

Court File No. CV-14-514423

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SAMUEL BERG

Plaintiff

and

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

Defendants

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

AFFIDAVIT OF ANDREW J. ECKART
 (SWORN FEBRUARY 20, 2015)

I, Andrew J. Eckart, of the City of Windsor, in the County of Essex, Province of Ontario, make oath and say:

1. I am a lawyer with the law firm Charney Lawyers, lawyers for the plaintiffs, and as such I have knowledge of the matters to which I hereinafter depose. Where I do not have firsthand knowledge of the matters, I have specified the source of the information, and I hereby state that I verily believe such information to be true.

THE DEFENDANTS

The CHL

2. The Canadian Hockey League (the "CHL") is a federal corporation incorporated in Canada under the *Canada Not-for-profit Corporations Act*, SC 2009, c 23. The directors of the CHL are David Branch, Sherry Bassin, Ronald Robison, Bruce Hamilton, Louie Brousseau, and Gilles Courteau. The CHL's registered office address is 305 Milner Avenue, Suite 201, Toronto ON, M1B 3V4. Attached hereto as **Exhibit "A"** is the Federal Corporation Information from Industry Canada.
3. The CHL is an umbrella organization which administers three hockey leagues with teams in Canada and the United States. The leagues are known as the Ontario Hockey League ("OHL"), the Western Hockey League ("WHL"), and the Quebec Major Junior Hockey League ("QMJHL").
4. The CHL describes itself as follows on its website:

The Canadian Hockey League is the world's largest development hockey league with 52 Canadian and eight American teams participating in the Ontario Hockey League, Quebec Major Junior Hockey League and Western Hockey League.

The CHL's staff are also listed on the CHL's website. David Branch is its president, and Gilles Courteau and Ron Robison are the CHL's Vice-Presidents. The address of the CHL's head office on the website is identical to that in the Federal Corporation

Information form from Industry Canada. Attached as **Exhibit "B"** are excerpts from the CHL's website.

The OHL

5. The defendant Ontario Major Junior Hockey League ("OMJHL") is a corporation incorporated in the province of Ontario in January 30, 1980. Amongst its officers is David Branch. The OMJHL's head office is 305 Milner Avenue, Suite 200, Toronto ON, M1B 3V4. Attached hereto as **Exhibit "C"** is a corporate profile report for the OMJHL.

6. The OHL's website describes itself as follows:

The Ontario Hockey League is a proud member of the Canadian Hockey League which is the world's largest development hockey league with 60 teams in nine Canadian provinces and five American states. In addition to the OHL, the CHL is made up of the Quebec Major Junior Hockey League and the Western Hockey League.

The OHL's staff and the coaches and General Managers of the 20 teams in the OHL are also listed on the OHL's website. David Branch is the Commissioner of the OHL. The head office of the OHL is listed as 305 Milner Ave., Suite 200, Scarborough, ON M1B 3V4, the same address as for the OMJHL. Attached as **Exhibit "D"** are excerpts from the OHL's website. Based on the foregoing, that Mr. Branch is a director of the OMJHL and the commissioner of the OHL and the head offices for the OHL and OMHJL are identical, I verily believe that the OMJHL operates the OHL.

7. Attached as **Exhibit "E"** are pages 1-67 of 2013-2014 OHL Media Information Guide, which include the OHL staff directory, and the team directory for every team in the league for the 2013-2014 season. Dr. Robert Neville is listed as the Chairman of the Board.

8. Further to searches I conducted through the Canadian Trademarks Database and business entity lookups in the States of Michigan and Pennsylvania, I do verily believe that the owners of the OHL's 20 teams are the defendants Windsor Spitfires

Inc., London Knights Hockey Inc., Barrie Colts Junior Hockey Ltd., Belleville Sports And Entertainment Corp., Erie Hockey Club Limited, Guelph Storm Limited, Kingston Frontenac Hockey Ltd., 2325224 Ontario Inc., Niagara Icedogs Hockey Club Inc., Brampton Battalion Hockey Club Ltd., Generals Hockey Inc., Ottawa 67's Limited Partnership, The Owen Sound Attack Inc., Peterborough Petes Limited., Compuware Sports Corporation, Saginaw Hockey Club, L.L.C., 649643 Ontario Inc C.O.B. as Sarnia Sting, Soo Greyhounds Inc.

9. I was initially unaware of the corporate owners of the teams known as the Kitchener Rangers and the Sudbury Wolves. Our firm had named those owners as John Doe Corporation "A" operating as The Kitchener Rangers, and John Doe Corporation "B" operating as The Sudbury Wolves in the Ontario Superior Court action with Court File No. CV-14-51563700CP. By email of February 12, 2015, attached hereto as **Exhibit "F"** counsel for the defendants advised our office as to their legal names.
10. We have replaced the John Doe defendants with the legal names of those defendants in the Draft Consolidated Fresh Statement of Claim attached hereto as **Exhibit "G"**.

The WHL

11. The defendant Western Hockey League is a federal corporation incorporated in Canada under the *Canada Not-for-profit Corporations Act*, SC 2009, c 23. The Western Hockey League's registered office is located at 2424 University Dr. NW, Calgary, AB T2N 3Y9. Attached hereto as **Exhibit "H"** is the Federal Corporation Information from Industry Canada. The Western Hockey League owns and operates the WHL.
12. The WHL's website describes itself as follows:

The Western Hockey League started with just seven teams based in the provinces of Saskatchewan and Alberta in 1966. The WHL now has representation in all four Western Canadian provinces and the U.S. states of Oregon and Washington. With the addition of the Edmonton Oil Kings for the 2007-08 season, the WHL now consists of 22 member Clubs with 17 based in Canadian markets and 5 in the U.S. Pacific Northwest.

The WHL is a member of the Canadian Hockey League (CHL) whose membership is comprised of three major junior hockey leagues: Ontario Hockey League (OHL), Quebec Major Junior Hockey League (QMJHL) and the Western Hockey League (WHL). At the conclusion of each League's playoffs, the CHL hosts the Mastercard Memorial Cup. A National Championship tournament involving each of the League's Champion and the tournament host.

The Western Hockey League's Head Office is located in Calgary, Alberta and is responsible to administer all functions related to League operations. Under the direction of the WHL Commissioner, the WHL Head Office functions include: game supervision, scheduling, League meetings, player drafts, agreements and scholarships, player transactions, finance, marketing, media relations, communications and statistics/results.

The WHL's staff is also listed on the WHL's website. Ron Robison is the Commissioner of the WHL. The address of the CHL's head office on the website is identical to that in the Federal Corporation Information form from Industry Canada. Attached as **Exhibit "I"** are excerpts from the WHL's website.

13. I have reviewed the web pages for each team currently playing in the WHL. The web pages listing the staff of each team are attached as **Exhibit "J"**. Each of the directors listed in the Federal Corporation Information for the Western Hockey League at Exhibit "H" are also each listed as the teams' governors, owners, or presidents. I verily believe that the directors of the defendant Western Hockey League comprise of the appointed governors or executives for each of the teams participating in the WHL.
14. A news article from the Kelowna Capital News entitled "Bruce Hamilton back at helm of WHL board" was posted on its website on June 12, 2014, and is attached hereto as **Exhibit "K"**. That article announces that Mr. Hamilton, the GM and president of the Kelowna Rockets WHL team was returning as chairman of the WHL's board of governors.
15. Further to searches I conducted through the Canadian Trademarks Database and corporate searches in the States of Washington and Oregon, I do verily believe that

the corporate owners of the WHL's 22 teams are the defendants McCrimmon Holdings, Ltd., 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings., 1056648 Ontario Inc., Rexall Sports Corp., EHT, Inc., Kamloops Blazers Hockey Club, Inc., Kelowna Rockets Hockey Enterprises Ltd., Hurricanes Hockey Limited Partnership, Prince Albert Raiders Hockey Club Inc., Brodsky West Holdings Ltd., Rebels Sports Ltd., Queen City Sports & Entertainment Group Ltd., Saskatoon Blades Hockey Club Ltd., Vancouver Junior Hockey Limited Partnership, West Coast Hockey Enterprises Ltd., Swift Current Tier 1 Franchise Inc., Medicine Hat Tigers Hockey Club Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc..

16. I was initially unaware of the corporate owners of the teams known as the Kootenay Ice and the Moose Jaw Warriors. We had named those owners as John Doe Corporation "C" operating as The Kootenay Ice, and John Doe Corporation "D" operating as The Moose Jaw Warriors in the Ontario Superior Court action with Court File No. CV-14-51563700CP, however, have now been advised by counsel for the defendants of the legal names of those entities. We have replaced the John Doe defendants with the legal names of those defendants in the Draft Consolidated Fresh Statement of Claim.

The QMJHL

17. The defendant the Quebec Major Junior Hockey League Inc. is a corporation incorporated pursuant to the laws of Quebec. Its president is listed as Louis Brousseau, who is also a director of the defendant CHL. The Quebec Major Junior Hockey League Inc.'s registered office is located at 101-1205 rue Ampere, Boucherville, QC, J4B 7M6. Attached hereto as **Exhibit "L"** is the Quebec corporate profile report. The Quebec Major Junior Hockey League Inc. owns and operates the QMJHL.
18. The QMJHL's website describes itself as follows:

The Quebec Major Junior Hockey 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 in order to ensure the continued success of its activities.

The QMJHL's staff and governors are also listed on the QMJHL's website. Gilles Courteau is the Commissioner and Louis Brousseau is the president of the Board of Governors of the QMJHL. All of the executives of the defendant Quebec Major Junior Hockey League Inc. are also governors in the QMJHL. Attached as **Exhibit "M"** are excerpts from the QMJHL's website.

19. Further to searches I conducted through the Canadian Trademarks Database and corporate searches in the province of Quebec, I do verily believe that the corporate owners of the QMJHL's 18 teams are the defendants 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., and Lewiston Maineiacs Hockey Club, Inc.
20. I was initially unaware of the corporate owner of the team known as Les Saqueneens Chicoutimi. We had named the owner as John Doe Corporation "E" operating as Les Saqueneens Chicoutimi in the Ontario Superior Court action with Court File No. CV-14-51563700CP, however, have now been advised by counsel for the defendants of the legal names of those entities. We have replaced the John Doe defendants with the legal names of those defendants in the Draft Consolidated Fresh Statement of Claim.

The Defendant Leagues' Common Directors

21. The foregoing evidence reveals that the registered directors of the defendant CHL consist of the commissioners, presidents or chairmen of the board of governors, and long-time owners of teams in each of the OHL, WHL, and the QMJHL. Specifically, David Branch is the commissioner of the OHL, the President of the CHL, and director of the CHL; Ron Robison is the commissioner of the WHL, vice-president of the CHL, and director of the CHL; Gilles Courteau is the commissioner of the QMJHL, vice-president of the CHL, and a director of the CHL; Louis Brasseur is the president of the board of governors of the QMJHL and a director of the CHL; Bruce Hamilton is the chairman of the WHL's board of governors and a director of the CHL; and Sherwood (Sherry) Bassin is the GM of and managing partner of the Erie Otters team in Erie, Pennsylvania and a director of the CHL.

THE MCCRIMMON RULING AND CHANGES TO THE STANDARD PLAYER AGREEMENTS

22. On November 24, 2000, the Tax Court of Canada released its judgment in *McCrimmon Holdings Ltd. v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823 [*McCrimmon*]. A copy of the ruling is attached at **Exhibit "N"**.
23. In *McCrimmon*, the tax court dismissed an appeal by the defendant owner of the Wheat Kings hockey team playing in the WHL, from the decision of the Minister of National Revenue that found that the players playing on the Wheat Kings were employed under contracts of service with the Wheat Kings and were therefore engaged in insurable and pensionable employment.
24. The court specifically found at paragraph 23 that the team "is a commercial organization...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".

25. Despite this ruling from over 14 years ago, the CHL, its leagues and the teams playing in those leagues have refused to categorize the players on the teams as employees. In *McCrimmon*, at para. 18, the standard player agreements and WHL rules and regulations referred to by the court described the weekly payment to the players as a "player's allowance", and "allowance fixed by the rules of the WHL". However, the contracts also referred to "loss of salary during suspension by the club or the league" [emphasis added].
26. By 2007, the description of the weekly fees paid to the players in the WHL continued to be described as "allowances". Attached as **Exhibit "O"** is a copy of the WHL Standard Player Agreement Execution Schedule effective September 1, 2007. There is no reference to the word "salary" under the document, however, clause 3 of the Execution Schedule states that the team would agree to pay an "allowance" "in consideration of the Player providing his services as a hockey player and otherwise to the Club, and in further consideration of the Player playing hockey exclusively for the Club during the Term of this Agreement".
27. Under clause 3(a) of the Execution Schedule, the player's fee was to increase each season, up to the 2011-2012 season, when the player would be considered a 20-Year-Old player. According to clause 3(a), the player would receive \$600/month at that age, which is the equivalent of \$150/week.
28. Similarly, the WHL Standard Player Agreement as executed by Lukas Walter and the Tri-City Americans on September 15, 2011, attached hereto as **Exhibit "P"**, contains identical terms.
29. In the other CHL leagues, the description of the weekly fees paid have been described differently at different times. The OHL Standard Player Agreement Forms used by

the teams in 2007 did not classify or describe the players' status vis-à-vis the teams. The contracts stated, under Clause 3, that the "Club shall pay to the Player the allowance and provide to the Player the benefits set out in Schedule "A" attached hereto and made part hereof." Attached as **Exhibit "Q"** is a redacted OHL Standard Player Form used by the OHL in the 2007-2008 season.

30. Under Schedule "A", the weekly sums paid to the player is described as an "allowance for the Player's exclusive services". Those sums increase to \$150/week in the 2010-2011 season, presumably when the player turned 20 years old.
31. By 2010, however, the OHL Standard Player Agreement Form was changed and subclause 1(b) was added to the contract. That clause reads as follows: "It is expressly acknowledged and agreed by the parties involved that the relationship between the OHL and the Player is that of an independent contractor. Nothing in this Agreement shall constitute the parties as employer/employee, or as agents, partner, or co-venturers of each other." Attached as **Exhibit "R"** is an OHL Standard Player Form used by the OHL in the 2010-2011 season. The terms and conditions of this OHL Standard Player Form are identical to those in the contract signed by the plaintiff, Samuel Berg, in September 2013.
32. Further, the OHL contracts no longer referred to the weekly payments to the Players as "allowances". Under Clause 3, the team agrees to "pay to the Player the fees and provide to the player the benefits set out in Schedule A attached hereto and made part hereof."
33. Under clause 1 of Schedule "A" of the 2010-2011 OHL Standard Player Agreement the weekly sums to be paid to the player is described as "fees for the Player's services under the Agreement". Under subclause 1.3(g), a clause not in the 2007-2008 agreements, it states that:

All benefits provided under the terms of the Ontario Hockey League Standard Players Agreement and such other standard additional benefits as are provided to the other members of the Club including, without limiting the foregoing,

the maximum weekly allowance of Fifty Dollars (\$50.00), save and except an overage player who will be entitled to receive a maximum weekly allowance of One Hundred-Fifty Dollars (\$150.00) from the commencement of Training Camp until the conclusion of the Club's schedule, including the playoffs.

34. The Standard Player Agreements in the QMJHL were also subject to considerable change in the past few years. In 2008, a contract between a player and the Tigres du Victoriaville, a team in the QMJHL, described the weekly fees as a "salary". The redacted version of the contract is attached hereto as **Exhibit "S"** and states at clause 6 that "The Tigres commit to double [the Player's] weekly salary through his Major Junior stay except for his 20-year-old season." At clause 7, the contract also provided for bonuses based on performance.
35. In 2010, a contract between a player and the Halifax Mooseheads Hockey Club in the QMJHL described the weekly fee as a "salary". Specifically, the contract set out that: "[t]he Club will provide to the Player any salary/bonus according to the Club's existing policies during the time the Player is with the Club." A redacted version of the contract is attached here to as **Exhibit "T"**.

THE UNIONIZATION EFFORT AND CHANGES TO THE STANDARD PLAYER AGREEMENTS

36. In or about August 2012, a proposed labour union calling itself the Canadian Hockey League Players' Association (the "CHLPA") sought to organize and represent the players playing in the CHL leagues. A press release dated August 17, 2012, posted on the CHLPA's website www.chlpa.com announcing the formation of the CHLPA is attached hereto as **Exhibit "U"**.
37. Following news of the attempt of the CHLPA to unionize players in the CHL affiliated leagues, David Branch as the President of the CHL issued a press release responding to the formation of the CHLPA, suggesting that "any organization drive

would be required to be at an individual team level”. Attached as **Exhibit “V”** is the statement from CHL President David Branch dated August 22, 2012.

38. Amongst some of the issues that the CHLPA hoped could be dealt with through unionization was the unfair wages or “stipends” being paid to the players. A Toronto Star article dated October 31, 2012, explained that a former defenceman in the QMJHL had “filed the first in what could become a string of union-supported claims for unpaid wages against the Canadian Hockey League teams” at the Nova Scotia Labour Standards Division. Attached as **Exhibit “W”** is a copy of the Toronto Star article entitled “Hockey player Joshua Desmond files suit against CHL for unpaid wages”.
39. Around the time and following the unionization drive and Mr. Desmond’s complaint regarding his wages in 2012, the defendants began to re-draft the player contracts to clarify the status of the players as “amateur” or “student-athletes”.
40. For example, in September 2013, Luke signed a 20-Year-Old Player contract with the Saint John Sea Dogs of the QMJHL. That contract is attached hereto as **Exhibit “X”**. According to the agreement, Luke received a base weekly gross salary of \$476.66/week plus \$90/week for accommodation expenses.
41. The contract signed by Luke was the standard player agreement included in the document entitled “R-11 Rights and Obligations of Players” dated September 2013 and approved by the Board of Governors of the QMJHL. That document is attached as **Exhibit “Y”** (the “R11 Manual”).
42. The R11 Manual distinguishes the status of 20 Year Old Players from Players ages 16-19. At Clause 1.2, the R11 Manual reads, “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 benefitting 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.” At clause 4.3, the R11 Manual states that “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”.

43. Under clause 1.3, the R11 Manual acknowledges that “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”. Clause 5.5 imposes a salary cap on the 20-year-old players such that they cannot receive earnings that exceed \$1,000 per week.
44. After the 2013-2014 season, however, the QMJHL changed the provisions of the 20-Year-Old Player contract. On May 30, 2014, the league announced that they were reducing the salary for those 20-year-old players from \$550/week to \$150/week which put them in line with the salaries received by 20-Year-Old players in the WHL and the OHL. Attached as **Exhibit “Z”** is a copy of news article from Yahoo Sports dated May 30, 2014 entitled “QMJHL drops overage salary to match OHL and WHL; predictably, potential overagers aren’t happy”.
45. Upon his completion of his season with the Saint John Sea Dogs for 2013-2014 season, Luke was provided with a Record of Employment listing as his employer the Saint John Major Junior Hockey Club Ltd. The team also issued a T4 for him for the tax year 2013. Luke’s Record and Employment is attached hereto as **Exhibit “AA”** and his T4 for 2013 is attached hereto as **Exhibit “BB”**.

THE CHL IS NOT AN “AMATEUR” LEAGUE AND ITS PLAYERS ARE NOT “STUDENT-ATHLETES”

46. Following the filing of the complaint by Mr. Desmond in Nova Scotia in 2013, Mr. Branch explained in the media how the CHL perceives its athletes, stating, in the same article attached as Exhibit “W”, that “We look upon our players as student

athletes. We've never considered ourselves professional. We are under Hockey Canada, which is the recognized amateur sports-governing body."

47. Hockey Canada describes itself as follows on its website, excerpts of which are attached as **Exhibit "CC"**:

Hockey Canada is the national governing body for grassroots hockey in the country. The organization works in conjunction with the 13 provincial branches, the Canadian Hockey League and Canadian Interuniversity Sport in growing the game at all levels.

Hockey Canada oversees the management of programs in Canada from entry-level to high performance teams and competitions, including world championships and the Olympic Winter Games. Hockey Canada is also Canada's voice within the International Ice Hockey Federation. Hockey Canada has offices in Calgary and Ottawa and operates regional centres in Ontario and Quebec

48. While Hockey Canada may not now recognize the CHL as a professional league, it certainly did in the past and it is not clear that it now considers the players in the CHL as amateurs. Attached as **Exhibit "DD"** is a copy of the USAH/HC/CHL Transfer and Release Agreement appended to the 2009-2010 Hockey Canada By-Laws. Under Article 2, section C. 2. At p. 120, the agreement states "It is agreed that CHL Teams are considered and treated by third parties as being professional."
49. In the current version of the Hockey Canada Bylaws, this agreement was amended. The same section quoted above now reads "It is agreed 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 in a member league of the CHL". The current version of Hockey Canada's Bylaws are available online. Unfortunately, the document is password protected so that I was unable to print it. It is included on the CD attached hereto as **Exhibit "EE"**. The USAH/HC/CHL Transfer and Release Agreement can be found at appendix K2, p. 116.

50. Further, the CHL is expressly not considered a member of Hockey Canada, but is one of its "Partners" under the current bylaws, under articles 12.2 and 12.5, found at p. 22 of the bylaws enclosed in Exhibit "EE".
51. The National Collegiate Athletic Association ("NCAA"), which regulates athletics in colleges and universities in the United States, also does not consider the CHL an amateur league and in fact considers the players playing on "major junior teams" in the CHL leagues as professionals pursuant to provision 12.2.3.2.4 of the NCAA's bylaws. The NCAA's bylaw Article 12, entitled "Amateurism" is attached hereto as **Exhibit "FF"**.
52. Despite the ruling in *McCrimmon*, wherein the players were found to be employees, and the positions of other leagues that the CHL players are neither amateur nor student-athletes, the leagues continue to consider the players as amateur student-athletes and not employees. After commencing this lawsuit, the commissioners from each of the leagues issued a joint press release posted on the CHL website on October 20, 2014. In the announcement, the players are described as "amateur student athletes". Attached as **Exhibit "GG"** is a copy of this press release.
53. Mr. Branch, the President of the CHL and commissioner of the OHL, also made several media appearances since the filing of this class action. Attached as **Exhibit "EE"** is a CD containing two radio interviews given by Mr. Branch including:
 - a. October 21, 2014 interview with Bob McGowan on Prime Time Sports, Sportsnet 590 the Fan (the interview begins at the 22 minute mark); and
 - b. October 21, 2014 interview with Matt Galloway on Metro Morning, CBC Radio;
54. In addition to classifying the players as "amateurs" and "student-athletes", in these radio interviews, Mr. Branch has also made several public statements that a conscious decision was made by the CHL 8-10 years ago that it was more important to institute various programs, such as investing in the scholarship and anti-doping programs rather than paying the players wages in accordance with minimum wage laws.

55. On February 10, 2015, Russ Farwell, the President and General Manager of the Seattle Thunderbirds testified before Washington State's House Labor Committee that the WHL teams "are members of both Hockey Canada and USA Hockey which are the governing bodies for amateur hockey in North America and our players are 100 per cent amateurs". An article from the Toronto Star dated February 17, 2015, entitled "Star investigation: CHL claims questioned" is attached hereto as **Exhibit "HH"** and referred hereinafter as the "Star Investigation Article".
56. USA Hockey, is a similar organization as Hockey Canada and describes itself on its website as the "National Governing Body for the sport of ice hockey in the United States". Its "primary emphasis is on the support and development of grassroots hockey programs". Attached hereto as **Exhibit "II"** are excerpts from USA Hockey's website, www.usahockey.com.
57. In the Star Investigation Article, in regards to Mr. Farwell's statements that WHL teams are members of USA Hockey, John Vanbiesbrouck, the junior chair of USA Hockey is quoted as stating that "We have had no communication with any CHL teams nor do I know of them being members...I have no idea (why they would say that)...I don't know what their view of being members are. But their team at the junior level is not registered with USA Hockey."
58. The Star Investigation Article also describes information received from interviews with player agents who describe that signing bonuses received by players on the signing of an NHL contracts is typically 10 per cent of the contract amount signed.
59. There are several players currently playing in the CHL leagues who have signed NHL contracts and who have been invited to NHL training camps. Each year, each of the three leagues issue press releases identifying which of their players have been invited to the NHL camps. The press releases also identify which players have been drafted by NHL teams and whether or not they have signed NHL contracts. Attached hereto as **Exhibit "JJ"** is the undated press release from the OHL's website; **Exhibit "KK"**

is the press release from the QMJHL's website dated September 10, 2014; and **Exhibit "LL"** is the press release from the WHL dated September 11, 2014.

60. While the details of it are unclear, I understand that there is an agreement between the CHL and NHL in which the NHL agrees to provide grants to the CHL. Attached as **Exhibit "MM"** is a letter dated September 10, 2012, from NHL Deputy Commissioner William Daly to Mr. Branch referring to an agreement between the NHL and CHL and providing a grant from the NHL to the CHL of nearly \$10 million.
61. I also believe that pursuant to the agreement between the NHL and the CHL, or some other agreement between the two leagues, that the NHL or teams in the NHL pay fees to CHL clubs when a CHL player signs a contract with an NHL club. This "development fee" has been discussed on various blogs and websites, a collection of which are attached hereto as **Exhibit "NN"**.
62. Attached as **Exhibit "OO"** are Articles 15 and 16 of the collective bargaining agreement between the National Hockey League and the National Hockey League Players' Association. These Articles spell out the teams' and players' obligations with respect to travel, practice, training, conditioning, orientation programs, exhibition games, regular season games, and playoffs, holidays, and league schedules.
63. Similarly, other hockey leagues such as the American Hockey League ("AHL") and the East Coast Hockey League ("ECHL") also have a players union known as the Professional Hockey Players' Association ("PHPA"). While the collective bargaining agreements between the PHPA and the AHL and ECHL are not available online, the PHPA's website outlines for information purposes the provisions of the collective bargaining agreements with each of the leagues. There exists in those provisions several team and player rights and obligations with respect to travel, practice, training, conditioning, promotional activities and league schedules. Excerpts from the PHPA website are attached hereto as **Exhibit "PP"**.

64. I have reviewed the affidavit of Samuel Berg, sworn February 18, 2015. Based on his duly sworn affidavit, and the facts as described in this affidavit, I do verily believe that NHL, AHL, and ECHL players and the CHL players have the same obligations, and provide the same services to their teams, all of whom are in the business of making a profit.
65. The issue of the status of “student-athletes” and whether they are employees in leagues such as the NCAA in the United States is currently before tribunals there. In March 2014, the United States Government National Labor Relations Board released a decision finding that Northwestern University is an employer and students playing on its football team were found to be employees. The decision *Northwestern University v. College Athletes Players Association (CAPA)* case 13-RC-121359 is attached hereto as “QQ”.
66. Currently, the four WHL teams located in the State of Washington are being investigated by the Washington Department of Labor and Industries regarding breaches of child labour laws in that state. Attached as **Exhibit “RR”** is a copy of an article from TSN.com published December 4, 2014 entitled “Westhead: State attorney recommends further labour probe of junior hockey”.
67. In what I believe is a response to the investigation, an amendment to the State’s minimum wage legislation has been proposed in order to expressly exclude the WHL teams from the definition of employer in the legislation. Attached as **Exhibit “SS”** is House Bill 1930 (the “Bill”) and the amendment to the Bill, both of which were voted out of the House Committee on Labor with a do pass recommendation to the House of Representatives on February 19, 2015.
68. I watched the executive meeting in which the bill was moved out of committee via live feed at http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2015021192. The sponsor of the amendment, House Representative Manweller, raised two concerns. Firstly, he was concerned that by naming a specific entity in the


legislation, the legislature would be creating a private law which he is uncomfortable with.

69. Secondly, he was concerned that by expressly naming the WHL teams as the person excluded from minimum wage legislation, that may be seen as a concession that the WHL has been breaching State laws and that the legislature is now amending the laws to prevent further liability.

70. Having reviewed the Bill and the amendment, I do verily believe the Bill would not be required unless the WHL teams appreciate that the teams are in fact violating minimum wage legislation. Otherwise, there would be no impetus to pass the current Bill. The fact that the Bill is being contemplated suggests that the WHL teams have admitted to the sponsors of the Bill and the amendment, specifically House Representatives McEwen, Riccelli, Parker, Tharinger, McCaslin, Ormsby, Sells, Robinson, and Manweller (as well as Senators Fain, Mullet, Litzow, Lias, and Hargrove who have sponsored an identical bill through the Senate), that they are employers under the legislation as it currently stands and changes are required to avoid further liability.

71. I swear this affidavit in support of the plaintiff's motion and for no other or improper purpose.

SWORN BEFORE ME at the)
)
City of Toronto, in the Province of)
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Ontario, this 20th day of February, 2015)
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(A Commissioner, etc.)
Samantha D. Schreiber
LSUC #638618

