team owned and/or operated by one or more of the Respondents located in the Provinces of New Brunswick and Nova Scotia (a "team") or at some point commencing October 29, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 19 on October 29, 2012 (the "NB/NS Class"); and

(d) All players who are members of a team owned and/or operated by one or more of the Respondents located in the State of Maine, USA, (a "team") or at some point commencing October 29, 2008 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 29, 2008 (the "US Class").

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

(b) Are, or were, the Class Members employees within the meaning of the Applicable Employment Standards Legislation?

(c) Did any or all of the Respondents conspire to require the Class Members to agree to the Contracts, and the Contracts only, which they knew were unlawful? If so, when, where, and how?

(d) Is this an appropriate case for the Respondents to disgorge profits?

(e) Are the Respondents liable for punitive damages?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

DECLARE that the Respondents are liable to the Class Members for the following:

(i) breach of the Applicable Employment Standards Legislation; and

(ii) conspiracy.

CONDEMN the Respondents to pay the Class Members damages in the amount of $50 million, or such other sum as this Honourable Court finds appropriate;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., pursuant to a further Order of the Court, and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs, including the costs of all publications of notices.

Montreal, October 29, 2014

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Lawyers for the Petitioner

NO :
PROVINCE OF QUÉBEC **COURT** **DISTRICT OF**
Plaintiff -vs- QUEBEC MAJOR JUNIOR HOCKEY LEAGUE INC. ET AL. Defendants
MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (Art. 1002 C.C.P. and following)
ORIGINAL
CHARNEY LAWYERS 151 Bloor St. W., Suite 890 Toronto, ON M5S 1P7 Theodore P. Charney Andrew J. Eckart Phone: 416.964.7950 Fax: 416.964.7416 Lawyers for the Petitioner

e. Décision du juge Hall Justice

Il s'agit d'une décision de justice certifiant le recours collectif pour les revendications de salaires et de conspiration contre les équipes de WHL, réclamation par les joueurs de la WHL

Justice Hall court ruling

This is a court decision certifying the class action for wages and conspiracy claims against WHL teams, claim by players in the WHL

Court of Queen's Bench of Alberta

Citation: Walter v Western Hockey League, 2017 ABQB 382

Date:
Docket: 1401 11912
Registry: Calgary

Between:

Lukas Walter, Travis McEvoy and Kyle O'Connor as Representative Plaintiffs

Plaintiffs

- and -

Western Hockey League, McCrimmon Holdings, Ltd. and 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings, Brandon Wheat Kings Limited Partnership, 1056648 Ontario Inc., Calgary Flames Limited Partnership, Calgary Sports and Entertainment Corporation, Rexall Sports Corp., Edmonton Major Junior Hockey Corporation, Edmonton Oilers Hockey Corp., EHT, Inc., Kamloops Blazers Hockey Club, Inc., Kamloops Blazers Holdings Ltd., Kelowna Rockets Hockey Enterprises Ltd., Hurricanes Hockey Limited Partnership, Prince Albert Raiders Hockey Club Inc., Brodsky West Holdings Ltd., Edgepro Sports & Entertainment Ltd., Rebels Sports Ltd., Queen City Sports & Entertainment Group Ltd., Braken Holdings Ltd., Saskatoon Blades Hockey Club Ltd., Vancouver Junior Hockey Limited Partnership, Vancouver Junior Hockey Partnership, Ltd., West Coast Hockey Enterprises Ltd., West Coast Hockey LLP, Medicine Hat Tigers Hockey Club Ltd., 1091956 Alta Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Hat Trick, Inc. d.b.a., Spokane Chiefs Hockey Club, Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc., Swift Current Tier 1 Franchise Inc., Swift Current Bronco Hockey Club Inc., Kootenay Ice Hockey Club Ltd., Moose Jaw Tier 1 Hockey Inc. d.b.a. Moose Jaw Warriors, Moose Jaw Warriors Tier 1 Hockey, Inc., Lethbridge Hurricanes Hockey Club, and Canadian Hockey League

Defendants

Memorandum of Decision
of the
Honourable Mr. Justice R.J. Hall

[1] The Plaintiffs in this action seek to have their action certified pursuant to the Alberta *Class Proceedings Act*, SA 2003, c C-16.5 as amended ("*CPA*").

[2] The three Plaintiffs are former hockey players who played on teams in the Western Hockey League ("WHL"). The WHL is one of three leagues featuring major junior hockey in Canada and the United States; the other two leagues being the Ontario Hockey League ("OHL") and the Quebec Major Junior Hockey League ("QMJHL"). The three leagues operate under the umbrella of the Canadian Hockey League ("CHL"). Each year, the winner of each league, and a host team, compete for the Memorial Cup Championship.

[3] The three Plaintiffs have filed a 66-page Statement of Claim here in Alberta. The claim is made against the WHL, the CHL, the owners of five Alberta clubs, six British Columbia clubs, four Saskatchewan clubs, one Manitoba club, one Oregon State club, and four Washington State clubs.

[4] The three Plaintiffs claim that while they played in the WHL they were employees of the clubs for whom they played. They claim that they should therefore be entitled to receive minimum wage payments in accordance with minimum wage legislation in each of the four Canadian and two US jurisdictions where the WHL carry on business. Various claims are made including:

1. Breach of contract of employment in British Columbia, Alberta, Saskatchewan and Manitoba;
2. Breach of contractual duties of honesty, good faith and fair dealing in British Columbia, Alberta, Saskatchewan and Manitoba;
3. Breach of statute in Washington and Oregon and pursuant to US labour laws;
4. Breach of the statutes in British Columbia, Alberta, Saskatchewan and Manitoba respecting employment standards legislation;
5. Claim that the WHL is jointly and severally liable to each player pursuant to the common employer doctrine;
6. Conspiracy;
7. Negligence against the Canadian clubs and their owners, the WHL and the CHL;
8. Unjust enrichment against the Canadian clubs and their owners, the WHL and the CHL;
9. Waiver of tort against the Canadian clubs and their owners, the WHL and the CHL.

[5] The remedies sought by the Plaintiffs are payment of back wages, holiday pay, vacation pay and overtime pay pursuant to applicable employment standards legislation, together with interest; that the Defendants disgorge all profits generated as a result of benefiting from the breaches of the applicable employment standards legislation, conspiracy and waiver of tort; and that the Defendants pay punitive damages to the Plaintiffs. The Plaintiffs also claim the costs of administering and distributing any monetary judgment.

[6] Similar actions have been brought in Quebec against the owners of the clubs in the QMJHL and the CHL; and in Ontario against the owners of the clubs in the OHL and the CHL. In the Ontario action, Justice Perell of the Ontario Superior Court of Justice has ruled upon the class certification application, and I have had the benefit of reading his decision in ***Berg v Canadian Hockey League***, 2017 ONSC 2608 (the "parallel Ontario proceeding"). In that decision Justice Perell has provided an excellent summary of the evidence and background, most of which is common to these proceedings.

Test for Certification Application

[7] The *CPA* sets out the certification test in section 5(1) set out below:

> 5(1) In order for a proceeding to be certified as a class proceeding on an application made under section 2 or 3, the Court must be satisfied as to each of the following:
>
> (a) the pleadings disclose a cause of action;
>
> (b) there is an identifiable class of 2 or more persons;
>
> (c) the claims of the prospective class members raise a common issue, whether or not the common issue predominates over issues affecting only individual prospective class members;
>
> (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
>
> (e) there is a person eligible to be appointed as a representative plaintiff who, in the opinion of the Court,
>
> (i) will fairly and adequately represent the interests of the class,
>
> (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
>
> (iii) does not have, in respect of the common issues, an interest that is in conflict with the interests of other prospective class members.

[8] The Supreme Court of Canada, in ***Hollick v Toronto (City)***, 2001 SCC 68 at para 15 provides that important advantages of class proceedings are judicial economy, access to justice and behaviour modification.

[9] An application for certification is a procedural motion only. The court hearing the application is not to assess or determine the merits of the plaintiff's claim or to resolve factual disputes: *CPA*, s 6(2).

[10] If the action is certified, then any person, regardless of residence, who meets the criteria to be a class member in respect of a class proceeding is a class member, unless that person opts out of the class proceedings: *CPA*, s 17.

[11] It is not necessary that the representative plaintiff has a cause of action against each defendant, as long as the class members collectively have at least one cause of action against each of the defendants: ***Eaton v HMS Financial Inc.***, 2008 ABQB 631 at para 67.

[12] Whether pleadings disclose a cause of action under section 5(1)(a) is to be determined on the same standard of proof that applies to an application to strike a cause of action, based on the "plain and obvious test". That is, "the facts as pleaded are assumed to be true and the requirement is satisfied unless it is 'plain and obvious' that the plaintiff's claim cannot succeed": ***Warner v Smith & Nephew Inc.***, 2016 ABCA 223 at para 12 , leave to appeal to SCC refused, 37229 (2 February 2017).

[13] The balance of the certification application – i.e. the requirements of section 5(1)(b) through (e) of the *CPA* – must be supported by evidence that establishes "some basis in fact" that those requirements have been met. The concern at the certification stage is with the form of the proceeding, namely, whether should it proceed as a class action. The Court is not to consider the merits of the claim itself at a certification application. The question before the Court is not whether there is some basis in fact for the claim, but whether there is some basis in fact to establish each of the individual certification requirements: *Hollick* at para 25; ***Pro-Sys Consultants Ltd. v Microsoft Corporation***, 2013 SCC 57 at paras 99-105. The "some basis in fact" threshold is not onerous. A plaintiff need only demonstrate a minimum evidentiary basis to support the conclusion that the action can go forward as a class proceeding. The certification requirements need not be proven on a balance of probabilities, nor is the certification judge to enter into a weighing of conflicting evidence: *Pro-Sys Consultants Ltd.* at paras 99-105.

[14] It follows that the defendant has an inversely heavy evidentiary burden to defeat the "some basis in fact" standard. In order to rebut a plaintiff's evidence establishing some basis in fact, the defendant bears an onus to demonstrate that there is no basis in the evidence to support a determination that the certification requirements are met: ***Lambert v Guidant Corp.***, [2009] OJ No 1910 (QL) at paras 67-68 (SCJ), leave to appeal refused [2009] OJ No 4464 (QL) (Div Ct).

[15] However, the test for certification is not a mere formality. Canadian courts treat the certification motion as an important screening mechanism for eliminating claims that are not appropriately resolved by class action. The Supreme Court of Canada has affirmed that "[t]he standard for assessing evidence at certification does not give rise to a 'determination of the merits of the proceeding' [...] nor does it involve such a superficial level of analysis into the sufficiency of the evidence that it would amount to nothing more than symbolic scrutiny": *Pro-Sys Consultants Ltd.* at para 103.

Statutory Exemptions

[16] Legislatures in Saskatchewan, British Columbia, and Washington State have each enacted statutory prohibitions that exempt players from the applicable employment standards

legislation. In this application the Plaintiffs concede the applicability of those statutory provisions, from the date that they came into force, and going forward. An issue remains between the Plaintiffs and the Defendants as to whether the statutory prohibitions in each of those jurisdictions speak from the time of its coming into force, or retroactively.

[17] This is a question going to the merits, and it is not to be determined by me at this stage of the proceedings.

Section 5(1)(a) Analysis

[18] The pleadings in the action disclose various causes of actions. It is not "plain and obvious" that those causes of actions cannot succeed.

[19] The defence argues that the Plaintiffs do not have a cause of action in negligence; rather, it is simply a claim that the Defendants breached the applicable employment standards legislation.

[20] In similar actions, the cause of action expressed in negligence has been allowed to proceed. I am satisfied that the particulars pleaded in the Plaintiffs' negligence claim extend much further than the Defendants' breach of the applicable employment standard legislation.

[21] The Defendants argue there is no basis pleaded for the claim of conspiracy. I do not accept that argument. The claim for conspiracy is clearly pleaded and it is not plain and obvious that it would not succeed.

[22] The claims for breach of contract, breach of statute, unjust enrichment, waiver of tort are all property pleaded and disclose causes of action. It is not plain and obvious that any of these cannot succeed.

[23] The Defendants argue that claims involving teams from British Columbia cannot be certified because there is no civil cause of action available to determine disputes under British Columbia employment law. They rely upon the decision of the British Columbia Court of Appeal in ***Macaraeg v E Care Contact Centers Ltd.***, 2008 BCCA 182, leave to appeal to SCC refused, 32704 (9 October 2008).

[24] In *Macaraeg*, the plaintiff claimed payment of overtime hours for herself, and as a representative of a class of the defendant's employees who worked, but were not paid for overtime. There was no mention of overtime in her employment contract. The defendant brought an application to determine whether the requirements of the *Employment Standards Act*, RSBC 1996, c 113 ("*ESA*") were implied terms of the contract of employment between the defendant and the plaintiff; and whether the plaintiff was entitled to bring a civil action to enforce her statutory right to overtime pay, or whether, instead, the jurisdiction to determine such claims lies exclusively with the Director of Employment Standards under the enforcement mechanisms of the *ESA*. It was noted that the plaintiff intended to seek certification of her action under the British Columbia *Class Proceedings Act,* RSBC 1996, c 50. Writing for the Court, Chiasson J.A. held at paragraph 74:

> In my view, in ascertaining the intention of the legislators an important indicium is whether the legislation provides effective enforcement of the right conferred by statute. If the statute does so, there is no need for enforcement outside the statute and *prima facie* there is no civil cause of action. If the statutory remedy is

> inadequate, a logical conclusion is the Legislature intended the right to be enforceable by civil action. If it were not, granting the right would be pyrrhic. It is at this stage of the analysis in the context of employment standards legislation that the issue of implied contractual terms arises.

[25] At paragraphs 77 and 78 he stated:

> I reject the broad proposition that rights granted by employment standards legislation are implied terms of employment contracts. In my view, the cases relied on by the learned chambers judge do not support such a conclusion. *Machtinger* and *Kenpo Greenhouses* do not concern statutorily-implied terms. [...]
>
> In my view, the judge erred concluding as a general proposition that rights in employment standards legislation are implied by law into employment agreements. The implication of terms is an adjunct to the conclusion, based on a consideration of the legislation as a whole, that the Legislature intended the rights could be enforced by civil action, a conclusion that may be derived from the absence of an effective statutory enforcement regime.

[26] And at paragraph 84, Chiasson J.A. wrote:

> [...] As noted, and as mandated by *Orpen* and *Vanderhelm*, the inquiry is whether the legislation allows pursuance of statutorily-conferred rights in a civil action. In my view, the answer to that question ends the inquiry: if yes, in a case such as this, the right is an implied contractual term and enforceable in an action for breach of contract; if no, the employee is obliged to rely exclusively on the enforcement mechanism in the legislation.

[27] In the result, the British Columbia Court of Appeal concluded that the plaintiff was not entitled to enforce her statutory right to overtime pay in a civil action; that exclusive jurisdiction to determine such claims lies with the Director, subject to an appeal tribunal, all pursuant to the provisions of the *ESA*; and, as a matter of law, the minimum overtime pay requirements of the *ESA* were not implied terms of the contract of employment between the defendant E Care Contact Centers Ltd. and the plaintiff.

[28] Relying on *Macaraeg*, the Defendants in this action argue that the claim of the Plaintiffs in British Columbia, that they should be paid the minimum prescribed in the *ESA* in British Columbia, cannot be maintained as a civil action, but instead a complaint must be filed with the Director of Employment Standards under the *ESA*. Therefore, the Defendants say, it is plain and obvious that the breach of contract claims being made by the Plaintiffs, and the breach of statute claims being made by the Plaintiffs cannot be maintained by them in a civil action.

[29] The Plaintiffs seek to distinguish *Macaraeg* on five bases. Firstly, the Plaintiffs maintain that *Macaraeg* is distinguishable on its facts because the contract in *Macaraeg* did not speak to overtime, whereas here, the Standard Player Agreement ("SPA") discusses compensation contractually promised to the Plaintiffs, which, the Plaintiffs say, is a clear attempt to waive the minimum standard. Put another way, since the SPA sets out compensation to be paid to the players, the Plaintiffs say that, where that compensation violates the minimum standards in the *ESA*, it provides the Plaintiffs with a breach of contract claim which can be litigated as a civil action.

[30] Secondly, whether the administrative enforcement regime is adequate depends upon the facts of the case at bar. This Court cannot make factual determinations at the certification stage.

[31] Thirdly, the Plaintiffs maintain that administrative proceedings in this case would be grossly inefficient and impractical, and in any event would be unlikely to be pursued.

[32] The Plaintiffs rely upon ***Dominguez v Northland Properties Corporation***, 2012 BCSC 328 where the British Columbia Supreme Court certified a class action which included claims for breach of British Columbia's employment standards legislation. That Court distinguished *Macaraeg* on the basis that there were no other means of resolving the claims that were more practical or efficient than the class proceeding.

[33] Fourthly, the Plaintiffs argued that *Macaraeg* is no longer good law since the Supreme Court of Canada's decision in ***Bhasin v Hrynew***, 2014 SCC 71, where the Court recognized a new common law duty of honest performance requiring the parties to be honest with each other in relation to their performance of their contractual obligations. The Court noted that good faith plays a role in the law of implied terms, particularly with respect to terms implied by law in certain classes of contracts such as employment. The Plaintiffs argued that *Macaraeg* can no longer be the law in light of *Bhasin*.

[34] Finally, the Plaintiffs argue that *Macaraeg* is inconsistent with other Supreme Court of Canada authorities, referencing ***Machtinger v HOJ Industries Ltd.***, [1992] 1 SCR 986 and ***Parry Sound (District) Social Services Administration Board v O.P.S.E.U., Local 324***, 2003 SCC 42, which decisions bind the courts of British Columbia. The Plaintiffs say that the Supreme Court of Canada has confirmed that the underlying and overriding purpose of the employment standards legislation is to counter the historic imbalance in bargaining power that characterizes the relationship between employers and employees. The statutory provisions inform employment contracts in two ways: (1) they function as a default contractual arrangement where the contract is silent and (2) they nullify and displace any lesser arrangements.

[35] While *Macaraeg* discusses these Supreme Court of Canada authorities, I find that it is confusing on the point.

[36] Further, it is clear to me that *Macaraeg* dealt with a case where there were no contractual provisions between the parties respecting the matters in issue (overtime). *Macaraeg* decided, on those facts, that the plaintiffs' entitlement had to be determined by the Director pursuant to the *ESA*.

[37] I am persuaded by the reasoning in *Dominguez* that the class action is the most practical and efficient means of resolving the claims against the BC Defendants.

[38] I am not satisfied that *Macaraeg* precludes the civil cause of action alleged by the Plaintiffs in this action. I am of the view that there is at least an arguable case that the cause of action for breach of statute and/or breach of contract, as alleged in the Fresh as Amended Statement of Claim, can be maintained.

[39] Accordingly, I reject the Defendants argument that the Plaintiffs have no civil cause of action against the BC Defendants.

[40] Further, even if *Macaraeg* does extinguish such civil cause of action for breach of contract, I am satisfied that the other pleaded causes of action, such as conspiracy, common employer, negligence, unjust enrichment, and waiver of tort, are still sound against the BC

Defendants: see ***Brigaitis v IQT, Ltd. c.o.b. as IQT Solutions***, 2014 ONSC 7 where, even though one cause of action was precluded by the *ESA*, the Court held that the Plaintiffs maintained the right to pursue all the remaining civil claims, such as conspiracy, negligence, etc. and that the substantive jurisdiction of the Court over those claims remain intact and could not be ousted by Employment Standards Proceedings.

[41] Accordingly, I am satisfied that, in respect of the BC claims, the pleadings disclose a cause of action.

Should All Causes of Action be Certified?

[42] In the parallel Ontario proceeding, Justice Perell decided that he would not certify the causes of action for: (1) breach of contract, (2) negligence, (3) breach of duty of honesty, good faith and fair dealing, (4) conspiracy and (5) waiver of tort. He pointed out that the Plaintiffs' action depended on the resolution of a single profound question: when do amateur athletes become employees of their teams and subject to various employment standard statutes? He determined that the Plaintiffs were bringing six causes of action to answer the one critical question; and while the Defendants conceded that the Plaintiffs had properly pleaded their causes of action, they maintained that there was redundancy in the number of claims put forth. Justice Perell agreed with the Defendants' submission. He stated that, in considering the preferable procedure criteria, the Court should consider the rights of the plaintiffs and defendants, the extent to which certification furthers the objectives underlying the *Act*, whether the claimants will receive a just and effective remedy for their claims, the relationship between proportionality and access to justice, and the complexity and manageability of the proposed action as a whole. He stated that, based on those considerations, the breach of contract, negligence, breach of duty of honesty, good faith and fair dealing, conspiracy and waiver of tort causes of action do not satisfy the preferable procedure criterion. He found that those claims are redundant to the main claim. He noted that, if the plaintiffs prove that as a common employer the defendants breached the various employment standards statutes, then they will succeed on their breach of statute claim and on their unjust enrichment claim and there will be no need to prove breach of contract, negligence, breach of duty of honesty, good faith and fair dealing, conspiracy and waiver of tort. Conversely, if they have failed to prove that the defendants breached the various employment standards statutes, their other causes of actions will necessary fail.

[43] Justice Perell noted that the redundant causes of action cause enormous problems of manageability, citing, in particular, the conspiracy claim, which could result in each defendant having its own defence counsel, and require evidence going back as far as the year 2000 when the Tax Court of Canada originally decided ***McCrimmon Holdings Ltd. v MNR***, [2000] TCJ No 823 (QL).

[44] So, while Justice Perell found under section 5(1)(a) that all of these causes of actions were properly disclosed in the pleadings, he determined that many of them were redundant, and should not be certified because of the requirements of section 5(1)(d), that the class proceeding be a preferable procedure for the fair and efficient resolution of the common issues.

[45] In this case, I cannot agree with Justice Perell in respect of the breach of contract claim against the Canadian Defendants. A viable cause of action is properly pleaded herein to say that it is an implied term of a contract of employment that the Defendants will not violate the applicable employment standards legislation. While, in Alberta, Saskatchewan and Manitoba

there is a parallel cause of action for breach of the statute itself, that question is murky in British Columbia because of the decision of *Macaraeg*.

[46] Justice Perell chose not to certify various causes of action for reasons of efficiency and judicial economy. I am not prepared to follow his lead. If the pleadings disclose causes of action, then I consider that those causes of action should be permitted to proceed. While I recognize that the Court is to look at the preferable procedure question through the lens of access of justice, behaviour modification and judicial economy, and that redundant causes of action do not promote either access to justice or judicial economy, nevertheless, I am not prepared to strike causes of action which have been properly pleaded. I cannot do so in actions brought by a single plaintiff. Similarly I do not believe I can dispose of properly pleaded causes of action in a class action certification application. It may be that the Plaintiffs would be well advised to simplify their claims. It may be that some of these claims might be summarily dismissed upon proper application. However, I will not rule out such claims at this stage in the proceedings.

CPA section 5(1)(b): Identifiable Class

[47] Section 5(1)(b) of the *CPA* requires the Court to be satisfied that there is an identifiable class of two or more persons.

[48] The identity of all the players who played for the WHL teams during the time period alleged is a matter of record.

[49] There can be no question but that there is an identifiable class of two or more persons.

[50] The proposed class definitions satisfy the three purposes of a class definition:

> (a) They identify persons who have a potential claim for a relief against the defendants;
>
> (b) They define the parameters of the lawsuit so as to identify those persons who are bound by the results; and
>
> (c) They describe who is entitled to notice of certification.

See ***Andriuk v Merrill Lynch Canada Inc.***, 2013 ABQB 422 at para 110, aff'd 2014 ABCA 177.

[51] An issue arises as to whether classes should be open-ended or fixed as the date of the certification application. I will address that later in these reasons.

The Common Issues: _CPA_ Section 5(1)(c)

[52] Section 5(1)(c) of the *CPA* requires that "the claims of the prospective class members raise a common issue, whether or not the common issue predominates over issues affecting only individual prospective class members". Section (1)(e) of the *CPA* defines "common issue" as:

> (i) common but not necessarily identical issues of fact, or
>
> (ii) common but not necessarily identical issues of law that arise from common but not necessarily identical facts.

[53] The Supreme Court of Canada has held that the commonality question should be approached purposively: "The underlying question is whether allowing the suit to proceed as a

representative one will avoid duplication of fact-finding or legal analysis": ***Western Canadian Shopping Centres Inc. v Dutton***, 2001 SCC 46 at para 39.

[54] The first three proposed common issues are:

1. Are, or were, the class members employees of the defendant clubs, the WHL and/or the CHL pursuant to (a) the applicable employment standards legislation and/or (b) at common law?
2. Are, or were, the class members who played for the defendant clubs located in Provinces in "pensionable employment" of the defendant clubs located in the Provinces, the WHL and/or the CHL, pursuant to the Canada Pension Plan?
3. Are, or were, the class members who played for the defendant clubs located in the Provinces in "insurable employment" of the defendant clubs located in the Provinces the WHL and/or the CHL, pursuant to the *Employment Insurance Act*?

[55] With regard to these issues, the Plaintiffs say the test for employment status is similar, if not identical, in all of the provinces. The statutory definition of employee's status is substantially the same in all of the provinces. The tests as to whether an individual is an employee are similar at common law in all of the Provinces, as is the test for what can constitute "work". The Plaintiffs point to the decision in *McCrimmon Holdings Ltd.* where the Tax Court held that players in the WHL are employees of the clubs for whom they play.

[56] The Plaintiffs point to early iterations of the SPA which referred to a player's "employment and duties". It was only at the beginning of the 2013/2014 season that returning WHL players were all required to execute a new SPA to replace their previous one. Where their previous SPA described the players receiving "remuneration" in return for performing "services", in 2013 the new SPA re-formulated the Plaintiffs' remuneration as a "monthly expense reimbursement" and a "monthly overage honorarium for 20-year old players" and classified the players as "amateur athletes" while removing all references to "service".

[57] The Plaintiffs further say that there are common issues arising from the defences, which they identified as follows:

4. Whether being in a relationship of "guidance, supervision, development and education" negates an individual's employee status, absent any formal exemption to this effect;
5. Whether being an "amateur athlete" negates an individual's employment status, absent any formal exemption to this effect;
6. The scope of the *US Fair Labor Standards Act*'s recreational exemption;
7. Whether the recently enacted amendments excluding amateur athletes from employment standard legislation apply retroactively; and
8. The scope of any applicable trainee/intern exemption.

[58] The Plaintiffs maintain that these are common legal issues, the resolution of which will bind all affected members of the class. Class members are identically situated with respect to questions of whether they are "amateur athletes", "trainee/interns", students, professionals, or in relationships of "guidance, supervision, development and education".

[59] The Plaintiffs propose further common issues as:

9. Are the WHL and the clubs a common employer, under statute and/or at common law?

10. Are the minimum wage, overtime pay, holiday pay, and/or vacation pay requirements under the applicable employment standards legislation express or implied terms of contract between the class members and any or all of the defendant clubs, the WHL and/or the CHL?

11. Did any or all of the Defendants breach any of the contractual obligations found to exist above?

12. Do the defendant clubs, the WHL, and/or the CHL owe a duty, in contract or otherwise, to class members to act in good faith and deal with them in a manner characterized by candour, reasonableness, honesty and/or forthrightness in respect to their obligations to:

    a) ensure that the class members are properly classified as employees;

    b) advise class members of their entitlements under the applicable employment standards legislation;

    c) ensure that class members' hours of work are monitored and accurately recorded;

    d) ensure that class members are compensated in accordance with their entitlements under the applicable employment standards legislation?

13. Did any or all of the Defendants breach their good faith duties with respect to any of the factors listed above?

14. Do any or all of the defendant clubs, the WHL and/or the CHL have an obligation to the class members under the applicable employment standards legislation to pay them minimum wage, overtime pay, holiday pay and/or vacation pay?

15. Did any or all of the defendant clubs, the WHL and/or the CHL breach the applicable employment standards legislation by failing to pay the class members minimum wage, overtime pay, holiday pay and/or vacation pay?

16. Did any or all of the Defendants conspire to violate the applicable employment standards legislation? If so when, where, and how?

17. Were any or all of the Defendants unjustly enriched by failing to compensate the class members with minimum wage, overtime pay, vacation pay and/or holiday pay owed to them in accordance with the applicable employment standards legislation and/or failing to make the required Employer Payroll Contributions on behalf of the class members?

18. Are any or all of the Defendants liable to the class members in waiver of tort?

19. Did any or all of the defendant clubs, the WHL and/or the CHL owe a duty of care to the class members to:

    a) ensure that class members are properly classified as employees;

b) advise class members of their entitlements under the applicable employment standards legislation;

c) ensure that class members' hours of work are monitored and accurately recorded; and

d) ensure that class members are compensated in accordance with their entitlements under their applicable employment standards legislation.

20. Did any or all of the Defendants breach any of the duties of care found to exist above?

21. Is this an appropriate case for any or all of the Defendants to disgorge profits?

22. Can any or all of the claims be assessed on an aggregate basis?

23. Are any or all the Defendants liable for punitive damages?

24. Are the defendant clubs located in Washington, WHL and/or CHL liable for damages in the amount of double the amount of all wages outstanding pursuant to Wash. Rev. C. Tit. 49, §49.46, as amended, and the regulations thereunder and/or *Fair Labor Standards Act of 1938*, 29 USC §201 and the regulations thereunder?

25. Are the defendant clubs located in Oregon, the WHL and/or CHL liable for additional damages in the amount of 30 days' wages pursuant to Or. Rev. Stat. Tit. 51, §653 and the regulations thereunder and/or *Fair Labor Standards Act of 1938*, 29 USC §201 and the regulations thereunder?

26. Should the Defendants pay pre-judgment and post-judgment interest, and at what annual interest rate?

27. Should the Defendants pay the costs of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If yes, who should pay what costs, why, and in what amount?

[60] I am satisfied that there is some basis in fact for a finding that the claims of the prospective class members raise these common issues. Section 5(1)(c) of the *CPA* is satisfied.

Preferable Procedure: *CPA* 5(1)(d)

[61] In order for this action to be certified as a class proceeding the Court must be satisfied that a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues.

[62] The Plaintiffs note that there are thousands of prospective class members, and that any alternative to a class proceeding would require individual civil and/or statutory claims to be made in multiple jurisdictions before the relative tribunals or courts. The common issues would be litigated repeatedly on an individual basis, including whether each player is an employee, whether his standard form contract and/or the applicable employment standard legislation has been breached, which defendants are responsible for any breach and what remedies the Plaintiffs may be entitled to. The Plaintiffs maintain this would be inefficient and impractical, and would result in a significant waste of judicial and administrative resources; whereas a class proceeding would allow the common issues against the WHL and the affiliated clubs to be determined together in the most economical, efficient and practical manner.

[63] The Defendants say that a class action is not an efficient way of resolving disputes and achieving the goals of the *CPA* without issues that are capable of being assessed in common. The Court must assess whether proceeding as a class action will avoid duplication of fact finding or legal analysis. Far from avoiding duplication, a class action, certified across six jurisdictions, would invite repetition, given the different legislative frameworks that govern employment standards. Even if there is some basis in fact to establish the existence of common issues, the Defendants submit that the Court must determine whether the resolution of such issues would depend upon individual findings of fact or would sufficiently advance each proposed class members claim. If the common issue fails to satisfy the Court in this regard the Court must refuse to certify it: *Pro-sys* at paras 100, 103.

[64] I note that, because the Statement of Claim deals with claims in four different provinces, and 2 US states, the Alberta Court must apply foreign law in determining the answers to the issues arising in the action. Because there are six different jurisdictions, where the law may differ in some respects in each jurisdiction, the matter to be tried is complex. However, the complexity of proceeding in one action pales in comparison to the inefficiency, confusion, and potential lack of consistency if each of the prospective Plaintiffs was required to litigate his claim separately.

[65] While the common issues may require refinement as the claim proceeds, I am satisfied that a class proceeding is the preferable procedure for the fair and efficient resolution of these common issues, except as against the US Defendants, as I will explain below.

Jurisdiction

[66] The Defendants argue, under the preferable procedures branch of the section 5(1)(a) test, that a class action would not be the preferable procedure for the claims against the American teams. The Defendants note that the Supreme Court of Canada has stated that "the preferability inquiry should be conducted through the lens of the three principal advantages of class actions – judicial economy, access to justice, and behaviour modification": *Hollick*, at para 27. Would the class proceeding be a fair, efficient and manageable method of advancing the claim; and would the class proceeding be preferable "in the sense of preferable to other procedures such as joinder, test cases, consolidation and so on": *Hollick*, at para 28.

[67] The Defendants also reference the Alberta Court of Appeal decision in ***T.L. v Alberta (Child, Youth and Family Enhancement Act, Director)***, 2009 ABCA 182 at paras 26 and 27:

> We endorse the following analytical framework adopted by Thomas J.:
>
> [...]
>
> > In summary, preferability involves a balancing of all the interests of the parties and of the Court and may include an assessment of the economics of the litigation, the number of individual issues to be dealt with, the complexities if there are third party claims and the alternative means available for adjudicating the dispute[...]
>
> The chambers judge adopted a careful, purposive approach in setting the criteria for certification. The s. 5(2) factors were considered in the context of the overall case, inclusive of the common issues, and in a manner consistent with the approach taken by Winkler J. in *Carom v. Bre-X Minerals Ltd.* (1999), 44 O.R. (3d) 173 (Ont. S.C.J.), at 239:

> The proper approach to be taken in considering whether a class proceeding is the preferable procedure for resolving the common issues is to have regard to all of the individual and common issues arising from the claims in the context of the factual matrix. A class proceeding is the preferable procedure where it presents a fair, efficient and manageable method of determining the common issues which arise from the claims of multiple plaintiffs and where such determination will advance the proceeding in accordance with the goals of judicial economy, access to justice and the modification of the behaviour of wrongdoers.
>
> As with the other criteria for certification there is an interaction between the common issues and the preferable procedure. In order for an issue to constitute a common issue in a class proceeding, the resolution of the issue must be capable of advancing the litigation in a legally material way. Thus in order for a common issue trial, and hence a class proceeding, to be the preferable procedure it must advance the litigation in such a way that the goals of the Act are met. [emphasis in appellate decision]

[68] The Defendants argue that certifying the claims against the US based teams would be neither fair nor efficient, and will not promote access to justice. They state that the tests for determining whether an individual is an employee and, if so, what activities constitute covered employment under US law, are unsettled. They argue that the preferable procedure available to US players is through the relevant US courts, which would be in a position to determine this unsettled area of law, subject to the full appeals process that is otherwise unavailable in Canada with respect to a point of US law. They note that their expert, Mr. Dunn, made clear that in his opinion, the US courts would not likely recognize or enforce any Canadian judgment in this situation.

[69] As to the latter assertion, I am of the view that Mr. Dunn's opinion does not reflect the fact that, as admitted by the Defendants, the US teams have attorned to the jurisdiction of the Alberta Court. The fact of such attornment, in my view, renders it far more likely that a decision by the Alberta Court would be enforced in Washington and Oregon.

[70] It is, however, the case that while the Defendants agreed to attorn to the jurisdiction of the Alberta courts, they reserved the right to argue, at the certification stage, that the Alberta courts should refuse jurisdiction on the basis that an Alberta class action would not be the preferable procedure for claims against those US Defendants.

[71] This argument found approval by Justice Perell in the parallel Ontario proceeding. Justice Perell noted that the manageability of the class action is an important ingredient of the preferable procedure analysis. He was of the view that the differences in the claims against the Ontario teams versus the claims against the American teams create a management nightmare. He added that there is a real prospect that there might be inconsistent outcomes for the class comprised of players from teams in Ontario, Michigan and Pennsylvania. He stated that it is not a given that players, whose playing circumstances are common under the SPA, would be classified as employees under all of Ontario, Michigan and Pennsylvania law, because each jurisdiction has its own common law and its own statutes to interpret. He noted that each statute must be

interpreted discretely. He noted that the status of amateur athletes as employees is an open question in Ontario, Michigan and Pennsylvania. In the result, he did not accept that it was fair to the Defendants for an Ontario court to interpret and apply the Michigan, Pennsylvania or US federal government minimum wage and employment standards legislation, where access to justice is available to the players in the American courts in Michigan and Pennsylvania. He saw no unfairness to the players, pursuing claims to enforce Michigan and Pennsylvania statutes, to do so in Michigan and Pennsylvania, where there are courts and administrative agencies available to resolve employment law disputes. He held it would not be just and fair to the American team Defendants for an Ontario court to decide the application of American law. Therefore he concluded that an Ontario class action is not the preferable procedure to resolve the claims against the American teams. He noted that the issues raised in the case at bar are important issues and that it befits courts on either side of the border to at least pause to question whether they should decide an issue that their sovereign neighbour would prefer to decide for itself.

[72] I agree with Justice Perell's reasoning and conclusion respecting the US teams, and I find it is applicable to the teams in this action that are based in the states of Washington and Oregon.

[73] It is clear from the opinions of each of Mr. Dunn and Mr. Hancock that the law in each of those states and in the United States as a whole is unsettled as to whether athletes, such as these Plaintiffs, are employees. Further, the courts of Washington and Oregon may not be prepared to embrace an Alberta judgment respecting that issue, for reasons expressed by Mr. Dunn.

[74] I believe it would be inappropriate for an Alberta court to tell Washington and Oregon how their law should be interpreted and applied in these circumstances. There are actions available in those states, applying their rules of procedure, some of which differ considerably from Canada and Alberta procedures; such as the fact that in Canada a class member is a plaintiff unless he or she opts out, whereas in their jurisdictions a class member is not a plaintiff unless he or she opts in. It would be preferable that actions proceed in Washington and Oregon in respect of the US Defendants. Like Justice Perell, I am not prepared to certify the class actions against the US Defendants.

Is there/are there Persons Eligible to be Appointed as a Representative Plaintiff under Section 5(1)(e) of the *CPA*?

[75] Section 5(1)(e) of the *CPA* requires that the representative Plaintiff be a person who, in the opinion of the Court:

> (i) will fairly and adequately represent the interests of the class;
>
> (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and notifying class members of the proceeding; and
>
> (iii) does not have, in respect of the common issues, an interest that is in conflict with the interests of other prospective class members.

[76] The Defendants argue that the three representative Plaintiffs are not appropriate. Firstly, they point out the three representative Plaintiffs are former players and there is no present player amongst them. Secondly, they suggest that the proposed representative Plaintiffs are not properly informed about the lawsuit.

[77] The fact the players are former players enhances their independence and especially recommends them as representative plaintiffs.

[78] The fact that the Plaintiffs are not personally aware of the evidence filed by the Defendants, or have not studied that evidence for purposes of the class certification is of no moment at this stage. There is no suggestion to say that the three Plaintiffs are incapable of understanding the action, nor of instructing counsel. Further, the Plaintiffs are represented by experienced class action counsel, who can be trusted to shepherd the cause in an appropriate fashion.

[79] I note, however, that the evidence before me shows that Lukas Walter played only for the Tri-City Americans, in Kennewick, Washington, and not for any of the Canadian WHL teams. Since I am not certifying the action against the U.S. Teams, Mr. Walter is not representative of any of the classes. I am satisfied that the other two proposed representative Plaintiffs, being Travis McEvoy, and Kyle O'Connor, will fairly and adequately represent the interests of the classes. Further, I am satisfied with their plan for proceeding with the class action and notifying class members of that proceeding.

[80] The major issue under this heading arises under section 5(1)(e)(iii). The Defendants argue that the proposed representative Plaintiffs are in conflict with the interests of many class members, such that certification should be denied. The Defendants argue that their evidence shows that one-third of WHL teams make money, one-third of the WHL teams lose money and the other third barely break even. The Defendants suggest that, if the Defendant clubs are required to pay minimum wages, the teams will face significant financial consequences. Some teams will go out of business. Other teams will have to replace their existing benefits with minimum wages. The Defendants argue that this creates an unresolvable conflict within the class and between proposed class members and the proposed representative Plaintiffs.

[81] The Defendants also argue there is a potential conflict between parents and players, in that the parents understand the benefit of education, the cost of equipment, the billeting program, and the WHL scholarship, all of which are benefits provided to the players; whereas the prospective Plaintiff players may simply be interested in getting a greater paycheque or remuneration, without regard to the continuation of such benefits to the future.

[82] I find that there are no disqualifying conflicts between the representative players and other prospective class members.

[83] The Defendants' argument is, in essence, that they cannot afford to pay minimum wages, and they threaten that, if they are required to do so, benefits to the players will be cut, and teams will go out of business.

[84] I do not accept that reasoning. The interests of the representative Plaintiffs are to be paid minimum wages and overtime in accordance with the employment standards statutes. The interests of the prospective class members, who do not opt out, are precisely the same. There is no conflict of interest. If the suggested representative Plaintiffs succeed, then all prospective class members will succeed; if the suggested representative Plaintiffs fail, then all class members will fail. The relief sought is the same for all class members.

[85] As stated by Justice Perell in the parallel Ontario proceeding at paragraphs 240 and 241:

> A disqualifying conflict for the representative plaintiff does not arise from a defendant's threats or dire predictions of the consequences of certification. A

> future theoretical risk is no basis to deprive class members of access to justice through a class proceeding: *Chapman v. Benefit Plan Administrators*, *supra* at paras. 59-61.
>
> Moreover, if the action is certified and if the sky does indeed fall, then the sky falling is not a reason to decertify the class action, because it would remain to be determined whether the Defendants were wrongdoers and were liable to pay minimum wages and overtime pay to the Class Members. It is not exculpatory of wrongdoing for a defendant to argue or even prove that it cannot afford to comply with the law.

[86] Justice Perell goes on to note that this type of argument was rejected in ***1176560 Ontario Ltd. v Great Atlantic & Pacific Co. of Canada Ltd.*** (2002), 62 OR (3d) 535 (SCJ), aff'd (2004), 70 OR (3d) 182 (Div Ct), leave to appeal refused [2004] O.J. No. 2009 (CA). I agree that the reasoning in *Great Atlantic & Pacific Co* is appropriate to this case.

[87] I therefore conclude that the representative Plaintiff criterion is satisfied.

Conclusions

[88] Section 5(2) of the *CPA* mandates that I must consider the items enumerated therein. In relation to 5(2)(a), I determine that the questions of fact and law in the Canadian jurisdictions predominate over any questions affecting only individual prospective class members.

[89] In relation to 5(2)(b) no prospective class members have demonstrated a valid interest in controlling prosecution of separate actions.

[90] Respecting 5(2)(c) the class proceeding would not involve claims that are the subject of other proceedings.

[91] Respecting 5(2)(d), I am satisfied in respect of the Canadian Defendants that other means of resolving the claims are less practical or efficient. However, in respect of the US claims, it would be more practical and efficient that they be resolved within Washington and Oregon.

[92] Respecting 5(2)(e), the class proceeding against Canadian Defendants would not create greater difficulties then those likely to be experienced if relief were sought by other means. However, class proceedings against the US defendants would create those greater difficulties.

[93] I have determined that all causes of actions pleaded against the Canadian Defendants are properly pleaded, and it is not plain and obvious that any of those causes of actions will fail. As a result, all of those causes of actions are certified to proceed.

[94] The parties have provided submissions regarding the end date or absence thereof for the proposed class period. The Defendants object to the open-ended class period proposed by the Plaintiffs.

[95] This issue does not arise in respect of the British Columbia class or the Saskatchewan class, because the Plaintiffs concede that membership in those classes terminates, at the latest, on the date of the statutory prohibitions that exempt players from the applicable employment standards legislation.

[96] In the parallel Ontario proceeding, Justice Perell addressed the issue of an open-ended or rolling period and he concluded as follows:

> 160 In my opinion, where the circumstances of additional putative class members may be different, it may not be appropriate to have a rolling class period end date. Apart from the management and administration difficulties of the approach of an open-ended class period, the approach ignores the fundamental problem that there has been no adjudication to determine whether the circumstances of the new class members, (who in the case at bar, at the time of the original certification motion, were not even playing hockey for OHL Clubs), are such that the criteria for certification continue to be satisfied for them. Who's to say that the evidentiary record has not changed between the date of certification and the next notice of certification? And, commonality is not a matter to be proven at the common issues trial.
>
> 161 I note here that in other circumstances where representative plaintiffs seek to increase class size, which sometimes occurs as part of the settlement of an already certified class action, it is necessary to determine that the criterion for certification are satisfied, and this typically occurs as a part of a consent certification for settlement purposes. The point is that the class size usually cannot be altered without a certification motion.
>
> 162 I, therefore, shall amend the class definition to add a class closing date as of the date of the certification motion. This amendment is made without prejudice to the definition being amended from time to time by a new motion to certify, which, if granted, would be followed by a notice program.

[97] I am attracted by the efficiency and practicality of his approach and therefore I direct that the definition of the Alberta and Manitoba class have a closing date as of the date of the certification motion. This is directed without prejudice to the definition being amended from time to time by a new motion to certify.

[98] The classes which I certify, are as follows:

a. All players who were or are members of a WHL team owned and/or operated by one or more of the defendants located in the Province of British Columbia (a "team") at some point, commencing October 30, 2012, and all players who were members of a team who were under the age of 19 on October 30, 2012, but excluding any players who commenced playing for a team on or after February 15, 2016 (the "B.C. Class");

b. All players who were or are members of a WHL team owned and/or operated by one or more of the defendants located in the Provinces of Alberta or Manitoba (a "team") at some point, commencing October 30, 2012 and ending April 18, 2017, and all players who were members of a team who were under the age of 18 on October 30, 2012 (the "Alberta and Manitoba Class"); and

c. All players who were or are members of a WHL team owned and/or operated by one or more of the defendants located in the Province of Saskatchewan (a "team") at some point, commencing October 30, 2012, and all players who were members of a team who were under the age of 18 on October 30, 2012, but excluding any players who commenced playing for a team on or after April 29, 2014 (the "Saskatchewan Class").

[99] The common issues which I certify are those set out in these reasons, other than issues 6, 24 and 25.

[100] I appoint Messrs. McEvoy and O'Connor as the representative plaintiffs for all class members.

[101] As this action is multi-jurisdictional, section 9.1 of the *CPA* comes into play. With respect to the Canadian defendants I have determined that the criteria in section 5(1) of the *CPA* have been satisfied, as set out above. The requirements of section 9.1(1)(b) are met, most particularly in that the Defendants have agreed to the action against the Manitoba, BC and Saskatchewan Defendants being pursued in Alberta, and have attorned to the jurisdiction of the Alberta Court. In respect of section 9.1(2) and (3) of the *CPA*, there are no other jurisdictions in which actions have been brought.

[102] If the parties are unable to agree on the manner and time within which a class member may opt out of a proceeding they may address me orally and in writing. Otherwise, their agreement on these subjects is to be incorporated into the certification order.

[103] If the parties are unable to agree upon costs of this application, they may likewise address me orally or in writing.

Heard on the 7th day of February, 2017 to the 10th day of February, 2017 and the 15th day of February, 2017 and the 18th day of April, 2017.
Dated at the City of Calgary, Alberta this 15th day of June, 2017.

R.J. Hall
J.C.Q.B.A.

Appearances:

Theodore P. Charney and Tina Q. Yang, Charney Lawyers
for the Plaintiffs

Patricia D.S. Jackson, Crawford Smith and Rachael Saab, Torys LLP
and Norman Machida, QC, Vogel LLP
for the Defendants

f. **La WHL fait appel des règles de la cour que les joueurs réclament, y compris des allégations de conspiration**.

Cette revendication est une fois de plus en faveur des joueurs de la WHL.

WHL appeals court rules players claims move forward including conspiracy claims.
This claim is the once again in favour of the players in the WHL.

In the Court of Appeal of Alberta

Citation: Walter v Western Hockey League, 2018 ABCA 188

Date: 20180515
Docket: 1701-0215-AC;
1701-0216-AC
Registry: Calgary

Docket: 1701-0215-AC

Between:

Lukas Walter, Travis McEvoy, and Kyle O'Connor as Representative Plaintiffs

Appellants
(Plaintiffs)

- and -

Western Hockey League, McCrimmon Holdings, Ltd. and 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings., Brandon Wheat Kings Limited Partnership, 1056648 Ontario Inc., Calgary Flames Limited Partnership, Calgary Sports and Entertainment Corporation, Rexall Sports Corp., Edmonton Major Junior Hockey Corporation, Edmonton Oilers Hockey Corp., EHT, Inc., Kamloops Blazers Hockey Club, Inc., Kamloops Blazers Holdings Ltd., Kelowna Rockets Hockey Enterprises Ltd., Hurricanes Hockey Limited Partnership, Prince Albert Raiders Hockey Club Inc., Brodsky West Holdings Ltd., Edgepro Sports & Entertainment Ltd., Rebels Sports Ltd., Queen City Sports & Entertainment Group Ltd., Braken Holdings Ltd., Saskatoon Blades Hockey Club Ltd., Vancouver Junior Hockey Limited Partnership, Vancouver Junior Hockey Partnership, Ltd., West Coast Hockey Enterprises Ltd., West Coast Hockey LLP, Medicine Hat Tigers Hockey Club Ltd., 1091956 Alta Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Hat Trick, Inc. d.b.a. Spokane Chiefs Hockey Club, Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc., Swift Current Tier 1 Franchise Inc., Swift Current Bronco Hockey Club Inc., Kootenay Ice Hockey Club Ltd., Moose Jaw Tier 1 Hockey Inc. d.b.a. Moose Jaw Warriors, Moose Jaw Warriors Tier 1 Hockey, Inc., Lethbridge Hurricanes Hockey Club, and Canadian Hockey League

Respondents
(Defendants)

Docket: 1701-0216-AC

And Between:

Lukas Walter, Travis McEvoy, and Kyle O'Connor as Representative Plaintiffs

Respondents
(Plaintiffs)

- and -

Western Hockey League, McCrimmon Holdings, Ltd. and 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings., Brandon Wheat Kings Limited Partnership, 1056648 Ontario Inc., Calgary Flames Limited Partnership, Calgary Sports and Entertainment Corporation, Rexall Sports Corp., Edmonton Major Junior Hockey Corporation, Edmonton Oilers Hockey Corp., EHT, Inc., Kamloops Blazers Hockey Club, Inc., Kamloops Blazers Holdings Ltd., Kelowna Rockets Hockey Enterprises Ltd., Hurricanes Hockey Limited Partnership, Prince Albert Raiders Hockey Club Inc., Brodsky West Holdings Ltd., Edgepro Sports & Entertainment Ltd., Rebels Sports Ltd., Queen City Sports & Entertainment Group Ltd., Braken Holdings Ltd., Saskatoon Blades Hockey Club Ltd., Vancouver Junior Hockey Limited Partnership, Vancouver Junior Hockey Partnership, Ltd., West Coast Hockey Enterprises Ltd., West Coast Hockey LLP, Medicine Hat Tigers Hockey Club Ltd., 1091956 Alta Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Hat Trick, Inc. d.b.a. Spokane Chiefs Hockey Club, Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc., Swift Current Tier 1 Franchise Inc., Swift Current Bronco Hockey Club Inc., Kootenay Ice Hockey Club Ltd., Moose Jaw Tier 1 Hockey Inc. d.b.a. Moose Jaw Warriors, Moose Jaw Warriors Tier 1 Hockey, Inc., Lethbridge Hurricanes Hockey Club, and Canadian Hockey League

Appellants
(Defendants)

The Court:

The Honourable Mr. Justice Jack Watson
The Honourable Madam Justice Frederica Schutz
The Honourable Madam Justice Michelle Crighton

Memorandum of Judgment
Delivered from the Bench

Appeal from the Decision by
The Honourable Mr. Justice R.J. Hall
Dated the 15th day of June, 2017
Filed on the 15th day of June, 2017
(2017 ABQB 382, Docket: 1401 11912)

Memorandum of Judgment
Delivered from the Bench

Schutz J.A. (for the Court):

[1] These appeals arise in the context of a certification application in respect of a class of plaintiffs who are current and former Western Hockey League (WHL) players who allege that they have been unlawfully denied employment status and associated benefits, including statutory minimum wage.

[2] The chambers judge ordered certification with respect to certain Canadian WHL clubs but held that it would not be the preferable procedure to have the class members' claims against some USA-based WHL clubs adjudicated within the certified action.

[3] In appeal number 1701-0215-AC, the plaintiffs seek to vary the certification order to include the US Teams that were not included by the chambers judge, and to expand the class definition to include the individuals who played for the US Teams during the applicable period. The plaintiffs argue that the chambers judge erred in principle by failing to apply the correct test in determining whether the plaintiffs' certified action would be the preferable procedure for adjudication of the class members' claims against the US Teams.

[4] In appeal number 1701-0216-AC, the owners or former owners of teams based in British Columbia appealed the whole of the certification order as against them, on the basis that the plaintiffs' pleadings do not disclose a cause of action against the BC Teams. They argue that there is no cause of action because the British Columbia Court of Appeal in *Macaraeg v E Care Contact Centers Ltd*, 2008 BCCA 182, 295 DLR (4th) 358 held that the British Columbia *Employment Standards Act*, RSBC 1996, c 113, is a complete code, and claims for the enforcement of statutory rights must be brought only by means of the statutory process. This is done by making a complaint under the BC statute to the Director of Employment Standards, and not by bringing suit in the civil court. The BC Teams say that since this is a question of law, the chambers judge's decision must be reviewed for correctness.

[5] Also in appeal number 1701-0216 AC, all defendants appeal other aspects of the certification order.

[6] In his written reasons, the chambers judge set out the facts, the test for certification under the Alberta *Class Proceedings Act*, SA 2003, c C-16.5, relevant case law and his decisions: *Walter v Western Hockey League*, 2017 ABQB 382. It is not necessary to repeat the reasons of the chambers judge or the content of the voluminous materials filed on these appeals.

[7] The Legislature has laid out the criteria to which the certification judge must have regard and section 5 of the *Class Proceedings Act* governs the analysis. These appeals bring into focus some settled axioms respecting class actions.

[8] A class action proceeding is not a licence to pursue non-existent or unarguable claims. Massing together into a group such unmeritorious claims does not have the effect of imbuing them with substantive legal merit. Likewise, a class action format is not a procedural structure that entitles a court to entertain the litigation of matters not within the jurisdiction or competence of the certifying court.

[9] Fundamentally, the chambers judge did not accept that the courts of Canada were able to make an effective determination of legal rights as between hockey players and their US Teams.

[10] Reading the reasons as a whole, we are satisfied that the correct analysis was undertaken and we also agree with the chambers judge's determination. We dismiss the plaintiffs' appeal.

[11] The BC Teams, for their part, assert that the employment standards legislation in that province ousts the possibility of a class action to enforce such standards. One anterior question to this objection, however, is proposed to be a common issue; namely, whether the plaintiffs have the rights recognized by the British Columbia employment standards legislation. Another anterior question is whether a conspiracy existed to avoid the application of employment standards legislation.

[12] Multi-jurisdictional class actions create difficulties, but the chambers judge decided that the determination of the effect of the British Columbia legislation and of the decision of the British Columbia Court of Appeal in *Macaraeg* was premature and the outcome was not plain and obvious.

[13] We substantially agree with the chambers judge's view, without prejudice to the possibility that on further evidence these defendants may establish that the British Columbia courts are the preferable location for those proceedings, for reasons of public policy or otherwise.

[14] As to the appeal on behalf of all defendants, at the certification stage the chamber judge was not prepared to strike causes of action that had been properly pleaded, although he recognized that some of the claims might be summarily dismissed upon proper application.

[15] While in general terms, litigation is often not well served by a proliferation of alternative and either redundant or inconsistent forms of claim, such as contract, fiduciary duty, statute-based causes of action, conspiracy and other torts, the certification stage is not necessarily an appropriate stage to assess whether the pleading of such alternatives creates problems, or engenders injustice.

[16] The first instance court is exercising a discretion for which appellate intervention is warranted only if the judge has clearly misdirected himself or herself on the facts or the law,

proceeded arbitrarily, or if the decision is so clearly wrong as to amount to an injustice. On the record to this point, we are not persuaded that the chambers judge has allowed too many common issues. We therefore affirm the chambers judge's finding, but without prejudice to the defendants' ability on further evidence to move for narrowing of the common issues.

[17] A judge who certifies a proposed class action, in whole or in part, with specified common issues and identified, un-conflicted representative plaintiffs is making a procedural order. Absent a material change of circumstances, or reversal on appeal, the order stands. A material change could include the development of circumstances or evidence which justifies changing or eliminating previously certified common issues, or adding new ones, or removing or replacing representative plaintiffs. Certification does not forbid evolution of the action.

[18] In connection with the chambers judge's determination that there were eligible representative plaintiffs for each of the specified common issues at this stage, we are also not persuaded that appellate interference is justified. But, again, this conclusion is without prejudice to the possibility of a more focused later objection to the continued propriety of the named representatives.

[19] In the result, all appeals are dismissed.

Appeal heard on May 10, 2018

Memorandum filed at Calgary, Alberta
this 15th day of May, 2018

Schutz J.A.

Appearances:

J. Mandryk
T.Q. Yang
T.P. Charney
S. Barrett
for the Appellants on Appeal No. 1701-0215-AC/Respondents on Appeal No. 1701-0216-AC

P.D.S. Jackson
C. Smith
S. Whitmore
for all Respondents on Appeal No. 1701-0215-AC and for the Appellants on Appeal 1701-0216-AC, Western Hockey League, McCrimmon Holdings, Ltd. and 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings., Brandon Wheat Kings Limited Partnership, 1056648 Ontario Inc., Calgary Flames Limited Partnership, Calgary Sports and Entertainment Corporation, Rexall Sports Corp., Edmonton Major Junior Hockey Corporation, Edmonton Oilers Hockey Corp., EHT, Inc., Hurricanes Hockey Limited Partnership, Prince Albert Raiders Hockey Club Inc., Rebels Sports Ltd., Queen City Sports & Entertainment Group Ltd., Braken Holdings Ltd., Saskatoon Blades Hockey Club Ltd., Medicine Hat Tigers Hockey Club Ltd., 1091956 Alta Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Hat Trick, Inc. d.b.a. Spokane Chiefs Hockey Club, Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc., Swift Current Tier 1 Franchise Inc., Swift Current Bronco Hockey Club Inc., Moose Jaw Tier 1 Hockey Inc. d.b.a. Moose Jaw Warriors, Moose Jaw Warriors Tier 1 Hockey, Inc., Lethbridge Hurricanes Hockey Club, and Canadian Hockey League

M.D. Andrews, Q.C.
A. Chowdhury
for the Appellants on Appeal No. 1701-0-216-AC, Kamloops Blazers Hockey Club, Inc., Kamloops Blazers Holdings Ltd., Kelowna Rockets Hockey Enterprises Ltd., Brodsky West Holdings Ltd., Edgepro Sports & Entertainment Ltd., Vancouver Junior Hockey Limited Partnership, Vancouver Junior Hockey Partnership, Ltd., West Coast Hockey Enterprises Ltd., West Coast Hockey LLP, Kootenay Ice Hockey Club Ltd.

g. Certification des tribunaux de l'Ontario pour les salaires des joueurs dans la Ligue de l'Ontario

Les revendications des joueurs en Ontario vont de l'avant sous la forme d'une poursuite en recours collectif.

Ontario court certification for player wages in the OHL

Players claims in Ontario move forward in the form of a class action law suit.

CITATION: Berg v. Canadian Hockey League, 2017 ONSC 2608
COURT FILE NO.: CV-14-514423CP
DATE: 20170427

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	
SAMUEL BERG and DANIEL PACHIS Plaintiffs	*Theodore P. Charney, Steven Barrett, Tina Q. Yang,* and *Joshua Mandryk,* for the Plaintiffs
– 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, JAW HOCKEY ENTERPRISES LP, GUELPH STORM LIMITED, ~~KINGSTON FRONTENAC HOCKEY LTD.~~, KINGSTON FRONTENACS HOCKEY CLUB, 2325224 ONTARIO INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., NIAGARA ICEDOGS HOCKEY CLUB INC., BRAMPTON BATTALION HOCKEY CLUB LTD., NORTH BAY BATTALION HOCKEY CLUB LTD., GENERALS HOCKEY INC., OTTAWA 67'S LIMITED PARTNERSHIP, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED~~,~~ COMPUWARE SPORTS CORPORATION, IMS HOCKEY CORP., SAGINAW HOCKEY CLUB, L~~L~~C~~,~~ 649643 ONTARIO INC. c.o.b. as SARNIA STING, 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, 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	*Patricia D.S. Jackson, Lisa Talbot,* and *Irfan Kara,* for the Defendants

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., CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC., WEST COAST HOCKEY ENTERPRISES LTD., MEDICINE HAT TIGERS HOCKEY CLUB LTD., PORTLAND WINTER HAWKS, INC., BRETT SPORTS & ENTERTAINMENT, INC., THUNDERBIRD HOCKEY ENTERPRISES, LLC, TOP SHELF ENTERTAINMENT, INC., SWIFT CURRENT TIER 1 FRANCHISE INC., 7759983 CANADA INC., LEWISTON MAINEIACS HOCKEY CLUB, INC., KITCHENER RANGER JR A HOCKEY CLUB, KITCHENER RANGERS JR "A" HOCKEY CLUB, SUDBURY WOLVES HOCKEY CLUB LTD., GROUPE SAGS 7-96 INC., MOOSE JAW TIER ONE HOCKEY INC., DBA MOOSE JAW WARRIORS, KOOTENAY ICE HOCKEY CLUB LTD., LETHBRIDGE HURRICANES HOCKEY CLUB, and LE TITAN ACADIE BATHURST (2013) INC./THE ACADIE BATHURST TITAN (2013) INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

HEARD: March 21-23, 2017

PERELL, J.

REASONS FOR DECISION

A. Introduction and Overview

[1] The Ontario Hockey League ("OHL") consists of 20 amateur hockey clubs in Ontario, Michigan, and Pennsylvania. The Western Hockey League ("WHL") consists of 22 amateur hockey clubs in Western Canada and the Western United States, and the Québec Major Junior Hockey League ("QMJHL") consists of 18 amateur hockey clubs in Québec and the Atlantic provinces and states. The OHL, WHL, and QMJHL, which are the regional leagues of the Canadian Hockey League ("CHL"), compete for the Memorial Cup Championship.

[2] Pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the Plaintiffs, Samuel Berg and Daniel Pachis, former players in the OHL, have commenced a proposed class action against the CHL, OHL, WHL, QMJHL and their respective teams. There are parallel class actions in Alberta and Québec brought by Lucas Walter, a former player in the WHL and the QMJHL.

[3] In their proposed class action in Ontario, Messrs. Berg and Pachis advance claims of: (1) breach of statute; (2) breach of contract; (3) breach of duty of honesty, good faith and fair dealing; (4) negligence; (5) conspiracy; and (6) unjust enrichment and waiver of tort. The Plaintiffs' main grievance is that the hockey clubs do not pay their players minimum wages and overtime pay under employment standards statutes.

[4] The employment statutes that Messrs. Berg and Pachis rely on are: (1) Ontario's *Employment Standards Act, 2000*, S.O. 2000, c. 41; (2) Michigan's *Workforce Opportunity Wage Act*, Mich. Stat. §408.413; (3) Pennsylvania's *Minimum Wage Act of 1968*, P.L. 11, No. 5; and (4) the United States federal government's *Fair Labor Standards Act of 1938*, 29 USC §§ 218(a).

[5] Messrs. Berg and Pachis bring their proposed class action on behalf of the following defined class:

> All players who are members of a team owned and/or operated by one or more of the clubs located in the Province of Ontario (a "team") or at some point commencing October 17, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2012 (the "Ontario Class");
>
> All players who are members of team owned and/or operated by one or more of the clubs located in the State of Pennsylvania, USA (a "team"), or at some point commencing October 17, 2010 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2010 (the "Pennsylvania Class"); and
>
> All players who are members of a team owned and/or operated by one or more of the clubs located in the State of Michigan, USA, (a "team"), or at some point commencing October 17, 2008 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2008 (the "Michigan Class").

[6] The Plaintiffs move for certification of their action as a class proceeding.

PERELL, J.

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[6] The Plaintiffs move for certification of their action as a class proceeding.

[7] Perhaps because of the novelty of their claim and the extraordinary importance that hockey has to Canadians, Messrs. Berg and Pachis excessively over-pleaded both their case and also their certification motion, and they engaged in an emotive public relations pitch to portray the players that formed the putative class as exploited workers of avaricious employers.

[8] The Defendants excessively responded to the certification motion with an emotive public relations pitch of their own. The Defendants portrayed themselves as magnanimous patrons and benefactors of their hockey players. The Defendants portrayed Messrs. Berg and Pachis as bitter, self-centered, and ungrateful also-rans, whose proposed class action would irreparably damage the enterprise that had been built for the players to advance their careers and their prospects to play in the professional hockey leagues.

[9] The Defendants' response to the certification motion, which is a procedural motion and neither a labour relations bargaining session nor a test of the merits of a claim, was a catalyst for still more evidentiary excesses and more propaganda by both sides building up to a hot-pitched certification motion that involved a contest about the truth of the teams' and the leagues' argument that Messrs. Berg's and Pachis' allegedly selfish class action would bring on the eve of destruction for hockey players.

[10] Ultimately, when the evidentiary boarding, cross-checking, slashing, and spearing, stopped, the Defendants challenged the certification motion as follows:

- Save for the pleading of conspiracy, the Defendants do not dispute that Messrs. Berg and Pachis have satisfied the cause of action criterion for certification; i.e., it is conceded that the Plaintiffs have pleaded reasonable causes of action.
- Save for submissions that the class period should be defined by the date of the court's certification decision and that the U.S. teams should be excluded as Defendants, the Defendants do not dispute that the Plaintiffs have satisfied the identifiable class criterion.
- Save for a submission that the claims for: (1) breach of duty of honesty, good faith and fair dealing; (2) negligence; (3) conspiracy; and (4) unjust enrichment and waiver of tort should not be certified, because they add nothing but unnecessary complexity to the proceedings, the Defendants do not challenge the proposed common issues.
- With the exclusion of the claims for: (1) breach of duty of honesty, good faith and fair dealing; (2) negligence; (3) conspiracy; and (4) unjust enrichment and waiver of tort, and save for the exclusion of the U.S. teams, the Defendants do not dispute that the Plaintiffs have satisfied the preferable procedure criterion. The Defendants submit, however, that the teams from Michigan and Pennsylvania should be excluded from the class action because a class action would not be the preferable procedure to resolve the claims against the U.S. teams and, among other problems, a U.S. court would decline to recognize any Canadian judgment against the American teams.
- The major challenge raised by the Defendants is the submission that Messrs. Berg and Pachis do not satisfy the representative plaintiff criterion for certification. In this regard, the Defendants submit that Messrs. Berg and Pachis are unqualified to be representative plaintiffs because there is an irreconcilable conflict of interest between them as former players and the current players of the Class. The Defendants submit that the Plaintiffs are interested only in obtaining unpaid salary claims and are uninterested in the fate of the Class Members, the current active players in the OHL, who will be irreparably harmed by

the certification of the action.

[11] To be more precise about the Defendants' major challenge to certification, they submit that if this action were certified as a class action, then they would either have to cease operations (fold some teams) or have to reduce the benefits they provide to their current or future players because the certification of the action would crystalize a $30 million contingent liability. The Defendants further submit that if the action is certified, then the Class Members who are current active players in the OHL will lose skills development programs, equipment, registration fees, travel expenses for away games, educational programs, scholarships, parenting *in loco parentis*, counselling programs, medical insurance, housing and food allowances.

[12] I agree with some of the Defendants' submissions, but I do not agree with the Defendants' ultimate argument that Messrs. Berg and Pachis' class action should not be certified.

[13] Thus, for the reasons that follow: (1) I certify the claims for breach of employment law statutes and unjust enrichment; (2) I shall not certify the claims for: (a) breach of contract, (b) negligence, (c) breach of duty of honesty, good faith and fair dealing, (d) conspiracy, and (e) waiver of tort; (3) I shall not certify the action as against the American teams and I shall amend the class definition accordingly; (4) I shall also amend the definition of the class to close the class period as of the date of the certification motion without prejudice to the definition being amended from time to time; (5) I shall not certify the common issues for breach of contract, negligence, breach of duty of honesty, good faith and fair dealing, and conspiracy; and (6) I appoint Messrs. Berg and Pachis to be Representative Plaintiffs. With the above amendments, I certify this action as a class action.

B. Evidentiary Background

1. Acronyms

- AHL – American Hockey League
- CAHA - Canadian Amateur Hockey Association
- CIS – Canadian Interuniversity Sports (U Sports) (University Sports)
- CJHL – Canadian Junior Hockey League
- CHL - Canadian Hockey League
- ECHL – East Coast Hockey League
- *ESA - Employment Standards Act*
- *FLSA – Fair Labor Standards Act of 1938*
- GMHL - Greater Metro Hockey League
- NCAA – National Collegiate Athletic Association
- NAHL - North American Hockey League
- NHL – National Hockey League
- OHL – Ontario Hockey League
- QMJHL - Québec Major Junior Hockey League
- SPA – Standard Player Agreement
- USHL - United States Hockey League
- WHA – World Hockey Association
- WHL – Western Hockey League
- *WOWA - Workforce Opportunity Wage Act*

2. The Witnesses

[14] There was a superabundance of evidence proffered for this certification motion. The motion record comprised 36 volumes, including documents, transcripts, financial statements, and 62 affidavits, declarations, or reports. Both sides baited the other and both sides took the bait - hook, line, sinker, and litigation fishing boat. (There were factums and also 14 volumes of case books.)

[15] In Schedule "A" to these Reasons for Decision, I set out who the witnesses were for the certification motion.

C. Factual Background

1. The Defendants

[16] In this and the companion actions, Mr. Berg, Mr. Pachis, and Mr. Walter sue Canadian Hockey League, Ontario Major Junior Hockey League, Ontario Hockey League, Western Hockey League, Québec 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, Jaw Hockey Enterprises LP, Guelph Storm Limited, Kingston Frontenacs Hockey Club, 2325224 Ontario Inc., Mississauga Steelheads Hockey Club Inc., Niagara IceDogs Hockey Club Inc., Brampton Battalion Hockey Club Ltd., North Bay Battalion Hockey Club Ltd., Generals Hockey Inc., Ottawa 67's Limited Partnership, The Owen Sound Attack Inc., Peterborough Petes Limited, Compuware Sports Corporation, IMS Hockey Corp., Saginaw Hockey Club, LLC, 649643 Ontario Inc. c.o.b. as Sarnia Sting, 211 SSHC Canada ULC o/a Sarnia Sting Hockey Club, 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 cCub 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 Québec 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., Club de Hockey Junior Majeur Val D'Or Inc., West Coast Hockey Enterprises Ltd., Medicine Hat Tigers Hockey Club Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc., Swift Current Tier 1 Franchise Inc., 7759983 Canada Inc., Lewiston Maineiacs Hockey Club, Inc., Kitchener Ranger Jr A Hockey Club, Kitchener Rangers Jr "A" Hockey Club, Sudbury Wolves Hockey Club Ltd., Groupe Sags 7-96 Inc., Moose Jaw Tier One Hockey Inc., DBA Moose Jaw Warriors, Kootenay Ice Hockey Club Ltd., Lethbridge Hurricanes Hockey Club, and Le Titan Acadie Bathurst (2013) Inc./The Acadie Bathurst Titan (2013) Inc.

[17] By consent Order dated July 22, 2015, in the immediate action, the claims against the

WHL, the QMJHL, and the clubs of the WHL and QMJHL were stayed.

[18] The action thus continues against the OHL, the CHL and the Clubs of the OHL namely: Windsor Spitfires Inc., London Knights Hockey Inc., Barrie Colts Junior Hockey Ltd., Belleville Sports and Entertainment Corp., Bulldog Hockey Inc., Erie Hockey Club Limited, Jaw Hockey Enterprises LP, Guelph Storm Limited, Kingston Frontenacs Hockey Club, 2325224 Ontario Inc., Mississauga Steelheads Hockey Club Inc., Niagara IceDogs Hockey Club Inc., Brampton Battalion Hockey Club Ltd., North Bay Battalion Hockey Club Ltd., Generals Hockey Inc., Ottawa 67's Limited Partnership, The Owen Sound Attack Inc., Peterborough Petes Limited, Compuware Sports Corporation, IMS Hockey Corp., Saginaw Hockey Club, LLC, 649643 Ontario Inc c.o.b. as Sarnia Sting, 211 SSHC Canada ULC o/a Sarnia Sting Hockey Club, Soo Greyhounds Inc., Kitchener Ranger Jr A Hockey Club, Kitchener Rangers Jr "A" Hockey Club,, and Sudbury Wolves Hockey Club Ltd.

2. The Venue and Jurisdictional Issue

[19] On October 17, 2014, Mr. Berg commenced this proposed class proceeding in Ontario against the CHL, OHL, WHL, and QMJHL and all of the member Clubs. As noted above, companion and overlapping actions were also filed in Alberta and Québec.

[20] Unlike the OHL's Standard Player Agreement ("SPA"), discussed below, the WHL's SPA provided that disputes must be litigated in the province or state where the team is located, and this circumstance sparked a venue and jurisdictional dispute between the parties.

[21] After the actions were filed, counsel for all parties had discussions about managing the multiplicity of proceedings, and Mr. Berg agreed to stay the claims against the WHL and the QMJHL in the Ontario action, and Mr. Walter agreed to proceed with claims against the WHL in Alberta and with the claims against the QMJHL in Québec.

[22] There is, however, a dispute between the parties about the terms under which the three class actions would proceed as against the American teams. Mr. Berg's position is that the American Defendants attorned to the jurisdiction of the various Canadian courts without prejudice to the Defendants' arguments as to the choice of law to be applied by the Canadian courts. Thus, Messrs. Berg and Pachis submit that the U.S.-based Defendants are not at liberty to advance arguments at the certification motion challenging the jurisdiction or venue of this Court to adjudicate the claims against the U.S. Clubs.

[23] The Defendants' position is that they reserved the right to challenge the jurisdiction *simpliciter* and the *forum conveniens* jurisdiction of the Canadian courts and to raise the issue of whether a class proceeding was the preferable and appropriate procedure to litigate the claims against the American teams.

[24] I am satisfied that this court has jurisdiction *simpliciter* over the American teams and that Ontario is a *forum conveniens* to litigate the claims, but I agree with the Defendants' that they can challenge whether a class proceeding in Ontario is the preferable procedure for advancing the claims based on American law against the American teams. I will have more to say about the Defendants' argument in the discussion and analysis portion of these Reasons for Decision.

[25] The correspondence relied on by the Plaintiffs does not preclude such a challenge by the Defendants. The correspondence, rather, is about how to accommodate the action against the WHL teams where the WHL's SPA provides that disputes must be litigated in the province or

state in which the relevant team is located. In contrast, the OHL's SPA does not contain a similar provision. Moreover, and in any event, the Defendants reserved the right to raise issues related to foreign law at the certification motion and there was a great deal of evidence and argument about foreign law at the certification motion. Further still, I agree with the Defendants' submission that in the case at bar the ways and means of the application of foreign law is important to the preferable procedure analysis and that the Defendants are not precluded or estopped from arguing that a class proceeding is not the preferable procedure for resolving the Plaintiffs' claims against the American teams.

3. The Organization of Amateur Hockey in Canada

[26] The premier professional hockey league in North America for male competitors is the NHL, which is a professional league comprised of 7 teams in Canada (Montreal, Ottawa, Toronto, Winnipeg, Calgary, Edmonton, and Vancouver) and 24 teams in the United States. The NHL has affiliated farm clubs in the AHL and the ECHL.

[27] Minor or amateur hockey is organized into tiers based on age and skill levels and into non-competitive and competitive leagues. The competitive leagues progress from Mite (novice), to Atom, Peewee, Bantam, Midget, Junior (under 21 years of age) and Senior (no age limit). The Junior tier of hockey is ranked moving from Junior C, Junior B, Junior A, and with Major Junior at the top.

[28] Hockey Canada, to varying degrees, oversees amateur hockey across Canada and also the Canadian men's Olympic hockey team, which in recent years has come to be comprised of NHL players (but perhaps not for the next Winter Olympics in PyeongChang). Hockey Canada recognizes the players of the leagues of the CHL as amateur athletes.

[29] Competitive minor league teams hold tryouts, and selection of players is based on skill level. Players chosen to play competitive hockey receive more coaching than in a recreational league. Generally speaking, the players of minor league hockey pay registration and team fees, some of which are as high as $8,000 per player, and players buy their own equipment and pay for the costs of traveling to and from out-of-town games.

[30] Some Junior B and Junior C hockey teams are under the auspices of Hockey Canada, but there is no national governing body. Junior B and C leagues operate on a "pay-to-play" model. Fees range from $1,000 to $1,500 per player, per year, and players are responsible for paying the costs of travel and accommodation for out-of-town games. Players purchase their own equipment, except for sweaters, socks, and pants.

[31] Junior A hockey is governed by the CJHL, which is comprised of 11 leagues across the country. CJHL players are provided with equipment and the teams pay travel costs. Some players, pay to play in the CJHL and fees vary between $4,000 and $8,000 per player, per year. There is no scholarship or tuition reimbursement program for players of the CJHL.

[32] Major Junior is comprised of the leagues of the CHL, which has three regional leagues, the WHL, OHL and QMJHL. The CHL was founded in 1975 as a not-for-profit corporation. It, however, has roots tracing back to 1914, with the founding of the CAHA, which oversaw all Canadian junior hockey until its merger with Hockey Canada in 1994. Approximately 1,300 athletes play hockey with the 60 teams of the CHL (52 Canadian teams and 8 American teams).

[33] Canadian universities offer intermural hockey leagues for their students and also have interuniversity competition supervised by the CIS ("U-Sports").

[34] Other Junior hockey leagues exist outside the auspices of Hockey Canada, the CHL, or the CJHL. For example, in Toronto, the GMHL is a pay-to-play league that charges an annual fee of approximately $6,000 per player and does not offer a scholarship program. Out-of-town players pay to be billeted with local families. The GMHL provides some, but not all, players with equipment.

[35] Once a Junior hockey player reaches the age of 18, he is eligible to be drafted to play in the NHL. The CHL provides more players to the NHL (approximately 55%) than any other league in the world. However, only a small minority of CHL players ever play in the NHL. After signing an NHL contract, the signed player may be returned to his CHL Club for further development if they remain age-eligible for Junior hockey.

4. The Organization of Amateur Hockey in the United States

[36] All U.S.-based teams and players belong to USA Hockey, which is the American equivalent of Hockey Canada.

[37] In the United States, the USHL includes Tier I, the top level of American Junior Hockey. The USHL consists of teams in the central and Midwestern U.S. The USHL does not charge players to pay, and teams provide players with equipment and pay travel costs. The USHL does not, however, offer a scholarship program.

[38] Tier II is the next level of Junior Hockey in the U.S., and is represented by the NAHL. The NAHL has no scholarship program, and all player expenses, including room and board, are paid by the player.

[39] In the U.S., college level hockey is under the auspices of the NCAA. Division I and II schools, but not Division III schools, offer athletic scholarships.

[40] CHL players are not eligible to play in the NCAA because they are regarded as professional athletes by USA Hockey. The CHL does not accept the NCAA's designation of CHL players as professional athletes.

5. The OHL

[41] The OHL, which is headquartered in Toronto, is a non-profit corporation organized under the laws of Ontario, with teams in Ontario, Michigan, and Pennsylvania.

[42] The Commissioner of the OHL is Mr. Branch, who has held that position for over 37 years. He also serves as Commissioner of the CHL.

[43] The OHL has 17 teams in Ontario, two in Michigan, and one in Pennsylvania. As members of the CHL, the OHL teams play a 68-game regular season that runs from late September to late March.

[44] The OHL schedule culminates in the Memorial Cup championship tournament, where the three CHL regional league champions and a host-team play in a round-robin tournament to determine a national champion.

[45] The OHL is governed by a Board of Governors, which is composed of one representative from each OHL Club. Each OHL Club is a franchise which owns a Major Junior hockey team under a trade name, and occupies an exclusive territory. Clubs are sold, purchased and relocated and new franchises can be purchased for a fee, all of which is regulated and must be approved by the OHL through its Board of Governors.

[46] The OHL publishes policies about, among other things, player contracts, the recruiting and drafting of players, and the selling, assigning, and trading of player contracts. The Board of Governors determines the terms of the standard form contract, known as the Standard Player Agreement ("SPA"). These agreements, which have changed over the years, are described below.

6. The Standard Player Agreement (SPA)

[47] Major Junior hockey players and their parents must sign the SPA to join a team and play in the league. Typically, the players and their parents receive independent legal advice before signing the SPA.

[48] Although a few provisions in the SPA are negotiable, OHL Clubs are not at liberty to deviate from the SPA standard terms, and each executed agreement is scrutinized by the League Commissioner to ensure compliance with the standard terms. CHL Clubs that have deviated from the standard terms of the SPA have been fined, including fines in excess of $200,000.

[49] Both the current and former OHL SPA consists of the form and Schedules "A","B", and "C". The standard form sets out the duties of the Club and the obligations of the player and does not vary between players.

[50] Schedule "A" pertains to player remuneration and reimbursements and does not vary.

[51] There are currently three versions of Schedule "B;" i.e., (1) a standard education package for Canadian or U.S. players; (2) a "full ride" education package for Canadian or U.S. players; and (3) a standard education package for import/European players.

[52] Schedule "C" is for special player benefits such as a no-trade clause, or any variations on an education package. The special player benefits are regulated by the OHL, and the Commissioner scrutinizes every player's SPA to ensure conformity with the OHL's regulations and policies.

[53] Under the SPA, the obligations of the player are: (a) maintaining exceptional hockey skills and abilities; (b) playing exclusively for the Club and not participating in any non-OHL-sanctioned hockey games without prior written Club consent; (c) reporting to training camp in good physical condition; (d) maintaining good physical condition throughout the season; (e) participating in promotional events; (f) behaving with good standards of honesty, morals, and fair play; (g) providing services faithfully, diligently, and to the best of the player's abilities as a hockey player; (h) using only the team's equipment and supplies; (i) permitting the OHL and the Club use of the player's likeness, image, statistical record, biography and autograph; and (j) obtaining an annual medical examination. All iterations of the SPA state that Clubs can unilaterally terminate players' contracts. The current SPA for the OHL provides that players can be terminated from their Club if: they default, neglect or refuse to provide the services required by the SPA; they violate the rules of the Club or the OHL; or if the player lacks the requisite skill to play in the OHL, in the opinion of the Club.

[54] Under the SPA, players may be traded to another team and the players do not share in any consideration paid by their new team for the trade. Players and their parents may negotiate the terms of this "trade clause," but the CHL exercises discretion and must approve all trades. Players in high school cannot be traded without their consent. A player who is traded does not forfeit any part of the OHL Scholarship he has earned and nothing about a trade affects a player's entitlement to his scholarship or other benefits.

[55] In 2007, OHL's and the WHL's SPA characterized player salaries as "remuneration" and as an "allowance" paid in exchange for players' "services". Under both SPAs, the "allowance" was provided to players in addition to reimbursements for listed expenses. Subsequently, the SPA was revised to use the terminology "fees" instead of "allowance", and OHL's SPA was revised before the 2009-10 season to add an express statement that the relationship between the player and the League is that of an "independent contractor" earning a "fee" in exchange for the player's "services". The OHL SPA also stated that "nothing in this Agreement shall constitute the parties as employer/employee".

[56] In or around August 2012, a proposed labour union calling itself the Canadian Hockey League Players' Association sought to organize and represent the players in the CHL. Following the union drive, Mr. Branch issued a directive to all OHL Clubs entitled, "Standard Players Agreement Update to Administrative Policies." The directive instructed the Clubs, "not to use any language in referring to the players and their Clubs that would imply an employment relationship", and to stop treating players as employees by ceasing to issue payroll documentation.

[57] The unionization drive failed, and in 2013-14, OHL players were required to execute a new SPA to replace their previous SPA. The WHL and the QMJHL also required their returning players to execute a new SPA.

[58] All three leagues, in tandem, reformulated their SPAs to remove all language referent to employment. In the OHL's SPA, the statement of the independent contractor relationship between the Club and the player was removed, and replaced with a statement that "this Agreement is not a contract of employment between the club and the player." The players' remuneration was renamed, from a "fee" or an "allowance" to a "reimbursement of certain expenses", and an "honorarium" for playoff success. The reformulated WHL's SPA changed player remuneration from an "allowance" to a "monthly expense reimbursement", and a "monthly overage honorarium" for 20-year-old players. The reformulated WHL SPA classified players as "amateur athletes", while removing all references to "service".

[59] Mr. Branch denies that the CHL-wide changes had anything to do with obfuscating the players' employment status, stating instead that the reformulations were made "to further reinforce the mutual understanding held by the league, teams, players and parents that the players are amateur student athletes".

[60] In addition to coordinated changes to the League SPAs, the CHL lobbied Hockey Canada to revise its bylaws and to reclassify CHL players' contracts from "professional" to "amateur" and the revised bylaws stated that CHL teams are considered the highest level of non-professional competition in Canada, administered as a development program under the auspices of Hockey Canada.

[61] In regard to characterizing the SPA as an employment contract, Messrs. Berg and Pachis rely on the 1970s litigation between John Tonelli and the Toronto Marlboro Major Junior A

Hockey Club, where the Club unsuccessfully sought an injunction to prevent Mr. Tonelli from playing with the now defunct WHL and where the Club's action for breach of contract was dismissed. In that litigation, the courts referred to the SPA as an employment contract. See *Toronto Marlboro Major Junior "A" Hockey Club et al. v. Tonelli et al.* (1976), 11 O.R. (2d) 664 (H.C.J.) and (1977), 18 O.R. (2d) 21 (H.C.J.) and (1979), 23 O.R. (2d) 193 (C.A.).

7. The Commonality of the Player Experience

[62] The Defendants did not challenge that there was some-basis-in-fact that the past and present players of the OHL had a common experience and a common type of relationship with them.

[63] Some of the evidence about commonality was based on a survey conducted by Dr. Harvey of the Berkeley Research Group, who was retained by the Plaintiffs to conduct a study respecting the degree of similarity or variability between CHL players in their experiences and relationships with their respective CHL Clubs. Thirteen players who together played on 30 teams across the three CHLs responded to the questionnaire. The evidence established that there was some-basis-in-fact for the following characteristics of the past and present player's experience:

- The players all sign the SPA and are obliged to act in accord with the agreement.
- Each OHL Club sets one common schedule for all of its players, beginning with a training camp in late summer, continuing through the pre-season and the 68 games of the regular season All training camp, pre-season, regular season and playoff activities carried out by players take place under the direction of Club coaches, trainers and managers.
- During the regular season, players follow a very structured schedule which is set by the Club. These schedules include a mixture of practices, workouts, team meetings, home games, away games, and mandatory team promotional events. The player affiants all estimated that they spent approximately 35 to 45 hours per week working for their Clubs during weeks with only home games, and up to approximately 85 hours per week working for their Clubs during weeks with road/away games.
- The players are paid bi-weekly, in cash or by cheque. The payments are commonly referred to as pay cheques by the players who believe that they are underpaid for the work they perform for the Clubs. Income tax, CPP, and EI contributions have been deducted from the payments by some of the teams.

8. The Factual Background as Pleaded

(a) The Standard Player Agreement ("SPA")

[64] Messrs. Berg and Pachis plead that the players; i.e., the Class Members, each entered into a contract of employment, namely, the SPA, with their respective Clubs.

[65] Messrs. Berg and Pachis plead that compliance with applicable employment statutes is an express term of each contract of employment or compliance with the statutes is an implied term of the SPA.

[66] The Plaintiffs plead that players' duties, functions, obligations and responsibilities are uniform across the Clubs, as set out in the SPA and in the bylaws of the OHL and CHL. They

plead that players uniformly devote, on average, 45 hours/week and up to 65 hours/week, or more, performing services, training, practicing, playing hockey in home and away games three times a week, and making promotional appearances in accordance with the SPA.

[67] The Plaintiffs plead that players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay, notwithstanding the ruling of the Tax Court of Canada in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a Club in the WHL and a player is identical to the relationship between an employer operating a commercial organization and an employee.

[68] The Plaintiffs plead that in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.), supra* the Tax Court ruled that the players receive insurable earnings under the *Employment Insurance Act*, and the Court rejected the WHL's argument that the remuneration was an allowance paid to a student participating in a hockey program that offered scholarships.

[69] The Plaintiffs plead that in response to the Tax Court ruling, the Defendants reformatted the SPA through several iterations. In this regard, they plead that:

a. in the 2007 OHL SPA, a player's relationship with his Club was not expressly defined, and the player received an "allowance" of $65/week in exchange for the player's exclusive services, of which $15/week was subject to a holdback to remit to the federal government as contributions to Employment Insurance in accordance with the decision in *McCrimmon Holdings*;

b. in the 2010 OHL SPA and the 2013 OHL SPA, a player was defined to be an "independent contractor" earning a "fee" in exchange for the player's services;

c. in the 2014 OHL SPA, the Clubs reimburse players for expenses.

[70] The Plaintiffs plead that in the WHL, the 2007 SPA and the 2011 SPA provide that the Club retains the "services" of the player and in consideration the player receives "remuneration" comprised of an "allowance" of between $160/month and $600/month, plus a bonus. In the 2013 WHL SPA, the players are described as "amateurs" who are to be "reimbursed" for travel or training related expenses of up to $250/month. Article 4.2 (k) of the Terms and Conditions Schedule of the WHL SPA states that the player covenants and agrees to "play hockey for the club faithfully, diligently and to the best of his abilities as an amateur athlete hockey player."

[71] The Plaintiffs plead that in the QMJHL, the 2013 SPA includes a "Declaration on the Status of the Players" that states that: "players who belong to a club who range in age from 16 to 19 years old are pursuing their academic careers while also benefitting from a framework which supports the development of their athletic potential as hockey players whose goal is to pursue the practice of hockey at the professional level".

(b) Mr. Berg

[72] Mr. Berg resides in Ontario, and he formerly played hockey for the Niagara IceDogs, an OHL Club owned and operated by the Defendant Niagara IceDogs Hockey Club Inc. He signed the 2013 OHL SPA that provided that in exchange for providing his services, he would receive a fee of $50/week for three seasons commencing August 31, 2013.

[73] During September and October 2013, Mr. Berg devoted about six hours a day, seven days

a week to providing services to the Club. When the team travelled, he would devote longer hours, up to twelve hours a day. He received $50.00/week by cheque less payroll deductions. He did not receive the minimum hourly wage rate governed by the *ESA*, nor vacation pay, holiday pay, or overtime pay.

[74] Mr. Berg pleads that he was an employee because:

a. he was subject to the control of the Club as to when, where, and how he played hockey;

b. the OHL, the CHL and the Club determined and controlled the method and amount of payment to him;

c. he was required to adhere to the team's schedule of practices and games;

d. the work environment was one of subordination;

e. the team provided tools, supplied room and board, and a benefit package;

f. the Defendants used his images for their own profit;

g. the 2013 OHL SPA provided that: "The club shall pay the player the fees and provide to the player the benefits set out in Schedule "A" in exchange for the "player's services";

h. the benefits provided by the 2013 OHL SPA include payment to players aged 16-19, a weekly sum of $50, and to players aged 20, a weekly sum of $150, paid on a bi-weekly basis, plus payment of the cost of school tuition and expenses, travel expenses, lodging expenses and others, as well as a one-time bonus ranging from $100 to $450 depending on how far the Club advanced in the playoffs;

i. the 2013 OHL SPA provides that if the player's services are no longer required by the Club, the "allowance" or "fee" payable to the player may be reduced on a *pro rata* basis according to the number of days on which the player's services were provided;

j. the club made payroll deductions at source;

k. he was not responsible for operating expenses and did not share in the profits;

l. he was not financially liable if he did not fulfill the obligations of the SPA;

m. the business of hockey belonged to the Club;

n. he was not in business on his own account;

o. the Club imposed restrictions on his social life including a curfew that was monitored;

p. the Club directed every aspect of his role as a player, and

q. the business of the Club was to earn profits.

[75] In October 2013, Mr. Berg was sent down to play Junior B hockey for the St. Catharines Falcons, and subsequently he was traded to the Thorold Blackhawks. He played eight games for the Falcons and four games for the Blackhawks. He was injured, took a medical leave, and ultimately could not return to hockey. He was not paid the $50 weekly fee while he was playing Junior B hockey.

[76] After his playing career ended, Mr. Berg enrolled in university. Pursuant to the SPA signed August 31, 2013, the Club agreed, in Schedule "C", to irrevocably guarantee funding for four years of a bachelor degree upon his playing at least one exhibition or regular season game. However, his Club failed to forward the SPA to the OHL and in January 2014, the OHL required that the SPA be revised before it would be approved. Knowing that he was injured and could not play, the OHL approved the SPA but reduced his tuition package from four years to half a year.

[77] Mr. Berg pleads that the Club breached its agreement to provide four years of tuition and violated the *ESA* by failing to pay minimum wages, holiday pay, vacation pay and overtime pay.

(c) Mr. Pachis

[78] Mr. Pachis resides in Ontario, and from August 2007 to August 2009, he played hockey for Saginaw Spirit, an OHL Club owned and operated by the Defendant Saginaw Hockey Club, LLC. From September 2009 to August 2010, he played hockey for the Oshawa Generals, an OHL Club owned and operated by the Defendant Generals Hockey Inc.

[79] Mr. Pachis signed the 2007 OHL SPA in August 2007. It provided that in exchange for providing services, he would receive a fee of $50/week for four seasons. Over the course of his time with the Saginaw Spirit and the Oshawa Generals, Mr. Pachis played in exhibition, regular season, and playoff games and his hours of service varied but, on average, he supplied between 30 and 40 hours of services weekly to the Club, over the course of six or seven days, in accordance with the SPA. When the team travelled, he would devote longer hours, up to 15 hours a day.

[80] Mr. Pachis received $100.00 bi-weekly by cheque less payroll deductions from Saginaw Spirit. He received $100.00 bi-weekly by cheque from the Oshawa Generals. He did not receive the minimum hourly wage rate in accordance with the applicable employment standards legislation, nor vacation pay, holiday pay or overtime pay, with either the Saginaw Spirit or the Oshawa Generals.

[81] Mr. Pachis pleads that he was an employee because:

a. he was subject to the control of the Club as to when, where, and how he played hockey;

b. the OHL, the CHL and the Club determined and controlled the method and amount of payment;

c. he was required to adhere to the team's schedule of practices and games;

d. the work environment was one of subordination;

e. the team provided tools, supplied room and board and a benefit package;

f. the Defendants used his images for their own profit;

g. the 2013 OHL SPA provides that: "The club shall pay the player the fees and provide to the player the benefits set out in Schedule "A" in exchange for the "player's services";

h. the benefits provided by the 2013 OHL SPA include payment to players aged 16-19, a weekly sum of $50, and to players aged 20, a weekly sum of $150, paid on a bi-weekly basis, plus payment of the cost of school tuition and expenses, travel

expenses, lodging expenses and others, as well as a one-time bonus ranging from $100 to $450 depending on how far the Club advanced in the playoffs;

i. the 2013 OHL SPA provides that if the player's services are no longer required by the Club, the "allowance" or "fee" payable to the player may be reduced on a *pro rata* basis according to the number of days on which the player's services were provided;

j. the Club made payroll deductions at source;

k. he was not responsible for operating expenses and did not share in the profits;

l. he was not financially liable if he did not fulfill the obligations of the SPA;

m. the business of hockey belonged to the Club;

n. he was not in business on his own account;

o. the Club imposed restrictions on his social life including a curfew that was monitored;

p. the Club directed every aspect of his role as a player; and,

q. the business of the Club was to earn profits.

[82] Mr. Pachis played throughout the 2007-08 and 2008-09 OHL seasons with Saginaw Spirit and attended training camp with the team in August 2009. His playing rights were traded by Saginaw Spirit to the Oshawa Generals on the day before the commencement of the 2009-2010 OHL season. In exchange for receiving the playing rights, the Oshawa Generals paid Saginaw Spirit approximately $5,000 or $6,000.

[83] Mr. Pachis played the 2009-10 season with the Oshawa Generals and attended training camp with the team in August 2010, after which, he was advised that he had been cut from the team. He requested that the Oshawa Generals place him "on waivers," which is a process whereby the Oshawa Generals would release his playing rights and terminate his SPA, allowing him to play Major Junior hockey elsewhere. The Club refused Mr. Pachis' request and, since he had been cut from the team, he was unable to continue playing Major Junior hockey.

[84] Mr. Pachis pleads that Saginaw Spirit violated the applicable employment standards legislation by failing to pay minimum wages, holiday pay, vacation pay and overtime pay.

(d) Additional Allegations of an Employment Relationship

[85] Messrs. Berg and Pachis plead the following additional facts, among others, in support of the allegation that the relationship between the players and Defendants is an employment relationship:

a. the Clubs' business is for profit;

b. the Clubs benefit from the players' activities;

c. the Clubs' business depends entirely on the services performed by the players;

d. the Clubs earn millions of dollars in revenues from the services performed by the players including ticket sales, television rights, sponsors, advertising, NHL

subsidies, memorabilia, the images of players, and food and beverage sales;

e. the players are not amateur students enrolled in a training program despite the language of the SPA;

f. the majority of the players, when playing in the OHL, do not attend school or study and are not students;

g. the number of players who are employed by a team in the NHL and play in the NHL, a professional league where the players are acknowledged to be employees and have a collective bargaining agreement, may be reassigned during the season to the OHL Clubs to play hockey;

h. the players are not interns because the Clubs earn millions of dollars in revenues from the player's services;

i. the Clubs retain the right to hire, fire and discipline the players;

j. the provisions of the OHL by-laws indicate that the players receive benefits in exchange for services;

k. the WHL Clubs arrange for players who were not residents of the United States to play for American Clubs by applying on behalf of the players for a work visa;

l. the Defendants are aware that the true nature of legal relationship with the players is one of employment because they have been lobbying the Ontario provincial government and the Government of Canada to exempt the players and Clubs from applicable employment standards legislation; and

m. in 2015, the four teams located in the State of Michigan, together with the WHL, when confronted with an investigation by the Michigan Attorney General into violations of child labour laws, successfully lobbied the Michigan State Government to exempt the WHL players from state labour laws.

[86] Mr. Berg and Mr. Pachis plead that the Defendants engaged in a systemic policy or practice of avoiding or disregarding the payment of wages – including back pay, vacation pay, holiday pay, overtime pay and applicable employer payroll contributions – in contravention of the applicable employment standards legislation as evidenced by:

a. the misclassification of players;

b. their requiring players to acknowledge that the SPA was not a contract of employment at risk of forfeiting their right to play in the OHL;

c. concealing the true nature of the employment relationship;

d. concealing that the SPA had been drafted to conceal the true nature of the relationship and to avoid paying wages;

e. failing to have a system to advise the players of their right to wages; and

f. failing to have a system in place to track the work performed by the players and to pay the statutorily required wages.

(e) The Causes of Action

[87] Based on the above pleaded facts, Messrs. Berg and Pachis plead the following causes of action: (1) breach of statute; (2) breach of contract; (3) breach of duty of honesty, good faith and fair dealing; (4) negligence; (5) conspiracy; and (6) unjust enrichment and waiver of tort.

[88] The Plaintiffs submit that the violations of the applicable employment standards legislation of Ontario, Michigan, and Pennsylvania are breaches of contract. They submit that the evolution of the SPA from one where the players were remunerated for their services, to one where the players are independent contractors, to one where the players are amateur athletes in a development program, is a breach of the Defendants' duties of honesty, good faith, and fair dealing.

[89] Messrs. Berg and Pachis allege that the Defendants unduly, unlawfully, and lacking *bona fides*, conspired and agreed together, the one with the other, to act in concert to breach applicable employment standards legislation. They plead that the Defendants knew or ought to have known that the SPA is unlawful pursuant to the applicable employment standards legislation but the Defendants nevertheless agreed and conspired with the CHL and the OHL to use the SPA with the predominant purpose to continue operating the OHL without incurring costs that were to be lawfully paid by the Clubs to the players in the form of minimum wages, overtime pay, holiday pay and vacation pay.

[90] The Plaintiffs plead that the Defendants' acts in furtherance of the conspiracy caused injury and loss to the Plaintiffs and Class Members in that the players' statutory protected right to fair wages was breached and they did not receive minimum wages, vacation pay, holiday pay or overtime pay that was owed to them.

[91] Messrs. Berg and Pachis plead that the Defendants owed the players a duty of care and were negligent and in breach of their duty of care as follows:

a. the failed to ensure that the players were properly classified as employees;

b. they failed to ensure that the work performed by the players was properly monitored and accurately recorded;

c. they failed to ensure that the players were appropriately compensated with minimum wage, back pay, holiday pay, vacation pay and overtime pay pursuant to applicable employment standards legislation;

d. they failed to implement a policy, practice or procedure whereby the players would receive wages when they knew or ought to have known that the players were employees;

e. they failed to implement a policy, practice or procedure whereby the players would receive wages when they knew or ought to have known that, according to *McCrimmon Holdings*, the players were employees;

f. they failed to obtain legal advice or to follow legal advice with respect to the application of *McCrimmon Holdings* and with respect to the likelihood that the players were employees as a matter of law;

g. they failed to appreciate that the players remained employees as a matter of law despite the fact that the language of the SPA was periodically changed;

h. they knew or ought to have known that the Clubs are required by law to pay wages yet they implemented a practice, policy or procedure whereby they forced the Clubs to withhold wages;

i. they required all players to sign the SPA when they knew or ought to have known that the SPA misclassified the players as non-employees;

j. they could have obtained a ruling or direction from employment standards officers but failed to do so; and

k. they systemically misclassified the players to avoid paying statutory wages.

[92] Messrs. Berg and Pachis plead that the players were deprived and the Defendants were enriched by failing to pay the players wages in a manner that complied with the legislation and there is no juristic reason for the unjust enrichment.

[93] Messrs. Berg and Pachis plead that the Defendants are liable for waiver of tort because they receive hundreds of millions of dollars in revenue and by breach of contract, conspiracy, negligence and related use of the unlawful SPA, the Defendants have been unjustly enriched.

[94] Messrs. Berg and Pachis plead that for the causes of action of: (1) breach of contract, (2) breach of the duty of good faith, and (3) breach of the statutes of employment, the OHL is jointly and severally liable with each Club, on the basis that the OHL is a common/joint employer or forms a single employer with each and every Club and its players.

[95] Messrs. Berg and Pachis, on their own behalf and on behalf of the Class, claim against the Clubs, OHL and CHL for:

(a) an order certifying this action as a class proceeding and appointing them as the Representative Plaintiffs of the Class;

(b) a declaration that the players are, or were, employees of their Clubs;

(c) a declaration that there exists a contract of employment between each player and his Club;

(d) a declaration with respect to the Clubs located in Ontario that it is an implied or express term of all contracts of employment between a player and his Club that the players are or were to be paid wages, back pay, vacation pay, holiday pay and overtime pay in accordance with applicable employment standards legislation, and that the Clubs were to make employment payroll contributions as required by law;

(e) a declaration that the Clubs located in Ontario breached the contracts of employment by failing to pay the players wages, back pay, vacation pay, holiday pay and overtime pay in accordance with applicable employment standards legislation and by failing to make employment payroll contributions as required by law;

(f) a declaration that the terms and conditions of the SPA which contravene provisions of the applicable employment standards legislation which prohibit contracting out of employment standards are unenforceable and void;

(g) a declaration that the Clubs located in Ontario breached the contractual duties of honesty, good faith and fair dealing;

(h) a declaration that the Clubs, OHL and CHL engaged in a policy or practice of avoiding or disregarding compliance with the applicable employment standards legislation;

(i) A Declaration that the clubs, OHL and CHL conspired together and with each other to violate applicable employment standards legislation and to compel the players to enter into the SPA knowing that the SPA constituted an unlawful agreement in violation of applicable employment standards legislation, and therefore the Defendants are jointly and severally liable for all damages;

(j) in the alternative to the conspiracy plea, a declaration that the OHL, CHL and the Clubs located in Ontario were negligent;

(k) a declaration that the players who had played on teams located in Ontario may elect to recover damages jointly and severally from all such Defendants, the WHL, and the CHL based on the cause of action or remedy of waiver of tort;

(l) a declaration that the Defendant Clubs located in Ontario were unjustly enriched to the deprivation of the players without juristic reason;

(m) an order disgorging the profits that the Defendants generated as a result of benefitting from their unlawful conduct;

(n) an interim and final mandatory order for specific performance directing that the Clubs, OHL and CHL comply with applicable employment standards legislation, in particular to: (i) ensure that the players are properly classified as employees; (ii) advise players of their entitlement to compensation as employees in accordance with the applicable employment standards legislation; (iii) ensure that the players' hours of work are monitored and accurately recorded; (iv) ensure that the players are appropriately compensated at a rate equal to or above the minimum requirements for employees pursuant to the applicable employment standards legislation; (v) ensure that the Clubs make employer payroll contributions required by law including the *Canada Pension Plan*, R.S.C., 1985, c. C-8, the *Employment Insurance Act*, S.C. 1996, c. 23, the laws of Michigan and the laws of Pennsylvania;

(o) an interim and final order restraining the Defendants, their officers, directors, agents, and employees from engaging in any form of reprisal as a result of a Class Member electing to participate in this action, including in Ontario, breaching s. 74(1) of the *ESA* ....

(p) damages for outstanding wages including back pay, vacation pay, holiday pay, overtime pay, and applicable employer payroll contributions required by law in the amount of one hundred million dollars in Canadian currency and fifty million in U.S. currency;

(q) liquidated damages in the amount of 25% of wages outstanding from Erie

Hockey Club Limited and Jaw Hockey Enterprises LP, pursuant to the laws of Pennsylvania;

(r) liquidated damages in the amount of 100% of wages outstanding from Compuware Sports Corporation, IMS Hockey Corp., and Saginaw Hockey Club, LLC and a civil fine of $1,000 per Class Member employed by these Defendants;

(s) punitive damages in the amount of twenty-five million dollars in Canadian currency;

(t) an order directing the Defendants to preserve and disclose to the Plaintiffs all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;

(u) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(v) pre-judgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and

(w) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award under ss. 24 or 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*"), including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*; and

(x) such further and other relief as this Honourable Court deems just.

9. Avaricious Employer or Magnanimous Patron?

(a) Introduction

[96] The crucial and determinative element of Messrs. Berg's and Pachis' proposed class action is proving that the putative Class Members are employees of their teams and of the OHL, the CHL and the Clubs that together constitute a common employer. If the players are employees of the Defendants, then it becomes arguable that their employer has breached the employment statutes of Ontario, Michigan, and Pennsylvania.

[97] For the certification motion, the Plaintiffs spent a great deal of evidentiary effort attempting to prove the merits of their ultimate legal position that the facts proved that they were the exploited employees of a for-profit employer and profitable commercial enterprise in the sports entertainment business.

[98] In resisting the certification motion, the Defendants responded with an even more formidable effort to prove that the players were not employees but students with career aspirations to be professional athletes. Moreover, as noted above, in compiling the voluminous evidentiary record for the certification motion both sides appeared to be engaging in some sort of public relations effort or propaganda exercise to win adherents from the players and the public.

[99] A certification motion, however, is not designed or supposed to be a determination of the merits, so I cannot say anything about the merits. All I can say is that some of the evidence, however, was relevant to the procedural issues that are the subject matter of a certification motion. Therefore, in this section, I shall briefly describe what the parties had to say about the nature of the relationship between the players and the Defendants.

(b) Avaricious Employer

[100] Relying on the evidence of Dr. Mongeon and the affiants who had played in the OHL, Messrs. Berg and Pachis characterized the OHL as a commercial for-profit enterprise that exploited its employees.

[101] Dr. Mongeon concluded that OHL Clubs are profit-maximizing with the primary purpose of maintaining high-level competition to attract fans and generate revenues. Dr. Mongeon applied economic theories to the economic environment and business operations of the OHL and WHL, and he concluded that players confer an economic benefit to their team and to all Clubs because the players are an integral part of all the Clubs' businesses. He opined that all of the revenue sources for the OHL and its Clubs are dependent on the playing of hockey games, which in turn is dependent on the labour of the players. In his opinion, the Clubs produce an entertainment product (hockey games) and that Club and League revenues are a function of the contribution of players throughout the entire League. It is his thesis that ticket sales, concession and merchandise sales, advertising, and other revenues from the distribution and marketing of hockey games can only exist where there are hockey games occurring, and hockey games, likewise, only occur when the players provide their labour to play the games.

[102] Dr. Mongeon said that the systemic expansion and relocation of Clubs in a sports league was an indicator of profit-maximizing teams in the OHL. He said that the ticket-pricing strategy of the OHL and WHL was consistent with a profit-maximizing monopolist. He said that the competitive balance in the OHL and WHL indicated profit-maximizing behaviour. He said that estimated franchise values and the Clubs' annual rate of return were in keeping with profit-maximizing behaviour.

[103] Dr. Mongeon concluded that the players are not paid for their services because the Defendants operate in a monopoly market for the players' services. Players are unable to approach Clubs to sell their services to the highest bidder because one team controls their rights completely within the entire market. As such, the players do not have the opportunity to seek out alternative "employers" willing to pay for their services. He said that the Clubs retained the entire value of the players' services, which serves to increase the Clubs' retained earnings from revenue.

[104] It was Dr. Mongeon's opinion that, motivated by profit, Clubs inherently choose to expend time and effort to promote their most-skilled players, rather than expend the time and effort necessary to help less skilled players develop, which would result in poorer results for the team.

[105] The Plaintiffs' affiants deposed that during their time in the OHL, there was minimal individually focused or targeted coaching or feedback. The Plaintiffs submitted that the Clubs prioritizing their own interests over player development indicated that the Clubs benefited from the contributions of the players, and suggested that the players are not interns, trainees or apprentices, but employees. In this regard, the Plaintiffs relied on a Washington Department of

Labour investigation that concluded that CHL players do not fall under any intern/trainee exemption to employment status because the Clubs benefit from the contributions of the players and that the players are not student athletes because that term is reserved for players representing their high school or college, whereas CHL players provide their services to for-profit businesses.

[106] The Plaintiffs' affiants deposed that the players fear reprisal from the Defendants, and condemnation from the hockey community at large, for participation in this proposed class action.

(c) Magnanimous Patron

[107] The Defendants deny that they have an employment relationship with their players, and the Defendants portray themselves as patrons and benefactors of their players with the philosophy and mission of putting the players first.

[108] The Defendants submit that under the SPA, a team commits to providing a player with a multi-faceted development program that focuses on hockey training, education, and character development in a safe, caring and healthy environment that provides the support necessary for the player to maintain the educational opportunities of his choosing with career opportunities inside and outside of hockey.

[109] The Defendants submit that they care for the players, many of whom are 16 or 17 years old, and who live away from home. The League arranges for them to reside with a billet family, which is subject to background checks and which must provide a stable family environment, appropriate supervision and support, access to computers, and private bedrooms. The billet families monitor school attendance and performance, impose and enforce curfews, provide for organized social activities, and encourage participation in community activities on a voluntary basis. The teams pay the billets a monthly stipend to cover the cost of groceries and living expenses for the players. Billets are not required to spend any of their own money on the players.

[110] The Defendants say that the teams provide access to trainers, medical professionals and other rehabilitation resources as necessary to care for the players. Each team makes different arrangements to provide these resources. Some teams have trainers and medical professionals on staff. Others have relationships and arrangements with local healthcare professionals. The OHL also provides the National Anti-Doping Program, introduced by the CHL and the Canadian Centre for Ethics in Sport in 2008.

[111] The Defendants' affiants depose that many teams offer non-denominational spiritual support programs to players through Hockey Ministries International. The OHL runs a mental health education program jointly with the Canadian Mental Health Association called *Talk Today*. This program is designed for players, parents, billet families, and team staff to help identify and deal with mental health issues.

[112] The Defendants say that each OHL team covers all education costs of current players, tuition (including university or college level courses), books, tutoring costs, and in some cases, private school fees. The OHL has a Manager of Education Services who works with each team's academic advisor who is available all year round, including during the off-season and summer. The academic advisor acts as a liaison between the team, the player, his parents, and the schools. The academic advisor monitors the academic progress and behaviour of players and provides guidance, including career and academic counselling.

[113] The Defendants say that all players are expected to attend high school until graduation and upon graduation, players are encouraged to take post-secondary courses. Teams must report academic results to the OHL. In 2014-2015, the high school graduate rate among OHL players was 99.7%. (The national average in Canada is 82%.) Since 2008, OHL teams have provided 1,712 scholarships worth more than $11 million to former players to attend universities and colleges. During the 2014-2015 season, CHL teams paid $6.2 million in scholarships for 769 graduate players who attended 163 post-secondary institutions across North America.

[114] At minimum, a player is eligible for a one-year scholarship, which covers the cost of tuition, textbooks and compulsory fees, for each season played. Players selected in the first round of the OHL Priority Selection also receive university room and board, which, combined with the minimum scholarship benefits, is referred to as a "Full Ride" scholarship benefit. After having played for four years, players are eligible to receive four years of scholarship funding. Once a player earns his scholarship, it is fully guaranteed by the team and the OHL. There is a contingent liability of more than $30 million for scholarships earned but not yet used. After leaving the OHL, approximately 49% of players use their scholarships.

[115] The Defendants submit that the commitments made by the players under the SPA are substantially the same as amateur athletes typically make to their teams and that there is nothing unique about committing to play exclusively with one's team, agreeing to maintain one's physical health, and promising to abide by rules governing player conduct, safety and good sportsmanship. The Defendants say that the commitments were not established to demonstrate the League or team's control over the player and are an ordinary feature of organized competitive amateur athletics.

10. OHL Team Finances and the Consequence of Certification

[116] The Defendants submit that if the action is certified, a contingent liability of $30 million would immediately crystallize. They submit that the evidence shows that they could not fund this liability on top of existing operations costs without significantly reducing or eliminating benefits to players.

[117] The Defendants submit that they cannot afford to pay players minimum wage and employment benefits in addition to the benefits they already provide. They submit that each season, approximately one-third of OHL teams lose money. The losses range from approximately $100,000 to $800,000 per year. The Defendants say that a third of the teams break even each season and that only about one-third of the teams make any profit, but the financial results do not take into account the contingent liability for scholarships, which is approximately $1.5 million per team.

[118] The Defendants submit that if the action is certified, then all the OHL teams would reduce or eliminate benefits including the OHL Scholarship Program, the billeting program, tuition coverage, tutoring programs, and food and nutrition programs and some teams would be forced to cease operations reducing the pool of available hockey opportunities for young athletes.

[119] Mr. Branch stated that if the Ontario and Alberta actions are certified, the teams and the League will have to re-examine and reduce the benefits offered to players such as the scholarships that former players are currently using. He stated that certification could result in the loss of several teams that would fold up operations.

[120] Mrs. Burke, the owner of the Niagara IceDogs, stated that, if her team is required to pay its players minimum wage, the consequences would be catastrophic for the team, and would cause the entire community significant harm.

[121] Mr. Abbott, owner of the North Bay Battalion, stated that his team would likely shut down if he is required to pay minimum wage, and the entire community would suffer.

11. The Application of U.S. Law

[122] The parties agree that U.S. law will govern any employment relationship between the U.S. teams and their players.

[123] The parties strenuously disagree about whether a U.S. court would enforce an Ontario judgment in the case at bar. Mr. Dunn, the Defendants' expert in U.S. law, deposed that it was unlikely that a U.S. court would recognize a class action judgment of a Canadian court in one of the class actions at issue here.

[124] Mr. Dunn opined that in the U.S., wage and hour law is a matter of overlapping authority. The U.S. Congress is responsible for the *Fair Labor Standards Act of 1938*, (*FLSA*), and state legislatures regulate local employment law. When federal and state wage and hour laws have different requirements, the law that is the most favorable to the employee controls. Each statute has its own criteria for what constitutes an employee. States also have their own administrative institutions to regulate and administer their wage and hours of employment regimes. Federal courts, including the Supreme Court of the United States, are bound by the rulings of a state's highest court as to that state's laws.

[125] At the state level, the *Michigan Workforce Opportunity Wage Act*, Mich. Comp. Laws § 408.411 et seq. (2014) and *Pennsylvania Minimum Wage Act,* 43 Pa. Cons. Stat. § 331.101 et seq. (2014), provide basic protections to all employees in the state.

[126] Mr. Hancock, the Plaintiffs' expert, deposed, and Mr. Dunn acknowledged, that most circuits of the U.S. Federal Court and the Michigan and Pennsylvania State Courts employ a six-part Economic Realities Test to determine whether a worker is an employee or an independent contractor under wage and hour legislation. These six factors are: (1) the permanence of the working relationship; (2) the degree of skill the work entails; (3) the extent of the worker's investment in equipment or materials; (4) the worker's opportunity for loss or profit; (5) the degree of the alleged employer's control over the worker; and (6) whether the service rendered by the worker is an integral part of the alleged employer's business.

[127] Mr. Dunn opined that whether under the *FLSA* or the laws of Michigan or Pennsylvania, the law as to whether amateur athletes are employees is unsettled.

[128] Mr. Hancock opined that the OHL's players would be found to be employees under state law because of: the level of control exercised over the players by the Clubs; the history of payment of player wages; the Clubs' and Leagues' right to discipline players; the Clubs being for-profit institutions; the OHL not being able to exist without the players, and the OHL and the Clubs not being connected to any educational institution.

[129] Under the *FLSA* several categories of workers, including independent contractors, volunteers, interns, trainees, and employees of seasonal recreational establishments, are excluded from and are not subject to the statutory minimum wage and overtime compensation provisions.

[130] Mr. Dunn and the Plaintiffs' expert Mr. Hancock agree that the test for determining whether an individual is an employee and, if so, what activities constitute covered employment under the *FLSA*, are unsettled. There are no reported cases or regulations that address the employment status of hockey players, directly or indirectly, nor are there reported cases or regulations about the extent to which athletic activities are compensable work under the *FLSA*.

[131] Mr. Dunn deposed that although thousands of students compete on many hundreds of teams for secondary schools and post-secondary institutions throughout the U.S., none has been determined to be an employee, or engaged in employment for the purposes of any federal or state wage and hour law.

[132] There are also hundreds of amateur leagues, teams and structured athletic training programs in the U.S. for teenage athletes. Many involve high levels of competition, and sophisticated and advanced training, and Mr. Dunn testified that there has been no adjudication, and no legislative or administrative determination that any player is an employee covered by the *FLSA* or by state wage and hour law.

[133] Mr. Hancock conceded no court anywhere in the U.S. has held that an employment relationship exists between an athlete and a team.

[134] Mr. Dunn deposed that there is no direct precedent or analogous authority to determine the employment status of OHL players under Michigan State's *Workforce Opportunity Wage Act*, Mich. Comp. Laws §§ 408.411-408.424 ("*WOWA*"), which governs minimum wage and overtime requirements. He said that no Michigan court has considered whether an individual athlete playing in any particular league, team or training program, or any intern or trainee is an employee such that his or her activities constituted work entitling him or her to minimum wage and overtime pay.

[135] Mr. Dunn deposed that in Pennsylvania, the Department of Labor and Industry oversees and enforces the *Minimum Wage Act of 1968*, 43 Pa. Stat. §§ 333.101-333, 115, which governs the mandated minimum wage and overtime pay rates and, once again, there is no case law considering whether an whether an individual athlete playing in any particular league, team or training program, or any intern or trainee, was an employee such that his or her activities constituted covered work, entitling him or her to minimum wage and overtime pay.

D. Discussion and Analysis

1. The General Principles for Certification

[136] The court is required to certify an action as a class proceeding where the following five-part test in s. 5 of the *Class Proceedings Act, 1992* is met: (1) the pleadings disclose a cause of action; (2) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (3) the claims of the class members raise common issues; (4) a class proceeding would be the preferable procedure for the resolution of the common issues; and (5) there is a representative plaintiff who: (a) would fairly and adequately represent the interests of the class; (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding; and (c) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[137] For an action to be certified as a class proceeding, there must be a cause of action shared

by an identifiable class from which common issues arise that can be resolved in a fair, efficient, and manageable way that will advance the proceeding and achieve access to justice, judicial economy, and the modification of behaviour of wrongdoers: *Sauer v. Canada (Attorney General)*, [2008] O.J. No. 3419 (S.C.J.) at para. 14, leave to appeal to Div. Ct. refused, [2009] O.J. No. 402 (Div. Ct.).

[138] On a certification motion, the question is not whether the plaintiff's claims are likely to succeed on the merits, but whether the claims can appropriately be prosecuted as a class proceeding: *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158 at para. 16.

[139] The test for certification is to be applied in a purposive and generous manner, to give effect to the important goals of class actions -- providing access to justice for litigants; promoting the efficient use of judicial resources; and sanctioning wrongdoers to encourage behaviour modification: *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534 at paras. 26 to 29; *Hollick v. Toronto (City)*, *supra* at paras. 15 and 16.

[140] The purpose of a certification motion is to determine how the litigation is to proceed and not to address the merits of the plaintiff's claim; there is to be no preliminary review of the merits of the claim: *Hollick v. Toronto (City)*, *supra* at paras. 28 and 29. However, the plaintiff must show "some-basis-in-fact" for each of the certification criteria other than the requirement that the pleadings disclose a cause of action: *Hollick v. Toronto (City)*, *supra* at paras. 16-26.

[141] In particular, there must be a basis in the evidence before the court to establish the existence of common issues: *Dumoulin v. Ontario*, [2005] O.J. No. 3961 (S.C.J.) at para. 25; *Fresco v. Canadian Imperial Bank of Commerce*, [2009] O.J. No. 2531 (S.C.J.) at para. 21; *Singer v. Schering-Plough Canada Inc.*, 2010 ONSC 42 at para. 140. To establish commonality, evidence that the alleged misconduct actually occurred is not required; rather, the necessary evidence goes only to establishing whether the questions are common to all the class members: *Pro-Sys Consultants v. Microsoft*, 2013 SCC 57 at para. 110.

2. Cause of Action Criterion

(a) General Principles

[142] The first criterion for certification is that the plaintiff's pleading discloses a cause of action. The "plain and obvious" test for disclosing a cause of action from *Hunt v. Carey Canada*, [1990] 2 S.C.R. 959 is used to determine whether a proposed class proceeding discloses a cause of action for the purposes of s. 5(1)(a) of the *Class Proceedings Act, 1992*.

[143] Thus, to satisfy the first criterion for certification, a claim will be satisfactory, unless it has a radical defect or it is plain and obvious that it could not succeed: *Anderson v. Wilson* (1999), 44 O.R. (3d) 673 (C.A.) at p. 679, leave to appeal to S.C.C. ref'd, [1999] S.C.C.A. No. 476; *176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada Ltd.* (2002), 62 O.R. (3d) 535 (S.C.J.) at para. 19, leave to appeal granted, 64 O.R. (3d) 42 (S.C.J.), aff'd (2004), 70 O.R. (3d) 182 (Div. Ct.).

[144] In a proposed class proceeding, in determining whether the pleading discloses a cause of action, no evidence is admissible, and the material facts pleaded are accepted as true, unless patently ridiculous or incapable of proof. The pleading is read generously and it will be unsatisfactory only if it is plain, obvious, and beyond a reasonable doubt that the plaintiff cannot succeed: *Hollick v. Toronto (City)*, *supra* at para. 25; *Cloud v. Canada (Attorney General)*

(2004), 73 O.R. (3d) 401 (C.A.) at para. 41, leave to appeal to the S.C.C. refused, [2005] S.C.C.A. No. 50, rev'g, (2003), 65 O.R. (3d) 492 (Div. Ct.); *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (3d) 453 (Div. Ct.) at p. 469.

(b) Is the Cause of Action Criterion Satisfied?

[145] Messrs. Berg and Pachis advance six causes of action; namely: (1) breach of statute; (2) breach of contract; (3) breach of duty of honesty, good faith and fair dealing; (4) negligence; (5) conspiracy; and (6) unjust enrichment and waiver of tort.

[146] I pause here to say, it is debatable that waiver of tort, which is coupled with unjust enrichment, is correctly classified as a cause of action, but for present purposes I shall treat it as a cause of action, and I also note that insofar as it provides restitutionary relief, waiver of tort is redundant to the Plaintiffs' unjust enrichment claim, which does provide the remedies of constructive trust and the disgorgement of ill-gotten gains.

[147] The Plaintiffs identify, in the Statement of Claim and in the proposed common issues, the causes of action that apply to all Defendants. The causes of action common to all Defendants are: (1) conspiracy, and (2) common employer and breach of statute, although different statutes are involved for the Ontario teams and for the teams of Michigan and Pennsylvania respectively. The action for statutory wages in Michigan and Pennsylvania is a direct action on the statute, whereas in Ontario it also forms an implied term of the contract of employment.

[148] The causes of action for negligence, unjust enrichment, waiver of tort, as well as the standalone contractual breach of the duty of good faith, are not being advanced against the Defendants domiciled in the States. These causes of action are being advanced only against the Ontario teams.

[149] As noted at the outset, save for the pleading of conspiracy, which they regard as deficiently pleaded, the Defendants do not dispute that Messrs. Berg and Pachis have satisfied the cause of action criterion for certification; i.e., it is conceded that the Plaintiffs have pleaded legally tenable causes of action.

[150] I, therefore, conclude that the cause of action criterion has been satisfied for all six of the Plaintiffs' pleaded causes of action.

[151] I, however, foreshadow to say that based on other certification criteria, most particularly the preferable procedure criterion, I shall not be certifying the action as against the American teams and I shall not be certifying the causes of action for: (1) breach of contract, (2) negligence, (3) breach of duty of honesty, good faith and fair dealing, (4) conspiracy, and (5) waiver of tort.

3. Identifiable Class Criterion

(a) General Principles

[152] The definition of an identifiable class serves three purposes: (1) it identifies the persons who have a potential claim against the defendant; (2) it defines the parameters of the lawsuit so as to identify those persons bound by the result of the action; and (3) it describes who is entitled to notice: *Bywater v. Toronto Transit Commission*, [1998] O.J. No. 4913 (Gen. Div.).

[153] In defining class membership, there must be a rational relationship between the class, the

causes of action, and the common issues, and the class must not be unnecessarily broad or over-inclusive: *Pearson v. Inco Ltd.* (2006), 78 O.R. (3d) 641 (C.A.) at para. 57, rev'g [2004] O.J. No. 317 (Div. Ct.), which had aff'd [2002] O.J. No. 2764 (S.C.J.).

(b) Is the Identifiable Class Criterion Satisfied?

[154] As already noted several times, I shall not be certifying the action as against the American teams, and this means that the class definition should be amended to exclude the Michigan Class and the Pennsylvania Class.

[155] I agree with the Defendants' argument that a class definition must specify an end date for class membership. An open-ended class definition is potentially improper because it would deny class members their right to opt-out and, in general, it also makes for an unmanageable proceeding. See *Magill v. Expedia Inc.*, 2010 ONSC 5247 at para. 32; *Re Collections Inc. v. Toronto Dominion Bank*, 2010 ONSC 6560.

[156] The Plaintiffs, however, submit that it would be arbitrary and unjust to have what would be an under-inclusive and under-efficient class by having a class period that closes on the date of certification, and they propose that the class membership should remain open until the last notice of certification is issued, and that notices of certification should be given on a running basis, i.e., on two or more occasions after the order certifying the action as a class proceeding. This approach, the Plaintiffs say, would achieve an appropriately inclusive class, maximize judicial economy, and preserve the Class Members' right to opt out.

[157] The Plaintiffs rely on Justice Horkins' decision in *Wright v. United Parcel Service Canada Ltd.*, 2011 ONSC 5044, where she rejected the defendant's argument that the class period must end when the action is commenced, rather than at the date of the certification award, which is the date that Justice Horkins used (and that I will use in the case at bar).

[158] The approach of an open-ended or rolling period of class membership may be appropriate where there is a certainty that the predicament of the new class members is common with those Class Members at the time of certification. I permitted this approach in *Brazeau v. Attorney General (Canada)*, 2016 ONSC 7836 and in *Alexander v. Ontario*, 2016 ONSC 7059, but these were consent certifications and the point was not argued.

[159] The matter of an open-ended class period was very briefly discussed in *Bozsik v. Livingston International Inc.*, 2016 ONSC 7168 and 2017 ONSC 1409, an overtime pay class action, where Justice Gray stated at paras. 4-6:

> 4. With respect to a cut-off date, the caselaw, such as it is, is inconsistent as to whether the date should be the date of certification, or the date notice is given to the class members, or some other date. It is not clear that matters of principle have been debated at any length in the cases that have been drawn to my attention.
>
> 5. I see no reason why the date notice as given should not be the appropriate cut-off date. That date is approximately five months after the date of certification. I assume that there will not be an extraordinarily large number of additional potential members of the class that will have been added since the date of certification.
>
> 6. Counsel for the defendant argues that there is no evidence that the terms and

> conditions of employment of any persons hired since the date of certification are the same as, or different from, the terms and conditions of employment in existence prior to the date of certification. Assuming that to be so, I do not think it is a relevant consideration for the purposes of identifying a specific cut-off date. If it is the defendant's position that the terms and conditions of employment, as they relate to overtime, are significantly different for persons hired after the date of certification, this is an issue that can be raised and dealt with by the trial judge. At this point, however, I see no reason why persons who were hired within that somewhat short window should not at least be given notice that their rights may be affected, and be given the opportunity to remain within the class at this stage, or opt out.

[160] In my opinion, where the circumstances of additional putative class members may be different, it may not be appropriate to have a rolling class period end date. Apart from the management and administration difficulties of the approach of an open-ended class period, the approach ignores the fundamental problem that there has been no adjudication to determine whether the circumstances of the new class members, (who in the case at bar, at the time of the original certification motion, were not even playing hockey for OHL Clubs), are such that the criteria for certification continue to be satisfied for them. Who's to say that the evidentiary record has not changed between the date of certification and the next notice of certification? And, commonality is not a matter to be proven at the common issues trial.

[161] I note here that in other circumstances where representative plaintiffs seek to increase class size, which sometimes occurs as part of the settlement of an already certified class action, it is necessary to determine that the criterion for certification are satisfied, and this typically occurs as a part of a consent certification for settlement purposes. The point is that the class size usually cannot be altered without a certification motion.

[162] I, therefore, shall amend the class definition to add a class closing date as of the date of the certification motion. This amendment is made without prejudice to the definition being amended from time to time by a new motion to certify, which, if granted, would be followed by a notice program.

[163] I shall also amend the definition to account for the fact that I shall not be certifying the claims against the Michigan and Pennsylvania Defendants.

[164] The resulting class definition is as follows:

> All players who are members of a team owned and/or operated by one or more of the clubs located in the Province of Ontario (a "team") or at some point commencing October 17, 2012 and [*date of certification order*], who were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2012 (the "Ontario Class")

[165] I conclude that the identifiable class criterion has been satisfied.

4. Common Issues Criterion

(a) General Principles

[166] The third criterion for certification is the common issues criterion. For an issue to be a

common issue, it must be a substantial ingredient of each class member's claim and its resolution must be necessary to the resolution of each class member's claim: *Hollick v. Toronto (City), supra* at para. 18.

[167] With regard to the common issues, success for one member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent. The answer to a question raised by a common issue for the plaintiff must be capable of extrapolation, in the same manner, to each member of the class. See: *Western Canadian Shopping Centres Inc. v. Dutton, supra* at para. 40; *Merck Frosst Canada Ltd. v. Wuttunee*, 2009 SKCA 43 at paras. 145-46 and 160, leave to appeal to S.C.C. refused, [2008] S.C.C.A. No. 512; *McCracken v. Canadian National Railway Co.*, 2012 ONCA 445 at para. 183.

[168] In *Pro-Sys Consultants v. Microsoft, supra* at para. 106, the Supreme Court of Canada describes the commonality requirement as the central notion of a class proceeding which is that individuals who have litigation concerns in common ought to be able to resolve those common concerns in one central proceeding rather than through an inefficient multitude of repetitive proceedings.

[169] The common issue criterion presents a low bar: *Carom v. Bre-X Minerals Ltd.* (2000), 51 O.R. (3d) 236 (C.A.) at para. 42; *Cloud v. Canada (Attorney General), supra,* at para. 52; *203874 Ontario Ltd. v. Quiznos Canada Restaurant Corp.*, [2009] O.J. No. 1874 (Div. Ct.), aff'd [2010] O.J. No. 2683 (C.A.), leave to appeal to S.C.C. refused [2010] S.C.C.A. No. 348.

[170] An issue can be a common issue even if it makes up a very limited aspect of the liability question and even though many individual issues remain to be decided after its resolution: *Cloud v. Canada (Attorney General), supra.* A common issue need not dispose of the litigation; it is sufficient if it is an issue of fact or law common to all claims and its resolution will advance the litigation for (or against) the class: *Harrington v. Dow Corning Corp.*, 2000 BCCA 605, affg. [1996] B.C.J. No. 734 (S.C.), leave to appeal to S.C.C. ref'd. [2001] S.C.C.A. No. 21.

[171] In the context of the common issues criterion, the some-basis-in-fact standard involves a two-step requirement that: (1) the proposed common issue actually exists; and (2) the proposed issue can be answered in common across the entire class: *Hollick v. Toronto (City), supra*; *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443; *McCracken v. Canadian National Railway Company, supra*; *Williams v. Canon Canada Inc., supra*; *Martin v. Astrazeneca Pharmaceuticals PLC*, 2012 ONSC 2744; *Good v. Toronto Police Services Board*, 2014 ONSC 4583 (Div. Ct.); *Dine v. Biomet*, 2015 ONSC 7050, aff'd 2016 ONSC 4039 (Div. Ct.).

(b) The Proposed Common Issues

[172] Messrs. Berg and Pachis propose the following common issues:

Employment Status

1. Are, or were, the Class Members employees of the Defendant Clubs, the OHL, and/or the CHL pursuant to (a) the applicable employment standards legislation and/or (b) at common law?

2. Are, or were, the Class Members who played for the Defendant Clubs located in Ontario in "pensionable employment" of the Defendant Clubs located in Ontario, the OHL, and/or the CHL, pursuant to the *Canada Pension Plan*?

3. Are, or were, the Class Members who played for the Defendant Clubs located in Ontario in "insurable employment" of the Defendant Clubs located in Ontario, the OHL, and/or the CHL, pursuant to the *Employment Insurance Act*?

Common Employer

4. Are the Defendant Clubs, the OHL, and/or the CHL a common employer, either under statute or at common law?

Statutory Requirements

5. Do any or all of the Defendant Clubs, the OHL, and/or the CHL have an obligation to the Class Members under the applicable employment standards legislation to pay them minimum wage, overtime pay, holiday pay and/or vacation pay?

Breach of Contract

6. Are the minimum wage, overtime pay, holiday pay, and/or vacation pay requirements under the applicable employment standards legislation in Ontario express or implied terms of contract between the Ontario Class Members and any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL?

7. Did any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL breach any of the contractual obligations found to exist above?

Breach of Statute

8. Did any or all of the Defendants breach the applicable employment standards legislation by failing to pay the Class Members minimum wage, overtime pay, holiday pay and/or vacation pay?

Negligence

9. Did any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL owe a duty of care to the Ontario Class Members to:

a. Ensure that Class Members are properly classified as employees;

b. Advise Class Members of their entitlements under the applicable employment standards legislation;

c. Ensure that Class Members' hours of work are monitored and accurately recorded; and

d. Ensure that Class Members are compensated in accordance with their entitlements under the applicable employment standards legislation?

10. Did any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL breach any of the duties of care found to exist above?

Breach of Duty of Honesty, Good Faith and Fair Dealing

11. Did any or all of the Defendant Clubs located in Ontario, the OHL and/or the CHL owe a duty, in contract or otherwise, to the Ontario Class Members, to act in good faith and to deal with them in a manner characterized by candour, reasonableness, honest and/or forthrightness in respect of its obligations to:

a. Ensure that Class Members are properly classified as employees;

b. Advise Class Members of their entitlements under the applicable employment standards legislation;

c. Ensure that Class Members' hours of work are monitored and accurately recorded; and

d. Ensure that Class Members are compensated in accordance with their entitlements under the applicable employment standards legislation?

12. Did any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL breach their good faith duties in any of the respects found to exist above?

Conspiracy

13. Did any or all of the Defendants conspire to violate the applicable employment standards legislation? If so, when, where, and how?

Unjust Enrichment/Waiver of Tort

14. Were any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL unjustly enriched by failing to compensate the Ontario Class Members with minimum wage, overtime pay, vacation pay, and/or holiday pay owed to them in accordance with the applicable employment atandards legislation and/or failing to make the required employer payroll contributions on behalf of the Class Members?

15. Are any or all of the Defendants located in Ontario, the OHL, and/or the CHL liable to the Ontario Class Members in waiver of tort?

Damages, Costs and Interest

16. Is this an appropriate case for any or all of the Defendants located in Ontario to disgorge profits?

17. Can any or all of the claims be assessed on an aggregate basis?

18. Are any or all the Defendants liable for punitive damages?

19. Are the Defendant Clubs located in Pennsylvania, the OHL and/or the CHL liable for liquidated damages in the amount of 25% of all outstanding wages owed to the Pennsylvania Class Members, pursuant to Pa. Cons. Stat. §260.10, as amended?

20. Are the Defendant Clubs located in Michigan, the OHL and/or the CHL liable for liquidated damages in the amount of 100% of all outstanding wages owed to the Michigan Class Members, and a civil fine of $1,000 per Michigan Class Member, pursuant to Mich. Stat. §408, as amended and the regulations thereunder and/or *Fair Labor Standards Act of 1938*, 29 U.S.C. §201 and the regulations thereunder?

21. Should the Defendants pay prejudgment and postjudgment interest, and, if so, at what annual interest rate?

22. Should the Defendants pay the costs of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If yes, who should pay what costs, why, and in what amount?

(c) Is the Common Issues Criterion Satisfied?

[173] Save for a submission that the claims for: (1) breach of duty of honesty, good faith and fair dealing; (2) negligence; (3) conspiracy; and (4) unjust enrichment and waiver of tort should not be certified, because they add nothing but unnecessary complexity to the proceedings, the Defendants do not challenge the proposed common issues.

[174] As now noted several times, I shall not be certifying the claims for: (1) breach of contract, (2) negligence, (3) breach of duty of honesty, good faith and fair dealing, (4) conspiracy, and (5) waiver of tort, and I shall not certify the action as against the American teams. The common issues need to be amended accordingly.

[175] The resulting common issues that shall be certified are as follows:

Employment Status

1. Are, or were, the Class Members employees of the Defendant Clubs, the OHL, and/or the CHL pursuant to (a) the *Employment Standards Act, 2000*, and/or (b) at common law?

2. Are, or were, the Class Members who played for the Defendant Clubs located in Ontario in "pensionable employment" of the Defendant Clubs located in Ontario, the OHL, and/or the CHL, pursuant to the *Canada Pension Plan*?

3. Are, or were, the Class Members who played for the Defendant Clubs located in Ontario in "insurable employment" of the Defendant Clubs located in Ontario, the OHL, and/or the CHL, pursuant to the *Employment Insurance Act*?

Common Employer

4. Are the Defendant Clubs, the OHL, and/or the CHL a common employer, either under statute or at common law?

Statutory Requirements

5. Do any or all of the Defendant Clubs, the OHL, and/or the CHL have an obligation to the Class Members under the *Employment Standards Act, 2000* to

pay them minimum wage, overtime pay, holiday pay and/or vacation pay?

Unjust Enrichment

6. Were any or all of the Defendant Clubs located in Ontario, the OHL, and/or the CHL unjustly enriched by failing to compensate the Ontario Class Members with minimum wage, overtime pay, vacation pay, and/or holiday pay owed to them in accordance with the *Employment Standards Act, 2000* and/or failing to make the required employer payroll contributions on behalf of the Class Members?

Damages, Costs and Interest

7. Is this an appropriate case for any or all of the Defendants located in Ontario to disgorge profits?

8. Can any or all of the claims be assessed on an aggregate basis?

9. Are any or all the Defendants liable for punitive damages?

10. Should the Defendants pay prejudgment and postjudgment interest, and, if so, at what annual interest rate?

11. Should the Defendants pay the costs of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If yes, who should pay what costs, why, and in what amount?

[176] I conclude that the Plaintiffs have satisfied the common issues criterion.

5. Preferable Procedure Criterion

(a) General Principles

[177] The fourth criterion is the preferable procedure criterion. Preferability captures the ideas of: (a) whether a class proceeding would be an appropriate method of advancing the claims of the class members; and (b) whether a class proceeding would be better than other methods such as joinder, test cases, consolidation, and any other means of resolving the dispute: *Markson v. MBNA Canada Bank* (2007), 85 O.R. (3d) 321 (C.A.) at para. 69, leave to appeal to S.C.C. ref'd, [2007] S.C.C.A. No. 346; *Hollick v. Toronto (City), supra.*

[178] Relevant to the preferable procedure analysis are the factors listed in s. 6 of the *Class Proceedings Act, 1992*, which states:

> 6. The court shall not refuse to certify a proceeding as a class proceeding solely on any of the following grounds:
>
> > 1. The relief claimed includes a claim for damages that would require individual assessment after determination of the common issues.
> >
> > 2. The relief claimed relates to separate contracts involving different Class Members.
> >
> > 3. Different remedies are sought for different Class Members.

4. The number of Class Members or the identity of each Class Member is not known.

5. The class includes a subclass whose members have claims or defences that raise common issues not shared by all Class Members.

[179] For a class proceeding to be the preferable procedure for the resolution of the claims of a given class, it must represent a fair, efficient, and manageable procedure that is preferable to any alternative method of resolving the claims: *Cloud v. Canada (Attorney General) supra* at paras. 73-75, leave to appeal to S.C.C. ref'd, [2005] S.C.C.A. No. 50.

[180] Whether a class proceeding is the preferable procedure is judged by reference to the purposes of access to justice, behaviour modification, and judicial economy and by taking into account the importance of the common issues to the claims as a whole, including the individual issues: *Markson v. MBNA Canada Bank, supra* at para. 69, leave to appeal to S.C.C. ref'd, [2007] S.C.C.A. No. 346; *Hollick v. Toronto (City), supra.*

[181] In considering the preferable procedure criterion, the court should consider: (a) the nature of the proposed common issue(s); (b) the individual issues which would remain after determination of the common issue(s); (c) the factors listed in the *Act*; (d) the complexity and manageability of the proposed action as a whole; (e) alternative procedures for dealing with the claims asserted; (f) the extent to which certification furthers the objectives underlying the *Act*; and (g) the rights of the plaintiff(s) and defendant(s): *Chadha v. Bayer Inc.* (2003), 63 O.R. (3d) 22 (C.A.)

[182] The court must identify alternatives to the proposed class proceeding: *AIC Limited v. Fischer* 2013 SCC 69 at para. 35; *Hollick v. Toronto (City), supra* at para. 28. The proposed representative plaintiff bears the onus of showing that there is some-basis-in-fact that a class proceeding would be preferable to any other reasonably available means of resolving the class members' claims, but if the defendant relies on a specific non-litigation alternative, the defendant has the evidentiary burden of raising the non-litigation alternative: *AIC Limited v. Fischer, supra* at paras. 48-49.

[183] In *AIC Limited v. Fischer, supra* at paras. 24-38, the Supreme Court of Canada reiterated that the preferability analysis must be conducted through the lens of judicial economy, behaviour modification, and access to justice. Justice Cromwell for the Court stated that access to justice has both a procedural and substantive dimension. The procedural aspect focuses on whether the claimants have a fair process to resolve their claims. The substantive aspect focuses on the results to be obtained and is concerned with whether the claimants will receive a just and effective remedy for their claims if established.

[184] In *AIC Limited v. Fischer,* Justice Cromwell pointed out that when considering alternatives to a class action, the question is whether the alternative has potential to provide effective redress for the substance of the plaintiff's claims and to do so in a manner that accords suitable procedural rights. He said that there are five questions to be answered when considering whether alternatives to a class action will achieve access to justice: (1) Are there economic, psychological, social, or procedural barriers to access to justice in the case?; (2) What is the potential of the class proceeding to address those barriers?; (3) What are the alternatives to class proceedings?; (4) To what extent do the alternatives address the relevant barriers?; and (5) How do the two proceedings compare?

[185] In considering the preferable procedure criterion, one should consider the type or genre of class action, because in terms of access to justice, the needs of plaintiffs suffering personal injuries are different than the needs of plaintiffs suffering a purely economic loss, and the needs of those suffering economic losses are different depending upon whether the loss is a deprivation or a missed expected financial gain.

[186] The type of remedy being sought be it declaratory, compensatory, or restitutionary may also make a difference to whether a class proceeding is the preferable procedure for the resolution of the class members' claims. Providing injured parties with access to justice cannot be divorced from ensuring that the ultimate remedy provides substantive justice where warranted: *AIC Limited v. Fischer*, *supra*, at para. 24; F. Iacobucci, "What Is Access to Justice in the Context of Class Actions?" in J. Kalajdzic, ed., *Accessing Justice: Appraising Class Actions Ten Years After Dutton, Hollick & Rumley* (2011), 17 at p. 20.

[187] And one should now add to the preferable procedure factors the factor of the relationship between access to justice, which is the preeminent concern of class proceedings, and proportionality in civil procedures. The importance of proportionality to access to justice was recently expressed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 1-2, 27, where the Court stated:

> Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. …
>
> Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.
>
> There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. A proper balance requires simplified and proportionate procedures for adjudication, and impacts the role of counsel and judges. This balance must recognize that a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial.

[188] The proportionality analysis, which addresses how much procedure a litigant actually needs to obtain access to justice, fits nicely with the part of the preferable procedure analysis that considers whether the claimants will receive a just and effective remedy for their claims.

(b) The Redundancy of the Causes of Action

[189] As foreshadowed above, I shall not certify the causes of action for: (1) breach of contract, (2) negligence, (3) breach of duty of honesty, good faith and fair dealing, (4) conspiracy, and (5)

waiver of tort. In this section of my Reasons for Decision, I shall explain why these causes of action, which satisfy the cause of action criterion, do not satisfy the preferable procedure criterion.

[190] I begin this discussion by pointing out the obvious that Messrs. Berg's and Pachis' action cruces on resolving a single profound question that apparently has not been answered in Canada or in the United States. The question is: When do amateur athletes become employees of their teams and subject to various employment standards statutes? Messrs. Berg's and Pachis' factums repeatedly emphasize that the core common issue in this action is whether the players are employees of the defendant businesses and, therefore, whether the businesses are obligated to provide players with the minimum protections afforded under employment standards legislation.

[191] This critical question in this proposed class action about the relationship between the owners of a team and the team members is a profound question. There is a continuum of types of team ownerships ranging from sponsors of lower tier teams who earn no revenue from their sponsorships to owners of professional teams and proprietors of university teams who make a great deal of money from their athletes. Some owners of amateur hockey teams are municipalities. It seems that for professional athletes, who are represented by unions and agents, the relationship between team owners and players has been categorized as an employment relationship, and there is some case law like the *Tonelli* case that has characterized the relationship between an amateur athlete and his team as an employment relationship; however, in the cases involving amateurs, the point was rather assumed and not argued because the athlete appeared to be paid for his work. However, for owners of lower tier amateur teams, including school teams, it seems to be assumed that there is no master and servant relationship or dependent contractor or independent contractor relationship between the team owner and the members of the team.

[192] On a continuum of relationships, the precise nature of the relationship between owner and team member is, from a legal point of view, unclear. The nature of when work becomes employment is also unclear. Students do school work and homework under the control of teachers but are not employees. Judges are paid a salary but are not employees There is little doubt that the players of the OHL work very hard, but are they employees?

[193] It is something to ponder that Ontario's *Employment Standards Act* has an inclusive definition of employee, but sections 1(1) and 3 of the *Act* and Ont. Reg. 285/01 (Exemptions, Special Rules and Establishment of Minimum Wage) also includes a very-very long list of persons that are exempt from the *Act*. (These provisions of the *Act* are set out in Schedule "B" to these Reasons for Decision.) There are also discrete regulations under the Act for different types of workers in defined industries; visualize temporary help industry, automobile manufacturing, automobile parts manufacturing, automobile parts warehousing and automobile marshalling, ambulance services, public transit services, live performances, trade shows and conventions, mineral exploration and mining, women's coat and suit industry, women's dress and sportswear industry, and building service providers.

[194] Questions abound. Why all the exemptions in the statute? Why all the special treatment for different types of worker? Do student amateur athletes have a unique classification? Are the members of an Olympic team employees of the nation's team? Are the members of a university football or basketball team or track team that sells tickets to its games or events, or that sells broadcast rights, employees of the university? Are Junior A players employees who receive benefits from their team employees but their pay-as-you-go teammates something else? Are

Major Junior A players employees subject to the *Employment Standards Act, 2000,* the *Workforce Opportunity Wage Act*, the *Minimum Wage Act of 1968*, and the *Fair Labor Standards Act of 1938*? Is the qualification for employment status the same under Ontario's *Employment Standards Act, 2000,* Michigan's *Workforce Opportunity Wage Act*, Pennsylvania's *Minimum Wage Act of 1968*, and the United States federal government's *Fair Labor Standards Act of 1938*?

[195] In the immediate case, the Plaintiffs bring six causes of action to answer the one critical question and the Defendants concede that the Plaintiffs have properly pleaded their causes of action with the possible exception of conspiracy. However, the Defendants submit that the causes of action for conspiracy, negligence, breach of honest performance, unjust enrichment, and waiver of tort are redundant and add unnecessary and burdensome complexity to the claim that the Class Members are employees under an employment contract or under the applicable employment standards legislation.

[196] I agree with the Defendants' submission. In considering the preferable procedure criterion, the court should consider the rights of the plaintiffs and defendants, the extent to which certification furthers the objectives underlying the *Act,* whether the claimants will receive a just and effective remedy for their claims, the relationship between proportionality and access to justice, and the complexity and manageability of the proposed action as a whole. Based on these considerations, I conclude that the (1) breach of contract, (2) negligence, (3) breach of duty of honesty, good faith and fair dealing, (4) conspiracy, and (5) waiver of tort causes of action do not satisfy the preferable procedure criterion.

[197] I agree with the Defendants' assertion that the negligence, breach of duty of honesty, good faith and fair dealing, conspiracy, and waiver of tort causes of action are redundant, and I add the breach of contract claim to the list of redundancies.

[198] In this proposed class action, if the Plaintiffs prove that as a common employer the Defendants breached the various employment standards statutes, then they will succeed on their breach of statute claim and on their unjust enrichment claim and there would be no need to prove breach of contract, negligence, breach of duty of honesty, good faith and fair dealing, conspiracy, and waiver of tort.

[199] Conversely, if the Plaintiffs fail to prove that the Defendants breached the various employment standards statutes, they will not be able to snatch victory from the jaws of defeat by proving breach of contract, negligence, breach of duty of honesty, good faith and fair dealing, conspiracy, or waiver of tort, because all of these claims will necessarily fail with the failure of the breach of statute claim.

[200] The redundant causes of action cause enormous problems of manageability. This is most particularly true with respect to the conspiracy claim. This claim would probably lead to the OHL, CHL, and the teams of the OHL retaining independent defence counsel because each defendant would be entitled to a separate defence that they were not co-conspirators and that each did not have the intent to injure the players.

[201] Instead of one defence counsel, there would be around 20 firms mounting vigorous defences. There is more than a taint of moral reprehensibility in an allegation that an employer conspired to exploit a young person for personal profit, and the signs of outrage are already manifest in the voluminous record that was proffered just for the certification motion. The factual footprint of the action would enormously expand with a redundant conspiracy plea

because it would appear that the alleged conspiracy began as far back as 2000 when the Leagues had to respond to the *McCrimmon Holdings* decision. The list of witnesses would greatly expand, because teams have been bought and sold and moved and ownerships have changed in the last 17 years.

[202] Were the causes of action against the American teams to be certified, further unmanageability would be added, of which I will have more to say in the next section of these Reasons for Decision, but for present purposes, it may be recalled that negligence, unjust enrichment, waiver of tort, as well as the standalone contractual breach of the duty of good faith, are not being advanced against the Defendants domiciled in the United States and these causes of action are being advanced only against the Ontario teams. This differentiation of the claims against the Ontario and American teams is, in and of itself, a case management nightmare.

[203] In *Magill v. Expedia*, 2013 ONSC 683, I refused to certify claims that were redundant and that added unnecessary complexity to the main claim. In that case, consumers of the online hotel-booking website alleged they were charged improper service fees, and the plaintiff advanced claims for breach of contract, dishonest performance, unjust enrichment, and breach of statute. I certified only the breach of contract claim. I took a similar approach in *Shah v. LG Chem, Ltd.* 2015 ONSC 6148, where the plaintiffs sought to certify a proceeding against the manufacturer of rechargeable batteries for breach of the *Competition Act*, R.S.C. 1985, c. C-34, unlawful means conspiracy, predominant purpose conspiracy, and unjust enrichment. I certified the *Competition Act* claim, but dismissed the remaining claims, refusing to certify the claim for predominate purpose conspiracy because it was redundant and, thus, a class action was not the preferable procedure for the claim. The Divisional Court, however, reintroduced the unlawful means conspiracy claim; see *Shah v. LG Chem, Ltd.*, 2017 ONSC 2586 (Div. Ct.).

[204] In my opinion, it is inimical to the access to justice principles of the *Class Proceedings Act, 1992* to succumb to the argument that it would be simply unjust and unfair to deny the Class Members the opportunity to prove all the claims they have that satisfy the criteria for certification without regard to whether they actually need to prove all those claims in order to achieve access to justice.

[205] The *Class Proceedings Act, 1992* is designed to provide the class members with the access to justice that they need, and needs are different than wants. For a cause of action to be certified, the preferable procedure criterion must be satisfied, and that criterion is designed to ensure that the class members get the access to justice they need, keeping in mind a genuine judicial economy of a manageable mass claim.

[206] In my opinion, in the case at bar, only the breach of statute and unjust enrichment causes of action need be certified. I conclude that only for these causes of action, the preferable procedure criterion is satisfied.

(c) The Claim against the Michigan and Pennsylvania Teams

[207] The Defendants argue that a class action would not be the preferable procedure for the claims against the American teams. The Defendants' argument is set out in paragraphs 157-161 of their factum, where they state:

> 157. Certifying the claims against the three U.S. based teams in this action would be neither fair nor would it be efficient. It will not promote access to justice for players on U.S. teams, who are governed by U.S. law. As Mr. Dunn made clear,

U.S. law is unsettled with respect to whether amateur hockey players are employees for the purposes of employment standards and benefits. There is no U.S. law for the Ontario courts to apply. Instead, the plaintiffs ask the Ontario courts to make wage and hour law on behalf of Michigan, Pennsylvania, and the United States Congress. It would be inappropriate to permit *FLSA* claims to proceed in Ontario by way of class action when the U.S. courts do not permit class actions under this legislation.

158. It would not enhance the plaintiffs' access to justice to have this court decide this case on the merits in their favour only to have a U.S. court refuse to enforce the claim. If this court were to certify the U.S. claims, it will take years for the merits to be determined with finality in Ontario. By that time, the U.S. limitation periods will have expired and the players may be left with no substantive resolution to their case.

159. The plaintiffs offer no evidence to counter the proposition that a class proceeding in the U.S. courts is the preferable procedure to determine the U.S. claims. The relevant U.S. regimes permit class proceedings in their own right, even if there are different requirements for certification. In the U.S., a representative plaintiff must have a cause of action against a particular defendant. Moreover, the *FLSA* does not permit class actions, but only collective actions in which individual plaintiffs "opt-in" to the proceeding. Individual claimants must agree expressly to participate and to be bound by a class proceeding. The fact that the *FLSA* does not permit class proceedings in the U.S. should not allow U.S. players to pursue a class action under the *FLSA* in Ontario.

160. The *FLSA* does not permit class actions, so to pursue a class action under the *FLSA* in an Ontario court would give U.S. players an advantage that they could not enjoy in U.S. courts. The U.S. players should not be permitted to do indirectly what they cannot do directly.

161. More importantly and as a practical matter, the U.S. claims are best resolved by the courts that can opine directly on U.S. law and be subject to the U.S. appellate process. Mr. Dunn made clear that U.S. courts are unlikely to enforce any Canadian judgment in these circumstances. The U.S. players face the very real possibility of succeeding at trial in Ontario only to fail to secure enforcement in a U.S. court. In this light, this court should deny certification of the U.S. claims under s. 5(1)(d) and encourage the U.S. plaintiffs to seek relief directly from a U.S. court.

[208] I think that there is considerable merit in the Defendants' arguments that the claims against the American teams do not satisfy the preferable procedure criterion, and I rely on those arguments in arriving at my own decision that a class action in Ontario is not the preferable procedure for prosecuting the breach of statute claim and the other claims against the American teams, but I also have my own reasons for reaching this conclusion.

[209] I begin my explanation for not certifying the actions against the Michigan and Pennsylvania teams by repeating the point above that the manageability of a class action is an important ingredient of the preferable procedure analysis and in the case at bar, the

differentiation of the claims against the Ontario and American teams is, in and of itself, a management nightmare.

[210] I add that there is the real prospect that there might be inconsistent outcomes for the class compromised of players from teams in Ontario, Michigan, and Pennsylvania. It is not a given that players whose playing circumstances are common under the SPA would be classified as employees under all of Ontario, Michigan, and Pennsylvania law because each jurisdiction has its own common law and its own statutes to interpret.

[211] If an Ontario court was charged with the responsibility of interpreting all three statutes, it is not a given that the outcomes about employment status would be the same. Indeed, for the class action as it is presently conceived, there are eight possible yes-no outcomes (yyy, yyn, yny, ynn, nyy, nyn, nny, nnn). The case at bar, is not a case, for example, like a national securities class action where all the provincial *Securities Acts* are pleaded and where it is highly unlikely that the essentially identical statutes would be interpreted other than uniformly. In the case at bar, each statute must be interpreted discretely, and, at the moment, the status of amateur athletes as employees, is an open question in Ontario, Michigan, and Pennsylvania.

[212] In their factums, the Plaintiffs trivialize the additional complexity of determining the law of all of Ontario, Michigan, and Pennsylvania, and they submit that the application of U.S. law is minimal, since only two states are involved and the common law tests for employment in Michigan and Pennsylvania are well-established and virtually the same in both states, as well as being virtually the same as in Ontario. The problem with this submission is that it begs the bigger question of whether the well-established common law tests for an employment relationship should be applied at all to classify the relationship between a sport's team owner and the amateur athletes that are team members.

[213] The Plaintiffs protest that the Defendants' preferable procedure argument is a disguised jurisdictional argument and that Mr. Dunn's opinions on comity, order and fairness, and the enforceability of an Ontario judgment in the U.S. are unpersuasive and do not rise to the level necessary to meet the Defendants' very heavy burden to defeat the some-basis-in-fact standard that the Plaintiffs have satisfied in the case at bar.

[214] I, however, do not intend to depart from a preferable procedure analysis. I accept that the Ontario court has the jurisdiction *simpliciter* to decide the causes of action against the American teams. And, I accept that the Ontario court is a *forum conveniens* to decide the causes of action against the American teams. And I accept that the OHL's SPA stipulates that the contract is governed by Ontario law, although I note that the critical issue in this case is not about contract law but rather about the interpretation and application of the statutory law of Michigan and Pennsylvania. I accept that the content of foreign law is a matter of fact that can be proven and then applied by an Ontario court, and I will even assume and accept that any judgment in the immediate case would be enforced by the courts of Michigan and Pennsylvania pursuant to Michigan's *Uniform Foreign-Country Money Judgments Recognition Act,* Mich. Comp. Laws § 691.1134 (2005) and Pennsylvania's *Uniform Foreign Money-Judgments Recognition Act*, 42 Pa. State. § 22001 (2007).

[215] However, what I do not accept is that it is fair to the Defendants and the preferable procedure for an Ontario court to interpret and apply the Michigan, Pennsylvania, or U.S. Federal government's minimum wage and employment standards legislation, where access to justice is available to the players in the American courts in Michigan and Pennsylvania. I see no

unfairness to the players, who are pursuing claims to enforce Michigan and Pennsylvania statutes, to pursue those claims in Michigan and Pennsylvania where there are courts and administrative agencies available to resolve employment law disputes. However, in my opinion, it would not be just and fair to the American team defendants for an Ontario court to decide the application of American law. In my opinion, an Ontario class action is not the preferable procedure to resolve the claims against the American teams.

[216] In the immediate case, I have come to my decision about preferable procedure without regard to the jurisdictional principles of comity, order, and fairness. However, in my opinion, in a proposed class action involving the necessary application of foreign law, I do think it is appropriate to have, at least, some regard to these principles as an aspect of the preferable procedure analysis in circumstances where the foreign jurisdiction does provide an alternative access route to justice for the class members.

[217] Given the importance of spectator sports to American and Canadian culture and society, the issues raised in the case at bar are quite important issues, and so I think it befits courts on either side of the border to at least pause to question whether they should decide an issue that their sovereign neighbour would prefer to decide for itself. This is a different question than asking whether, as an aspect of the conflicts of law, an American court would enforce an Ontario class action judgment and rather asks whether a Canadian court should respect the American court's jurisdiction to enforce its own law when it is ready to make it available.

[218] Finally, as a possible element in an analysis of the preferable procedure criteria to which I simply note but give no weight, I observe that as an alternative to litigating their claims in Michigan and Pennsylvania, the players on those teams might have the alternative of just waiting to see if the Ontario players can settle the litigation or can succeed at the common issues trial because if the Ontario players settled or succeed, it would be difficult for the CHL and OHL to allow a situation where the American players were treated differently than the Ontario players.

(d) Is the Preferable Procedure Criterion Satisfied?

[219] I conclude that the preferable procedure criterion is not satisfied with respect to the claims against the OHL teams in Michigan and Pennsylvania. The preferable procedure criterion is satisfied for the breach of statute and unjust enrichment causes of action against the Ontario teams.

6. Representative Plaintiff Criterion

(a) General Principles

[220] The fifth and final criterion for certification as a class action is that there is a representative plaintiff who would adequately represent the interests of the class without conflict of interest and who has produced a workable litigation plan.

[221] The representative plaintiff must be a member of the class asserting claims against the defendant, which is to say that the representative plaintiff must have a claim that is a genuine representation of the claims of the members of the class to be represented or that the representative plaintiff must be capable of asserting a claim on behalf of all of the class members as against the defendant: *Drady v. Canada (Minister of Health)*, [2007] O.J. No. 2812 (S.C.J.) at

paras. 36-45; *Attis v. Canada (Minister of Health)*, [2003] O.J. No. 344 (S.C.J.) at para. 40, aff'd [2003] O.J. No. 4708 (C.A.).

[222] Provided that the representative plaintiff has his or her own cause of action, the representative plaintiff can assert a cause of action against a defendant on behalf of other class members that he or she does not assert personally, provided that the causes of action all share a common issue of law or of fact: *Boulanger v. Johnson & Johnson Corp.*, [2002] O.J. No. 1075 (S.C.J.) at para. 22, leave to appeal granted, [2002] O.J. No. 2135 (S.C.J.), varied (2003), 64 O.R. (3d) 208 (Div. Ct.) at paras. 41, 48, varied [2003] O.J. No. 2218 (C.A.); *Matoni v. C.B.S. Interactive Multimedia Inc.*, [2008] O.J. No. 197 (S.C.J.) at paras. 71-77; *Voutour v. Pfizer Canada Inc.*, [2008] O.J. No. 3070 (S.C.J.); *LeFrancois v. Guidant Corp.*, [2008] O.J. No. 1397 (S.C.J.) at para. 55.

[223] Whether the representative plaintiff can provide adequate representation depends on such factors as: his or her motivation to prosecute the claim; his or her ability to bear the costs of the litigation; and the competence of his or her counsel to prosecute the claim: *Western Canadian Shopping Centres Inc. v. Dutton*, *supra* at para. 41.

[224] The critical ingredients or factors for the determination of the representative plaintiff criterion are the competence of counsel and on the qualification of the plaintiff as reflected in the litigation plan, which in a sense is a synthesis of the other certification criteria: *Shah v. LG Chem Ltd.*, *supra* at para. 32.

(b) The Defendants' Argument

[225] The Defendants submit that Messrs. Berg and Pachis are not qualified to be representative plaintiffs because, as former players, their only interest in the litigation is to obtain compensation as employees and that they do not care whether the litigation will adversely impact the current players whose benefits and career prospects will be diminished or lost altogether. The nature of the Defendants' argument about the representative plaintiff criterion is set out in paragraphs 139-141 of their factum, where they state:

> 139. In the instant case, former and current/future players have different interests in how the common issues are resolved. Unlike former players, current and future players have an interest in safeguarding the benefits that are entirely dependent on the financial viability of their teams. Former players have a fundamentally different interest that raises a conflict because there is a finite pool of resources for each team. The only interest of former players, and certainly the representative plaintiffs, is to maximize the payment of past wages, without any regard to whether those payments undermine the viability of certain teams or reduce the benefits given to current players.
>
> 140. Typically, sub-classes can cure any conflict among class members. However, in the instant case, just as in *Boucher v. Public Service Alliance of Canada* [[2005] O.J. No. 2693 (S.C.J.), aff'd (2006), C.C.P.B. 18 (Ont. Div. Ct.)]; *MacDougall v. Ontario Northland Transportation Commission*, [[2006] O.J. No. 5164 (S.C.J.), aff'd [2007] O.J. No. 573 (Div. Ct.), motion for leave to appeal to Ont. C.A. refused July 31, 2007, leave to appeal to S.C.C. refused [2007] SCCA No. 491], and *Paron v. Alberta (Environmental Protection)* [2006 ABQB 375], the conflict within the proposed class is such that a sub-class cannot cure the

> conflict. In these cases, the conflict is such that the common issue cannot be resolved to the satisfaction of all class members; success for one does not mean success for all.
>
> 141. Additionally, all class members, whether they benefit from the result or not, will be bound by the outcome. That is, there is no meaningful opportunity for anyone to exercise their right to "opt-out" of the proceeding. Opting out does not resolve the conflict. The conflict will exist despite the opt-out mechanism. In the cases involving surplus pension funds [*MacDougall* and *Boucher*], there was a finite pool of resources available. To allocate funds to one class would preclude the use of funds by another class. Similarly, [in *Paron,*] if the lake level in Alberta were to be raised, some property risked being flooded permanently. Those property owners, regardless of their opposition, would not be able to "opt-out" of the elevated water levels. In all these cases, the determination is binding on anyone with an interest, not merely those who participate in the class. Participation becomes mandatory, which is contrary to the way we approach class proceedings.

(c) Is the Representative Plaintiff Criterion Satisfied?

[226] I disagree with the Defendants' argument. In my opinion, although revisions will need to be made to the Litigation Plan (not an unusual phenomenon), Messrs. Berg and Pachis are qualified to be Representative Plaintiffs, and this criterion for certification is satisfied.

[227] Messrs. Berg and Pachis will adequately represent the interests of the class without conflict of interest. There are no disqualifying conflicts in the immediate case of the nature of those found in: *Boucher v. Public Service Alliance of Canada,* [2005] O.J. No. 2693 (S.C.J.), aff'd (2006), C.C.P.B. 18 (Ont. Div. Ct.); *MacDougall v. Ontario Northland Transportation Commission*, [2006] O.J. No. 5164 (S.C.J.), aff'd [2007] O.J. No. 573 (Div. Ct.), motion for leave to appeal to Ont. C.A. refused July 31, 2007, leave to appeal to S.C.C. refused [2007] SCCA No. 491; and *Paron v. Alberta (Environmental Protection)*, 2006 ABQB 375. And the suggested conflict of the certification of the action by itself yielding adverse consequences is a bogus argument that does not stand in the way of certification of the class action.

[228] I begin the analysis with two prefatory observations.

[229] First, it is both self-serving and also ironic for a defendant to argue that plaintiffs, represented as they are by responsible class counsel, will ill-serve the putative class and inevitably breach their duties of loyalty to the class. Defendants are not genuinely interested in ensuring that class members are responsibly represented; rather, defendants are genuinely interested in ensuring that there is no class action.

[230] Second, in the immediate case, it is unfortunate that Class Counsel gave credence to the Defendants' "Chicken Little – The Sky is Falling" argument by retaining experts and further bloating an already bloated record. Class Counsel expended a great deal of effort to counter the Defendants' argument that a financial disaster would follow the certification of this action with teams folding and with players losing benefits and career opportunities. To make matters worse, Class Counsel stuffed their factum with an elaborate argument about whom bore the onus of proof on the issue of whether the sky would fall. No motion, much less a certification motion, can predict the future, but Class Counsel took the bait and made a ponderous argument that it

was highly unlikely that the Leagues would cut their throats to spite the players' class action and, therefore, there was no-basis-in-fact for the argument that Messrs. Berg and Pachis were unfit to be representative plaintiffs because of the adverse financial consequences of a certification order directly on the Defendants and indirectly on the current and future players.

[231] Turning then to why there is no merit to the Defendants' attack on the qualification of Messrs. Berg and Pachis to be representative plaintiffs, it is well established that a class action should not be allowed if class members have conflicting interests and that a plaintiff with an interest in conflict with the interests of other putative class members does not qualify as a representative plaintiff: *Western Canadian Shopping Centres Inc. v. Dutton*, *supra* at para. 40; *Boucher v. Public Service Alliance of Canada, supra*; *MacDougall v. Ontario Northland Transportation Commission, supra*; *Paron v. Alberta (Environmental Protection), supra*; *TL v. Alberta (Child, Youth and Family Enhancement Act, Director)*, 2010 ABQB 262 at paras. 44-45.

[232] That the common issues may yield a nuanced response depending upon the idiosyncratic nature of groups of class members does not mean that there is a conflict of interest between the representative plaintiff and the class members or between class members. The Supreme Court of Canada in *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, explained that a common issue may give rise to varied answers to reflect differences between class members but still be a common issue so long as it does not give rise to genuine conflicting interests. The Court held at paras. 45-46:

> 45. Having regard to the clarifications provided in *Rumley*, it should be noted that the common success requirement identified in *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, must not be applied inflexibly. A common question can exist even if the answer given to the question might vary from one member of the class to another. Thus, for a question to be common, success for one member of the class does not necessarily have to lead to success for all the members. However, success for one member must not result in failure for another.
>
> 46. *Dutton* and *Rumley* therefore establish the principle that a question will be considered common if it can serve to advance the resolution of every class member's claim. As a result, the common question may require nuanced and varied answers based on the situations of individual members. The commonality requirement does not mean that an identical answer is necessary for all the members of the class, or even that the answer must benefit each of them to the same extent. It is enough that the answer to the question does not give rise to conflicting interests among the members.

[233] If the difference between the situation of the representative plaintiff and the class members does not impact on the common issues, then the difference does not affect the representative plaintiff's ability to adequately and fairly represent the class and there is no conflict of interest: *Ewing v. Francisco Petroleum Enterprises Inc.*, [1994] O.J. No. 1852 (Gen. Div.); *Chace v. Crane Canada Inc.*, [1996] B.C.J. No. 1606 (B.C.S.C.), affd. [1997] B.C.J No. 2862 (B.C.C.A.); *Hoy v. Medtronic*, 2001 BCSC 1343 at paras. 83-85, aff'd 2003 BCCA 316; *Reid v. Ford Motor Co.*, [2003] B.C.J. No. 2489 (B.C.S.C.) at para. 73; *MacLean v. Telus Corporation and Telus Communications Inc.*, 2006 BCSC 766 at para. 53; *T.L. v. Alberta (Director of Child Welfare)*, 2008 ABQB 114 (Q.B.) at para. 40, aff'd 2009 ABCA 18.

[234] It is not a conflict that all the class members may not desire to pursue the claim as they will have the right to opt-out of the action: *Kranjcec v. Ontario* (2004), 69 O.R. (3d) 231 (S.C.J.) at para. 68; *Kwicksutaineuk/Ah-Kwa-Mish First Nation v. British Columbia (Minister of Agriculture and Lands)*, 2010 BCSC 1699 at para. 131, rev'd on other grounds 2012 BCCA 193; *Chapman v. Benefit Plan Administrators Ltd.*, 2013 ONSC 3318 at para. 58. If the active players do not wish to participate in the litigation, they can opt-out of the class proceeding and pursue their rights individually or not at all. If they choose not to opt-out, then, their interest will be the same as, and not adverse to, that of the other class members.

[235] In the immediate case, there are no conflicts of the type that existed in *Boucher, MacDougall,* and *Paron*. In the immediate case, the interests of Messrs. Berg and Pachis are to be paid a minimum wage and overtime wages in accordance with employment standards statutes. The interests of the Class Members, who do not opt out, are precisely the same. There is no conflict of interest; if Messrs. Berg and Pachis succeed, then all Class Members will succeed and if Messrs. Berg and Pachis fail, all Class Members will fail. The prospect that Messrs. Berg's and Pachis' success would negate the prospects of success of the other Class Members does not exist.

[236] In the immediate case, there is no conflict of interest about distributing or apportioning the Defendants' liability. The determination of the critical common issue of whether the Class Members are employees will not lead to a determination that some Class Members but not others are employees entitled to the protection of the employment statutes. The relief sought is the same for all Class Members; i.e., an entitlement to the minimum protections of employment standards legislation.

[237] In *Boucher,* the plaintiffs sought to certify an action against their employer who administered a pension plan. The plaintiffs alleged that the defendant employer had wrongfully appropriated the surplus by taking a contribution holiday and providing new retirees early retirement incentives including pay equity payments while excluding the plaintiffs and others from the benefits. Justice Charbonneau, for a variety of reasons, refused to certify the action as a class proceeding, including that the plaintiffs proposed to represent claimants with a conflicting interest because they were differently affected depending on what relief the plaintiffs sought. In the case at bar, all the Class Members are similarly situated; if the class action is successful, they will receive the benefits of the employment standards legislation.

[238] In *MacDougall*, the plaintiffs sought to certify an action to challenge, among other things, amendments to a pension plan that provided for a contribution holiday, an early retirement program and enhanced retirement benefits. Justice Hennessy refused certification. She held that if the litigation was successful and the amendments were invalidated, the active employees in the class could face adverse consequences since the amendments actually benefited them and they would lose the contribution holiday, the early retirement program and the enhanced retirement amendments. There was a direct link between the successful outcome of the litigation and the adverse consequences to the active employees. In the immediate case, a successful outcome of the litigation is not adverse to the class and would mean that all active and retired players would be paid a minimum wage and overtime pay. In the immediate case, any adverse consequences to the active players is the Defendants' threat that they should be excused from wrongdoing because the active players are better off being victimized.

[239] *Paron* was a class action about the water level of a lake. In *Paron,* the plaintiffs sought an order to raise the water level of the lake by 18 inches, which would permanently submerge portions of the lands of the putative class members who owned lower-lying properties. In that

case, some putative class members would be helped and others would be harmed by the remedy sought. In the immediate case, the remedy of the minimum protections of employment standards legislation causes no harm at all to the Class Members. I agree with the comments of the Plaintiffs at paragraph 36 of their Reply Factum:

> 36. .... Requiring all class members to be compensated in accordance with minimum employment standards legislation would not harm any members of the class, unlike raising the water level would have done in *Paron*. The common issue does not give rise to a conflict; rather the defendants' threats to cut back benefits and shut down clubs manufacture a conflict that they then seek to rely on to avoid certification.

[240] A disqualifying conflict for the representative plaintiff does not arise from a defendant's threats or dire predictions of the consequences of certification. A future theoretical risk is no basis to deprive class members of access to justice through a class proceeding: *Chapman v. Benefit Plan Administrators, supra* at paras. 59-61.

[241] Moreover, if the action is certified and if the sky does indeed fall, then the sky falling is not a reason to decertify the class action, because it would remain to be determined whether the Defendants were wrongdoers and were liable to pay minimum wages and overtime pay to the Class Members. It is not exculpatory of wrongdoing for a defendant to argue or even prove that it cannot afford to comply with the law.

[242] If the action is certified and if large numbers of the class members opt-out that also would not be a basis for decertifying the action. The class members who do not opt out are entitled to access to justice and the representative plaintiff is duty bound to advance their common interest. In *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2013 ONCA 279, Chief Justice Winkler explained that certification is not akin to labour arbitration nor is it a political process of voting for or against the class action.

[243] In *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, Justice Strathy, as he then was, out of concern that the opt-out process had been politicized, invalidated the opt-out notices. The Court of Appeal, however, reversed the decision and Chief Justice Winkler explained that the class action would proceed notwithstanding a diminished class size. He stated at paragraphs 45-51:

> 45. The purpose of the opt-out process is to provide class members with the opportunity to make an informed and voluntary decision as to whether they wish to remain as participants in the class action.
>
> 46. The motion judge was rightly motivated by a concern for protecting the fairness of the opt-out process and by the goal of ensuring that opt-out decisions were not the product of misinformation or intimidation. He was deeply troubled that the "CPVF telephone campaign and website were an unabashed attempt to destroy the class action" (at para. 55). In his decision awarding the plaintiff its costs of the opt-out motion, the motion judge stated, at para. 20, that the "survival of the class action depended on the outcome of the [opt-out] motion."
>
> 47. These comments reveal that the motion judge was proceeding on an erroneous principle, at least to the extent that his analysis was premised on the view that the survival of the class action depended on the outcome of the opt-out motion. The motion judge believed that because slightly more than half the class had opted

> out, the very survival of the class action was at stake on the plaintiff's motion. He did not explain exactly what he meant by "the survival of the class action". In his reasons on the opt-out motion, he mentioned, at para. 6, that the defendant had raised the prospect of bringing a decertification motion.
>
> 48. If by the survival of the class action the motion judge was referring to the prospect of de-certification, he did not explain why the number of class opt-outs could undermine the evidence satisfying the certification criteria. Indeed, other than perhaps in the most extreme cases, I fail to see any reason why the number of opt-outs would be a basis for decertification. Alternatively, if he meant the viability of the class action somehow depends on the number of remaining class members, there is no basis for this concern. A certified class proceeding will continue regardless of the diminished size of the class and the correspondingly diminished damages award or settlement amount that might follow therefrom.
>
> 49. The motion judge evaluated the fairness of the opt-out process based on an incorrect belief that the viability of the class action was in peril. From that viewpoint, the CPVF's actions would have appeared more troubling than they actually were.
>
> 50. The motion judge's view that the survival of the class action was at stake on the opt-out motion -- although incorrect -- reflected the CPVF's motivation for waging the opt-out campaign. They were at least in part trying to end the class action by encouraging class members to opt out.
>
> 51. Given these misconceptions about the nature of the opt-out process, I think it is important to emphasize that the *CPA* does not contemplate the politicization of the opt-out process. The opt-out process is not analogous to the labour context where majority support or opposition is required to certify or decertify a union. Within the statutory framework of the *CPA*, there is no legitimate purpose that can be achieved by politicizing the opt-out process. As explained in *A&P* [*1176560 Ontario Limited v. Great Atlantic & Pacific Co. of Canada Ltd.* (2002), 62 O.R. (3d) 535 (S.C.J.), aff'd (2004), 70 O.R. (3d) 182 (Div. Ct.)] at para. 32, certification motions are not determined through a referendum of the class members. Nor is the viability of the class action dependent on majority support. Just as the percentage of support amongst class members is not an element of certification, opting out cannot stop a class action. The number of opt-outs does not in itself provide a basis for decertifying a class action.

[244] The "Sky will Fall" argument advanced by the Defendants in the immediate case was rejected in *1176560 Ontario Limited v. Great Atlantic & Pacific Co. of Canada Ltd.* (2002), 62 O.R. (3d) 535 (S.C.J.), aff'd (2004), 70 O.R. (3d) 182 (Div. Ct.). In that case, the proposed representative plaintiffs were franchisees, and the franchisor argued that they were disqualified because "certification of the action would upset the existing arrangements with the franchisees and cause [the franchisor] to revisit each of these arrangements." On the certification motion, the franchisor proffered evidence from franchisors that opposed certification because they felt they had more to lose than to gain and they did not want a class proceeding brought that would upset the existing relationship between them and the franchisor. Justice Winkler, as he then was,

rejected the argument and stated at paragraphs 32, 45-46:

> 32. .... To adduce evidence from individual class members as to the desirability of a class proceeding is to assume, as an underlying proposition, that certification motions are somehow determined through a referendum of the class members. Such is not the case. The legislature has spoken with respect to class proceedings in this province. The provisions dealing with opt outs and de-certification show that it was clearly alive to the prospect that not all members of a proposed class would wish to participate in a class proceeding or, alternatively, that a sufficient number of defections from the class would render a class proceeding unnecessary. Conversely, there are no provisions that expressly or implicitly mandate, or even suggest, that the suitability of a class proceeding is to be determined by a polling of the class prior to the certification motion.
>
> ....
>
> 45. I find no merit in the contention that the independence of the plaintiffs disqualifies them as representatives. The fact that their circumstances may be different from some or all of the balance of the class does not represent a conflict "on the common issues" as that term is used in s. 5(1)(e) of the *CPA*. Nor do their different circumstances mean that they cannot fairly and adequately represent the class. In fact, the evidence is to the contrary.
>
> 46. A&P also contended that there is a conflict because certification of the action would upset the existing arrangements with the franchisees and cause A&P to revisit each of these arrangements. In my view, this is effectively an argument that there should be no litigation at all rather than an attack on either the adequacy of the plaintiffs as representatives or the preferability of a class proceeding as opposed to individual actions. Through this argument, A&P implies that if the plaintiffs are successful, that success entails a risk for the other franchisees. However, as counsel for A&P candidly admitted, a successful individual action would have the same effect with respect to the existing arrangements. The purpose of class proceedings legislation is to make the justice system accessible. To this end, the court must consider alternative procedures. However, as noted in *Hollick* at para. 16, the certification analysis is concerned with the "form of the action". Arguments that no litigation is preferable to a class proceeding cannot be given effect. If there is any basis to this argument, it is subsumed in the cause of action element of the test for certification.

[245] A similar type of argument, as advanced in the immediate case, was also rejected by Justice Cullity at paragraph 68 of his judgment in *Kranjcec v. Ontario*, *supra,* where he stated:

> 68. I am satisfied that conflicts of the first kind can be adequately addressed by the opting out process. This is designed to permit putative class members to divorce themselves from the litigation, for whatever reason, and, by so doing, to preserve their rights. The possibility that some members of the putative class may be concerned that - irrespective of its resolution - the litigation may provoke an unfavourable reaction from the defendant should not be permitted to prevent members who do not choose to opt out from proceeding with the action as a class

proceeding.

[246] I, therefore, conclude that the representative plaintiff criterion is satisfied.

E. Conclusion

[247] For the above reasons: (1) I certify the claims for breach of employment law statutes and unjust enrichment; (2) I do not certify the claims for: (a) breach of contract, (b) negligence, (c) breach of duty of honesty, good faith and fair dealing, (d) conspiracy, and (e) waiver of tort; (3) I do not certify the action as against the American teams and I amend the class definition accordingly; (4) I also amend the definition of the class to close the class period as of the date of the certification motion; (5) I do not certify the common issues for breach of contract, negligence, breach of duty of honesty, good faith and fair dealing, and conspiracy; and (6) I appoint Messrs. Berg and Pachis to be Representative Plaintiffs. With the above revisions, I certify this action as a class action.

[248] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with Messrs. Berg's and Pachis' submissions within 20 days of the release of these Reasons for Decision followed by the Defendants' submissions within a further 20 days.

Perell, J.

Released: April 27, 2017

Schedule "A" – Witness List

[1] The Plaintiffs supported their motion for certification with the following evidence from 12 deponents, some of whom swore multiple affidavits:

- Three Affidavits from **Samuel Berg** sworn February 18, 2015, March 11, 2015, and June 14, 2016. Mr. Berg, who is a resident of Ontario. He formerly played hockey for the Niagara IceDogs of the OHL. Mr. Berg was cross-examined.
- Affidavit from **John Paul Chartrand** sworn on June 9, 2016. Mr. Chartrand is a resident of Ontario. He is a former player with: the Niagara IceDogs of the OHL (2009-11), the Barrie Colts of the OHL (2011-12); and the Sudbury Wolves of the OHL (2012, including play at the 2012 Junior World Cup in Omsk, Russia). Mr. Chartrand also played with the Moncton Wildcats of the QMJHL (2012-13).
- An affidavit from **Andrew J. Eckart** sworn February 20, 2015. Mr. Eckart is a lawyer with Charney Lawyers PC, of the consortium of proposed Class Counsel.
- An affidavit from **Jeremy Gottzmann** sworn June 8, 2016. Mr. Gottzmann is a resident of Ontario. He is a former player with: the Erie Otters of the OHL (2009-11) and the Peterborough Petes of the OHL (2011-12).
- An affidavit from **Victoria Grygar** sworn June 11, 2016. Ms. Grygar is a resident of Ontario. She is a law clerk at Saad Law Professional Corporation in Mississauga, Ontario. She has an M.A. in health and physical education (Brock University) and wrote a Master's thesis entitled "A Struggle Against the Odds: Understanding the Lived Experiences of Canadian Hockey League (CHL) Players". As part of her research, she interviewed eleven players, ten of whom played in OHL and one in the WHL.
- Two affidavits from **Ryan Allen Hancock** sworn March 31, 2015 and June 15, 2016. Mr. Hancock is a resident of the State of Pennsylvania and a lawyer with the Employment Law Department of Willig, Williams & Davidson, a law firm with its head office located in Philadelphia. He delivered expert reports dated March 31, 2015 and June 15, 2016. Mr. Hancock was cross-examined.
- Three affidavits from **Brendan O'Grady** sworn June 15, 2016, November 8, 2016, and November 29, 2016. Mr. O'Grady is a resident of Ontario and a lawyer with Charney Lawyers PC, proposed Class Counsel.
- A declaration from **Chester Hanvey** dated June 15, 2016, and an acknowledgment of expert's duty dated November 25, 2016. Dr. Hanvey is a resident of California. He is Associate Director at Berkeley Research Group, a consulting firm. Dr. Hanvey has a Ph.D. in industrial and organizational psychology. He was retained to deliver an expert opinion and a job analysis about the degree of similarity of experience across current and former players in the CHL as relates to determining whether players are employees, interns, trainees or amateur student athletes.
- A report from **Kevin P. Mongeon**, who is a resident of Ontario and Assistant Professor of Sport Management at Brock University. He has a Ph.D. in economics (Washington State University) an MBA (University of Windsor) and B.Sc. in mathematics (Lakehead University). He was retained to deliver an expert report entitled "Report on the Economics of the Canadian Hockey League and its Team Members" dated June 14, 2016.

He delivered his acknowledgment of expert's duty on November 29, 2016.

- Affidavit from **Daniel Pachis** sworn November 24, 2016. Mr. Pachis is a resident of Ontario. He is a former player with: the Saginaw Spirit in the OHL (2007-09) and the Oshawa Generals of the OHL (2009-10). He was cross-examined.
- Affidavit of **Kiara Sancler** sworn November 18, 2015. Ms. Sancler is a resident of Ontario and a law clerk at Charney Lawyers PC of proposed Class Counsel.
- Two Affidavits from **Lukas Walter** sworn March 11, 2015 and June 14, 2016. Mr. Walter is a resident of British Columbia and is the proposed representative plaintiff in class actions filed in the provinces of Alberta and Quebec against the WHL and the QMJHL, where he formerly was a player.

[2] The Defendants resisted the motion for certification with the following evidence from the following 33 deponents, some of whom swore multiple affidavits:

- Two affidavits from **Scott Abbott** sworn on November 12, 2015 and September 21, 2016. Mr. Abbott is a resident of Ontario and is the owner of the North Bay Battalion of the OHL.
- Affidavit from **Spencer Abraham** sworn on December 3, 2015. Mr. Abraham is a resident of Ontario and a former player with the Brampton Battalion and the Erie Otters of the OHL.
- Affidavit from **Andrew Agozzino** sworn November 8, 2015. Mr. Agozzino is a resident of the State of Texas. He is a former player with the Niagara IceDogs of the OHL.
- Affidavit from **Ted Baker** sworn on October 27, 2016. Mr. Baker is a resident of Ontario and is the Vice-President of the OHL.
- Affidavit from **Brett Bartman** sworn on November 12, 2015. Mr. Bartman is a resident of Alberta. He played Minor hockey from the age of six including playing with the Medicine Hat Midget AAA team. He then played for the Spokane Chiefs of the WHL from 2007 to 2010 after which he obtained a B.A. in Kinesiology from the University of Calgary. At the university he played for the men's hockey team. He is now a strength and conditioning coach at the Southern Alberta Institute of Technology.
- Affidavit from **Terry Bartman**, sworn on November 12, 2015. Mr. Terry Bartman is a resident of Alberta. He coached his son Brett Bartman's minor hockey teams in Medicine Hat until Brett was 13 years old. Mr. Terry Bartman is the President of the Board of Directors of the South East Athletic Club, an amateur hockey club, and he is a part-time scout for the Spokane Chiefs, where he is reimbursed for his expenses but receives no salary. The South East Athletic Club is a sporting society that supports a Bantam AAA, Midget AAA, and a Midget team in Medicine Hat, Alberta.
- Affidavit from **Jordan Binnington** sworn on November 7, 2015. Mr. Binnington is a resident of the State of Illinois. He is a former player with the Owen Sound Attack of the OHL.
- Three affidavits from **David E. Branch** sworn on December 23, 2015, September 23, 2016, and November 1, 2016. Mr. Branch is the President of the CHL and has served in that position since 1996. He is also the Commissioner of the OHL, where he has served

for over 36 years. He formerly was the Executive Director of the CAHA from 1977 to 1978. He was the Secretary-Manager of the OHA between 1974 and 1976. He is coach of the Whitby Wildcats a Minor Midget AAA Team. Mr. Branch was cross-examined.

- Affidavit from **Gordie Broda** sworn on December 18, 2015. Mr. Broda is a resident of Saskatchewan where he has been a Governor, Alternate Governor, Vice-President and member of the Board of Directors of the Prince Albert Raiders of the WHL, all volunteer positions, for over 12 years. His son, Joel Broda, played in the WHL between 2005 and 2010 and now plays professionally in Austria after playing in the AHL and the ECHL.
- Three affidavits from **Denise Burke** sworn on November 14, 2015, September 14, 2016, and March 14, 2017. Ms. Burke is a resident of Ontario. She is the part owner and the President of the Niagara IceDogs of the OHL.
- Affidavit from **George Burnett** sworn on September 16, 2016. Mr. Burnett is a resident of Ontario. He is the general manager of the Flint Firebirds of the OHL. He was the coach and general manager of several other OHL teams, including the Belleville Bulls, now the Hamilton Bulldogs, from 2004-2016.
- Affidavit from **Joseph Caligiuri** sworn on November 13, 2015. Mr. Caligiuri is a resident of Manitoba and is a former player with the Brandon Wheat Kings of the WHL (2006-08) and with the Prince George Cougars of the WHL (2009). Then, he played hockey in the Manitoba Junior Hockey League with the Dauphin Kings after which he enrolled at the University of Manitoba where he obtained a B.A. after which he enrolled at the University's law school.
- Affidavit from **Jane Carrick** sworn on December 17, 2015. Mrs. Carrick is the mother of four sons (Jake, Sam, Trevor, and Josh) who have played or are playing in the OHL.
- Affidavit from **Alex Chan** sworn on January 18, 2017. Dr. Chan is a resident of British Columbia. He is an orthopedic surgeon. He has a BSc. in Physiology and a MSc. and PhD. in Neurobiology, all from the University of Toronto. He got his M.D. from McMaster University in 1990, with a specialization in orthopedic surgery, which he obtained in 1999.
- Affidavit of **Jeff Chynoweth** sworn January 5, 2017. Mr. Chynoweth is a resident of British Columbia. He is the President, General Manager, and part-owner of the Kootenay Ice Hockey Club of the WHL. He was the Assistant Director of Marketing for the WHL's Spokane Chiefs (1986-1987) the Medicine Hat Tigers (1987-1988), the Brandon Wheat Kings (1988-1989), and the Lethbridge Hurricanes (1989-1990). He was an Assistant General Manager of the Hurricanes and the Director of Operations of the Red Deer Rebels.
- Two Affidavits from **David Dunn** sworn on December 18, 2015 and August 30, 2016. Mr. Dunn is a resident of the City of New York, in the State of New York. He is a partner in the litigation department at Hogan Lovells US LLP. He was retained to provide an expert opinion and delivered a report dated December 18. 2015 and a supplementary report dated August 30, 2016.
- Two Affidavits from **Craig Goslin** sworn on November 9, 2015 and December 28, 2016. Mr. Goslin is a resident of the State of Michigan. He is the co-owner and President of the Saginaw Hockey Club, L.L.C., the Saginaw Spirit of the OHL.

- Affidavit from **Steve Hogle** sworn on January 9, 2017. Mr. Hogle is a resident of Saskatchewan. He is the President of the Saskatoon Blades of the WHL.
- Affidavit from **Brett Howden** sworn December 16, 2015. Mr. Howden is a resident of Saskatchewan. He plays for the Moose Jaw Warriors of the WHL.
- Affidavit from **Sheldon Howden** sworn on December 18, 2015. Mr. Sheldon Howden is a resident of Manitoba. He has two sons, Quinton, who played with the Moose Jaw Warriors in Saskatchewan (2007-12), and Brett who plays for the Moose Jaw Warriors.
- Two affidavits from **James McAuley** sworn on December 22, 2016 and March 14, 2016. Mr. McAuley is a resident of Ontario and is a Senior Vice President with KPMG Forensic Inc. ("KPMG"), which was retained to deliver an expert report dated December 22, 2016.
- Affidavit from **Kelly Mercer** sworn on November 19, 2015. Mrs. Mercer is a resident of Ontario and she is the mother of Luke Mercer, a former player with the Niagara IceDogs of the OHL.
- Affidavit from **Paul Myers** sworn on November 12, 2015. Mr. Myers is a resident of Alberta. His son Tyler played in the WHL for the Kelowna Rockets (2005-009). Mr. Myers played amateur hockey while growing up in Pennsylvania, including Division II hockey at Lehigh University, where he obtained a B.A. in geophysics. Mr. Myers also has a M.Sc. in geology from the University Kansas, and an M.B.A. from the University of Calgary.
- Affidavit from **Lucas Nickles** sworn December 17, 2015. Mr. Nickles is a resident of Alberta where he is enrolled in a BA program in First Nations studies at the University of Alberta, where he is a member of the men's hockey team. He is a former player with the Tri-City Americans in the State of Washington (2010-15). Before that he played Minor and Junior B hockey in British Columbia.
- Affidavit from **David Nenni** sworn on December 16, 2015. Mr. Nenni is a resident of the State of Washington where he is an attorney with the law firm of Jackson Lewis, P.C.
- Two affidavits of **Norm O'Reilly** sworn on December 21, 2016 and March 14, 2017. Dr. O'Reilly is a resident of the State of Ohio where he is a professor of sport business at the College of Business at Ohio University. He was retained to deliver an expert's report dated December 21, 2016. Dr. O'Reilly has four post-secondary degrees and the Chartered Professional Accountant Chartered General Accountant (CPA/CGA). His PhD is in Management (Carleton University), MBA in Marketing (University of Ottawa), MA in Sport Management (University of Ottawa) and B.Sc. is in Kinesiology (University of Waterloo). He is a member of the Board of Directors of the Business of Hockey Institute (BHI), a not-for-profit group of hockey industry leaders that partners with Athabasca University on the "Hockey MBA" program.
- Affidavit from **Sherry Pysyk** sworn on November 12, 2015. Mrs. Pysyk is a resident of Alberta. She is the mother of Mark Pysyk who played with the Edmonton Oil Kings of the WHL (2007-12). Her family also billeted one of Mark's teammates during that time.

- Two affidavits from **Kruise Reddick** sworn on November 12, 2015 and September 16, 2016. Mr. Reddick is a resident of Saskatchewan and he a former player with the Tri-City Americans of the WHL (2006-11). Before that he played Minor hockey in Saskatchewan. He obtained B.A. in Recreation and Sport Tourism at the University of Alberta in Edmonton, Alberta. He played on the men's ice hockey team while at the University from 2011 to 2016.
- Two affidavits from **Ron Robinson** sworn on December 22, 2015 and September 28, 2016. Mr. Robinson is a resident of Alberta. Since September 2000, he has been the Commissioner of the WHL and Vice-President of the CHL. Before becoming Commissioner, he held senior management positions with the CAHA and with Hockey Canada between 1981 and 1997 including a tenure as President of Hockey Canada from 1992 to 1994. He was a member of the Physical Education Faculty at the University of Saskatchewan and an assistant coach of the men's hockey team.
- Affidavit from **Chad Taylor** sworn on December 15, 2015. Mr. Taylor is a resident of Saskatchewan and is the Governor of the Moose Jaw Warriors of the WHL and the President of the Moose Jaw Tier 1 Hockey Inc. Board of Directors, which are volunteer positions. He played and referred Minor League Hockey.
- Affidavit from **Mitchell Topping** sworn on September 19, 2016. Mr. Topping is a resident of Alberta. He played with the Tri-City Americans in the WHL (2012-14). Before that he played with the Chilliwack Bruins of the WHL (2008-11), and he played Bantam AAA hockey in Alberta. In 2014, he enrolled at the University of Alberta in a degree course in Commerce. He has played hockey with the university's team since enrolling at the university.
- Affidavit from **Bob Topping** sworn on September 20, 2016. Mr. Topping is a resident of Alberta. He is a former player in the WHL for the Tri-City Americans (2012-14). He previously played with the Chilliwack Bruins of the WHL (2008-11). After leaving the WHL in 2014, he enrolled at the University of Alberta for a B.A. in Commerce and where he plays CIS hockey.
- Affidavits from **Bob Tory** sworn on December 16, 2015 and September 20, 2016. Mr. Tory is a resident of State of Washington. He is the General Manager and part-owner of the Tri-City Americans of the WHL. Previously, he was the General Manager of WHL teams in Seattle, Edmonton, and Cranbrook (Kootenay). He has a B.A. in Education from the University of Alberta and was the Head of the Physical Education Department and was a physical education teacher at Kenilworth Junior High School in Edmonton where he coached Minor hockey.

Schedule "B" – Excerpts *Employment Standards Act*

Employment Standards Act

Definitions

1. (1) In this Act,

....

"employee" includes,

(a) a person, including an officer of a corporation, who performs work for an employer for wages,

(b) a person who supplies services to an employer for wages,

(c) a person who receives training from a person who is an employer, as set out in subsection (2), or

(d) a person who is a homeworker,

and includes a person who was an employee;

....

To whom Act applies

3. (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

(a) the employee's work is to be performed in Ontario; or

(b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario.

Exception, federal jurisdiction

(2) This Act does not apply with respect to an employee and his or her employer if their employment relationship is within the legislative jurisdiction of the Parliament of Canada.

Exception, diplomatic personnel

(3) This Act does not apply with respect to an employee of an embassy or consulate of a foreign nation and his or her employer.

Exception, employees of the Crown, etc.

(4) Only the following provisions of this Act apply with respect to an employee and his or her employer if the employer is the Crown, a Crown agency or an authority, board, commission or corporation all of whose members are appointed by the Crown:

1. Part IV (Continuity of Employment).

2. Section 14.

3. Part XII (Equal Pay for Equal Work).

4. Part XIII (Benefit Plans).

5. Part XIV (Leaves of Absence).

6. Part XV (Termination and Severance of Employment).

7. Part XVI (Lie Detectors).

8. Part XVIII (Reprisal), except for subclause 74 (1) (a) (vii) and clause 74 (1) (b).

9. Part XIX (Building Services Providers).

Other exceptions

(5) This Act does not apply with respect to the following individuals and any person for whom such an individual performs work or from whom such an individual receives compensation:

1. A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled.

2. An individual who performs work under a program approved by a college of applied arts and technology or a university.

3. A participant in community participation under the *Ontario Works Act, 1997*.

4. An individual who is an inmate of a correctional institution within the meaning of the *Ministry of Correctional Services Act*, is an inmate of a penitentiary, is being held in a detention facility within the meaning of the *Police Services Act* or is being held in a place of temporary detention or youth custody facility under the *Youth Criminal Justice Act (Canada)*, if the individual participates inside or outside the institution, penitentiary, place or facility in a work project or rehabilitation program.

5. An individual who performs work under an order or sentence of a court or as part of an extrajudicial measure under the *Youth Criminal Justice Act (Canada)*.

6. An individual who performs work in a simulated job or working environment if the primary purpose in placing the individual in the job or environment is his or her rehabilitation.

7. A holder of political, religious or judicial office.

8. A member of a quasi-judicial tribunal.

9. A holder of elected office in an organization, including a trade union.

10. A police officer, except as provided in Part XVI (Lie Detectors).

11. A director of a corporation, except as provided in Part XX (Liability of Directors), Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title).

12. Any prescribed individuals.

Dual roles

(6) Where an individual who performs work or occupies a position described in subsection (5) also performs some other work or occupies some other position and does so as an employee, nothing in subsection (5) precludes the application of this Act to that individual and his or her employer insofar as that other work or position is concerned.

....

O. Reg. 285/01, s. 2 (1)

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,

(a) as a duly qualified practitioner of,

(i) architecture,

(ii) law,

(iii) professional engineering,

(iv) public accounting,

(v) surveying, or

(vi) veterinary science;

(b) as a duly registered practitioner of,

(i) chiropody,

(ii) chiropractic,

(iii) dentistry,

(iv) massage therapy,

(v) medicine,

(vi) optometry,

(vii) pharmacy,

(viii) physiotherapy, or

(ix) psychology;

(c) as a duly registered practitioner under the *Drugless Practitioners Act*;

(d) as a teacher as defined in the *Teaching Profession Act*;

(e) as a student in training for an occupation mentioned in clause (a), (b), (c) or (d);

(f) in commercial fishing;

(g) as a salesperson or broker, as those terms are defined in the *Real Estate and Business Brokers Act, 2002*; or

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer's place of business.

(2) Subject to sections 24, 25, 26 and 27 of this Regulation, Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.

CITATION: Berg v. Canadian Hockey League, 2017 ONSC 2608
COURT FILE NO.: CV-14-514423CP
DATE: 20170427

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SAMUEL BERG and DANIEL PACHIS

Plaintiffs

– and –

CANADIAN HOCKEY LEAGUE, et al.

Defendants

REASONS FOR DECISION

PERELL J.

Released: April 27, 2017

h. Le commissaire de la WHL, Ron Robison, a prêté serment sous serment (voir page 26 :110).

Malgré le témoignage du commissaire de la WHL, M. Robison, sous serment, affirmant que la majorité des équipes se coucheraient si la certification du recours collectif venait à se produire, alors qu'aucune équipe n'a encore plié et que la WHL parle d'élargir sa ligue !

Documents complets de la Cour supérieure disponibles sur demande: Dossier de la Cour no. CV-14-514423

http://www.independentsportsnews.com/2017/03/08/statement-whl-commissioner-ron-robison/

http://www.timescolonist.com/news/local/whl-vows-to-bring-team-to-nanaimo-if-new-arena-gets-nod-1.11215000

WHL commissioner Ron Robison sworn testimony under oath (see page 26:110).

Despite testimony by WHL commissioner Mr. Robison that was sworn under oath stating that the majority of teams would fold if certification of the class action law suit happened, as of yet no teams have folded and the WHL is talking about expanding its league!

http://www.independentsportsnews.com/2017/03/08/statement-whl-commissioner-ron-robison/

http://www.timescolonist.com/news/local/whl-vows-to-bring-team-to-nanaimo-if-new-arena-gets-nod-1.11215000

Full Superior Court Documents available upon request : Court file no. CV-14-514423

110. I anticipate that the result of certification would be that the teams and the League would have to re-examine and reduce the benefits offered to players beginning next season, in order to responsibly plan for this contingent liability. I also anticipate that certification would result in the loss of the majority of our teams, whose owners simply cannot shoulder the burden of the contingent liability of this lawsuit on top of annual losses or near the break-even result. The size of the League would shrink, as would the opportunities available to talented young hockey players, both from a hockey development and educational standpoint.

i. **T-4 pour Player XXX et contrat complet de la LHJMQ** :

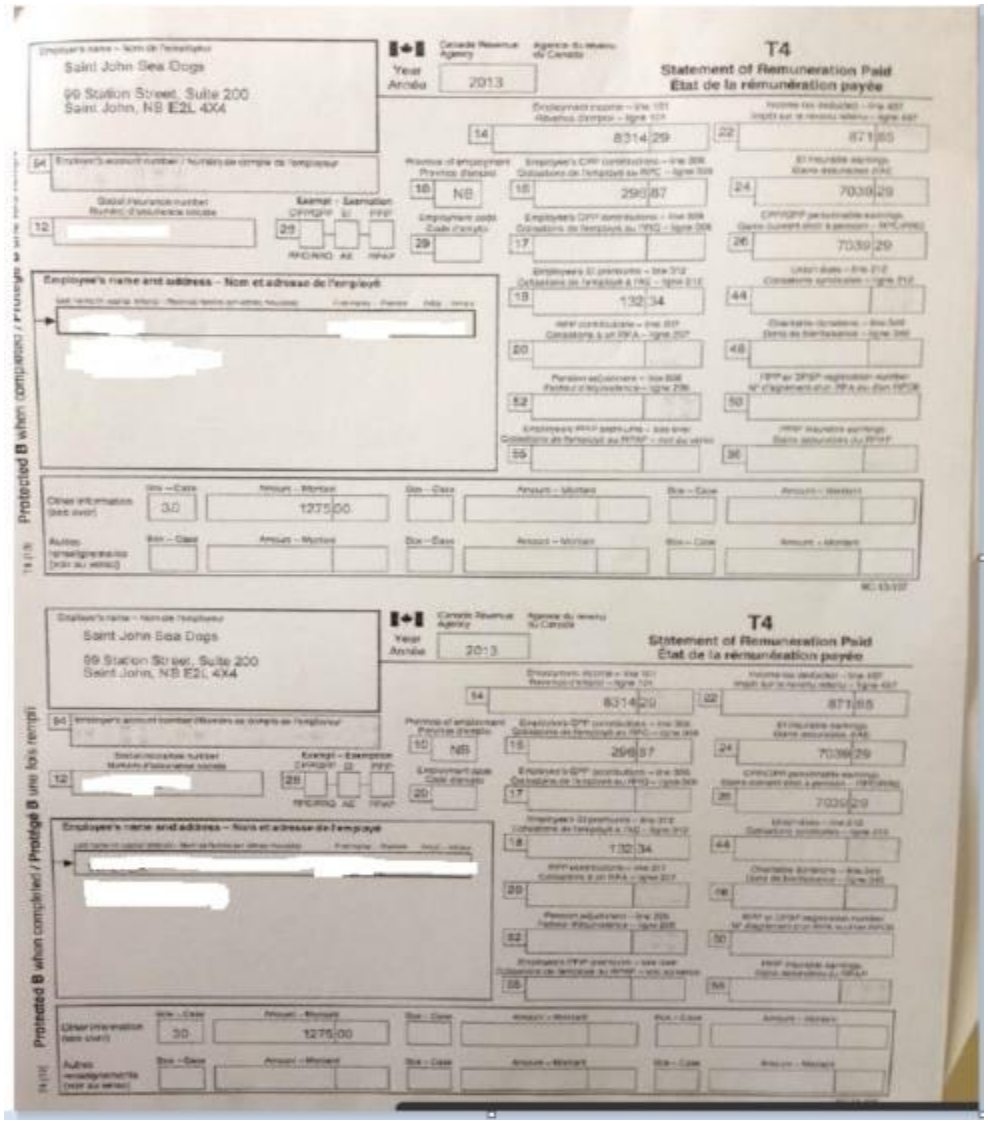
Il s'agit d'un contrat de joueur de la LHJMQ et de T 4 Slip avant la poursuite en justice en 2014, les joueurs de 20 ans de la LHJMQ étaient en fait des employés des clubs (section 5.1) du contrat de joueur

Changer cette loi soulèvera une violation des droits de l'homme sur la discrimination fondée sur l'âge, sans parler des autres domaines de la loi pour les salaires.

T-4 for Player and full QMJHL contract:

This is a QMJHL player contract and T 4 Slip that show prior to the class action law suit in 2014, 20-year-old players in the QMJHL, were in fact employees of the clubs (section 5.1) of the player contract

Changing this law will bring up a human rights violation on age discrimination, not to mention other areas of law for wages.



Saint John Sea Dogs

99 Station Street, Suite 200
Saint John, NB E2L 4X4

Year / Année 2013

T4
Statement of Remuneration Paid
État de la rémunération payée

14	8314.29
22	871.85
10	NB
16	296.87
24	7039.29
29	
17	
26	7039.29
18	132.34
44	
20	
46	
52	
50	
55	
36	

Employee's name and address – Nom et adresse de l'employé

[redacted]

Other information (see over) — Box – Case 30 — Amount – Montant 1275.00

Autres renseignements (voir au verso)

Protected B when completed / Protégé B une fois rempli

Saint John Sea Dogs

99 Station Street, Suite 200
Saint John, NB E2L 4X4

Year / Année 2013

T4
Statement of Remuneration Paid
État de la rémunération payée

14 8314.29 | 22 871.85 | 10 NB | 16 296.87 | 24 7039.29 | 29 | 17 | 26 7039.29 | 18 132.34 | 44 | 20 | 46 | 52 | 50 | 55 | 36

Employee's name and address – Nom et adresse de l'employé

[redacted]

Other information (see over) — Box – Case 30 — Amount – Montant 1275.00

Autres renseignements (voir au verso)

Protected B when completed / Protégé B une fois rempli

SEPTEMBER 2013

RIGHTS AND OBLIGATIONS OF PLAYERS

R-11 RIGHTS AND OBLIGATIONS OF PLAYERS

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ADOPTION, EFFECTIVE DATE AND AMENDMENTS

The present regulation was adopted by the Board of Governors on June 7th, 2013, and will come into force on July 1, 2013, effectively replacing all regulatory texts previously in force which pertain to the same topics.

Dates of subsequent amendments:

September 6th, 2013.

REGULATION OBJECTIVES

The goal of the present regulation is to clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.

1. DECLARATION ON THE STATUS OF THE PLAYERS

1.1 League's Mission

The League and its clubs' mission, as worded in article1.3 of the League's constitution, is to fundamentally guide regulations which apply to the conditions that the clubs must apply to the players who are part of their team.

Article 1.3 of the constitution: « ***The League's mission is to develop players for professional hockey while supporting them throughout their academic endeavors in order to mold them into responsible and educated citizens. It must offer high entertainment value within a profitable framework in order to ensure the continued success of its activities***.»

1.2 Status of Players Ages 16 to 19

Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as hockey players whose goal it is to pursue the practice of hockey at the professional level.

1.3 Status of 20 Year Old Players

Players who are 20 years old and who are retained by a team are young adults who are called upon to exercise their leadership abilities and to act as mentors towards their teammates. They are considered to be salaried employees of the club and will be paid accordingly.

2. CLUB'S RESPONSIBILITIES TOWARDS PLAYERS

2.1 Extent of the Club's Responsibilities

The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their junior major career. The norms and standards of the clubs' responsibilities are determined by the present regulation, and by any other pertinent regulation, policy or directive issued by the Commissioner.

2.2 Duration of the Club's Responsibility towards its Players

The club's responsibility towards a player at the beginning of the academic semester or during the academic semester must be extended until the end of the academic semester, except in the following cases:

- The player voluntarily leaves the team;
- The player is traded, in accordance with the regulations which govern such trades. Consequently, the club's responsibilities will be transferred to the team which receives the player;
- The player is unable to practice the sport because of an injury which occurred during an activity which was not an activity required by the team, the League, the CHL or a national FIHG member organisation;
- The player refuses or neglects to respect League or club regulations.

2.3 Player who is Injured for the Remainder of the Season

If a player can no longer play because of an injury which occurred during an activity which was required by the team, the League, the CHL or a national FIHG member organisation, the team will be responsible for the player until the very last game played by the team during the season or until the end of the winter academic semester, even if the injury occurred during the fall academic semester.

3. CONDITIONS FOR ALL THE PLAYERS

3.1 Equipment

3.1.1 Equipment Supplied by the Club

The club must provide the player with complete hockey equipment, in accordance with the norms and standards established by the Commissioner and in compliance with the agreements which have been concluded with the League and its equipment supplying sponsors.

3.1.2 Training Camp

During the selection and training camps, the player may be asked to use part of all of his own equipment.

3.1.3 Mouthguard, Neck Guard and Visor

The mouthguard, neck guard and visor are mandatory pieces of protective equipment and must be worn during training, warm-up periods, before and during the games. The League recommends that players wear a full face shield instead of wearing only a visor; however, this is not mandatory.

These pieces of equipment must comply with the norms and standards determined by the League. These pieces of equipment cannot be modified or altered either directly or indirectly.

3.2 Medical

3.2.1 Club's Responsibility

The club is responsible for paying all medical expenses incurred by the practice of the sport of hockey during games, on-ice and off-ice training, and any other activity required by the club. The parents' health insurance plan, if required, will be used within the limits of the plan's coverage as a first source of medical expense coverage. Hockey Canada's insurance plan, which the League and its clubs subscribe to, will cover excess expenses within the limits of the available coverage. Finally, the club will be responsible for all other expenses.

3.2.2 Medical Exam

The player must submit to a complete medical exam to evaluate his physical condition and general health before the beginning of each hockey season or when he first reports to the club. He must also submit to any complete or partial medical exam which is required by his club's management during the course of the year.

3.2.3 Disclosed Injuries

Any injury which is disclosed by a player must be communicated to the club's therapist without delay.

3.2.4 Medical Treatment

A player, who is undergoing medical treatment prescribed by a doctor, a dentist, a licensed sports therapist, a medical responder, or a physical therapist, must comply with treatment recommendations.

3.2.5 Disclosure of Medical Information

The player must agree to give the following authorizations to the team's medical staff to transmit information, data or relevant information from his medical records by signing the form found in Schedule A of the present regulation:

- Authorization for the doctor, dentist, licensed sports therapist, medical responder or physical therapist to disclose and transmit any information, data or relevant information from his medical records or general health records to the doctor, dentist, licensed sports therapist, medical responder or physical therapist designated or referred by any of the League's teams with which the player could be called upon to play with in preparation for or in the event of a trade or other event which could occur during the course of his junior major career in the League;
- Authorization for the doctor, dentist, licensed sports therapist, medical responder or physical therapist to disclose and transmit any information, data or relevant information from his medical records or general health records to the doctor, dentist, licensed sports therapist, medical responder or physical therapist designated or referred by the League, its insurers, as well as League management;
- Authorization to transmit to the League, upon request, an injury report which includes the type and nature of the injury, the care and treatment received for the injury and, if applicable, the date of his return to being an active player. This report may be transmitted by the League to the NHL.

3.3 Publicity

3.3.1 Photographs and Motion Pictures

The Player grants to the Club and to the League the right to authorize any person, firm or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. Therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires.

3.3.2 Right to Use the Name of the Club

The Club irrevocably grants to the Player the right to use the name of the Club (but not the emblem or uniform unless otherwise agreed with the Club) and to identify himself, truthfully, as a past or present Player of the Club.

3.3.3 Consent of the Club

The Player agrees that he will not make public appearances, participate in radio or television programs, write or sponsor a newspaper or magazine article or endorse any commercial product without the prior written consent of the Club, which consent shall not be unreasonably withheld.

3.4 Gift to Players

No League club has the right to give directly, indirectly or in any manner whatsoever, a gift or a prize to one of its players.

However, under the condition of having obtained the express consent of the Commissioner, a club may grant one of its players a gift or a prize whose value does not exceed $ 100 to highlight a noteworthy school or athletic achievement.

4. CONDITIONS FOR 16-TO-19-YEAR-OLD PLAYERS

4.1 Commitment Forms

Upon a player's arrival in a League team, the player must sign the commitment form, included in Schedule A, which stipulates that the player agrees to abide by all League regulations, that he has read the present regulation and the academic policy. The player also recognises that the League has the constitutional right to amend its regulations by following a procedure established in the constitution. Specifically, the player agrees to abide by the League's policy as it relates to the mandatory nature of certain pieces of equipment such as a mouthguard, a neck guard and a visor; the player also accepts that certain medical information which applies to him may be communicated, in certain circumstances, to a medical responder associated with the League, another club, or the NHL.

The resulting commitment is valid for the duration of the player's relationship with the QMJHL, up until age 19 (inclusively), notwithstanding the team he belongs to.

4.2 During the Selection and Training Camp

During the selection and training camps, the club will cover or reimburse the following expenses:

- Transportation fees from the permanent residence to the training camp;
- Transportation fees from the training camp to the permanent residence if the player is cut;
- Lodging and meal fees;
- Local transportation fees for academic activities;
- Local transportation fees for all team activities;

Player reimbursement modalities, if applicable, will be established by the team.

However, the club cannot reimburse the expenses which were incurred by a player if a player requested to participate in the training camp at his own expense.

4.3 During the Regular Schedule and the Eliminatory Schedule

During the regular schedule and the eliminatory schedule, the club will cover or reimburse the following expenses:

- Room and board expenses;
- The actual cost of tuition, registration and school supplies;
- Local transportation fees for academic activities;
- Local transportation fees for all team activities;
- Transportation fees to and from the player's permanent residence during the Holidays;
- Transportation fees to the player's permanent residence at the end of the year;
- For expenses related to hockey practice and being away from home that is not otherwise reimbursed to the player, the club pays a fixed weekly allowance of $ 60.

Room and board expenses will be reimbursed until the end of the player's winter academic semester, even if the club is no longer competing.

If a player cannot play for the rest of the season because of an injury that he sustained during the course of an activity required by the League, the CHL or by a national FIHG member organisation, the following rules apply:

- If the player remains in the team's entourage to complete his academic activities, all expenses will be covered or reimbursed by the team; however, transportation fees for the team's activities will only be reimbursed if the player participates in the activity;
- If the player returns to his permanent residence, the team will only cover or reimburse academic fees, medical rehabilitation fees, and the weekly amount for expenses not otherwise reimbursed.

Player reimbursement modalities, if applicable, will be established by the team.

5. CONDITIONS FOR 20-YEAR-OLD PLAYERS

5.1 20-year-old Players' Status

20-year-old players are considered to be employees and are treated as such.

5.2 20-year-old Player's Contract

All 20-year-old players must sign a standard contract supplied by the league and this contract must be registered with the league; he and cannot sign any other contract that is not registered with the league.

No conditions other than those recorded in the contract can be applied to the player;

The contract begins with the beginning of services, at the earliest during the week of the regular season opening, and the contract ends at the deadline closest to his release date, the date of trade of his services to another league team, the date of his team's elimination at the end of the regular season or during the playoffs, or at the end of the Memorial Cup tournament.

A copy of the standard contract is included in Schedule B of the present regulation; the text included in the standard contract can be modified by the Commissioner to accommodate future signatures.

5.3 During the Selection and Training Camp

During the selection and training camps, the club will cover or reimburse the following expenses:

- Transportation fees from the permanent residence to the training camp;
- Transportation fees from the training camp to the permanent residence if the player is cut;
- Lodging and meal fees;
- Local transportation fees for academic activities;
- Local transportation fees for all team activities;

Player reimbursement modalities, if applicable, will be established by the team.

However, the club cannot reimburse the expenses which were incurred by a player if a player requested to participate in the training camp at his own expense.

5.4 During the Regular Schedule and the Playoff Schedule

During the regular and playoff schedules, the club will cover or reimburse the following expenses:

- The player's salary, in accordance with the following articles:
- The actual cost of tuition, registration and school supplies;
- All the conditions and benefits which are normally applicable to all players in relation to equipment, medical fees, training, games and travel.

If a 20 year old player cannot play for the rest of the season because of an injury that he sustained during the course of an activity required by the League, the CHL or by a national FIHG member organisation, the following rules apply:

- If the player remains in the team's entourage to complete his academic activities, all expenses will be covered or reimbursed by the team; however, transportation fees for the team's activities will only be reimbursed if the player participates in the activity;
- If the player returns to his permanent residence, the team will pay for his salary but deduct the allocations for room and board as well as local transportation; the team will only cover or reimburse academic fees and medical rehabilitation fees

5.5 The salary cap for 20-year-old Players

For all 20-year-old players, a team is limited to a salary cap of $1,700 per week; however, if among its 20-year-old players, there is at least one player who has signed a contract with the NHL or with the AHL, this maximum is raised to $2,100.

A 20-year-old player cannot receive earnings that exceed $1,000 per week.

5.6 Included in the Salary Cap

The following amounts are included in the maximum pay:

- The weekly base pay including the payroll deductions imposed by the various levels of government;
- The fair value pension, except for the training camp periods or following elimination if the player must not travel for the purposes of school;
- An apartment, if applicable, at its fair value;
- An allowance for local transportation;
- All sponsorship (car, computer, apartment, meals, etc.) at its fair value on a weekly basis;
- All scholarship for future studies promised to him at the moment of his turning 20 years of age, at its fair value on a weekly basis.

All litigation on "the fair value on a weekly basis" of certain benefits is defined by the Commissioner or by the person designated by him for this purpose.

If the salary or any other monetary benefits are disbursed by a sponsor or a third party, these amounts must be declared and they are included in the salary cap.

5.7 Excluded from the Salary Cap

The following amounts are excluded from the maximum pay:

- The actual cost of tuition, registration and school supplies;
- The payroll taxes imposed on the employers by all levels of government;
- All the conditions usually applied to all the players regarding equipment, medical expenses, training, games and travel.

5.8 Incapable of Playing

The salary of the 20-year-old player who is incapable of playing because of illness or injury and who is replaced by another 20-year-old player is excluded from the salary cap anticipated in 3.1. The salary of the replacement player is included. A medical certificate certifying his inability to play is mandatory.

5.9 A 20-year-old Player in Excess

For a period not exceeding 14 days, the team can pay four 20-year-old players, as long as the salary of the three players registered in the league respects the salary cap anticipated in 3.1; the salary of the 4th player is thus excluded from the salary cap. The team can only use the hereby agreement twice per year.

5.10 Payment of the salary

The payment of the salary to the 20-year-old player cannot begin until the week of the regular schedule opening and cannot exceed the week that marks the elimination of his team or the last game of the season if his team is not eliminated.

5.11 Reports to be registered with the league

From the start of the season, and every time an amendment is made to the conditions underlined for 20-year-old players thereafter, either by the subtraction or addition of such a player or by an amendment to the contract of one player in particular, the appropriate forms must be filled-out and forwarded to the League office (registry department) by e-mail. If a new player, or one who has had one of his conditions modified, participates in one or more games before the League registry department has received the appropriate forms, the team will be fined $500 for each game that the player has played.

The report produced must be attested under oath within five (5) working days of its production. A $500 fine will be imposed to teams for every game that the report has not been forwarded to the League. The attested report must be transmitted by fax or by e-mail if it has been scanned.

6. SPECIAL AGREEMENTS

6.1 Special Agreements

In the event that a club wishes to establish a special agreement with a player that the team wants to recruit and in the event that the special agreement offers conditions which are different than those established in the present regulation, the club must comply with the guidelines established by the Commissioner on the matter of special agreements. In addition, the club must file such agreements between the club and a player with the League's Registrar.

7. COMPLAINTS, INQUIRIES AND SANCTIONS

7.1 Complaint

Any club accusing another of not complying the present regulation shall do so in writing to the Commissioner and include all written evidence supporting the accusation, along with a cheque in the amount of $1000 made payable to the League.

If the complaint proves to be well-founded, the cheque will be reimbursed to the complaining club. If the Commissioner feels the information is credible and believes that the present regulation was indeed infringed, he may conduct an inquiry and impose a fine to the faulty team.

7.2 Conduct of the inquiry

Upon receipt of the written complaint, evidence and cheque, the Commissioner shall immediately conduct an inquiry and notify the accused club by sending the organization a copy of the complaint which has been filed. The organization which is accused shall fully cooperate to the inquiry; otherwise, it will automatically be declared guilty and fined.

7.3 Sanction

Any team that violates the rules of the present regulation, either making false declarations, hiding or trying to hide information regarding financial benefits extended to a player, will be charged by the Commissioner with one or several of the following sanctions in proportion to the severity of the offence:

- A fine that could reach $100,000;
- The loss of entry draft picks for the two years following the infraction being brought to the attention of the Commissioner;
- The loss of points in standings.

7.4 If not guilty

If the Commissioner's inquiry proves that the complaint is not well-founded, the accusing club shall automatically be fined $1000 which will then be deposited into the Education Fund Gervais Munger.

SCHEDULE A: COMMITMENT FORM FOR 16-TO-19-YEAR-OLD PLAYERS

Rights and obligations of the Player

The Player bound by the Regulation of the QMJHL

The Player acknowledges to be bound by the Constitution, the Regulations, the Policies and the Directives of the QMJHL and to comply with their provisions throughout the player's association with the QMJHL, as a player between the ages of 16 and 19 (inclusively).

Without limiting the general spirit of the previous paragraph,

- The Player hereby acknowledges to have received the QMJHL Regulation related to Rights and Obligations of Players (R-11) and its Education Policy (P-1), to have read and to understand their provisions;
- The player acknowledges that he has read article 3.1.3 of the present regulation on the rights and obligations of players (R-11) which pertains to the mandatory requirement that players wear a mouthguard, neck guard and visor. The player understands its content and agrees to comply. Therefore, the player agrees to clear, release and exonerate the League from any claim, action or cause of action in the event that the player fails to wear or use the mandatory protective equipment, that he wears or uses equipment which has been modified or altered in any way, that he wears or uses protective equipment which has not been authorized by the League;
- The player acknowledges that he has read article 3.2 of the present regulation on the rights and obligations of players (R-11) which pertains to the various medical requirements. The player understands its content and agrees to comply;
- The player acknowledges that this present agreement terminates, cancels and replaces any existing standard contract, if any, between the player and the club.

Power of the League to amend its regulation

The Player acknowledges that the League may amend the content of its Constitution, its Regulations, its Policies and its Directives in accordance with its constitutional decision-making procedure. The enforcement of an amendment related to the conditions applied to players may only be done after appropriate and complete information is provided to the Player.

Disagreement

Power of the Commissioner

In case of disagreement between the Club and the Player, as to the application of the regulations of the League governing the conditions to Players, the question shall be submitted to the Commissioner of the League, who shall render a final decision binding all the parties after receiving and reviewing the contingence of both parties and hearing in the presence of their attorneys, if any. The decision of the Commissioner is final and is not subject to appeal.

Exclusive Jurisdiction of the Courts of the Province of Quebec

Notwithstanding the place where the contract is concluded, the parties also agree that any dispute arising from this agreement that is not within the scope of the Commissioner's jurisdiction be submitted to the exclusive jurisdiction of the Courts of the Province of Quebec, for the resolution of the matter in accordance with the laws applicable in the province of Quebec.

In witness, thereof, the parties to this agreement have signed at the date and location indicated below.

(The commitment form is signed in four (4) originals: one for the Player, one for the Club and two for the League.)

Player

Name of the Player:

Signature: _____ at_____, this___ th day of _____20___
Permanent address of the Player:

Tel:

Email:

Countersignature of a parent or legal guardian if the player is a minor

Signature: _____ at_____, this___ th day of _____20___
Permanent address of the Parent or the Tutor:

Tel:

Email:

Approved by

Club member of the QMJHL:

Name of the Club:

Authorized signatory of the Club

Signature: _____ at_____, this___ th day of _____20___
Date: _____

Approved by

Quebec Major Junior Hockey League

Commissioner: Gilles Courteau:

Signature: _____ at_____, this___ th day of_____20___

SCHEDULE B: STANDARD CONTRACT – 20-YEAR-OLD PLAYER

Agreement between

_____, hereinafter called « the Club », member of the Quebec Major Junior Hockey League, hereinafter called « the League ».

and

_____, hereinafter called « the Player ».

The parties agree as follows:

Rights and obligations of the parties

The Player bound by the Regulation of the QMJHL

The Player acknowledges to be bound by the Constitution, the Regulations, the Policies and the Directives of the QMJHL and to comply with their provisions throughout the player's association with the QMJHL as a 20 year old player.

Without limiting the general spirit of the previous paragraph,

- The Player hereby acknowledges to have received the QMJHL Regulation related to Rights and Obligations of Players (R-11) and its Education Policy (P-1), to have read and to understand their provisions;
- The player acknowledges that he has read article 3.1.3 of the present regulation on the rights and obligations of players (R-11) which pertains to the mandatory requirement that players wear a mouthguard, neck guard and visor. The player understands its content and agrees to comply. Therefore, the player agrees to clear, release and exonerate the League from any claim, action or cause of action in the event that the player fails to wear or use the mandatory protective equipment, that he wears or uses equipment which has been modified or altered in any way, that he wears or uses protective equipment which has not been authorized by the League;
- The player acknowledges that he has read article 3.2 of the present regulation on the rights and obligations of players (R-11) which pertains to the various medical requirements. The player understands its content and agrees to comply;
- The player acknowledges that this present contract terminates, cancels and replaces any existing standard contract, if any, between the player and the club.

Power of the League to amend its regulation

The Player acknowledges that the League may amend the content of its Constitution, its Regulations, its Policies and its Directives in accordance with its constitutional decision-making procedure. The enforcement of an amendment related to the conditions applied to players may only be done after appropriate and complete information is provided to the Player.

This agreement is the sole understanding relating to the rights of the Player for his services as a 20-year-old player, and it supersedes or replaces any other prior verbal or written agreement or statement of intent.

Remuneration conditions of the Player:

Base weekly gross salary to be paid to the Player for regular season and playoffs: _____

Accommodation expenses: _____

Local transportation expenses, in cash or in tickets: _____

Other conditions: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Disagreement

Power of the Commissioner

In case of disagreement between the Club and the Player, as to the application of this agreement, the question shall be submitted to the Commissioner of the League, who shall render a final decision binding all the parties after receiving and reviewing the contingence of both parties and hearing in the presence of their attorneys, if any. The decision of the Commissioner is final and is not subject to appeal.

Exclusive Jurisdiction of the Courts of the Province of Quebec

Notwithstanding the place where the contract is concluded, the parties also agree that any dispute arising from this agreement that is not within the scope of the Commissioner's jurisdiction be submitted to the exclusive jurisdiction of the courts of the province of Quebec, for the resolution of the matter in accordance with the laws applicable in the province of Quebec.

Term of this agreement

Subject to the provisions of this agreement, the Club hires the Player for a period starting not sooner than the opening week of the regular schedule and ending immediately upon the occurrence of one of the following events: the release of the player by the Club, his exchange to another team of the League, the elimination of his team at the end of the regular schedule or during the playoffs, or at the end of the Memorial Cup contest.

In witness, thereof, the parties to this agreement have signed at the date and location indicated below.

(The contract is signed in four (4) originals: one for the Player, one for the Club and two for the League.)

Club member of the QMJHL

Name of the Club:

Authorized signatory of the Club

Signature: _____ at_____, this___ th day of _____20___
Date: _____

Address of the club:

Tel:

Email:

Player

Name of the Player:

Signature: _____ at_____, this___ th day of _____20___
Permanent address of the Player:

Tel:

Email:

Approved by

Quebec Major Junior Hockey League

Commissioner: Gilles Courteau:

Signature: _____ at_____, this___ th day of_____20___

j. Salaires de CHL / QMJHL:

La section de la LHJMQ montre que 54 joueurs ont été rédigés ou signés et qu'ils sont actuellement sous contrat dans les matchs de la LHJMQ et ont reçu des salaires et / ou des primes à la signature de plus de 27 514 041 $.

Le synopsis ci-dessous vous donne une ventilation par ligue. Les primes de signature indiquées dans le sommaire indiquent que ces montants ont été reçus lors des matchs de la LHJMQ.

CHL / QMJHL Salaries:

QMJHL section shows 54 players drafted or signed that are currently under contract participating in QMJHL games and have receives salaries and or signing bonuses more than $27,514,501.

The Synopsis below gives you a break down per league. The signing bonuses as indicated in the synopsis shows these amounts have been received while performing in the QMJHL games.

STATS 2014 - 2020 SEASONS	QMJHL	OHL	WHL
Total Players Drafted	54	84	47
Total Cap Hit	$92,998,504	$107,852,504	$56,330,839
Total S. Bonus	$8,682,500	$10,880,000	$5,530,000
Total P. Bonus	$21,232,500	$30,007,500	$9,272,500
League Totals	**$122,913,504**	**$148,740,004**	**$71,133,339**

QMJHL						QMJHL							QMJHL							QMJHL						
Player	Draft Year	Draft Round	QMJHL Team	NHL Team	Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016-2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT	S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS	P. Bonus 2014-2015	P. Bonus 2015-2016	P. Bonus 2016-2017	P. Bonus 2017-2018	P. Bonus 2018-2019	P. Bonus 2019-2020	TOTAL P. BONUS
	2016	3	Blainville-Boisbriand, Armada	Columbus Blue Jackets	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$0	na	$185,000	na	na	$2,500,000	$2,500,000	$2,500,000	na	$7,500,000
	2015	2	Blainville-Boisbriand, Armada	San Jose Sharks	na	$889,167	$858,333	$858,333	$858,333	na	$3,464,166	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	$0	$107,500	$0	$0	na	$107,500
	2015	3	Blainville-Boisbriand, Armada	Florida Panthers	na	na	$725,833	$725,833	$725,833	na	$2,177,499	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$157,500	na	$597,500
	2016	7	Cape Breton, Screaming Eagles	Buffalo Sabres	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2014	7	Cape Breton, Screaming Eagles	Columbus Blue Jackets	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	2	Charlottetown, Islanders	Pittsburgh Penguins	na	$692,500	$692,500	$692,500	na	na	$2,077,500	na	$92,500	$92,500	$92,500	na	na	$277,500	na	$257,500	$257,500	$182,500	na	na	$697,500
	2015	2	Charlottetown, Islanders	Ottawa Senators	na	na	$759,167	$759,167	$759,167	na	$2,277,501	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$182,500	$132,500	na	$497,500
	2014	6	Charlottetown, Islanders	St. Louis Blues	na	$672,500	$673,333	$673,333	$673,333	na	$2,692,499	na	$72,500	$72,500	$72,500	$0	na	$217,500	na	$0	$77,500	$77,500	$2,500	na	$157,500
	2015	7	Charlottetown, Islanders	Detroit Red Wings	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2016	4	Charlottetown, Islanders	Anaheim Ducks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	2	Charlottetown, Islanders	Colorado Avalanche	na	na	na	$853,333	$853,333	$853,333	$2,559,999	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$132,500	$82,500	$0	$215,000
	2015	5	Charlottetown, Islanders	Vancouver Canucks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	3	Charlottetown, Islanders	Vancouver Canucks	na	$734,167	$703,333	$703,333	$703,333	na	$2,844,166	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$132,500	$0	$572,500
	Undrafted	na	Charlottetown, Islanders	Toronto Maple Leafs	$616,667	$633,333	$641,667	$641,667	$641,667	na	$3,175,001	$50,000	$50,000	$50,000	$0	$0	na	$150,000	na	na	$0	$0	$0	na	$0
	2016	1	Chicoutimi, Saguenéens	Philadelphia Flyers	na	na	na	$925,000	$925,000	$925,000	$2,775,000	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$0	$212,500	$425,000	$637,500
	2015	4	Chicoutimi, Saguenéens	Vancouver Canucks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	4	Chicoutimi, Saguenéens	Carolina Hurricanes	na	na	$705,000	$705,000	$705,000	na	$2,115,000	na	na	$80,000	$80,000	$80,000	na	$240,000	na	na	$145,000	$70,000	$70,000	na	$285,000
	2016	3	Chicoutimi, Saguenéens	Nashville Predators	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	Undrafted	na	Drummondville, Voltigeurs	Vancouver Canucks	na	na	$675,000	$675,000	$675,000	na	$2,025,000	na	na	$25,000	$25,000	$25,000	na	$75,000	na	na	$0	$0	$0	na	$0
	2016	3	Gatineau, Olympiques	Columbus Blue Jackets	na	na	$775,833	$775,833	$775,833	na	$2,327,499	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$182,500	$82,500	$0	$447,500
	2015	2	Gatineau, Olympiques	Nashville Predators	na	$792,500	$761,667	$761,667	$761,667	na	$3,077,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$182,500	$132,500	$82,500	na	$397,500
	Undrafted	na	Gatineau, Olympiques	Vancouver Canucks	na	na	na	$847,000	$847,000	$847,000	$2,541,000	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$132,500	$100,000	$212,500	$445,000
	2016	7	Halifax, Mooseheads	Tampa Bay Lightning	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2016	5	Moncton, Wildcats	San Jose Sharks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2014	7	Moncton, Wildcats	Edmonton Oilers	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	4	Québec, Remparts	Carolina Hurricanes	na	na	na	$741,667	$741,667	$741,667	$2,225,001	na	na	na	$75,000	$75,000	$75,000	$225,000	na	na	na	$25,000	$25,000	$0	$50,000
	2015	6	Saint John, Sea Dogs	Montreal Canadiens	na	na	na	$720,000	$720,000	$720,000	$2,160,000	na	na	na	$70,000	$50,000	$40,000	$160,000	na	na	na	$0	$0	$0	$0
	2016	6	Rouyn-Noranda, Huskies	New York Rangers	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	3	Rouyn-Noranda, Huskies	Toronto Maple Leafs	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	3	Rouyn-Noranda, Huskies	Colorado Avalanche	na	na	na	$765,000	$765,000	$765,000	$2,295,000	na	na	na	$80,000	$82,500	$82,500	$245,000	na	na	na	$70,000	$42,500	$42,500	$155,000
	Undrafted	na	Rouyn-Noranda, Huskies	Chicago Blackhawks	na	na	$685,000	$685,000	$685,000	na	$2,055,000	na	na	$60,000	$60,000	$60,000	na	$180,000	na	na	$0	$0	$0	na	$0
	2015	2	Rouyn-Noranda, Huskies	Boston Bruins	na	$800,833	$770,000	$770,000	$770,000	na	$3,110,833	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$207,500	$107,500	$57,500	na	$372,500
	Undrafted	na	Rouyn-Noranda, Huskies	Philadelphia Flyers	na	$636,667	$648,333	$648,333	$648,333	na	$2,581,666	na	$40,000	$35,000	$35,000	$0	na	$110,000	na	na	$0	$0	$0	na	$0
	2016	4	Saint John, Sea Dogs	Chicago Blackhawks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2016	1	Saint John, Sea Dogs	Carolina Hurricanes	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$300,000	$300,000	$300,000	na	$900,000
	Undrafted	na	Saint John, Sea Dogs	Chicago Blackhawks	na	na	na	$775,833	$775,833	$775,833	$2,327,499	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$157,500	$107,500	$447,500
	2015	4	Saint John, Sea Dogs	Philadelphia Flyers	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	5	Saint John, Sea Dogs	Carolina Hurricanes	na	na	na	$741,667	$741,667	$741,667	$2,225,001	na	na	na	$75,000	$75,000	$75,000	$225,000	na	na	na	$25,000	$25,000	$0	$50,000
	2015	4	Saint John, Sea Dogs	Tampa Bay Lightning	na	na	$742,500	$742,500	$742,500	na	$2,227,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$182,500	$182,500	na	$547,500
	2015	6	Saint John, Sea Dogs	Tampa Bay Lightning	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	1	Saint John, Sea Dogs	Ottawa Senators	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$360,000	$360,000	$360,000	na	$1,080,000
	2015	1	Saint John, Sea Dogs	Boston Bruins	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$212,500	$425,000	$637,500	na	$1,275,000
	2016	3	Saint John, Sea Dogs	Winnipeg Jets	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2015	3	Shawinigan, Cataractes	Tampa Bay Lightning	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2016	3	Shawinigan, Cataractes	New Jersey Devils	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500		$622,500
	2015	1	Shawinigan, Cataractes	New York Islanders	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$212,500	$212,500	$212,500	na	$637,500
	Undrafted	na	Shawinigan, Cataractes	San Jose Sharks	na	$654,167	$656,667	$656,667	$656,667	na	$2,624,168	na	$42,500	$45,000	$50,000	$0	na	$137,500	na	na	$0	$0	$0	na	$0
	2016	2	Shawinigan, Cataractes	Nashville Predators	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2014	4	Sherbrooke, Phoenix	Columbus Blue Jackets	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	Undrafted	na	Sherbrooke, Phoenix	Ottawa Senators	$616,667	$633,333	$641,667	$641,667	$641,667	na	$3,175,001	$50,000	$50,000	$50,000	$0	$0	na	$150,000	na	na	$0	$0	$0	na	$0
	2015	5	Sherbrooke, Phoenix	Vancouver Canucks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2016	2	Sherbrooke, Phoenix	St. Louis Blues	na	na	na	$784,167	$784,167	$784,167	$2,352,501	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$182,500	$57,500	$422,500
	2014	4	Val-d'Or, Foreurs	Colorado Avalanche	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2016	2	Victoriaville, Tigres	Philadelphia Flyers	na	na	$842,500	$842,500	$842,500	na	$2,527,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$107,500	$82,500	$57,500	na	$247,500

QMJHL						QMJHL							QMJHL							QMJHL						
# of Players Drafted from QMJHL					Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016-2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT	S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS	P. Bonus 2014-2015	P. Bonus 2015-2016	P. Bonus 2016-2017	P. Bonus 2017-2018	P. Bonus 2018-2019	P. Bonus 2019-2020	TOTAL P. BONUS
54					$1,233,334	$9,914,167	$20,360,834	$27,514,501	$26,822,001	$7,153,667	$92,998,504	$100,000	$902,500	$2,175,000	$2,842,500	$1,927,500	$735,000	$8,682,500	$0	$257,500	$6,762,500	$6,842,500	$6,525,000	$845,000	$21,232,500

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QMJHL						QMJHL					
Player	Draft Year	Draft Round	QMJHL Team	NHL Team	Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016-2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT
	2016	3	Blainville-Boisbriand, Armada	Columbus Blue Jackets	na	na	$925,000	$925,000	$925,000	na	$2,775,000
	2015	2	Blainville-Boisbriand, Armada	San Jose Sharks	na	$889,167	$858,333	$858,333	$858,333	na	$3,464,166
	2015	3	Blainville-Boisbriand, Armada	Florida Panthers	na	na	$725,833	$725,833	$725,833	na	$2,177,499
	2016	7	Cape Breton, Screaming Eagles	Buffalo Sabres	na	na	na	na	na	na	$0
	2014	7	Cape Breton, Screaming Eagles	Columbus Blue Jackets	na	na	na	na	na	na	$0
	2015	2	Charlottetown, Islanders	Pittsburgh Penguins	na	$692,500	$692,500	$692,500	na	na	$2,077,500
	2015	2	Charlottetown, Islanders	Ottawa Senators	na	na	$759,167	$759,167	$759,167	na	$2,277,501
	2014	6	Charlottetown, Islanders	St. Louis Blues	na	$672,500	$673,333	$673,333	$673,333	na	$2,692,499
	2015	7	Charlottetown, Islanders	Detroit Red Wings	na	na	na	na	na	na	$0
	2016	4	Charlottetown, Islanders	Anaheim Ducks	na	na	na	na	na	na	$0
	2015	2	Charlottetown, Islanders	Colorado Avalanche	na	na	na	$853,333	$853,333	$853,333	$2,559,999
	2015	5	Charlottetown, Islanders	Vancouver Canucks	na	na	na	na	na	na	$0
	2015	3	Charlottetown, Islanders	Vancouver Canucks	na	$734,167	$703,333	$703,333	$703,333	na	$2,844,166
	Undrafted	na	Charlottetown, Islanders	Toronto Maple Leafs	$616,667	$633,333	$641,667	$641,667	$641,667	na	$3,175,001
	2016	1	Chicoutimi, Saguenéens	Philadelphia Flyers	na	na	na	$925,000	$925,000	$925,000	$2,775,000
	2015	4	Chicoutimi, Saguenéens	Vancouver Canucks	na	na	na	na	na	na	$0
	2015	4	Chicoutimi, Saguenéens	Carolina Hurricanes	na	na	$705,000	$705,000	$705,000	na	$2,115,000
	2016	3	Chicoutimi, Saguenéens	Nashville Predators	na	na	$717,500	$717,500	$717,500	na	$2,152,500
	Undrafted	na	Drummondville, Voltigeurs	Vancouver Canucks	na	na	$675,000	$675,000	$675,000	na	$2,025,000
	2016	3	Gatineau, Olympiques	Columbus Blue Jackets	na	na	$775,833	$775,833	$775,833	na	$2,327,499
	2015	2	Gatineau, Olympiques	Nashville Predators	na	$792,500	$761,667	$761,667	$761,667	na	$3,077,501
	Undrafted	na	Gatineau, Olympiques	Vancouver Canucks	na	na	na	$847,000	$847,000	$847,000	$2,541,000
	2016	7	Halifax, Mooseheads	Tampa Bay Lightning	na	na	na	na	na	na	$0
	2016	5	Moncton, Wildcats	San Jose Sharks	na	na	na	na	na	na	$0
	2014	7	Moncton, Wildcats	Edmonton Oilers	na	na	na	na	na	na	$0
	2015	4	Québec, Remparts	Carolina Hurricanes	na	na	na	$741,667	$741,667	$741,667	$2,225,001
	2015	6	Saint John, Sea Dogs	Montreal Canadiens	na	na	na	$720,000	$720,000	$720,000	$2,160,000
	2016	6	Rouyn-Noranda, Huskies	New York Rangers	na	na	na	na	na	na	$0
	2015	3	Rouyn-Noranda, Huskies	Toronto Maple Leafs	na	na	na	na	na	na	$0
	2015	3	Rouyn-Noranda, Huskies	Colorado Avalanche	na	na	na	$765,000	$765,000	$765,000	$2,295,000
	Undrafted	na	Rouyn-Noranda, Huskies	Chicago Blackhawks	na	na	$685,000	$685,000	$685,000	na	$2,055,000
	2015	2	Rouyn-Noranda, Huskies	Boston Bruins	na	$800,833	$770,000	$770,000	$770,000	na	$3,110,833
	Undrafted	na	Rouyn-Noranda, Huskies	Philadelphia Flyers	na	$636,667	$648,333	$648,333	$648,333	na	$2,581,666
	2016	4	Saint John, Sea Dogs	Chicago Blackhawks	na	na	na	na	na	na	$0
	2016	1	Saint John, Sea Dogs	Carolina Hurricanes	na	na	$925,000	$925,000	$925,000	na	$2,775,000
	Undrafted	na	Saint John, Sea Dogs	Chicago Blackhawks	na	na	na	$775,833	$775,833	$775,833	$2,327,499
	2015	4	Saint John, Sea Dogs	Philadelphia Flyers	na	na	na	na	na	na	$0
	2015	5	Saint John, Sea Dogs	Carolina Hurricanes	na	na	na	$741,667	$741,667	$741,667	$2,225,001
	2015	4	Saint John, Sea Dogs	Tampa Bay Lightning	na	na	$742,500	$742,500	$742,500	na	$2,227,500
	2015	6	Saint John, Sea Dogs	Tampa Bay Lightning	na	na	na	na	na	na	$0
	2015	1	Saint John, Sea Dogs	Ottawa Senators	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501
	2015	1	Saint John, Sea Dogs	Boston Bruins	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501
	2016	3	Saint John, Sea Dogs	Winnipeg Jets	na	na	na	na	na	na	$0
	2015	3	Shawinigan, Cataractes	Tampa Bay Lightning	na	na	$717,500	$717,500	$717,500	na	$2,152,500
	2016	3	Shawinigan, Cataractes	New Jersey Devils	na	na	$717,500	$717,500	$717,500	na	$2,152,500
	2015	1	Shawinigan, Cataractes	New York Islanders	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501
	Undrafted	na	Shawinigan, Cataractes	San Jose Sharks	na	$654,167	$656,667	$656,667	$656,667	na	$2,624,168
	2016	2	Shawinigan, Cataractes	Nashville Predators	na	na	$717,500	$717,500	$717,500	na	$2,152,500
	2014	4	Sherbrooke, Phoenix	Columbus Blue Jackets	na	na	na	na	na	na	$0
	Undrafted	na	Sherbrooke, Phoenix	Ottawa Senators	$616,667	$633,333	$641,667	$641,667	$641,667	na	$3,175,001
	2015	5	Sherbrooke, Phoenix	Vancouver Canucks	na	na	na	na	na	na	$0
	2016	2	Sherbrooke, Phoenix	St. Louis Blues	na	na	na	$784,167	$784,167	$784,167	$2,352,501
	2014	4	Val-d'Or, Foreurs	Colorado Avalanche	na	na	na	na	na	na	$0
	2016	2	Victoriaville, Tigres	Philadelphia Flyers	na	na	$842,500	$842,500	$842,500	na	$2,527,500
QMJHL						QMJHL					
# of Players Drafted from QMJHL					Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016-2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT

	QMJHL					
S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS
na	na	$92,500	$92,500	$0	na	$185,000
na	$92,500	$92,500	$92,500	$0	na	$277,500
na	na	$92,500	$92,500	$92,500	na	$277,500
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	$92,500	$92,500	$92,500	na	na	$277,500
na	na	$92,500	$92,500	$92,500	na	$277,500
na	$72,500	$72,500	$72,500	$0	na	$217,500
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	$92,500	$92,500	$92,500	$277,500
na	na	na	na	na	na	$0
na	na	$92,500	$92,500	$92,500	na	$277,500
$50,000	$50,000	$50,000	$0	$0	na	$150,000
na	na	na	$92,500	$92,500	$92,500	$277,500
na	na	na	na	na	na	$0
na	na	$80,000	$80,000	$80,000	na	$240,000
na	na	$92,500	$92,500	$92,500	na	$277,500
na	na	$25,000	$25,000	$25,000	na	$75,000
na	na	$92,500	$92,500	$92,500	na	$277,500
na	$92,500	$92,500	$92,500	$0	na	$277,500
na	na	na	$92,500	$92,500	$92,500	$277,500
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	$75,000	$75,000	$75,000	$225,000
na	na	na	$70,000	$50,000	$40,000	$160,000
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	$80,000	$82,500	$82,500	$245,000
na	na	$60,000	$60,000	$60,000	na	$180,000
na	$92,500	$92,500	$92,500	$0	na	$277,500
na	$40,000	$35,000	$35,000	$0	na	$110,000
na	na	na	na	na	na	$0
na	na	$92,500	$92,500	$92,500	na	$277,500
na	na	na	$92,500	$92,500	$92,500	$277,500
na	na	na	na	na	na	$0
na	na	na	$75,000	$75,000	$75,000	$225,000

na	na	$92,500	$92,500	$92,500	na	$277,500
na	na	na	na	na	na	$0
na	$92,500	$92,500	$92,500	$0	na	$277,500
na	$92,500	$92,500	$92,500	$0	na	$277,500
na	na	na	na	na	na	$0
na	na	$92,500	$92,500	$92,500	na	$277,500
na	na	$92,500	$92,500	$92,500	na	$277,500
na	$92,500	$92,500	$92,500	$0	na	$277,500
na	$42,500	$45,000	$50,000	$0	na	$137,500
na	na	$92,500	$92,500	$92,500	na	$277,500
na	na	na	na	na	na	$0
$50,000	$50,000	$50,000	$0	$0	na	$150,000
na	na	na	na	na	na	$0
na	na	na	$92,500	$92,500	$92,500	$277,500
na	na	na	na	na	na	$0
na	na	$92,500	$92,500	$92,500	na	$277,500

	QMJHL					
S. Bonus 2014-2015	**S. Bonus 2015-2016**	**S. Bonus 2016-2017**	**S. Bonus 2017-2018**	**S. Bonus 2018-2019**	**S. Bonus 2019-2020**	**TOTAL S. BONUS**
$100,000	**$902,500**	**$2,175,000**	**$2,842,500**	**$1,927,500**	**$735,000**	**$8,682,500**

	QMJHL					
P. Bonus 2014-2015	**P. Bonus 2015-2016**	**P. Bonus 2016-2017**	**P. Bonus 2017-2018**	**P. Bonus 2018-2019**	**P. Bonus 2019-2020**	**TOTAL P. BONUS**
na	na	$2,500,000	$2,500,000	$2,500,000	na	$7,500,000
na	$0	$107,500	$0	$0	na	$107,500
na	na	$257,500	$182,500	$157,500	na	$597,500
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	$257,500	$257,500	$182,500	na	na	$697,500
na	na	$182,500	$182,500	$132,500	na	$497,500
na	$0	$77,500	$77,500	$2,500	na	$157,500
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	$132,500	$82,500	$0	$215,000
na	na	na	na	na	na	$0
na	na	$257,500	$182,500	$132,500	$0	$572,500
na	na	$0	$0	$0	na	$0
na	na	na	$0	$212,500	$425,000	$637,500
na	na	na	na	na	na	$0
na	na	$145,000	$70,000	$70,000	na	$285,000
na	na	$257,500	$182,500	$182,500	na	$622,500

na	na	$0	$0	$0	na	$0
na	na	$182,500	$182,500	$82,500	$0	$447,500
na	na	$182,500	$132,500	$82,500	na	$397,500
na	na	na	$132,500	$100,000	$212,500	$445,000
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	$25,000	$25,000	$0	$50,000
na	na	na	$0	$0	$0	$0
na	na	na	na	na	na	$0
na	na	na	na	na	na	$0
na	na	na	$70,000	$42,500	$42,500	$155,000
na	na	$0	$0	$0	na	$0
na	na	$207,500	$107,500	$57,500	na	$372,500
na	na	$0	$0	$0	na	$0
na	na	na	na	na	na	$0
na	na	$300,000	$300,000	$300,000	na	$900,000
na	na	na	$182,500	$157,500	$107,500	$447,500
na	na	na	na	na	na	$0
na	na	na	$25,000	$25,000	$0	$50,000
na	na	$182,500	$182,500	$182,500	na	$547,500
na	na	na	na	na	na	$0
na	na	$360,000	$360,000	$360,000	na	$1,080,000
na	na	$212,500	$425,000	$637,500	na	$1,275,000
na	na	na	na	na	na	$0
na	na	$257,500	$182,500	$182,500	na	$622,500
na	na	$257,500	$182,500	$182,500		$622,500
na	na	$212,500	$212,500	$212,500	na	$637,500
na	na	$0	$0	$0	na	$0
na	na	$257,500	$182,500	$182,500	na	$622,500
na	na	na	na	na	na	$0
na	na	$0	$0	$0	na	$0
na	na	na	na	na	na	$0
na	na	na	$182,500	$182,500	$57,500	$422,500
na	na	na	na	na	na	$0
na	na	$107,500	$82,500	$57,500	na	$247,500
			QMJHL			
P. Bonus 2014-2015	**P. Bonus 2015-2016**	**P. Bonus 2016-2017**	**P. Bonus 2017-2018**	**P. Bonus 2018-2019**	**P. Bonus 2019-2020**	**TOTAL P. BONUS**
$0	**$257,500**	**$6,762,500**	**$6,842,500**	**$6,525,000**	**$845,000**	**$21,232,500**

OHL			OHL					OHL								OHL								OHL							
Player	Draft Year	Draft Round	OHL Team	NHL Team	Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016 2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT	S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS	P. Bonus 2014-2015	P. Bonus 2015-2016	P. Bonus 2016-2017	P. Bonus 2017-2018	P. Bonus 2018-2019	P. Bonus 2019-2020	TOTAL P. BONUS
	2015	6	Barrie Colts	Chicago Blackhawks	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	Undrafted	na	Barrie Colts	Inactive	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0	na	na	na	na	na	na	$0
	2016	2	Erie Otters	Chicago Blackhawks	na	na	$809,167	$809,167	$809,167	na	$2,427,501	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$132,500	$32,500	na	$347,500
	2014	6	Erie Otters	Vancouver Canucks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	2	Erie Otters	Tampa Bay Lightning	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	1	Erie Otters	Arizona Coyotes	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	na	$92,500	$92,500	$92,500	$0	$277,500	na	na	$2,475,000	$2,475,000	$2,475,000	na	$7,425,000
	2015	3	Erie Otters	Tampa Bay Lightning	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2014	3	Erie Otters	Carolina Hurricanes	na	na	na	$746,667	$746,667	$746,667	$2,240,001	na	na	na	$80,000	$80,000	$80,000	$240,000	na	na	na	$70,000	$70,000	$20,000	$160,000
	2016	5	Erie Otters	Detroit Red Wings	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	$0
	2015	2	Erie Otters	Los Angeles Kings	na	$732,500	$708,333	$708,333	$708,333	na	$2,857,499	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$227,500	$202,500	$147,500	na	$577,500
	2016	5	Flint Firebirds	Dallas Stars	na	na	na	$745,000	$745,000	$745,000	$2,235,000	na	na	na	$70,000	$70,000	$70,000	$210,000	na	na	na	$0	$0	$0	$0
	Undrafted	na	Flint Firebirds	Columbus Blue Jackets	na	$750,000	$721,667	$721,667	$721,667	na	$2,915,001	na	$85,000	$85,000	$80,000	$0	na	$250,000	na	na	$115,000	$115,000	$20,000	na	$250,000
	2014	3	Flint Firebirds	Dallas Stars	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	Undrafted	na	Flint Firebirds	Arizona Coyotes	na	na	$655,000	$655,000	$655,000	na	$1,965,000	na	na	$30,000	$30,000	$30,000	na	$90,000	na	na	$0	$0	$0	na	$0
	Undrafted	na	Hamilton Bulldogs	Los Angeles Kings	na	na	$641,667	$641,667	$641,667	na	$1,925,001	na	na	$20,000	$15,000	$15,000	na	$50,000	na	na	$0	$0	$0	na	$0
	2016	3	Hamilton Bulldogs	Montreal Canadiens	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	5	Hamilton Bulldogs	Vancouver Canucks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	6	Kingston Frontena	Toronto Maple Leafs	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	5	Kingston Frontena	Carolina Hurricanes	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	2	Kitchener Rangers	Florida Panthers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	4	Kitchener Rangers	Philadelphia Flyers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	3	Kitchener Rangers	Pittsburgh Penguins	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	5	Kitchener Rangers	St. Louis Blues	na	$692,500	$686,667	$686,667	$686,667	na	$2,752,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$257,500	$257,500	$182,500	na	$697,500
	2016	1	London Knights	Anaheim Ducks	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$0	$0	$0	na	$0
	2016	3	London Knights	Buffalo Sabres	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	London Knights	Tampa Bay Lightning	na	na	$839,167	$839,167	$839,167	na	$2,517,501	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$0	$0	na	$257,500
	2016	2	London Knights	Carolina Hurricanes	na	na	na	$842,500	$842,500	$842,500	$2,527,500	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$132,500	$82,500	$32,500	$247,500
	2014	4	London Knights	Toronto Maple Leafs	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	Undrafted	na	London Knights	Columbus Blue Jackets	na	na	$725,000	$725,000	$725,000	na	$2,175,000	na	na	$50,000	$75,000	$75,000	na	$200,000	na	na	$0	$25,000	$0	na	$25,000
	2016	6	London Knights	Toronto Maple Leafs	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	5	London Knights	Vancouver Canucks	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$850,000	$1,450,000	$850,000	na	$3,150,000
	2015	3	London Knights	New York Islanders	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2016	4	London Knights	Montreal Canadiens	na	na	na	$748,333	$748,333	$748,333	$2,244,999	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$182,500	$0	$365,000
	2016	2	London Knights	Calgary Flames	na	na	na	$759,167	$759,167	$759,167	$2,277,501	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$182,500	$132,500	$497,500
	2016	1	Mississauga Steell	New Jersey Devils	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$500,000	$500,000	$500,000	na	$1,500,000
	2016	2	Mississauga Steell	New Jersey Devils	na	na	$734,167	$734,167	$734,167	na	$2,202,501	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$132,500	na	$572,500
	2014	4	Mississauga Steell	Los Angeles Kings	na	na	$705,833	$705,833	$705,833	na	$2,117,499	na	na	$80,000	$80,000	$82,500	na	$242,500	na	na	$145,000	$70,000	$92,500	na	$307,500
	2016	4	Mississauga Steell	Los Angeles Kings	na	na	$691,667	$691,667	$691,667	na	$2,075,001	na	na	$60,000	$70,000	$70,000	na	$200,000	na	na	$0	$0	$0	na	$0
	2016	7	Mississauga Steell	Buffalo Sabres	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	3	Mississauga Steell	Detroit Red Wings	na	$692,500	$686,667	$686,667	$686,667	na	$2,752,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$257,500	$257,500	$182,500	na	$697,500
	2014	4	Niagara IceDogs	Edmonton Oilers	na	na	na	$870,000	$870,000	$870,000	$2,610,000	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$82,500	$82,500	$0	$165,000
	2014	6	Niagara IceDogs	Dallas Stars	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	4	Oshawa Generals	Florida Panthers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Ottawa 67s	Colorado Avalanche	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	4	Ottawa 67s	Dallas Stars	na	na	$703,333	$703,333	$703,333	na	$2,109,999	na	na	$70,000	$70,000	$70,000	na	$210,000	na	na	$55,000	$0	$0	na	$55,000
	2015	5	Owen Sound Atta	Los Angeles Kings	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Owen Sound Atta	Los Angeles Kings	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	Undrafted	na	Owen Sound Atta	Montreal Canadiens	na	$646,667	$648,333	$648,333	$648,333	na	$2,591,666	na	$70,000	$70,000	$0	$0	na	$140,000	na	na	$55,000	$55,000	$0	na	$110,000
	2015	4	Peterborough Pet	Tampa Bay Lightning	na	na	$690,000	$690,000	$690,000	na	$2,070,000	na	na	$63,888	$66,112	$65,000	na	$195,000	na	na	$0	$0	$0	na	$0
	2016	5	Peterborough Pet	Tampa Bay Lightning	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	7	Peterborough Pet	Carolina Hurricanes	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	4	Peterborough Pet	Florida Panthers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	7	Peterborough Pet	Toronto Maple Leafs	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2014	7	Peterborough Pet	Carolina Hurricanes	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	Peterborough Pet	Tampa Bay Lightning	na	na	$742,500	$742,500	$742,500	na	$2,227,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$232,500	$182,500	$132,500	na	$547,500
	2016	5	Peterborough Pet	Edmonton Oilers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	6	Sarnia Sting	Philadelphia Flyers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Sarnia Sting	St. Louis Blues	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2014	6	Sarnia Sting	Pittsburgh Penguins	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	Sarnia Sting	St. Louis Blues	na	na	$803,333	$803,333	$803,333	na	$2,409,999	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$182,500	$0	na	$365,000
	2015	1	Sault Ste. Marie G	Boston Bruins	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$400,000	$425,000	$450,000	na	$1,275,000
	2016	2	Sault Ste. Marie G	Tampa Bay Lightning	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	3	Sault Ste. Marie G	New Jersey Devils	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500		$622,500
	2016	5	Sault Ste. Marie G	New York Rangers	na	na	na	$736,667	$736,667	$736,667	$2,210,001	na	na	na	$70,000	$70,000	$70,000	$210,000	na	na	na	$0	$0	$0	$0
	2016	4	Sault Ste. Marie G	Anaheim Ducks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	6	Sault Ste. Marie G	Carolina Hurricanes	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	4	Sault Ste. Marie G	New Jersey Devils	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2015	7	Sault Ste. Marie G	Minnesota Wild	na	na	$713,333	$713,333	$713,333	na	$2,139,999	na	na	$80,000	$80,000	$80,000	na	$240,000	na	na	$145,000	$70,000	$45,000	na	$260,000
	2016	6	Sudbury Wolves	Montreal Canadiens	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2014	6	Sudbury Wolves	St. Louis Blues	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	6	Sudbury Wolves	St. Louis Blues	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Sudbury Wolves	Minnesota Wild	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2014	7	Sudbury Wolves	Dallas Stars	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	$132,500	na
	2015	3	Sudbury Wolves	Arizona Coyotes	na	na	$775,833	$775,833	$775,833	na	$2,327,499	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$157,500	$107,500	na	$447,500
	2015	7	Windsor Spitfires	Montreal Canadiens	na	na	na	$720,000	$720,000	$720,000	$2,160,000	na	na	na	$70,000	$50,000	$40,000	$160,000	na	na	na	$0	$0	$0	$0
	2016	1	Windsor Spitfires	Ottawa Senators	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$710,000	$710,000	$710,000	na	$2,130,000
	2015	2	Windsor Spitfires	Anaheim Ducks	na	$775,833	$745,000	$745,000	$745,000	na	$3,010,833	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	$0	$232,500	$157,500	$57,500	na	$447,500
	2015	2	Windsor Spitfires	Chicago Blackhawks	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2014	6	Windsor Spitfires	Tampa Bay Lightning	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	Windsor Spitfires	Toronto Maple Leafs	na	na	na	$842,500	$842,500	$842,500	$2,527,500	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$82,500	$82,500	$82,500	$247,500
	2016	1	Windsor Spitfires	Winnipeg Jets	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$0	$212,500	$425,000	na	$637,500
	2016	1	Windsor Spitfires	Montreal Canadiens	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$850,000	$850,000	$850,000	na	$2,550,000
	Undrafted	na	Windsor Spitfires	Vancouver Canucks	na	na	na	$765,000	$765,000	$765,000	$2,295,000	na	na	na	$60,000	$65,000	$70,000	$195,000	na	na	na	$0	$0	$0	$0
	2016	3	Windsor Spitfires	New York Rangers	na	na	na	$775,833	$775,833	$775,833	$2,327,499	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$182,500	$82,500	$447,500

OHL			OHL					OHL								OHL								OHL							
# of Players Drafted from OHL					Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016 2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT	S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS	P. Bonus 2014-2015	P. Bonus 2015-2016	P. Bonus 2016-2017	P. Bonus 2017-2018	P. Bonus 2018-2019	P. Bonus 2019-2020	TOTAL P. BONUS
84					$0	$6,140,000	$25,352,501	$33,904,168	$33,904,168	$8,551,667	$107,852,504	$0	$617,500	$2,736,388	$3,598,612	$3,042,500	$885,000	$10,880,000	$0	$0	$9,857,500	$10,497,500	$9,170,000	$482,500	$30,007,500

WHL			WHL			WHL							WHL											WHL		
Player	Draft Year	Draft Round	WHL	NHL Team	Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016-2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT	S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS	P. Bonus 2014-2015	P. Bonus 2015-2016	P. Bonus 2016-2017	P. Bonus 2017-2018	P. Bonus 2018-2019	P. Bonus 2019-2020	TOTAL P. BONUS
	2015	2	Seattle Thunderbirds	New York Rangers	na	$839,167	$808,333	$808,333	$808,333	na	$3,264,166	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$257,500	$0	$0	na	$257,500
	2015	1	Seattle Thunderbirds	New York Islanders	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$400,000	$400,000	$400,000	na	$1,200,000
	2015	3	Seattle Thunderbirds	Columbus Blue Jackets	na	$722,500	$708,333	$708,333	$708,333	na	$2,847,499	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$257,500	$232,500	$117,500	na	$607,500
	2015	5	Seattle Thunderbirds	Edmonton Oilers	na	na	$721,667	$721,667	$721,667	na	$2,165,001	na	na	$80,000	$80,000	$80,000	na	$240,000	na	na	$145,000	$70,000	$20,000	na	$235,000
	2016	1	Regina Pats	Anaheim Ducks	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$0	$0	$0	na	$0
	2015	4	Regina Pats	Los Angeles Kings	na	na	na	$759,167	$759,167	$759,167	$2,277,501	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$182,500	$132,500	$497,500
	2015	4	Regina Pats	Ottawa Senators	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	4	Regina Pats	Toronto Maple Leafs	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	3	Regina Pats	New York Rangers	na	na	$734,167	$734,167	$734,167	na	$2,202,501	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$132,500	na	$572,500
	2016	3	Regina Pats	Anaheim Ducks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	5	Regina Pats	Washington Capitals	na	na	$721,667	$721,667	$721,667	na	$2,165,001	na	na	$80,000	$80,000	$80,000	na	$240,000	na	na	$145,000	$70,000	$20,000	na	$235,000
	2016	6	Calgary Hitmen	Vancouver Canucks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	5	Calgary Hitmen	Washington Capitals	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	7	Calgary Hitmen	Winnipeg Jets	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	1	Calgary Hitmen	Carolina Hurricanes	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$500,000	$500,000	$500,000	na	$1,500,000
	2016	6	Everett Silvertips	Calgary Flames	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	1	Everett Silvertips	Montreal Canadiens	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$0	$425,000	$175,000	na	$600,000
	2014	6	Everett Silvertips	Nashville Predators	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	2	Everett Silvertips	Philadelphia Flyers	na	na	$792,500	$792,500	$792,500	na	$2,377,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$132,500	$82,500	na	$397,500
	2015	5	Kamloops Blazers	San Jose Sharks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	3	Kamloops Blazers	Anaheim Ducks	na	na	$717,500	$717,500	$717,500	na	$2,152,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$257,500	$182,500	$182,500	na	$622,500
	2016	3	Kamloops Blazers	Washington Capitals	na	na	na	$925,000	$925,000	$925,000	$2,775,000	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$0	$0	$0	$0
	2016	3	Kamloops Blazers	Tampa Bay Lightning	na	na	na	$759,167	$759,167	$759,167	$2,277,501	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$182,500	$182,500	$132,500	$497,500
	2015	1	Kelowna Rockets	Arizona Coyotes	na	$925,000	$894,167	$894,167	$894,167	na	$3,607,501	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$212,500	$212,500	$212,500	na	$637,500
	2016	3	Kelowna Rockets	Philadelphia Flyers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	Kelowna Rockets	Buffalo Sabres	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	6	Lethbridge Hurricanes	Buffalo Sabres	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	5	Medicine Hat Tigers	Montreal Canadiens	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	7	Medicine Hat Tigers	Chicago Blackhawks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Medicine Hat Tigers	New York Islanders	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	Undrafted	na	Medicine Hat Tigers	Calgary Flames	na	$625,000	$641,667	$641,667	$641,667	na	$2,550,001	na	$25,000	$25,000	$25,000	$0	na	$75,000	na	na	$0	$0	$0	na	$0
	2016	1	Moosejaw Warriors	Tampa Bay Lightning	na	na	$925,000	$925,000	$925,000	na	$2,775,000	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$0	$0	$0	na	$0
	2016	4	Moosejaw Warriors	Tampa Bay Lightning	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Moosejaw Warriors	Washington Capitals	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	4	Prince George Cougars	New York Rangers	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	Prince George Cougars	Winnipeg Jets	na	na	na	$925,000	$925,000	$925,000	$2,775,000	na	na	na	$92,500	$92,500	$92,500	$277,500	na	na	na	$0	$0	$0	$0
	2015	4	Prince George Cougars	Boston Bruins	na	na	$767,500	$767,500	$767,500	na	$2,302,500	na	na	$92,500	$92,500	$92,500	na	$277,500	na	na	$182,500	$182,500	$107,500	na	$472,500
	2015	5	Prince George Cougars	Chicago Blackhawks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	5	Prince George Cougars	Columbus Blue Jackets	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	2	Prince George Cougars	Buffalo Sabres	na	$734,167	$703,333	$703,333	$703,333	na	$2,844,166	na	$92,500	$92,500	$92,500	$0	na	$277,500	na	na	$257,500	$182,500	$132,500	na	$572,500
	2015	7	Prince George Cougars	Vancouver Canucks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	3	Prince George Cougars	Colorado Avalanche	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	4	Tri-City Americans	New York Islanders	na	na	$735,833	$735,833	$735,833	na	$2,207,499	na	na	$85,000	$85,000	$87,500	na	$257,500	na	na	$190,000	$115,000	$62,500	na	$367,500
	2016	6	Victoria Royals	Toronto Maple Leafs	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	6	Victoria Royals	Calgary Flames	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2016	7	Victoria Royals	Anaheim Ducks	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
	2015	7	Victoria Royals	Los Angeles Kings	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na	na
WHL			WHL					WHL							WHL									WHL		
# of Players Drafted from WHL					Cap Hit 2014-2015	Cap Hit 2015-2016	Cap Hit 2016-2017	Cap Hit 2017-2018	Cap Hit 2018-2019	Cap Hit 2019-2020	TOTAL CAP HIT	S. Bonus 2014-2015	S. Bonus 2015-2016	S. Bonus 2016-2017	S. Bonus 2017-2018	S. Bonus 2018-2019	S. Bonus 2019-2020	TOTAL S. BONUS	P. Bonus 2014-2015	P. Bonus 2015-2016	P. Bonus 2016-2017	P. Bonus 2017-2018	P. Bonus 2018-2019	P. Bonus 2019-2020	TOTAL P. BONUS
47					$0	$5,695,834	$13,510,001	$16,878,335	$16,878,335	$3,368,334	$56,330,839	$0	$580,000	$1,472,500	$1,842,500	$1,265,000	$370,000	$5,530,000	$0	$0	$3,245,000	$3,252,500	$2,510,000	$265,000	$9,272,500

k. Contrat du joueur WHL:

WHL et les ligues demandent aux joueurs de payer pour leurs sorties s'ils quittent la ligue pour aller dans d'autres ligues professionnelles. (La LHJMQ ne gère que légèrement différemment, elle permet à chaque équipe de mettre un prix dessus plutôt que pour la ligue.)

Cela ne ressemble-t-il pas à une entreprise ?

WHL Player contract:

WHL and leagues ask for players to pay for their releases if they leave the league to go to other pro leagues. (QMJHL handles this only slightly different, they allow each team to put a price on it instead of for the league.)

Does this not sound like a business??

ARTICLE 12 – PLAYER DEVELOPMENT

12.1 If the Player has not completed his eligibility to play in the WHL, the Player shall not, during the Term of this Agreement, enter into a contract to play hockey for a professional hockey team unless;

(a) the Player has obtained a written release from the WHL, and

(b) the Club has been paid the sum of $500,000.00 in the currency where the Club is located, either by the Player or the professional hockey team with whom the Player has entered into such a contract.

The foregoing provisions of this paragraph 12.1 do not apply in circumstances where the Player is released by the Club and, in accordance with the WHL regulations, enters into a contract to play for a professional hockey team that is a member of a league that has a written agreement with the WHL covering compensation for player development.

l. Accord de la LNH:

La LCH est une esclave de la LNH, comme on le voit dans l'entente. La LNH paie les joueurs de la LCH pour l'éducation postsecondaire ainsi que les arbitres. La LNH verse également jusqu'à 175 000 $ (plus) par joueur et contribue 79 000 000 $ (soixante-dix-neuf millions de dollars) à la LCH.

Cela permet à la LNH de restreindre le commerce des joueurs, en permettant seulement aux joueurs d'accéder à la LNH en vertu d'un contrat avec la LCH.

La LNH gère 60 équipes en tant qu'équipe agricole pour moins de 150 000 $ par année par équipe.

SECTIONS POUR L'EXAMEN :

- A7: énonce les termes: la LNH contribue 79 000 000 à la LCH
- B1: NHL contribue un minimum de 750 000 $ pour les forfaits d'éducation
- B2: La LNH contribue au moins 255 000 $ pour les programmes de traitement de la toxicomanie
- B3: La LNH contribue 315 000 $ pour les blessures à la tête
- B4: La LNH contribue 775 000 $ pour les salaires des arbitres
- B5: La LNH contribue 500 000 $ pour le développement des compétences
- B8 (page 4): Les clubs de la LCH sont tenus d'exploiter au moins 50 clubs juniors chaque année pour cet accord
- Page 6 (e) : La LNH paiera un maximum de 175 000 $ pour un joueur repêché
- E: Joueurs de la LNH pour l'assurance des joueurs de la LCH
- G5: les parties de la LCH doivent être jouées sous

NHL Agreement:

The CHL is a slave to the NHL, as seen in the agreement. The NHL pays for CHL players post-secondary education as well as referees. The NHL also pays up to $175,000(plus) per player as well contributes $79,000,000 (Seventy-Nine million dollars) to the CHL.

This allows the NHL to restrict players trade, only allowing players to go to the NHL while under CHL contract.

The NHL gets to run 60 teams as a farm team for less than $150,000 a year per team.

SECTIONS FOR REVIEW:

- *A7: lays out the terms: NHL contributes 79,000,000 to the CHL*
- *B1: NHL contributes a minimum of $750,000 for educations packages*

- *B2: NHL contributes a minimum $255,000 for substance abuse programs*
- *B3: NHL contributes $315,000 for Head Injuries*
- *B4: NHL contributes $775,000 for referee salaries*
- *B5: NHL contributes $500,000 for skill development*
- *B8(page 4): CHL clubs are required to operate a minimum of 50 junior clubs every year for this agreement*
- *Page 6(e) : NHL will pay a maximum of $175,000 for a drafted player*
- *E: NHL plays for CHL players insurance*
- *G5: CHL games are to be played under NHL professional rules*

AGREEMENT

between

THE NATIONAL HOCKEY LEAGUE

"NHL"

and

THE CANADIAN HOCKEY LEAGUE

"CHL"

Agreement made, effective as of November 14, 2013 (with application retroactive to June 1, 2013) between the National Hockey League ("NHL") and the Canadian Hockey League ("CHL").

A. TERM

This Agreement will be in effect for the following seven (7) seasons:

Year	Season
1	2013/14
2	2014/15
3	2015/16
4	2016/17
5	2017/18
6	2018/19
7	2019/20

This agreement will expire on June 30, 2020.

B. FUNDING

The NHL agrees to make the following payments to the CHL to support Player development by Junior Clubs that are members of the CHL:

1. Each of the Ontario Hockey League, the Quebec Major Junior Hockey League and the Western Hockey League will establish uniform plans providing for reimbursement of payment of tuition fees for current and former CHL Players not signed to professional contracts with NHL or AHL clubs. The NHL will reimburse the three leagues up to a maximum of $750,000 for the 2013/14 season, and amounts in future years of the Agreement to be determined by the CHL in consultation with the NHL, it being understood that such amounts in future years shall not be less than $750,000.

2. Each of the Ontario Hockey League, the Quebec Major Junior Hockey League and the Western Hockey League will engage professionals to provide counseling to its Players regarding lifestyle education including but not limited to substance abuse, gambling and sexual activity. The NHL will reimburse the three leagues for such professional services up to a maximum of $255,000 for the 2013/14 season, and amounts in future years of the Agreement to be determined by the CHL in consultation with the NHL, it being understood that such amounts in future years shall not be less than $255,000.

3. Each of the Ontario Hockey League, the Quebec Major Junior Hockey League and the Western Hockey League will engage professionals to provide education to its Players on the diagnosis and treatment of concussions, including the importance of reporting symptoms and the dangers associated with head injuries generally. The NHL will reimburse the three leagues for such professional services up to a maximum of $315,000 for the 2013/14 season, and amounts in future years of the Agreement to be determined by the CHL in consultation with the NHL, it being understood that such amounts in future years shall not be less than $315,000.

4. The NHL shall pay to the CHL an annual officiating grant of $775,000 for the 2013/14 season, and amounts in future years of the Agreement to be determined by the CHL in consultation with the NHL, it being understood that such amounts in future years shall not be less than $775,000.

5. The NHL shall pay to the CHL an annual grant for elite Player skill development of $500,000 for the 2013/14 season, and amounts in future years of the Agreement to be determined by the CHL in consultation with the NHL, it being understood that such amounts in future years shall not be less than $500,000.

6. An annual grant to the CHL of $7,605,000 for the 2013/14 season, and amounts in future years of the Agreement to be determined by the CHL in consultation with the NHL.

7. The total amount paid by the NHL to the CHL (the "Total Grant") pursuant to Sections B.1 – B.6 above shall not exceed the amounts indicated below:

Year	Season	Amount
1	2013/14	$10,200,000
2	2014/15	$10,600,000
3	2015/16	$11,000,000
4	2016/17	$11,400,000
5	2017/18	$11,800,000
6	2018/19	$12,200,000
7	2019/20	$12,600,000

8. The Total Grant in the 2013/14 season will be paid in two installments -- on November 14, in the amount of $5,100,000 and on February 1, in the remaining amount of $5,100,000.

The Total Grant in the remaining years of the Agreement shall be paid in three equal installments -- on October 1, December 1 and February 1 of each season covered by this Agreement, and is conditioned on the CHL including a minimum of fifty (50) operating Major Junior Clubs ("Clubs") every year during the term of this Agreement. In the event that the number of operating Clubs falls below fifty (50) at any time during the term of this Agreement, there shall be a pro-rata reduction in said annual grant. An increase in the number of Clubs shall not result in any increase in the amount of the Total Grant.

9. The final annual installment in each year of the Agreement will be reduced by the amount of $25,000 for each Player who has transferred from a European country to play in the CHL at age 17 or older, and who next signs a Standard Player's Contract with an NHL Club (with no intervening contract with a Club outside the NHL) (the "Reduction Amount"). The Reduction Amount will be applied only in the League Year (i.e., July 1 to June 30) in which the term of Player's NHL contract is scheduled to begin and the total amount reduced will never exceed the aggregate amount of $250,000 in any season of the Agreement.

10. Additional payments in consideration for the CHL and its Clubs agreeing to consent to any Junior Player age 18 or 19 being signed and retained by an NHL Club shall be made on the following basis:

(NOTE: All the below-referenced amounts will be paid on a pro-rata basis, based upon the date that the under-aged Player is returned to his Junior Team).

(a) Up to $60,000 for a skater and up to $75,000 for a goaltender signed by an NHL Club who is retained after the commencement of the NHL Regular Season. This amount is payable as follows:

(i) $12,000 for a skater and $15,000 for a goaltender if the Player is retained from the beginning of the NHL season up to and including November 1;

(ii) an additional $12,000 for a skater and $15,000 for a goaltender if the Player is retained from the beginning of the NHL season up to and including December 1 (or an additional amount reduced pro rata to reflect days on NHL roster between November 1 and December 1);

(iii) an additional $12,000 for a skater and $15,000 for a goaltender if the Player is retained from the beginning of the

NHL season up to and including January 1 (or an additional amount reduced pro rata to reflect days on NHL roster between December 1 and January 1);

(iv) an additional $12,000 for a skater and $15,000 for a goaltender if the Player is retained from the beginning of the NHL season up to and including February 1 (or an additional amount reduced pro rata to reflect days on NHL roster between January 1 and February 1); and

(v) an additional $12,000 for a skater and $15,000 for a goaltender if the Player is retained from the beginning of the NHL season until after March 1 (or an additional amount reduced pro rata to reflect days on NHL roster between February 1 and March 1).

(b) Additional payments in consideration for the CHL and its Clubs agreeing to provide consent to any Junior Player age 18 who is signed and retained by an NHL Club for the entire season as an 18 year old and then is retained again by an NHL Club as a 19 year old for all or part of a second consecutive season shall be made as follows:

(i) if the Player is retained from the beginning of the second consecutive NHL season (i.e., when Player is a 19 year old) up to and including November 1, the additional payment will be $17,000 for a skater and $20,000 for a goaltender.

(ii) if the Player is retained from the beginning of the second consecutive NHL season (i.e., when Player is a 19 year old) up to and including December 1, the additional payment (also subject to pro rata reduction based on actual days on NHL roster) will be $17,000 for a skater and $20,000 for a goaltender.

(iii) if the Player is retained from the beginning of the second consecutive NHL season (i.e., when Player is a 19 year old) up to and including January 1, the additional payment (also subject to pro rata reduction based on actual days on NHL roster) will be $17,000 for a skater and $20,000 for a goaltender.

(iv) if the Player is retained from the beginning of the second consecutive season (i.e., when Player is a 19 year old) up to and including February 1, the additional payment (also subject to pro rata reduction based on actual days on NHL

roster) will be $17,000 for a skater and $20,000 for a goaltender.

(v) if the Player is retained from the beginning of the second consecutive NHL season (i.e., when Player is a 19 year old) until after March 1, the additional payment (also subject to pro rata reduction based on actual days on NHL roster) will be $17,000 for a skater and $20,000 for a goaltender.

(c) $1,000 per NHL game for any Player recalled under Emergency Conditions.

(d) $1,000 for each game played by an unsigned draft choice recalled under the provisions of NHL By-Law 10A and Exhibit 17 of the NHL/NHLPA CBA governing Amateur Try-Outs.

(e) It is understood that the total obligation under sub-paragraphs (a), (b), (c) and (d) above shall not exceed for any Player: $60,000 for a skater and $75,000 for a goaltender if the Player is not retained for all or part of a second consecutive NHL season as a 19 year old, and, if Player is retained for the entire NHL season as an 18 year old and for all or part of the second consecutive NHL season as a 19 year old, $145,000 for a skater and $175,000 for a goaltender.

(f) The additional payments set forth in this Section B.10 are only payable with respect to Junior Players who are drafted directly from the CHL; such additional payments are not payable for Players drafted from a league other than the CHL, but who may subsequently play in and/or be assigned to the CHL.

(g) The CHL shall be responsible for invoicing the National Hockey League for all such amounts due. These invoices shall be delivered to the NHL's Montreal office (Attention: Joseph DeSousa), with a copy to the NHL's Toronto office (Attention: Colin Campbell). Any invoice so presented shall be paid within thirty (30) days of its receipt.

C. REGULATIONS GOVERNING PLAYERS AGE 18 AND 19

1. Signed Players

(a) Loans

A signed Player age 18 or 19 who has been claimed from the CHL and who is not retained by his NHL Club, must be assigned to the

Junior Club of the CHL for whom he last played or with whom he owes contractual obligations. NHL Clubs may also elect to assign 18 or 19 year old Players who are not otherwise covered by this Agreement to the CHL, and, in the event that such an election is made, the assignment must be to the Junior Club on whose protected list his name appears.

Notwithstanding the above, a Player normally subject to mandatory return to the CHL may be assigned to his NHL Club's affiliated minor league professional team for a period not exceeding two weeks on one occasion during the season for conditioning purposes providing said Player was injured or ill while with the NHL Club.

Also, notwithstanding the above, a Player who is at least 19 years of age and has played at least four seasons in CHL (minimum of 25 games per season) may be assigned to the minor league professional team affiliated with his NHL Club.

(b) Recalls

A Player who has been assigned to his Junior Club may not be recalled after the commencement of the NHL Regular Season, except that NHL Clubs may recall a signed Junior Player: (1) under emergency conditions, as provided for in Section C.1 (c) below; or (2) at a time when it is not inconvenient to the Junior Club, but in no event for more than five (5) NHL games in a given season. (**NOTE:** "Inconvenient" shall mean any recall that would result in the Player missing one or more of his Junior Club's games.)

For Players recalled pursuant to the latter provision, no such recall can be made prior to November 1 or later than March 1, and the NHL Club recalling such Player will be obligated to pay the CHL $1,000 for each game the Player plays in the NHL.

A non-retained signed Player age 18 or 19 may also be recalled to his NHL Club or to the minor professional league team affiliated with his NHL Club when his Junior team is no longer in competition.

Finally, a Player who is with his NHL Club and is assigned to participate in the Junior World Championship Tournament may be recalled by his NHL Club immediately following the termination of the Tournament or at the conclusion of his national team's participation in the Tournament.

(c) Emergency Conditions

A signed 18 or 19 year old Player may be recalled by an NHL Club in an "emergency condition" as defined in Section 13.12 (m) of the NHL/NHLPA CBA (hereinafter "emergency condition") at any time during the NHL Regular Season and Playoffs as follows:

(1) With respect to forwards, when the NHL Club is in a third (3rd) emergency condition and has already executed two previous recalls of forwards from its minor professional affiliate under emergency condition;

(2) With respect to defensemen, when the NHL Club is in a second (2nd) emergency condition and has already executed one previous recall of a defenseman from its minor professional affiliate under emergency condition;

(3) With respect to goalkeepers, at any time that the NHL Club is in an emergency condition; or

(4) After an NHL Club has already recalled two (2) Players from its minor league professional affiliate under emergency conditions.

(d) Junior Training Camp

A signed 18 or 19 year old Player must obtain the permission of his NHL Club to attend the Junior Club's training camp and/or to play in exhibition games for his Junior Club during such training camp period.

(e) Trading of Junior Players

In the event that a Junior Player is traded between CHL Clubs for the second time in any one CHL season, he may be recalled by his NHL Club when either the CHL Club from which he was traded on the second occasion or his then current CHL Club is out of competition for that season.

2. Unsigned Draft Choices

(a) Retained Players

A Player age 18 or 19 who was claimed in the first three (3) rounds of the NHL Draft, if not signed, may not be retained by the NHL Club and must be returned to his Junior Club by not later than the

day prior to the opening of the NHL Regular Season. A Player selected in the fourth (4th) or subsequent rounds of the NHL Draft, if not signed, may not be retained by the NHL Club and must be returned to his Junior Club by not later than the fourth (4th) day prior to the opening of the NHL Regular Season, but in no event later than October 3rd.

(b) Players Signed After Start Of Season

An NHL Club may not retain the services of an 18 or 19 year old Junior Player who is signed after the start of the NHL season, except that such Player may be recalled: (1) under emergency conditions at any time during the Regular Season and Playoffs (as provided for in Section C.1(c) above); (2) at a time when it is not inconvenient to the Junior Club (as provided in Section C.1(b) above); or (3) when his Junior team is no longer in competition.

(c) Try-Outs

A Junior Player may be granted an Amateur Try-Out by an NHL Club, which Try-Out shall be governed by the provisions of NHL By-Law 10A and Article 11 and Exhibit 17 of the NHL/NHLPA CBA governing Amateur Try-Outs, and on the condition that he will not be granted such Try-Out by an NHL Club prior to November 1st nor after March 1st.

3. Unclaimed Players

A Player who is eligible for the NHL Draft but is not claimed may be signed to an NHL Standard Player's Contract or invited to an NHL Training Camp on an NHL Amateur Try-Out form which Try-Out form must be signed and filed with NHL Central Registry by 5:00 p.m. New York time, August 25th.

An unclaimed Player who has not been signed to an NHL Standard Player's Contract may not be retained by an NHL Club and must be returned to his Junior Club by not later than the fourth (4th) day prior to the opening of the NHL Regular Season, but in no event later than October 3rd.

4. Injured Players

A Player who is otherwise required to be assigned to a CHL Club but who is at such time injured (whether from an injury in a prior season, at training camp or otherwise), may at the NHL Club's option, upon notice by the NHL Club to the CHL and the Player's CHL Club, remain with his NHL Club solely for purposes of

rehabilitation and only until he receives appropriate medical clearance from his NHL Club that he is fit to play. During such period of rehabilitation, such an injured Player will be on his CHL Club's roster, and not his NHL Club's roster, for all purposes. Upon receiving appropriate medical clearance to play in an NHL game, the NHL Club's and CHL Club's rights at such time will be governed by the other provisions of this Agreement.

In addition, in the event that a signed or unsigned Player age 18 or 19 is injured while playing for his Junior Team, the NHL Club holding his rights shall receive immediate notification of the injury, together with a full medical report and an outline of the treatment that will be provided. In addition, the NHL Club shall have the right to bring such Player into the NHL Club's home city (or elsewhere), may request a full medical examination and may provide all necessary medical treatment, the cost of which will be borne by the NHL Club, provided, however, that during such period of rehabilitation and until he receives appropriate medical clearance from his NHL Club, such an injured Player will be on his CHL Club's roster, and not his NHL Club's roster, for all purposes. Upon receiving appropriate medical clearance to play in an NHL game, the NHL Club's and CHL Club's rights at such time will be governed by the other provisions of this Agreement.

The NHL agrees to provide similar medical information to the CHL Club regarding CHL Players injured while in NHL Training Camp or while on recall to an NHL Club.

D. REGULATIONS GOVERNING OVERAGE JUNIORS

1. Limit on Overage Juniors

No CHL Club shall retain more than three (3) Overage Players on its roster.

2. Recall of Overage Juniors

A draft choice who is signed or unsigned and is playing in the CHL as an Overage Junior may not be recalled to play in NHL after January 1st of any year, except that a signed Player may be recalled under the same circumstances and restrictions as specified in Sections C.1(b), (c), and (e) above.

3. Try-Outs

A Player who is playing in the CHL as an Overage Junior may be

granted an Amateur Try-Out, which Try-Out shall be governed by the provisions of NHL By-Law 10A and Article 11 and Exhibit 17 of the NHL/NHLPA CBA governing Amateur Try-Outs.

4. Composition of CHL Rosters

The payments set forth in Section B.6 of this Agreement assume that the current CHL roster composition rules remain in effect. The CHL may change those rules at any time in its sole discretion. If a change in roster composition rules should, in the NHL's judgment, adversely affect the NHL, then the NHL's obligation to make the payments specified in Section B.6 above shall be suspended pending good faith negotiations on new payment terms. All other terms of this Agreement shall remain in effect during the pendency of those negotiations.

E. INSURANCE

The NHL agrees to provide disability insurance for Players with junior eligibility who are designated as unsigned draft choices for the period during which they participate at NHL Preseason Training Camps on the following basis:

(a) Disability Insurance will be purchased by the NHL Club for each unsigned draft choice invited to the Club's Training Camp. This insurance policy will extend for 30 days from September 1st and will provide in the event of accidental injury sustained in Training Camp:

(i) Temporary Total Disability, accident only, $400 per game missed of the Regular Season of the Player's CHL Club, subject to a deductible of the first five consecutive games missed as a result of each and every loss, and subject to a total maximum benefit of $25,000 for Temporary Total Disability, plus

(ii) Permanent Total Disability, accident only, $25,000 payable in the event of the insured's permanent disablement.

(iii) The maximum claim payable during any one season (Temporary Total Disability and Permanent Total Disability combined) will be $50,000.

(b) The above specified insurance coverage may also be made available for purchase by any Junior Club who chooses to cover any undrafted and unsigned Player who is invited to an NHL Training Camp. The CHL may request information regarding the cost of such coverage,

which the NHL shall promptly provide. The NHL shall provide the CHL with a list of all such undrafted and unsigned Players who are invited to an NHL Training Camp.

(c) In the event that a signed Player is injured at an NHL Training Camp and returned to his Junior Club (either prior to or after rehabilitation of the Player's injury), the NHL Club shall pay $200 per week to the applicable Junior Club for each week missed by the Player as a result of his injury.

F. ARBITRATION

1. Initiation

Any dispute arising after the effective date of this Agreement and involving the interpretation or application of, or compliance with, any provision of this Agreement, will be resolved exclusively in arbitration, in accordance with the procedure set forth herein.

Arbitration may be initiated by the NHL or the CHL only. Arbitration must be initiated within thirty (30) days from the date of the occurrence or non-occurrence of the event upon which the dispute is based, or within thirty (30) days from the date on which the facts of the matter became known or reasonably should have been known to the party initiating the arbitration, whichever is later.

2. Filing

A party shall initiate arbitration by filing a written notice by certified mail, fax or e-mail with the other party. The notice will set forth the specifics of the alleged action or inaction giving rise to the dispute. The party so served will answer in writing by certified mail, fax or e-mail within ten (10) days of receipt thereof. The answer will set forth admissions or denials as to the facts alleged. If the answer denies the claims alleged, the specific grounds for denial will be set forth.

In any arbitration pursuant to this Agreement in which a Player's or Players' interests, rights or obligations could potentially be affected, the NHLPA shall be provided a copy of the notice initiating the arbitration and the answer, including any amendments, promptly upon their being filed. The NHLPA shall also be advised of the name of the arbitrator hearing the matter and the location and date of the hearing as soon as such information is available. The NHLPA will not, however, be a party to such arbitration and will not be entitled to participate except upon agreement of the parties.

3. Selection of Arbitrator

The parties shall either agree upon an Arbitrator or, failing agreement, an Arbitrator shall be selected under the Voluntary Labor Tribunal Rules of the Canadian Arbitration Association and the American Arbitration Association, on an alternating basis, then in effect.

4. Hearing

It is intended that witnesses appear at the arbitration hearing. The parties shall each use their best efforts to require witnesses to appear at the scheduled hearing. If a witness is unavailable, the party offering the witness shall notify the other party as soon as the unavailability of the witness is known. If the parties agree, the witness may testify by telephone. If the parties do not agree, a hearing date shall be selected for the purpose of taking the witnesses' testimony.

The record shall be closed at the end of the hearing unless the Arbitrator orders to the contrary. If post-hearing briefs are permitted in a given case, they shall be filed within ten (10) days of the close of the hearing unless the parties agree to a different filing schedule.

5. Arbitrator's Decision and Award

The Arbitrator will issue a written decision within thirty (30) days of the close of the record. The decision of the Arbitrator will constitute full, final and complete disposition of the dispute, as the case may be, and will be binding upon the Player(s) and Club(s) involved and the parties to this Agreement; provided, however, that the Arbitrator will not have the jurisdiction or authority to add to, subtract from, or alter in any way the provisions of this Agreement or any Player contract or addenda thereto. In resolving grievances, the Arbitrator has the authority to interpret, apply and determine compliance with any provision of this Agreement. Otherwise, the Arbitrator shall have no authority to alter or modify the contractual relationship or status between a Player and a Club, other than where such remedy is expressly provided for in this Agreement.

6. Costs

Except as otherwise set forth herein, all costs of arbitration, including without limitation, the fees and expenses of the Arbitrator, will be borne equally between the parties, except that each party

shall bear its own costs of transportation, counsel, witnesses and the like.

G. MISCELLANEOUS TERMS

1. It is understood and agreed that any and all references to funds made in this Agreement shall mean Canadian currency.
2. The NHL will cooperate where possible when requested by the CHL to provide other non-monetary assistance, such as, but not limited to, coaching, scouting, Club management and Player consultation.
3. The responsibility for allocation of funds provided under this Agreement shall belong to the CHL, except that NHL shall be consulted before the allocation formula is approved.
4. The CHL agrees to provide an annual report to the NHL by no later than June 30 in every season of the Agreement on the status of the CHL in a number of areas including, but not necessarily limited to: (a) the financial condition of each of the three leagues and their respective member clubs for the most recently completed season; (b) a general description of any "compliance-related" enforcement activities that may have been undertaken during the most recently completed season; (c) an overview of CHL support to minor hockey and the development of the game at the grassroots level; and (d) the operation of the CHL scholarship program.
5. All CHL games will be played according to the NHL's playing rules as then in place. In the event the CHL (or any CHL league) proposes to change or amend any rule then in place, or to adopt some new rule, prior notice and a meaningful chance to consult on such proposal shall be provided to the NHL.
6. The CHL will cooperate with the NHL in scheduling and staging the NHL's Prospects Game. The CHL will cooperate with the NHL in designing and executing additional testing initiatives implemented around the NHL's Prospects Game.
7. Each CHL Club will use its best efforts to make two (2) cornerboard panels in its home arena (diagonally opposite each other) available to the NHL for promotional purposes (e.g.: "NHL Face-Off", "NHL Heritage Classic" logos or the like), free of charge. To the extent cornerboard panels are not available, suitable equivalent space in the arena shall be provided. The NHL will provide, at its cost, all such promotional materials.

8. Each of the NHL and CHL will provide to the other regular updates with respect to Player assignment status and injuries and, as it relates to Players signed to an NHL SPC, such information will also be shared with the NHLPA.

9. The parties agree to meet on an annual basis in either May or June (or another mutually agreed upon date) to discuss the operation of this Agreement and to consider whether any adjustments or other changes to the terms of this Agreement can or should be made to improve its operation.

10. In return for the agreement to make the payments provided herein, and conditioned upon such payments being made, the Junior Clubs agree to consent to all Players executing contracts with and playing in the NHL for NHL Clubs, all in accordance with the terms of this Agreement. It is understood that this consent relates only to Players playing with the NHL Clubs and not to any other club in another League, except as may be expressly provided for in Sections C and D hereof. In that regard, the Junior Clubs agree to release the NHL Clubs, the NHL and the Players from any and all claims by said Junior Clubs, whether arising from statute, common law or otherwise, asserted or unasserted, to or arising out of the services of its Players or former Players for NHL Clubs, except as provided herein. This Agreement supersedes all prior agreements between the parties.

11. It is warranted by each of the undersigned that he has full authority to enter into this Agreement on behalf of his indicated principals, that this Agreement has been approved by such principals and that this Agreement is binding upon such principals.

ACCEPTED AND AGREED TO THIS 14th DAY OF NOVEMBER 2013.

[redacted]
Deputy Commissioner
National Hockey League

[redacted]
[redacted] President
Canadian Hockey League

[redacted]
[redacted], Commissioner
Quebec Major Junior Hockey League

[redacted]
[redacted] Commissioner
Ontario Hockey League

[redacted]
[redacted], Commissioner
Western Hockey League

m. McCrimmon Holdings Ltd contre Canada - Ministre de la Revue nationale (M.N.R.):

Section 22, page 8-9: tous les joueurs de la LCH sont des employés des clubs. 17 janvier 2000 en cour d'appel.

Ce document montre que le gouvernement canadien a qualifié le hockey d'entreprise et que, en fait, les joueurs étaient des employés des clubs, c'est la décision d'appel que la LCH a perdue.

McCrimmon Holdings Ltd vs Canada – Minister of National Review (M.N.R.):

Section 22, page 8-9: all players in the CHL are employees of the clubs. January 17 ,2000 in Appeals court.

This document shows the Canadian Government called hockey a business and in fact players were employees of the clubs, this is the appeal ruling that the CHL lost.

Indexed as:

McCrimmon Holdings Ltd. v. Canada (Minister of National Revenue - M.N.R.)

Between
McCrimmon Holdings Ltd. and 32155 Manitoba Ltd., a partnership o/a Brandon Wheat Kings, Appellant, and The Minister of National Revenue, Respondent, and Daryl Stockham, Intervenor

[2000] T.C.J. No. 823

[2000] A.C.I. no 823

Court File Nos. 2000-1538(EI), 2000-1540(CPP)

Tax Court of Canada
Winnipeg, Manitoba

Rowe D.T.C.J.

Heard: October 2, 2000.
Judgment: November 24, 2000.

(24 paras.)

Unemployment insurance -- Insurable employment -- What constitutes -- Employer-employee relationship.

This was an appeal by a major junior hockey club from the Minister's decision that players for the club were engaged in insurable and pensionable employment. The club argued that the relationship between the players and the club was more akin to a form of private education. It argued that the money the players received from the club was an allowance rather than a salary. Players who had graduated from high school were entitled to post-secondary tuition for every year of service to the club. The Minister argued that the evidence clearly established an employment relationship between the players and the club.

HELD: Appeal dismissed. The players were paid employees of the club. An amendment to subsection 5(2) of the Employment Insurance Act would be required to exclude junior hockey players from the category of insurable employment. While there was an educational component to the con-

tract between the hockey club and the players, the players were paid to play hockey. The requirement to play hockey was not inextricably bound to a condition of scholarship.

Statutes, Regulations and Rules Cited:

Canada Pension Plan.

Employment Insurance Act, s. 5(1)(a), 5(2).

Employment Standards Act, chapter E110, s. 9(2).

Income Tax Act.

Insurable Earnings and Collection of Premiums Regulations, s. 3(1).

Unemployment Insurance Act, s. 3(1)(a).

Unemployment Insurance Regulations, s. 3.

Pat Fraser and David Swayze, for the Appellant.
Tracy Harwood-Jones, for the Respondent.
No one appeared, for the Intervenor.

JUDGMENT:-- The appeal is dismissed and the decision of the Minister is confirmed in accordance with the attached Reasons for Judgment.

REASONS FOR JUDGMENT

1 ROWE D.T.C.J.:-- The style of cause utilized in the Notice of Appeal and subsequent pleadings or notices named Kelly McCrimmon and Robert Cornell o/a The Brandon Wheat Kings as the appellant. Counsel for the appellant advised the proper style of cause should reflect the corporate members of the partnership, McCrimmon Holdings Ltd. and 32155 Manitoba Ltd. used by McCrimmon and Cornell to carry on the business of operating - in Brandon, Manitoba - the hockey team known as the Brandon Wheat Kings and I ordered the style of cause to be amended accordingly. Counsel for the appellant waived the effect of any irregularities arising from the manner in which the assessment was issued and noted the proper account number had been used so there was no doubt concerning the matter at issue. The position of the appellant is that the junior hockey players on the Wheat Kings team were participants in an established training program having a sophisticated infrastructure and the overriding component was educational in nature.

2 The appellant partnership, referred to herein as the "Wheat Kings" appealed from decisions of the Minister of National Revenue (the "Minister"), dated January 17, 2000 wherein it was decided to confirm certain assessments issued pursuant to the Employment Insurance Act, Unemployment Insurance Act and the Canada Pension Plan on the basis named persons listed on Schedule A attached to the said decision letter were employed under contracts of service with the Wheat Kings and were therefore engaged in both insurable and pensionable employment. The appellant appeals from these decisions and both counsel agreed that appeal 2000-1540(CPP) would follow the result in the within appeal.

3 Kelly McCrimmon testified he resides in Brandon, Manitoba and for the past 12 years has been the General Manager of the Brandon Wheat Kings hockey club. Through his corporation, McCrimmon Holdings Ltd., he owns 1/3 of the team and Robert Cornell - through the numbered company - owns the balance and they operate as a partnership. McCrimmon explained the Canadian Hockey League (CHL) is composed of the Ontario Hockey League (OHL), Western Hockey League (WHL) and Quebec Major Hockey League (QMHL). There are 18 teams - including the Wheat Kings - in the WHL and 55 teams within the CHL. The teams are made up of players who have been developed in the minor hockey systems. McCrimmon stated that if a young (aged 16-20) player wishes to play in the WHL, it will probably be necessary for him to move away from home to the municipality where the team is situated. The Canadian Hockey Association (CHA) is an umbrella organization which oversees Canadian amateur hockey. The CHL has some teams operating in the United States and they have a similar arrangement with the U.S. counterpart organization. The WHL - an 18-member league - includes 7 community-owned teams that are managed by an Executive Committee and the other 11 franchises are privately owned. The WHL has a 72-game schedule with training camp beginning in August. The regular season is finished at the end of March while the playoff series - including the final - are concluded on Victoria Day in May. The WHL is run by a Commissioner and Board of Governors composed of one member from each team in the league. Approximately 8 meetings are held each year, on average, and a 5-man Executive Committee is responsible throughout the year for developing policy, rules, by-laws and otherwise dealing with matters pursuant to the league constitution. An excerpt of the Rules and Regulations governing the WHL was filed as Exhibit A-1 and contains details concerning the mandatory pay schedule of players while playing for any team in the WHL. McCrimmon stated the modest amounts paid to the players have not changed substantially since he played in the WHL 20 years ago except that a second-year player now earns $20.00 more per month than he would have two decades ago. McCrimmon stated the following monthly payments of $160.00 to a first-year player, $180.00 to a second-year player, $200.00 to a third-year player, $240.00 to a fourth-year player and a maximum of $600.00 to a returning 20-year old player are little more than an allowance to cover their day-to-day needs for transportation and other small expenses one would normally associate with "pocket money" if they were living at home. The players are billeted at local families in Brandon and the host billets are paid the sum of $270.00 per month together with tickets to Wheat Kings home games as compensation for a player's room and board. Since most billets are avid hockey fans, the players are treated like a member of the billet's family. During the many years the Wheat Kings have been in the WHL, there has never been more than two players on the team from Brandon and some years there are none. In the event the players are local, they merely reside in their own family homes. McCrimmon referred to the standard players contract - Exhibit A-2 - which, in his opinion, did not legally bind a player but served to formalize the arrangement and sets forth the obligations of the player and the hockey team. A player can move up to a team playing in a higher league or to a team in a lower rung in the hockey hierarchy but cannot voluntarily decide to move to another team within the WHL. McCrimmon explained the cities having teams in the WHL range in size from Seattle and Portland to Swift Current and Prince George so it is vital for the existence of the league to stabilize the player pool. Pursuant to clause 13 of the contract - Exhibit A-2 - a player can play for a chosen professional team as an under-age 19-year old player provided the team in the professional league compensates his former WHL team by paying the sum of $100,000. The rules of the WHL permit three 20-year olds on the roster of each team and they are referred to as "over-age" players. As a result, most players remain in the WHL for only four years. The National Hockey League (NHL) rules permit an 18-year old to play in that elite league but not in any minor

league or farm system owned by or associated with that NHL team. McCrimmon stated the WHL has a policy regarding education of the players. The league will pay the cost of one year's tuition and books at any Canadian university for each year a player has performed for a team and every education agreement is registered with the league Head Office. In any player-trade agreement, there is a provision relating to an allocation of the education entitlement as agreed upon by both teams and this arrangement must be approved by the Governor of the WHL. The minimum age at which a player can be a member of a WHL team is 16. The league has a system whereby promising 15-year olds are contacted and counselled in order to prepare them for leaving home the next year in order to play with a WHL team in another city. While playing for the Wheat Kings, all players attend the same high school and meet with the same counsellor. All players are subject to a curfew and are closely monitored both in and out of school, especially as it concerns their attendance, and the club will mete out discipline. There is a great deal of travel involved during the course of a hockey season and the players are required to be at school in Brandon at 9:00 a.m. even if they had just returned - at 5:00 a.m. - from a road trip. Brandon University and Assiniboine Community College are both located in Brandon. Those players who finished high school but have not chosen to attend college or university must come to training sessions 6 days a week from 12:30 p.m. to 5:30 p.m. each day. On a day on which a game is played, the players report to the arena between 12:30 p.m. and 2:00 p.m. and then return to the rink at 5:30 p.m. and remain there until the game is finished which is usually after 11:00 p.m. Even during a week when there is no game played, a Wheat Kings player would be at the arena 24 hours a week. When travelling to play games in other cities, the bus is the only form of transportation used by the team and it takes 27 hours to travel from Brandon to Portland, Oregon and 22 hours to Prince George, British Columbia. The arduous bus trips are an integral part of the process by which a player - against long odds - ultimately is afforded an opportunity to become a professional in the NHL and to participate in an industry which can permit a young man to earn up to several million dollars US per year or to play in other hockey leagues in North America or in Europe where salaries - for a short season - range up to $100,000 CND. McCrimmon stated that following his hockey career in the WHL as a Brandon Wheat King, which he acknowledged was a disciplined environment requiring many sacrifices, he attended Brandon University. He is aware of other former players who have become executives, scouts or therapists and thereby able to remain involved in the game of hockey as a business. The Wheat Kings players are permitted one 2:00 a.m. weekend curfew each month. They are required to work with children at elementary schools and in programs concerning minor hockey, handicapped children, and drug awareness as well as interacting with the Brandon business community. Behaviour is monitored by the team management and the families acting as billets. The city of Brandon - with a population of 50,000 - is very proud of the Wheat Kings hockey team and players have a high profile within the community. At the annual awards banquet, there is an award for scholastic achievement and an award for the top graduating player which includes many facets of the individual as a member of the team and as a resident of the community of Brandon. The actual team roster has 22 or 23 players but an additional four persons can be on a protected list recognized by the WHL and could be playing somewhere else at a lower level such as Tier II or Midget Triple A.

4 In cross-examination, Kelly McCrimmon stated in the event a player chooses not to pursue post-secondary education, the room and board allowance is still paid on his behalf. Pursuant to clause 12 of the standard player's contract - Exhibit A-2 - there is provision for the suspension of payment of salary during a suspension issued by the league to a player but in 12 years with the Wheat Kings as General Manager, he had never seen this clause utilized. The fines that can be imposed pursuant to clause 6 of the contract are deducted from the monthly allowance but are later

refunded in the sense the amounts collected are contributed towards a team function for the benefit of all the players.

5 Lyn Shannon testified she lives in Brandon and for the past 10 years has worked as the Executive Assistant to the General Manager of the Wheat Kings. Her function originally was to reduce the workload of the General Manager but it developed into other areas so that she is now responsible for certain accounting, marketing and administrative functions as well as acting as a counsellor to the players. She is responsible for issuing them their monthly cheques. In September, 1992 she enquired of the previous operator of the hockey club and of Revenue Canada about the method of payment to the players and was advised that cash could be paid in a pay envelope - without any deductions - but a T4 slip would have to be issued to each player at the end of the year. She advised that since January, 1999, the appellant takes the appropriate deductions from the cheques issued to the players. While the billets are compensated at the rate of $260.00 per month, in Shannon's opinion that does not cover the cost of having a young hockey player living in the home and eating as a member of the family. The billets enter into an agreement - Exhibit A-4 - with the Wheat Kings which sets out various terms and conditions including certain rules and expectations of the club together with some advice as to how players should be treated in an attempt to include them into a family atmosphere. When the players are on the road for 36 games per season, all costs are paid for by the Wheat Kings. At least 50% of the team - aged 16-18 - will be in highschool and the older ones can attend university or the community college and will be reimbursed for the cost of their books and tuition provided they achieve a passing grade. At the arena - Keystone Centre - in Brandon there is space available for the players who are students to study and, on occasion, the Wheat Kings organization will retain and pay for a tutor to instruct one or more players.

6 Counsel for the respondent did not cross-examine.

7 Counsel for the appellant submitted the case did not involve the usual analysis employed pursuant to the decision of the Federal Court of Appeal in Wiebe Door Services Ltd. v. M.N.R. [1986] 2 C.T.C. 200 as it was clear on the evidence the players were not independent contractors but would be regarded as employees, without more. However, counsel put forth the proposition that the true characterization of the status of the players in relation to the Wheat Kings hockey club was not that of apprentices but was more consistent with a form of private education in that the students were participating in a hockey program offering scholarships containing certain pre-conditions, one of which was to possess the ability to play hockey at a level permitting one to be a member of a team in the WHL. The players - like any students - had to abide by a code of conduct and to meet certain defined standards similar to any student on a scholarship. Counsel pointed out that in the long history of the WHL no assessments for unemployment - or employment - insurance premiums or contributions for Canada Pension had ever been issued and it did not seem reasonable within the overall context of the WHL to regard the small payment to the players as anything more than an allowance they could spend at their unfettered discretion that - although it consituted income under the Income Tax Act - was not insurable income for purposes of the Employment Insurance Act. In counsel's view of the legislation, it was intended to protect against involuntary idleness and is not - from any practical standpoint - relevant to the situation in the within appeal.

8 Counsel for the respondent submitted the evidence clearly established the relationship of the players to the appellant was that of employees to an employer as they were engaged in employment pursuant to a contract of service pursuant to the Employment Insurance Act and the Regulations thereunder made it clear the remuneration paid to the players was to be regarded as insurable earn-

ings. Further, counsel submitted it would require a specific regulation in order to exempt the players from the category of insurable employees as otherwise defined by the Employment Insurance Act.

9 Insurable employment is defined in paragraph 5(1)(a) of the Employment Insurance Act as follows:

> "Subject to subsection (2), insurable employment is
>
> (a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;"

10 Subsection 5(2) of the Employment Insurance Act reads as follows:

> "(2) Insurable employment does not include:
>
> (a) employment of a casual nature other than for the purpose of the employer's trade or business;
> (b) the employment of a person by a corporation if the person controls more than 40% of the voting shares of the corporation;
> (c) employment in Canada by Her Majesty in right of a province;
> (d) employment in Canada by the government of a country other than Canada or of any political subdivision of the other country;
> (e) employment in Canada by an international organization;
> (f) employment in Canada under an exchange program if the employment is not remunerated by an employer that is resident in Canada;
> (g) employment that constitutes an exchange of work or services;
> (h) employment excluded by regulations made under sub-section (6); and
> (i) employment if the employer and employee are not dealing with each other at arm's length."

11 Since the Employment Insurance Act did not come into force until June 30, 1996 - and the assessments included the entire year 1996 - it is worth noting the definition of insurable employment contained in paragraph 3(1)(a) of the Unemployment Insurance Act is exactly the same as the one above quoted.

12 The definition of insurable earnings contained in subsection 3(1) of the Insurable Earnings and Collection of Premiums Regulations reads as follows:

> "For the purposes of subsections (1) and (2), "earnings" does not include
>
> (a) the value of board, lodging and all other benefits received or enjoyed by a person in a pay period in respect of the employment if no cash remuneration is paid to the person by the person's employer in respect of the pay period;
> (a.1) any amount excluded as income under paragraph 6(1)(a) or (b) or subsection 6(6) or (16) of the Income Tax Act;

(b) a retiring allowance;
(c) a supplement paid to a person by the person's employer to increase worker's compensation paid to the person by a provincial authority;
(d) a supplement paid to a person by the person's employer to increase a wage loss indemnity payment made to the person by a party other than the employer under a wage loss indemnity plan;
(e) a supplemental unemployment benefit payment made under a supplemental unemployment benefit plan as described in subsection 37(2) of the Employment Insurance Regulations; and
(f) a payment made to a person by the person's employer to cover the waiting period referred to in section 13 of the Act or to increase the pregnancy or parental benefit payable to the person under section 22 or 23 of the Act if the payment meets the criteria set out in section 38 of the Employment Insurance Regulations."

13 The relevant provision in the former Unemployment Insurance (Collection of Premiums) Regulations is section 3:

> "3(1) For the purposes of this Part, a person's earnings from insurable employment means any remuneration, whether wholly or partly pecuniary, received or enjoyed by him, paid to him by his employer in respect of insurable employment..."

14 Pursuant to both sets of regulations, the value of board, lodging and other benefits received in respect of the employment are not considered as insurable earnings provided no cash remuneration is paid by the employer to the employee. The Minister recognized this aspect of the matter when undertaking a variation of earlier assessments and deleted certain amounts by virtue of certain players falling into the exempt category.

15 As noted by counsel for the appellant, IT 168R3 applies only to professional athletes employed by football, hockey and similar clubs and players in the WHL are not included in that definition.

16 The appellant's position is that the players were involved in a scholarship program. The following definition of scholarship is contained in The Dictionary of Canadian Law, 2nd Edition, Carswell, 1995, Dukelow & Nuse:

> "1. A sum of money awarded with special regard to the quality of the academic work of the person to whom it is awarded. 2. An award of distinction, prize or incentive. 3. Pecuniary assistance granted gratuitously to a student."

17 The Concise Oxford Dictionary of Current English, Eighth Edition, Clarendon Press, Oxford defines scholarship as:

> "payment from the funds of a school, university, local government, etc., to maintain a student in full-time education, awarded on the basis of scholarly achievement."

18 Counsel for the appellant agreed the sums received by the players in the form of their monthly allowance would be taxable but that one cannot assume this renders the employment in-

surable - or pensionable - for purposes of the relevant legislation. The WHL rules and regulations - Exhibit A-1 - referred to the Standard Players Contract which states the amount of payment which is referred to as "player's allowance". The players had full discretion over this amount and they were not required to use it to pay for any expenses while travelling on the road for away games or otherwise in connection with performing their services as hockey players for the Wheat Kings. The player's contract - Exhibit A-2 - in clause 12 referred to: Loss of salary during a suspension by the club or the league. However, under Clauses 2.1 and 2.2 there is reference to the payment as "the allowance fixed by the rules of the WHL".

19 While there is an educational component attached to the contract between the Wheat Kings and the players - and that is commendable - the players are paid to play hockey for the team in the WHL. They are entitled to one year's books and tuition at a post-secondary educational institution for each year they have played for a WHL team. It is the completion of the playing time that gives rise to the educational entitlement. The payment for playing hockey is modest but all their expenses are covered, including room and board. However, the requirement to play hockey is not inextricably bound to a condition of scholarship as may be the case with a university since attendance at a post-secondary educational institution was not mandatory for remaining on the roster. In the case of Charron v. M.N.R., [1994] T.C.J. No. 47 - Archambault T.C.J. heard an appeal from a determination by the Minister that the appellant - a graduate student employed by Laval University on a research project - was not engaged in insurable employment because she was receiving university credit for the work. Judge Archambault held that the existence of an academic benefit did not prevent the existence of a contract of employment and at paragraph 14 of his judgment stated:

> "...Further, the fact that s. 3(1)(a) refers to employment " under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person" indicates that Parliament clearly intended the idea of insurable employment to be as wide as possible for the purposes of the Act."

20 Kelly McCrimmon - General Manager of the Wheat Kings - stated he did not regard the players contract as being legally binding upon them but as a document formalizing - for league purposes mainly - the arrangement between players and their respective hockey clubs. The relevant provision of The Employment Standards Act, chapter E110, Province of Manitoba, in force during the period covered by the within appeal defines an adolescent, as follows:

> "adolescent" means a person who has reached his 16th birthday but has not reached his 18th birthday;"

21 Subsection 9(2) of the said Standards Act under the heading Agreements by Adolescent states:

> "An adolescent who enters into employment is liable thereon and has the benefit thereof as if the adolescent were an adult."

22 It is extremely doubtful that Parliament was concerned about massive unemployment among the ranks of 16 to 20-year old hockey players. It is also difficult to imagine how unemployment would result other than in the circumstance where a player was released outright or was unable to play for any other team and was therefore in need of collecting the extremely modest benefits dur-

ing a transition period. The WHL has operated for many years and has put emphasis on the value of obtaining an education. Kelly McCrimmon serves as a model to other players who can continue to be involved - at some level - in the hockey industry after their playing days have come to an end. 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.

23 Taking into account the evidence, relevant legislation and jurisprudence, I find the assessments issued by the Minister to have been correct and the decision dated January 17, 2000 confirming those previous assessments is - itself - hereby confirmed.

24 The within appeal is dismissed together with the appeal 2000-1540(CPP) which the parties agree would follow the result.

cp/d/qlsrr/qlscl

CASSELS BROCK
LAWYERS

May 25, 2018

By E-mail and Courier

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World Association of Ice Hockey Players Unions, North America
1010 Sherbrooke Street West, Suite 2200
Montreal, QC H3A 2R7

Attention: Sandra Slater and Randy Gumbley

Dear Madame and Sir:

Re: Notice of Libel Pursuant to the *Libel and Slander Act*

We are litigation counsel to the Canadian Hockey League ("**CHL**") and its three component Leagues, the Western Hockey League ("**WHL**"), the Ontario Hockey League ("**OHL**") and the Quebec Major Junior Hockey League ("**QMJHL**"). This letter and the accompanying Notice of Libel (the "**Notice**"), are hereby served on you pursuant to section 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c. L.12.

This letter and the Notice pertain to video footage (the "**Defamatory Videos**") of the testimonies of Tyler Maxwell and James McEwan, which were given to the Oregon Senate Committee on Workforce Practices on February 27, 2018. It has come to our clients' attention that these Defamatory Videos have been republished by you on the home page of the World Association Ice Hockey Players Union, North America ("**WAIPU**") Website (www.waipu.ca).

The Defamatory Videos contain statements that are false and deliberately intended to cast the CHL, WHL, OHL and QMJHL in a negative and harmful light, the most egregious of which are set out in the enclosed Notice. The publication of such defamatory content unlawfully interferes with my clients' operations. Further, each and every dissemination of the Defamatory Videos constitutes a separate, actionable defamatory statement.

Further, WAIPU does not represent any players or teams in the CHL or in any other league in North America. However, you position WAIPU and yourselves as if you have some representative or official capacity, which is also false and misleading.

The CHL intends to take all appropriate steps to enforce its rights to the fullest extent possible to protect its reputation and that of its component leagues. Accordingly, at a minimum, it is hereby required that WAIPU take immediate steps to remove the Defamatory Videos from its Website and prepare a full written retraction. Failure to do so will result in legal proceedings being commenced against WAIPU, Sandra Slater and Randy Gumbley with no further notice.

You and WAIPU are also cautioned to refrain from uttering or republishing any further untruths or inciting others to do so at any future parliamentary proceedings at which you or WAIPU

representatives make submissions regarding the CHL or any of its component leagues. We are monitoring all media and social media commentary in this regard.

This letter is written without waiver of, or prejudice to, any of the rights or remedies at law or equity, that the CHL or any of its component leagues may have, all of which are hereby expressly reserved.

Yours truly,

Cassels Brock & Blackwell LLP

per. Geoffrey B. Shaw
GBS/dk

Enclosure

cc: client

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER of the *Libel and Slander Act*, R.S.O., 1990, c. L.12

AND IN THE MATTER OF AN INTENDED ACTION

B E T W E E N:

CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, ONTARIO HOCKEY LEAGUE AND QUEBEC MAJOR JUNIOR HOCKEY LEAGUE

- and -

WORLD ASSOCIATION OF ICE HOCKEY PLAYERS UNIONS, NORTH AMERICA (WAIPU, NORTH AMERICA), SANDRA SLATER AND RANDY GUMBLEY

NOTICE OF LIBEL

Pursuant to subsection 5 (1) of the *Libel and Slander Act,* R.S.O. 1990, c. L.12, the Canadian Hockey League ("**CHL"**), the Western Hockey League ("**WHL**"), the Ontario Hockey League ("**OHL"**) and the Quebec Major Junior Hockey League ("**QMJHL"** and, collectively with the CHL, WHL and OHL, the "**Complainants**") complain of two videos that were republished by the World Association Ice Hockey Players Union, North America (WAIPU, North America) (the "**Respondent**") on its Website, <www.waipu.ca> (the "**Website**").

1. The Complainants object to and complain of the following defamatory statements that were made in a video (the "**Maxwell Video**") depicting the testimony of Tyler Maxwell, which was provided on February 27, 2018 in connection with the Oregon Senate Committee on Workforce, and which was published on the Website continuously until at least the date of this notice:

i.	The "so called WHL education package."	[Video time stamp 1:01]
ii.	"They rushed me back to playing after 4 weeks and little therapy so I could play in the playoffs. [...] They wanted me back in the line up to help them win their playoff	[Video time stamp 4:26]

round and sell tickets. People bought my jerseys, bobbleheads, autograph photographs of me in our team store."

iii. "They tricked 16 and 17 year olds into signing contracts with fine print and stipulations, tell them not to use an agent or a lawyer." [Video time stamp 5:31]

iv. "[...] at school you could say [*sic*], the teachers would say score two goals and I'll give you an "A" or give me a signed puck and I'll give you an "A". I got scholastic player of the year. I took 3 courses my senior year." [Video time stamp 7:35]

2. The Complainants object to and complain of the following defamatory statements that were made in a video (the "**McEwan Video**") depicting the testimony of James McEwan, which was provided on February 27, 2018 in connection with the Oregon Senate Committee on Workforce, and which was published on the Website continuously until at least the date of this notice:

i. "I did feel the pressure to fight because if I didn't I would be replaced or traded." [Video time stamp 1:15]

ii. "In this junior and professional hockey culture, players are being abused, manipulated, exploited, and neglected." [Video time stamp 6:29]

iii. "The consequences of allowing and tolerating fighting and violence in the game in hockey is utterly devastating. And having the power to stop the violence and let it continue because it profits a small group is cowardly and disgusting." [Video time stamp 6:53]

iv. "The WHL is a business about making profits and are doing so from exploiting young players, minors, who work for these teams." [Video time stamp 7:26]

v. "They give big shiny promises on education packages yet have loopholes [Video time stamp 7:35]

that prevent players from getting them."

3. The statements set out above, in their plain and ordinary meaning, are false and defamatory of the Complainants in the following respects:

   a. The statements "so called WHL education package" and "[t]hey give big and shiny promises on education packages yet have loopholes that prevent players from getting them" falsely suggest that the Complainants do not offer the opportunity to procure legitimate scholarships to players or that the Complainants deliberately obstruct players from realizing said scholarships;

   b. The statements "[t]hey rushed me back to playing after 4 weeks and little therapy so I could play in the playoffs [...] They wanted me back in the line up to help them win their playoff round and sell tickets", "I did feel the pressure to fight because if I didn't I would be replaced or traded" and "[t]he consequences of allowing and tolerating fighting and violence in the game in hockey is utterly devastating. And having the power to stop the violence and let it continue because it profits a small group is cowardly and disgusting" falsely suggest that the health and safety of players in the CHL and WHL is irrelevant to the Complainants, and that the Complainants are directly complicit in harming the health of its players for pecuniary gain;

   c. The statements "[t]hey tricked 16 and 17 year olds into signing contracts with fine print and stipulations, tell them not to use an agent or a lawyer", "[...] players are being abused, manipulated, exploited, and neglected" and "WHL is a business about making profits and are doing so from exploiting young players, minors, who work for these teams" are false and falsely suggest that the Complainants are engaged in or have committed acts of child exploitation and are deliberately engaged in illegal, improper, fraudulent, and/or unethical business practices for pecuniary gain; and

d. The statement "[...] at school you could say, the teachers would say score two goals and I'll give you an "A" or give me a signed puck and I'll give you an "A" [...]", in the context of the Maxwell Video as a whole, falsely suggests that the Complainants are engaged in a conspiracy or deliberate arrangement with educational institutions in order to undermine the education received by its players for some ulterior purpose.

The Complainants hereby give notice under the *Libel and Slander Act* and the *Courts of Justice Act* in respect of their intention to bring a claim as set out herein.

DATED at Toronto, this 25th day of May, 2018.

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