

COURT FILE NUMBER 1401-11912
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF LUKAS WALTER, TRAVIS MCEVOY,
and KYLE O'CONNOR as
REPRESENTATIVE PLAINTIFFS



DEFENDANTS 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

I hereby certify this to be a true copy of
the original order
Dated this 17 day of Nov 2017
 Clerk of the Court

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

DOCUMENT

ORDER
(Certification)

Brought under the *Class Proceedings Act*, S.A.
2003, c. C-16.5

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
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DOCUMENT

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Lawyers for the Defendants

ORDER (CERTIFICATION)

DATE ON WHICH ORDER WAS PRONOUNCED: NOVEMBER 16, 2017

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Mr. Justice R.J. Hall

UPON THE APPLICATION of the plaintiffs for an order pursuant to the *Class Proceedings Act*, S.A. 2000, c. C-16.5, certifying this action as a class proceeding, which was heard on February 7, 8, 9, 10, 15 and April 18, 2017, at the courthouse at 601 5th Street Southwest, Calgary, Alberta; AND UPON reading all materials filed and on hearing the submissions of counsel for all parties; AND UPON the Court reserving decision until the release of Reasons for Decision on June 15, 2017.

IT IS HEREBY ORDERED THAT:

Definitions

1. For the purposes of this Order, including Schedule "A" to this Order, the following definitions apply:
 - a. "CHL" means the defendant Canadian Hockey League;
 - b. "Class Counsel" has the meaning described in paragraph 6 of this Order;
 - c. "Class Members" or "Class" has the meaning described in paragraph 3 of this Order;
 - d. "CPA" means the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
 - e. "Defendant Clubs" means the named defendant hockey clubs located in the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba, and for greater certainty does not include the clubs located in the States of Washington or Oregon;
 - f. "Employer payroll contributions" includes contributions to the Canada Pension Plan pursuant the *Canada Pension Plan*, R.S.C., 1985, c. C-8 and contributions to unemployment insurance pursuant to the *Employment Insurance Act*, S.C. 1996;
 - g. "WHL" means the defendant Western Hockey League;
 - h. "British Columbia Clubs" means the named defendant hockey clubs located in the Province of British Columbia;

- i. "Alberta Clubs" means the named defendant hockey clubs located in the Province of Alberta;
- j. "Saskatchewan Clubs" means the named defendant hockey clubs located in the Province of Saskatchewan;
- k. "Manitoba Club" means the named defendant hockey club located in the Province of Manitoba.

Certification

- 2. This proceeding is certified as a class proceeding only as against the British Columbia Clubs, the Alberta Clubs, the Saskatchewan Clubs and the Manitoba Club, the WHL and the CHL, pursuant to the *CPA*.

Class definition & representative plaintiff

- 3. The class for the purposes of this action consists of the following (the "Class" or "Class Members").
 - 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").
 - 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").

4. The closing date for the Alberta and Manitoba Class (paragraph 2b above) is without prejudice to the class definition being amended from time to time by a new motion to certify, which, if granted, would be followed by a notice program.
5. Travis McEvoy and Kyle O'Connor are appointed as the representative plaintiffs on behalf of the Class.
6. Charney Lawyers PC and Goldblatt Partners LLP (collectively, "Class Counsel") are appointed as counsel for the Class.

Nature of the claims and common issues

7. The claims asserted on behalf of the class are as follows:
 - a. breach of contract;
 - b. breach of the contractual duties of honesty, good faith and fair dealing;
 - c. breach of the employment standards legislation in British Columbia, Alberta, Saskatchewan and Manitoba;
 - d. common employer doctrine claim that the defendants Western Hockey League ("WHL") and Canadian Hockey League ("CHL") are jointly and severally liable to each Class Member for the claims in breach of contract, breach of the contractual duties of honesty, good faith and fair dealing, and breach of employment standards legislation;
 - e. conspiracy;
 - f. negligence;
 - g. unjust enrichment; and
 - h. waiver of tort.
8. The relief sought by the class is as set out in the Fresh as Amended Statement of Claim filed February 3, 2017.
9. The common issues shall be as appended as Schedule "A" attached hereto.

Notice of certification & opting out

10. The form of notice of this certification order, the manner of giving notice, and all other related matters, shall be determined by further order of this Court.
11. The Class Members may not opt out after the expiry of the 60th day after the date the first notice of certification is published.

12. Class Counsel will deliver to the Court, within 30 days after the close of the opt-out period referred to in paragraph 10 above, an affidavit exhibiting the persons who have validly opted out of the class proceeding, if any.

Costs

10. Costs of this motion shall be determined by agreement of the parties or by further order of this Court.

Other

11. This order may be signed in counter-part and by electronic means.

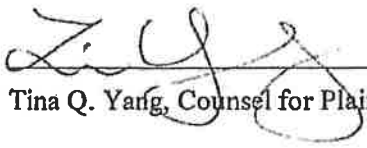


JUSTICE HALL, COURT OF QUEEN'S BENCH OF ALBERTA

~~CONSENTED TO BY:~~

OR APPROVED AS TO FORM AND CONTENT BY:

CHARNEY LAWYERS
GOLDBLATT PARTNERS LLP



Tina Q. Yang, Counsel for Plaintiffs

AND BY:

TORYS LLP



Sarah Whitmore, Counsel for Defendants

SCHEDULE "A" – COMMON ISSUES

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 of British Columbia, Alberta, Saskatchewan, and Manitoba and/or (b) at common law?
2. Are, or were, the class members who played for the Defendant Clubs in "pensionable employment" of the defendant clubs, 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 in "insurable employment" of the defendant clubs, the WHL and/or the CHL, pursuant to the Employment Insurance Act?
4. If the answers to common issues #1, #2 & #3 are yes:
 - a. does being in a relationship of "guidance, supervision, development and education" negate the class members' employee status, absent any formal exemption to this effect?
 - b. do the Class Members qualify for an "amateur athlete" status which negates their employee status, absent any formal exemption to this effect?
 - c. do the Class Members qualify for any applicable trainee or intern exemption to employment status?
 - d. does *The Employment Standards Regulations*, R.R.S. c. S-15.1, Reg. 5, s. 3(1) apply retroactively?
 - e. does the *Employment Standards Regulation*, B.C. Reg. 396/95, s. 37.16 apply retroactively?
5. If the answers to common issues #1, #2 & #3 are yes, are the CHL and/or the WHL a common employer with the Defendant Clubs, under statute and/or at common law?
6. Are the minimum wage, overtime pay, holiday pay, and/or vacation pay requirements under the applicable employment standards legislation express or implied terms of the contracts between the class members and any or all of the Defendant Clubs, the WHL and/or the CHL?
7. If the answer to common issue #6 is yes, did any or all of the Defendant Clubs, the WHL, and/or the CHL breach any of the contractual obligations found to exist?
8. 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 to 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 of British Columbia, Alberta, Saskatchewan, and Manitoba;
 - c. ensure that Class Members' hours of work are monitored and accurately recorded; and/or
 - d. ensure that Class Members are compensated in accordance with their entitlements under the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba?
9. If the answer to common issue #8 is yes, did any or all of the Defendant Clubs, the WHL and/or the CHL breach their good faith duties with respect to any of the factors listed above?
10. 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 of British Columbia, Alberta, Saskatchewan, and Manitoba to pay them minimum wage, overtime pay, holiday pay and/or vacation pay?
11. If the answer to common issue #10 is yes, did any or all of the Defendant Clubs, the WHL and/or the CHL breach the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba by failing to pay the class members minimum wage, overtime pay, holiday pay and/or vacation pay?
12. Did any or all of the Defendant Clubs, the WHL and/or the CHL conspire to violate the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba? If so when, where, and how?
13. Were any or all of the Defendant Clubs, the WHL and/or the CHL 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 of British Columbia, Alberta, Saskatchewan, and Manitoba and/or failing to make the required Employer Payroll Contributions on behalf of the Class Members?
14. Are any or all of the Defendant Clubs, the WHL and/or the CHL liable to the class members in waiver of tort?
15. 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 of British Columbia, Alberta, Saskatchewan, and Manitoba;
 - c. ensure that Class Members' hours of work are monitored and accurately recorded; and/or

- d. ensure that Class Members are compensated in accordance with their entitlements under their applicable employment standards legislation?
16. If the answer to any part of common issue #15 is yes, did any or all of the Defendant Clubs, the WHL and/or the CHL breach any of the duties of care found to exist above?
17. Is this an appropriate case for any or all of the Defendant Clubs, the WHL and/or the CHL to disgorge profits?
18. Can any or all of the claims be assessed on an aggregate basis?
19. Are any or all of the Defendant Clubs, the WHL and/or the CHL liable for punitive damages?
20. Should the Defendant Clubs, the WHL and/or the CHL pay pre-judgment and post-judgment interest, and at what annual interest rate?
21. Should the Defendant Clubs, the WHL and/or the CHL 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?