

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SAMUEL BERG

Plaintiff

and

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

Defendants

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

AFFIDAVIT OF SAMUEL BERG

Sworn June 14, 2016

(Motion for Certification)

I, SAMUEL BERG, OF THE COMMUNITY OF BEAMSVILLE, IN THE TOWN OF LINCOLN, IN THE PROVINCE OF ONTARIO, MAKE OATH AND SAY:

1. I am the proposed representative plaintiff in this action and have personal knowledge of the facts hereinafter deposed. Where my knowledge is based on information obtained from others, I have so indicated and believe that information to be true.
2. I have reviewed the affidavit of Denise Burke, sworn November 14, 2015 (the “Burke Affidavit”). I spent over two months (August – October 2013) as a player on the Niagara IceDogs (the “IceDogs”), the Ontario Hockey League (the “OHL”) club owned by Ms. Burke and her husband, Bill Burke.
3. Before joining the IceDogs, I played minor hockey for several years, and attended the PEAC School for Elite Athletes (“PEAC”), which has a very well-regarded hockey development program. I became friends during my minor hockey career, and at PEAC, with many other young hockey players who would go on to play for teams across the OHL. For example, in the 2012 OHL draft, when I was drafted by the IceDogs, fifteen of my classmates were also drafted, by the: Erie Otters, Sault Ste Marie Greyhounds, Windsor Spitfires, Belleville Bulls (now known as the Hamilton Bulldogs), Mississauga St. Michael’s Majors (now known as the Mississauga Steelheads), Ottawa 67’s, Kingston Frontenacs, and Guelph Storm. The next year, thirteen more of my PEAC classmates were drafted into the OHL, to teams including those already listed, as well as the Saginaw Spirit (now known as the Flint Firebirds), Oshawa Generals, London Knights, Kitchener Rangers, and the North Bay Battalion.
4. Through my experiences during my time with the IceDogs, my discussions with friends and acquaintances who have played for other OHL clubs, and my general observations of the IceDogs and other OHL clubs, I learned that the roles of players across the OHL are largely

identical. As such, I believe that my experiences in the OHL are representative of a common OHL experience. I believe that I am qualified to discuss how the league operates, and to speak in generalities about the roles and experiences of players with all OHL clubs during the relevant timeframe.

5. The essential role of an OHL player is to be the best possible hockey player for his team. In my experience, this included: reporting to training camp in good shape; eating well, going to bed early, and staying fit throughout the season; attending all training sessions and practices; travelling on road trips; and being ready to play in all games when and as instructed by the coaching staff. There are additional expectations of players which are standard across the league, such as: wearing a suit to games, engaging with the community, interacting with the media, signing autographs, allowing the club to use our images for promotional materials, and generally maintaining the reputation of the club through good behaviour.

6. The basic OHL experience that I had was shared almost universally by my friends, teammates, and acquaintances. The players were expected to play excellent hockey for their clubs. The players' roles and responsibilities were the same. The clubs' expectations of players were the same. The clubs' means of disciplining and exerting control over players were the same. The benefits to the players were the same. The benefits to the clubs were the same. Every player's goal was to be drafted to the National Hockey League (the "NHL"). Every club's goal was to win championships.

7. I disagree with the comments and themes which are emphasized throughout the Burke Affidavit. In this affidavit, I will reply to the Burke Affidavit and address some of the additional issues raised in the defendants' certification motion record.

THE BUSINESS OF OHL CLUBS

8. I particularly disagree with Ms. Burke's statements beginning at paragraph 10 of the Burke Affidavit, and continuing throughout, that the OHL and its member clubs are in the business of supporting, caring for, and developing young men into positive members of society. Ms. Burke repeatedly states that OHL owners, including herself and her husband, are in the business of developing and supporting young hockey players and are not in the business of earning profits.

9. To the contrary, in my experience playing for the IceDogs, it was always apparent to me that Ms. Burke and the IceDogs owners, management and coaches were in the for-profit business of operating a hockey franchise, with the primary goal being to win games.

10. The Burke Affidavit presents a very negative picture of the club's finances, but does not discuss the fact that the IceDogs were the number one team for attendance in the entire OHL based on arena capacity percentage, for the 2008/09 to 2013/14 seasons. In fact, the IceDogs were over capacity in terms of attendance for every game for those six seasons. This means that, for every single IceDogs home game, there was standing room only. For the 2014/15 and 2015/16 seasons, the IceDogs began playing games in a new arena, the Meridian Centre, and maintained attendance percentages of 81.7% and 85.9%, which were still near the top of the OHL. Attached hereto and marked as Exhibit "A" are the IceDogs' attendance statistics from 2007/08 to 2015/16.

11. The Burke Affidavit also does not discuss how heavily sponsored the IceDogs club is. In my previous affidavit sworn in support of this motion, I state that IceDogs corporate sponsors would advertise at games, and on the IceDogs website. Attached hereto and marked as Exhibit "B" is a copy of the IceDogs' "Corporate Partnership Available Inventory" marketing brochure

for the 2013-2014 season, which details the extensive advertising opportunities available to corporate sponsors, from rinkboards to signs around the arena to video screen commercials to ticket sleeves and even to on the rink ice itself.

12. At paragraph 29 of the Burke Affidavit, Ms. Burke states that the Meridian Centre is owned by the City of St. Catharines. Attached hereto and marked as Exhibit “C” is a copy of Schedule “B” to the tenancy agreement between the IceDogs and the City, detailing the allocation of arena advertising revenue as between the IceDogs and the City.

Focus on team success

13. At paragraph 11 of the Burke Affidavit, Ms. Burke states that the main driving force for OHL clubs has always been hockey development of the players. This is not true. The main driving force for each and every OHL team is to recruit the best players and to assemble the best team so as to win games and to make the playoffs – therefore increasing attendance and generating more revenue.

14. The Burke Affidavit does not elaborate on what is meant by “hockey development”, but, if Ms. Burke means improving players’ hockey skills through coaching, training, and playing competitive hockey, that is simply not true. The general managers’ and the coaches’ primary focus is not on developing promising players into “great hockey players that have a chance to make it to the NHL”, but rather on obtaining the best results for the team. Thus, every OHL team focuses on playing its best players, while the other players are no more than placeholders who get minimal ice time, and sometimes do not dress for games at all.

15. How a player develops is based on the way the coaches train the player, including how they provide individualized critical feedback and ice time. As I have discussed, the teams do not do that to any great degree. If it is done at all, the teams certainly do not work on developing on

all of their players, focusing instead only on the best players. This is why the top players in the OHL are, generally speaking, the same players who were top draft picks and top players in the lower level leagues.

16. The head coach is responsible for deciding how much ice time each player receives. Before every game, he decides which players get to play in the game, and what line they are going to play on. The top two forward lines and defense pairings get most of the ice time because the head coach thinks that they are the best players for the game, not because they are the players whose development will benefit the most from the ice time.

17. In the section of the Burke Affidavit entitled “Hockey Development”, Ms. Burke states at paragraph 78 that players on the IceDogs, and on OHL teams in general, fall into different skill categories. Ms. Burke states that a player’s skill category – and, therefore, his ice time and prominence on the team – varies and depends on how the player develops. This is incorrect. The teams are not concerned with how a player develops, but rather with his existing skill set. The teams do very little work to develop junior hockey players into great senior hockey players. Instead, the teams draft or trade for players who are already successful at the junior level. These are the players who get the majority of the ice time and, therefore, the development. By getting the majority of the ice time, they become more seasoned and come to the notice of the NHL, potentially getting drafted.

18. Ms. Burke admits as much at paragraph 115 of the Burke Affidavit, where she states, “as a team, we are tasked with playing our best players each game, and unfortunately, Sam was not consistently one of our best players”.

19. At paragraph 91 of the Burke Affidavit, Ms. Burke states that the team’s goal is to develop highly skilled hockey players on the ice. Again, this is incorrect. The goal is to recruit or

draft highly skilled hockey players and provide them with most of the ice time and development opportunities, while the other players are merely support for the top players and their development is not addressed.

Discipline

20. Every OHL club uses disciplinary measures which are completely at odds with the idea that the league and club's focus is on player development.

21. Ice time is not guaranteed to players and the amount of ice time players receive is completely at the discretion of the coaches. All OHL players want regular ice time because they are pursuing their dreams to have a career in hockey and to play in the NHL. Typically, to get drafted by an NHL club, a player has to establish himself as a top OHL player, which means receiving a lot of ice time. Unless a player gets regular ice time, he is very unlikely to be noticed by NHL scouts or to be drafted.

22. Because ice time is decided by the coaches, players comply with all club rules and demands. Further, coaches are well aware of this, and use players' fear of losing ice time to control players' commitment to the team.

23. If a player is not performing up to the club's expectations, is not working as hard as the club expects, or is complaining about a lack of ice time, the club might send the player down to play for a club in a Junior "A" or Junior "B" hockey league – where he can likely get more ice time without interfering with the OHL team's success. The player must report to that club or he will not be able to play anywhere, since the OHL club controls his rights. OHL players do not want to be sent down to the Junior "A" or "B" leagues because it is effectively a demotion and significantly impacts a player's chances of being drafted into the NHL. For example, there are

sometimes scouts at the Junior “B” league games that I played, but they were mostly NCAA and OHL scouts, not NHL scouts.

24. Players follow the rules, work hard and do not complain, out of fear that there will be repercussions, including being sent down to the junior leagues.

25. Teams can also cut players or place them “on waivers”. The club can cut a player at any time, without any reason, which usually means the end of his career. In the Standard Player Agreement (“SPA”), the team’s right to cut a player is called “termination”. Being placed “on waivers” means a player is cut from the team, but the club also waives its exclusive rights over the player, allowing other clubs to sign him at their discretion.

26. The clubs can also trade players at any time, for any reason. Clubs will trade players if they are not happy with their performance or if they perceive the player to be a complainer. Players have no real say into whether they will be traded or to which team they will be traded. This is a major concern for players because, a trade could mean moving to a team several provinces away or even in a different country. The player’s new team could be at the bottom of its division with little chance of being noticed by the NHL. If a player refuses to report to his new team but his OHL club does not put him on waivers, then his only other option is to quit hockey and go home.

27. Some of the top prospects negotiate to have “no-trade” clauses in their SPAs. In reality, these clauses do not matter, because if a player does not agree to a trade then he will be cut, or otherwise scratched or placed on the fourth line and unlikely to receive adequate ice time.

28. Being traded means that a player must move to another city, live with a new billet family, attend a new high school, and spend most of his waking hours with new teammates. Players are

not necessarily given any warning before they are cut or traded and then must uproot their lives on a moment's notice.

29. In summary, the clubs have several disciplinary measures available to them to control players, including loss of ice time, being scratched from games, being sent down to the junior leagues, being traded, and being cut/terminated. Every player is aware that all of these options are available to the clubs, in particular the general managers and head coaches, at their complete discretion. The existence of these disciplinary measures is part of the day-to-day environment in which all players perform services for their clubs in the OHL. None of these disciplinary measures are reflective of the idea that the OHL is a development league which prioritizes player learning over everything else.

The role of coaches

30. The head coach, the assistant coaches and the general manager of a junior hockey club all have the same primary goal, which is to field the best team of players to win the division and advance in the playoffs. The coaching staff also have career advancement to pursue and salaries to justify, which is why they want to win games. For example, all of the five coaches who won the CHL's Brian Kilrea Coach of the Year Award between 2009 and 2015 coached teams which won at least their division. Four of those five coaches have now left junior hockey to coach in senior-level leagues, including the East Coast Hockey League, the American Hockey League, and the NHL.

31. The majority of the time that junior hockey coaches spend with players is dedicated to trying to fit each player's existing skills or strengths into the overall team strategy. The coaches focus on using the players to create a winning team, not on teaching players new or improved skills. I know this to be the case because I observed the way my coaches treated our team, and

the goals they expressed to us; their strategies were directed toward team success rather than individual development and progress. For example, while I was on the IceDogs, I would routinely use my free time to practice my skills at our training facility where our coaches worked, but they never came out to help me. The coaches just left it up to players to work on their own, even the 16-year-old rookies like me.

32. If OHL clubs were really focused on developing young hockey players, then all of the players would get significant ice time during games, as well as some degree of one-on-one training, to keep improving their performance. Based on my experience and observations, neither of these situations occur.

33. As I state in my earlier affidavit sworn in support of this motion, all of the players on our team attended practice, but our team practices were not about our hockey development in the sense of learning new skills or improving existing skills. At each practice, we would perform drills which were the same for all of us, every day with little variation. These drills were designed to improve our stamina, as were the after-practice work-outs that we would do as a team. There was no one-on-one training during practices, and it was not part of the usual routine. Before games, the coaches would show us a video of the team were about to play.

34. After each game, our head coach and general manager Marty Williamson would visit us in the locker room. He would criticize the players who were not following the team game plan, and sometimes his visits would turn into screaming matches with players.

The Burkes' role

35. In the section of the Burke Affidavit entitled "Our Role as Owners", Ms. Burke states that she and her husband Bill prefer to be at the rink with the team every day, and that they enjoy interacting with the players on a day-to-day basis: "Put simply, Bill and I care for them as we

would our own children.” I disagree. As far as I saw, the Burkes never interacted with the players on a day-to-day basis. Bill Burke came into the locker room only once, to talk to some of the players who got into trouble. I did not experience Bill Burke or Denise Burke ever treating me like they would their own children, nor did I see them treat any of the other players that way.

36. I also do not agree with the Burke Affidavit at paragraph 10, where Ms. Burke states that CHL club owners, general managers and coaches act as “surrogate parents” for the players. My coaches and general manager never did anything for me or the other players on my team that could be considered surrogate parenting. As for the Burkes, I saw them very rarely while I played for the IceDogs and never really got to know them throughout the duration of my association with the club.

37. With respect to paragraph 66 of the Burke Affidavit, I disagree that the Burkes interact with all players’ families before the season begins and discuss what the team can do to make their son feel safe, comfortable, and supported throughout the season. I also disagree with Ms. Burke’s statement that the Burkes discuss with players’ families how they can work together to better develop their sons into competitive hockey players, good students, and positive members of society. With respect to my family, none of this ever happened.

38. While I was on the IceDogs, all of the players used to talk amongst ourselves about our experiences on the team, including the contact we had with our families. Not one player ever mentioned to me the type of family interaction described in the Burke Affidavit.

39. With respect to paragraph 74 of the Burke Affidavit, where Ms. Burke repeats her earlier statement about how the Burkes treat all the players as “[their] own adopted children”, I never felt like I was one of the Burkes’ children, nor did I see them treat any of the other players as their own children. The Burkes did, however, hire their own children as IceDogs staff members,

naming their son Billy Burke as an assistant coach and their son Joey Burke as an assistant general manager. According to the Burke Affidavit, it was Joey Burke who neglected to send my player agreement for approval to the OHL for a period of more than two months (which is discussed in further detail below).

40. I am uncertain what Ms. Burke means when she states that she treats IceDogs players as her adopted children, but, at paragraphs 75 and 76, of the Burke Affidavit she discusses scholarships for players. If Ms. Burke intended to suggest that the Burkes provide scholarships to IceDogs players because they want to help the players further their education, as if they were their own children, then I disagree. The IceDogs, like every other team in the OHL, offer better education packages to the top players in order to recruit them and promote the success of the team. The education packages have nothing to do with treating players like their own children.

MY TIME WITH THE ICEDOGS

Joining the team

41. Players are typically drafted by OHL clubs at age 15 and first attend training camp at age 16. Being drafted does not guarantee that a player will sign a player agreement, make the team, or stay with the team.

42. I was drafted in the April 2012 draft in the 14th round, which is the second to last round. Mr. Williamson called me during the draft to tell me that he was thinking about selecting me in the sixth round, but the IceDogs did not draft me until much later.

43. I went to IceDogs training camp in August 2012, but did not make the team even though I was drafted. I then decided to play a season in the Ontario Junior Hockey League (“OJHL”), which is a Junior A league one step below major junior leagues such as the OHL, which I felt was appropriate for my age and skill level. I played for the Buffalo Jr. Sabres for ten games and

then I was traded to the Hamilton Red Wings for the rest of the season, which was approximately 37 games.

44. After the 2012-2013 season, I was asked by the IceDogs to participate in the Carnevale summer hockey league in Toronto. I was on a team with IceDog players and other IceDogs draft picks for two to three months, playing one game a week. The purpose of participating in the Carnevale league was for the IceDogs to see if I had improved enough to make the team roster for the upcoming season and get a contract.

45. I was invited to the IceDogs training camp for the next season, starting in August of 2013, but the club was so impressed with the way I played in the Carnevale league that I was offered a Standard Player Agreement (“SPA”) even before training camp began.

46. Another reason why the club signed an SPA with me before training camp was because they were aware that I was considering joining the Muskegon Lumberjacks, the United States Hockey League (“USHL”) team that had selected me in their draft.

My SPA

47. In the section of the Burke Affidavit entitled “Signing and Approval of Sam’s SPA”, Ms. Burke states at paragraph 104 that her son Joey Burke did not send my SPA to the OHL league offices until over two months after I signed it on August 21, 2013. According to paragraph 15 of the SPA, the contract was supposed to be sent to the OHL Commissioner for approval within 10 days after I signed it and I was not supposed to play in the OHL until it had been approved. By the time Joey sent my contract to the OHL on October 28, 2013, I had already been on the IceDogs for more than 2 months and therefore I was entitled to the four-year education package in Schedule “C” because I had played in at least one exhibition or regular season OHL game.

Professional structure

48. In the section of the Burke Affidavit entitled "Players' Path to the OHL", Ms. Burke discusses some of the differences and similarities between playing in the OHL and in the lower level OJHL. As described in this affidavit and in my earlier affidavit sworn in support of this motion, I played for four junior hockey teams. In my opinion, the differences between the OHL and the lower level junior hockey leagues are significant, including:

- a. Junior A & B league players have to pay to play in their leagues;
- b. the level of competition is much lower in Junior A & B leagues;
- c. attendance at OHL games ranges between a few thousand and tens of thousands of people per game, whereas, at a Junior B league team, the average attendance might be 100 people;
- d. Junior A & B hockey teams typically have no, or very few, corporate sponsorships;
- e. Junior A & B games are not broadcast on television or over the internet;
- f. Junior A & B teams require significantly less time commitment than OHL teams: some Junior B teams practice as infrequently as twice a week and teams require players to participate in promotional or community events rarely if at all;
- g. Junior A & B league seasons last for approximately 40 or 50 games, as opposed to 68 in the OHL;
- h. Junior A & B league players travel to games in a school bus, or drive themselves, rather than being driven in luxury coach buses;
- i. Junior A & B league players are not paid to play in their leagues; and,

- j. Junior A & B league players do not sign long-term contracts compared to OHL SPAs which can have terms of up to five years.

49. In all of the above-listed respects, the OHL is much more similar to the NHL and to other professional senior hockey leagues than to other junior hockey leagues.

Time commitment

50. In the section of the Burke Affidavit entitled “Time Commitment”, Ms. Burke states her description of a typical week in the life of an IceDogs player. I disagree with her description. Each player does not spend “varying hours participating in a wide range of activities” associated with the club. All of the players participate in the same team activities and follow the same schedule, spending the same number of hours practicing, working out, and playing games for the IceDogs. This is apparent from Exhibit “G” to the Burke Affidavit, which includes a calendar of all of the day-to-day events which the players must attend (the “Calendar”), including the start times for these events, and the players’ daily curfew.

51. As I stated in my earlier affidavit sworn in support of this motion, we all had the same schedule, which included: team work-outs in the morning at White Oaks Resort; on-ice practices in the afternoon; more work-outs on non-game days; 10 a.m. pre-game skates on home game days; and, other daily events on game days. For away game days, there was an itinerary which documented all of the daily events that players would participate in – for reference, see the Calendar, which identifies away games with the notation “see trip itinerary”. The Calendar at Exhibit “G” also identifies the starting time of home games and the mandatory 10 a.m. pre-game skates.

52. At paragraph 58 of the Burke Affidavit, Ms. Burke states that the players generally have at least one, or sometimes two or three, days off during a week, depending on the schedule. That

was not my experience. While I played with the IceDogs, the coaching staff decided at their discretion if the players would get one day off a week, but usually we did not get any days off. For example, the calendar at Exhibit "G" to the Burke Affidavit identifies that there is an IceDogs event taking place for almost every single day of the month. If we did have a day off from the team, it might be once a month, not two to three days a week. It is interesting that Ms. Burke uses the term "day off", because I too thought of those days as days off from my work with the team.

53. At paragraph 61 of the Burke Affidavit, Ms. Burke states that, on a non-game day, players have a total of two and a half hours of team activities. This is only partially true. In addition to those two and a half hours, we also had half an hour to an hour of game film to watch, half an hour getting dressed/undressed and showering, plus travel time.

54. Travel time included driving to the rink from home, then driving to White Oaks Resort to work out, and then driving home again. It took me half an hour to drive to the rink and fifteen minutes to drive from the rink to White Oaks and then another half hour to drive from White Oaks to home, for a total of one hour and 15 minutes of driving time, plus two and a half hours of team activities in practice and working out, plus half an hour to an hour watching game film, plus half an hour getting dressed, undressed and showering, for a total of five hours of IceDogs activities even on non-game days.

55. At paragraph 62 of the Burke Affidavit, Ms. Burke states that, on home game days, there is usually no mandatory activity for players until 5 p.m., when they arrive at the rink. This is incorrect, as there was a mandatory morning skate at 10 a.m. for all non-high school players. As well, while all players were required to be at the rink by no later than 5 p.m., I, and many of the

other players, typically used to arrive at the rink two to three hours early because we had our own routines to get ready for the games.

56. Between 5 p.m. and game time, we would watch more video footage of other teams, get dressed and warm up for 20 minutes on the ice. The games would start at 7 p.m. and usually end at approximately 9:30 or 10:00 pm. After the game, the players would spend up to half an hour signing autographs. We would leave the rink between 11:30 and midnight.

57. If a player did not play at least ten minutes in a game, he would also have to do a cardio workout after the game.

Community activities

58. With respect to paragraph 33 of the Burke Affidavit, I disagree with Ms. Burke's statement that the community activities were voluntary. In my experience, the community activities were framed as voluntary, but the team's expectation was that each player would participate as asked. Usually the rookies on the team, including me, were responsible for most of the community activity participation.

59. In the section of the Burke Affidavit entitled "Team Travel and Player Time Commitment", Ms. Burke states at paragraph 128 that I did not participate in any community events. But, at paragraph 129, she acknowledges that I participated in the IceDogs' Annual Golf Classic. With respect to the Golf Classic, Ms. Burke states that the players did not act as caddies for the golfers and that "this could not be further from the truth." In fact, all of the IceDogs players were stationed at the tees for one of the 18 holes. When the sponsors participating in the golf tournament came to each tee, the players at that tee would caddy for them by holding their bags at tee off. I was required to be at this event from 9 a.m. until 7 p.m., as were all of the other

players. Ms. Burke also takes issue with the number of hockey sticks that I signed, although she admits that I did sign hockey sticks.

60. I participated in another community event called the St. Catharines Mayor's Invitational Grape Stomp in September 2013. The IceDogs received the Grape Stomp Champions award that year. Some of the other IceDogs players who were at this event were reported on in a local newspaper article, a copy of which is attached hereto and marked as Exhibit "D".

61. At paragraph 130 of the Burke Affidavit, Ms. Burke states that IceDogs community events are restricted to school visits, community skates, and other events "aimed at supporting and integrating with the community". Perhaps Ms. Burke considers the events that I have described as something other than community events even though they took place in the community.

62. Some IceDogs events do involve bars or restaurants, despite Ms. Burke's statement to the contrary at paragraph 50 of the Burke Affidavit. For example, attached hereto and marked as Exhibit "E" is an Instagram posting with a picture where team players participated in an IceDogs event at St. Louis Bar and Grill, meeting with corporate sponsors. As well, I was interviewed by local sports radio host Rod Mawhood at a bar during an event raising money for special needs children. I also participated in another IceDogs event involving a ride on the Maid of the Mist boat tour on Niagara Falls, after which the players were taken to a bar for an event, where we ate dinner. This event was on the team itinerary for the day, a picture of which is attached hereto and marked as Exhibit "F".

63. In my two months playing for the IceDogs, I recall participating in at least: the Grape Stomp, a golf tournament, an event at St. Louis Bar and Grill, an event at a bar with a radio interview, and a boat ride followed by an event at a bar/restaurant. Ms. Burke's statement at

paragraph 128 of the Burke Affidavit that I never participated in any community events for our team is clearly incorrect.

Educational challenges

64. While I was playing for the IceDogs, I could not take a full course load at high school. A full course load for an Ontario high school student is four courses per semester, but I, and most of the other IceDogs players still in high school, only took two courses per semester to accommodate the time constraints of fulfilling all of the club's expectations in terms of practicing, playing games, and attending community events. We therefore did not have an opportunity to take many elective classes or to try to be better-rounded in our educations.

65. Even with a limited course load, I realized that I was on track to fail one of my courses before I left the IceDogs, because I found that I had so little time to do homework or study for tests. Rather than fail, I made the decision to drop the course. When I and the other players were in class, we would routinely be tired, and therefore inattentive, because of our demanding schedules working for the IceDogs.

66. I never spoke to the IceDogs' educational coordinator and, in fact, did not even know that the team had an educational coordinator. As far as I am aware, nobody with the IceDogs or the OHL ever spoke with my family or any staff at my school to discuss my grades or academic performance.

Departure from the team

67. With respect to the section of the Burke Affidavit entitled "Departure from the IceDogs", I do not agree with Ms. Burke's characterization of how I left the IceDogs to play Junior B hockey, nor do I agree with her suggestion that I stopped playing competitive hockey because I simply decided to quit.

68. I agree with Ms. Burke's statement at paragraph 115 of the Burke Affidavit that I informed the IceDogs that I was unhappy with my lack of ice time. I asked the coaches, the general manager and the captains what I needed to do to get more ice time. They all told me to "keep plugging away" but had no constructive advice or help to offer. At that time, I was playing left wing on the third or fourth line for the IceDogs, if I played at all. I only dressed for eight games even though I was on the team for over two months. During those two months, the team played approximately 20 games, home and away. I also would not find out if I was going to dress for a game until game time. Nobody with the club offered or provided any mentorship or guidance to help me deal with the situation.

69. I discussed my lack of ice time with Mr. Williamson and his response was that I could not expect my ice time to increase significantly with the IceDogs that season. Mr. Williamson advised me that, if I wanted to develop through more ice time, I would have to play in the USHL or be "sent down" to play in a Junior B league. I did not like either of those options so I asked for a trade within the OHL instead. The IceDogs did not trade me, but they put me on waivers and then recalled me from waivers, which meant that I was getting no playing time at all. The team went on a three-game road trip but, since I had already been informed that I would not be able to play in those games, I chose to stay behind to decide what to do. At that point, I agreed to be sent down to play in a Junior B league.

70. The IceDogs arranged for me to play for the St. Catharines Falcons and I was sent down in late October 2013. I stopped receiving my paycheque from the IceDogs after that time.

71. I played for the Falcons until November 2013. I asked for a trade from the Falcons because I was still not receiving much ice time, even though I was leading the team in points, in the games that I did play.

72. The next closest Junior B hockey team to where I lived was the Thorold Blackhawks, so I asked to be traded to them. I joined the Thorold Blackhawks in mid-December 2013.

73. The Burke Affidavit references several conversations with coaches on the Falcons, the Blackhawks, and the Sioux City Musketeers to support the IceDogs' allegation that I quit the team and that my education package therefore did not have to be honoured. These statements attributed to coaches on other teams are inaccurate or have been misrepresented.

74. For example, at paragraph 117 of the Burke Affidavit, Ms. Burke discusses a conversation that I had with Mr. Williamson about potentially joining a USHL team, and a conversation that Joey Burke had with Jay Varady, head coach of the Sioux City Musketeers of the USHL.

75. With respect to the conversation I had with Mr. Williamson about playing in the USHL, Mr. Williamson did not inform me that, by playing in the USHL, I would "in effect, be quitting the team and would no longer be a part of the IceDogs or the OHL". I am advised by my father, Bill Berg, and verily believe, that he spoke with Mr. Williamson regarding the possibility of me joining the USHL, but Mr. Williamson did not explain the potential associated consequences to my father either, despite the fact that I was a minor at the relevant time. Mr. Williamson also never informed me that I would lose my education package if I played for the USHL. Instead, Mr. Williamson told me that I could play in the USHL to receive more ice time and to improve my skills, and then return to the IceDogs the following season without issue. He also told me that the IceDogs wanted me to play with the Musketeers, and even called Mr. Varady to encourage him to recruit me for his team.

76. I spoke with Mr. Varady, who invited me to come to his team and develop for the remainder of the hockey season. I told Mr. Varady that I would consider his invitation, but that I

had not made a decision as to whether I would play for the Musketeers. I did not inform anybody that I would be leaving the IceDogs for the Musketeers. I called Mr. Varady back a few days later and told him that I had decided not to join the Musketeers because Sioux City was too far from my home in Beamsville.

77. Contrary to Ms. Burke's statement at paragraph 117 of the Burke Affidavit, I did not inform Mr. Varady or anyone at the USHL that I was "quitting hockey altogether". Having reviewed the Burke Affidavit, I now believe that the IceDogs were trying to avoid paying my education package by manipulating me into joining a USHL team, without informing me that I would become ineligible for my education package if I did so.

78. At paragraph 118 of the Burke Affidavit, Ms. Burke states that she believed that I had quit playing hockey altogether because I rejected Mr. Varady's offer to play for the Musketeers and had allegedly told Mr. Varady that I was quitting hockey altogether. She states also that the next she heard about me was when she discovered that I had signed with the Falcons, without any involvement of the IceDogs. In fact, it was the IceDogs who sent me to the Falcons. As I state in my earlier affidavit, Mr. Williamson arranged for me to be able to play for the Falcons.

79. At paragraph 118 of the Burke Affidavit, Ms. Burke also describes how I played two games as a fill-in for the IceDogs even after I was sent down to the Falcons. I do not understand how Ms. Burke could have reasonably believed that I had quit hockey altogether when I had actually returned to play for her team twice.

80. At paragraph 119 of the Burke Affidavit, Ms. Burke states again her belief that I had quit hockey, citing an email from the Falcons' general manager, Frank Girhiny, to Joey Burke, which is attached as Exhibit "S" to the Burke Affidavit. This email is interesting for a number of reasons. First, it was sent after this action had already been commenced. Second, Mr. Girhiny

begins his email by admitting that I had gone to the Falcons “from the Niagara IceDogs”, which is in keeping with my knowledge that it was the IceDogs who had sent me to the Falcons. Third, nowhere in his email does Mr. Girhiny state that I had informed him of an intention to quit the IceDogs or to quit hockey. His email states, rather, that I no longer wanted to continue playing for the Falcons because I believed that I was one of the top forwards on the team and was not getting enough ice time. Mr. Girhiny agrees that I therefore requested a trade to the Thorold Blackhawks. I did inform Mr. Girhiny in November 2013 that, if he did not trade me, I would not play on his team anymore, but this is a very common tactic used by players to prompt a trade and I never intended to quit hockey altogether.

81. At paragraph 120 of the Burke Affidavit, Ms. Burke describes a conversation which Joey Burke allegedly had with Brian Kelly, the general manager and head coach of the Blackhawks, and which Joey then shared with his mother. Ms. Burke states that Joey informed her that Mr. Kelly had informed him that I had informed Mr. Kelly – that I was quitting hockey. This is the third such triple hearsay allegation in the Burke Affidavit that I had decided to quit hockey even while continuing to play for a number of hockey teams. Again, I now believe that the IceDogs are trying to avoid paying my education package by establishing that I had quit the team, which I feel is an approach very inconsistent with Ms. Burke’s stated policy, which she repeats in the Burke Affidavit several times, of treating all IceDogs players like adopted children.

82. At paragraph 120 of the Burke Affidavit, Ms. Burke addresses two separate issues. The first issue is whether I allegedly informed Mr. Kelly that I was quitting hockey after a game on January 2, 2014, in which I received a ten-minute penalty for checking. The second issue is whether I was injured during that game. Ms. Burke states that I informed Mr. Kelly that I was

quitting hockey, and that I was not injured in the January 2, 2014, game. Both statements are false.

83. During a game with the Blackhawks on January 2, 2014, I checked an opposing team player and my right shoulder popped out of its socket. This had happened to me previously, but I had always been able to pop it back into the socket right away. For the first time ever, I could not pop my shoulder back into the socket right away. When the check happened, I was given a ten-minute penalty and there were only ten minutes left in the game. Since my shoulder was out of its socket and I had been penalized for the rest of the game, I went to the dressing room where I could be alone and I was extremely upset about my shoulder injury. The team trainer may have been there as well, but I cannot remember. I could not possibly have spoken to Mr. Kelly at that time because he was still behind the bench, continuing to coach the game.

84. I packed up all of my equipment and gear, as I did after every game, and I left the arena right away. I did not speak to anybody on the Blackhawks that night. My father drove me home.

85. Up to that point, I had not missed any games with the Falcons or the Blackhawks, or even the IceDogs, due to injury. The IceDogs' physical trainer had been aware that I had a dislocated shoulder which was prone to popping out of the socket, especially when I hit opposing players during games. The trainer had worked on my shoulder, and I had been doing exercises to strengthen it. Although the problem with my shoulder was longstanding, it had never prevented me from playing hockey until that hit on January 2, 2014. When I checked that opposing player so hard that I received a ten-minute penalty and an automatic one-game suspension, everything changed.

86. Shortly after the hit during the January 2, 2014, game, I went to see my family doctor in Grimsby, Dr. Don Deegan. Although I had been able to pop my shoulder back into the socket

later on the night of my injury, I was still experiencing pain. Dr. Deegan informed me that I should not continue to play competitive hockey and he referred me to an orthopedic surgeon in Burlington for further medical attention. After that meeting with Dr. Deegan, I was even more upset, because I had been playing competitive hockey since I was very young and dreamed of a career as a professional hockey player. Hockey was my life.

87. I am advised by my father Bill Berg, and verily believe, that, several days after sustaining my injury, Mr. Williamson called and spoke with my father. Mr. Williamson told my father that he had heard that I had quit hockey. My father informed Mr. Williamson that I had not quit hockey and that I had a shoulder injury which required further medical attention before I might be able to play again. Mr. Williamson did not offer any help or any consolation and ended the phone call abruptly.

88. There was a long waiting list to see the orthopedic surgeon to whom Dr. Deegan referred me, but I was able to have an appointment with him several months after the referral. The orthopedic surgeon advised me that it was not a good idea for me to resume playing competitive hockey, and that he wanted to order tests to see if I required surgery. I decided against surgery but, since it was clear that my dream of being a professional hockey player would not be reached through playing in the OHL, I also decided to follow the medical advice to stop playing competitive hockey. I did not want to keep playing high-level hockey and then end up having my shoulder be irreparably damaged for the rest of my life.

89. I have read Mr. Kelly's email of October 23, 2014, addressed to Joey Burke and sent at 1:21 a.m., which is attached as Exhibit "T" to the Burke Affidavit. That email was also sent after this action was already commenced, and it begins by saying "I wanted to give you something tonight before your conference call so bare minimum you have some info to work with...",

presumably in reference to this action. In Mr. Kelly's email, he alleges that he called me at some point after the game to ask why I had left, and that I responded that I was quitting hockey for the year. Mr. Kelly alleges that, during that conversation, I further informed him that I was done playing hockey so I had no objection to remaining the property of the Blackhawks. Mr. Kelly also alleges that he contacted me during the summer of 2014, and I informed him that I would not be attending Blackhawks training camp as I had quit hockey.

90. To the extent that I spoke to Mr. Kelly after the January 2, 2014, game, it was to inform him that it was no longer safe for me to play competitive hockey, as a result of my shoulder injury, and that I was not returning to the Blackhawks. I am advised by my father, Bill Berg, and verily believe that, about two weeks after the January 2, 2014, game, he spoke to the Blackhawks to inform the team that I was injured and that I could not play for them anymore.

91. What both my father and I communicated to Mr. Kelly was that I had sustained a serious injury which had resulted in my family doctor advising me to stop playing competitive hockey. I believe now that the IceDogs, as well as the Falcons and the Blackhawks – which are lower level feeder teams which rely partially on beneficial relationships with the OHL and its teams for their success – are attempting to characterize what happened as simply my angry reaction to a penalty inspiring me to quit hockey. The truth is that I did not simply quit playing hockey for the IceDogs, or the Falcons, or the Blackhawks. I stopped playing competitive hockey because it was no longer safe for me to do so.

92. At paragraph 120 of the Burke Affidavit, Ms. Burke further describes a conversation I had with Mr. Kelly in the summer of 2014, wherein I informed him that I was playing rugby. Also, in Mr. Kelly's email marked as Exhibit "T" to the Burke Affidavit, he states that I requested a release to play juvenile hockey. This is true. I wanted to play rugby and house league

hockey with my friends, and felt I could play these non-competitive sports without risking further damage to my shoulder. I started playing on a team in the Lincoln Minor Hockey League, which is essentially a house league with weekly games. Nobody attends these games except occasionally players' family members, and it is a very casual, recreational level of hockey compared to what I was playing before. There is no comparison between the degree of physical contact in this house league or in my rugby games, and the intense physicality found in the OHL.

93. Finally, in his October 23, 2014, email attached as Exhibit "T" to the Burke Affidavit, Mr. Kelly states, "...at no time did [Sam] leave our hockey club due to any injury of any sort - he walked out & quit ... He may have had a shoulder issue but at no time did he bring it to mine, our team doctor or training staffs attention". I never brought my shoulder issue to the team's attention because I do not recall ever being aware that the Blackhawks had a team doctor, and the Blackhawks trainer was not someone in whom I felt comfortable confiding.

94. At paragraph 121 of the Burke Affidavit, Ms. Burke states that Joey Burke invited me to attend the IceDogs' 2014 training camp, despite Ms. Burke and Joey Burke's apparent belief that I had already quit playing hockey on three different occasions, and that I had informed Mr. Kelly that I was no longer interested in playing hockey. This invitation also came despite the IceDogs' apparent belief that I was not good enough to play in the OHL, that I was upset and refused to join a USHL team, that I was upset by my limited ice time and quit the Falcons, and that I was upset by a penalty and quit playing for the Blackhawks.

95. The Burke Affidavit does not provide any reasonable explanation as to why the IceDogs would extend a training camp invitation to a player who the team management believed to be easily upset, who routinely quit when facing setbacks, and who simply was not good enough to play in the OHL. On reflection, I believe that the IceDogs sent me this invitation to their 2014

training camp not because they believed I could still play well for the team, but because they knew I would not attend, and they intended to use my non-attendance as proof that I was refusing to play for the IceDogs (and therefore was not eligible for my full education package). This is apparent from paragraph 122 of the Burke Affidavit, wherein Ms. Burke states that I was considered to have quit the team when I did not attend at the 2014 training camp, and that I therefore had forfeited my scholarship benefit under the terms of my SPA.

96. When I applied to the OHL for funding for my studies at McMaster University, in accordance with the terms of my education package, I was initially informed by a representative of the OHL that my application was fine and I would be receiving my funding. Approximately a month afterward, a representative of the IceDogs informed me that I was not eligible for my education package because I had quit the team.

97. It was not until after I commenced this action that the OHL agreed to pay for my first year of studies. The league is still refusing to pay the years two through four that I am still owed. The terms of my SPA require the OHL and the IceDogs to fund my education package if I sustained an injury which prevented me from continuing to play hockey, but they refuse to recognize my injury. Neither the OHL nor the IceDogs have ever requested that I participate in a medical examination with a doctor of their choice and have never requested that I provide them with my medical records.

Reimbursements

98. As described in this affidavit, and in the other former OHL player affidavits sworn in support of this motion, every OHL player devotes many hours of work each day in service of their for-profit clubs. During my time with the IceDogs, I estimate that I and my teammates each

committed, on average, 46 hours/week to providing services to the IceDogs, with extra time for travel when the team was on a road trip.

99. For the time that I played with IceDogs, I was paid approximately every two weeks by cheque in the amount of \$50/week. In the Burke Affidavit and the rest of the defendants' certification motion record (see *e.g.* the affidavit of David E. Branch, sworn December 23, 2015 (the "Branch Affidavit"), at paragraphs 197-200), the defendants repeatedly take the position that these payments were merely reimbursement for expenses incurred, but I considered the club's biweekly \$100 payment to me to be my paycheque for my services to the IceDogs, and I recall that this understanding was shared generally amongst the other players and coaches. The other IceDogs players and I referred to our payments as our "paycheques", and our coaches also did the same when distributing the physical cheques to us.

100. I felt that the amount of my paycheque from the IceDogs was minimal, and it was insufficient to pay for the expenses I incurred. I recall discussing this issue with other IceDogs players, and we agreed that we were being paid essentially nothing, certainly not enough to reimburse us for our various out-of-pocket expenses. I also recall that many of the other IceDogs players agreed that we should have been paid more, but that we felt that we had no recourse regarding how low our pay was.

101. As described in the section entitled "Fear of Reprisal" in my previous affidavit sworn in support of this motion, I did not feel like I could voice any complaints about our pay to any of the IceDogs staff because all of our behaviour as players was controlled by the threat of being kicked off of the team or of losing ice time. As discussed above in this affidavit, the issue of ice time was paramount; if the club had truly prioritized player development over success, as stated

in the Burke Affidavit, we would not have feared reprisal and been made to feel that our ice time could be jeopardized by questioning our low pay.

102. In the section of the Burke Affidavit entitled “Player Reimbursements”, Ms. Burke states that players on the IceDogs were never paid more than the league’s standard amounts, nor did they ever receive education packages which were more than was allowed by the league’s rules. Ms. Burke states that, to the best of her knowledge, no other OHL team does either. In my previous affidavit sworn in support of this motion, I stated at paragraph 66 my belief that the top prospects entering the OHL are paid more than the league’s standard, and do receive education packages which exceed league rules. I have now also had an opportunity to read the sworn affidavits of Jeremy Gottzmann and John Chartrand. Both former OHL players also state in their affidavits that top players on their teams were paid more than the league standard or received other financial incentives, sometimes including better education packages than was allowed by the league’s rules. One player, Jeremy Gottzmann, has attached as Exhibit “D” to his affidavit an additional agreement for extra financial incentives which he made with the owner of the Erie Otters, which was not part of his SPA as approved by the OHL.

103. On August 10, 2012, the OHL announced that it had levied a \$400,000 fine against the Windsor Spitfires after determining that the Spitfires had violated the OHL’s player benefit and recruitment policy – in other words, that the Spitfires had paid players more than the league’s standards and/or had given them benefits which exceeded league rules. The Spitfires also lost their first-round selections in the 2013, 2014 and 2016 OHL drafts and their second-round selections in the 2015 and 2017 OHL drafts. Attached hereto and marked as Exhibit “G” is a copy of the OHL’s August 10, 2012, announcement regarding the Spitfires.

104. As a member of the OHL Board of Governors and as an owner of an OHL team competing with the other clubs for the best players in the yearly draft, I do not believe it is reasonable for Ms. Burke to be unaware that these kinds of practices are happening.

THE EMPLOYMENT RELATIONSHIP

105. The defendants' certification motion record states that OHL players are not employees, despite receiving paycheques for the services that they provide to their clubs. The Burke Affidavit and the Branch Affidavit both state that OHL players are "student athletes".

106. I viewed myself as a professional hockey player, as did other players who I knew. I never thought of myself as an intern, trainee, or apprentice and I am not aware of any player who has ever thought of himself as an intern, trainee or apprentice. OHL players are never referred to by their coaches, fans, or teammates in these terms. I was never aware that I was part of an internship or apprenticeship program with the IceDogs.

107. Clubs do provide players with training in the sense that we go to training practices, but, as described above, the training is designed primarily to win hockey games. Winning games primarily benefits the clubs, not the players. It benefits the clubs because of increased attendance, improved rankings, potential to win division and championship titles, and ultimately increased revenues.

108. The clubs benefit from the services performed by the players. The benefits to the clubs are obvious. There would be no club without the players. It is the players who attract the fans and media attention to the rinks and who attract all of the associated revenue sources such as sponsorship, broadcast revenues, video games, and so on. No matter how you look at it, it is impossible to say that OHL clubs "derive little, if any, benefit" from the players.

109. To the extent that OHL players receive training, the training is in playing hockey, which is a skill used only by the other players and not by the coaches or other club employees.

110. The players do not replace other club employees unless, again, it is accepted that OHL players are employees. New draft picks who make the team and players who show promise can, and do, bump other players from the playing roster and in that sense, players can replace one another.

111. The training that OHL players receive in practice and playing in the league has no comparison to what a hockey player would receive in a vocational school. I am not aware of any colleges or universities which offer courses or teaching in hockey.

112. Players are not promised a job at the end of their contract.

113. Players are told that they will be paid for their time spent working for an OHL club and accordingly receive a paycheque from the club. Also, the education packages or “scholarships” are connected to playing for the club, so we are told that we will be paid for our work in that sense as well. I am informed by my lawyers that, in or around 2014, the OHL changed how they pay players. Now players are no longer paid a fee – it is called reimbursement for expenses.

The SPA defines the employment relationship

114. My SPA accurately identified what was expected of me in my work duties for the IceDogs.

Exceptional skills and abilities

115. The SPA at section 1(b)(i) describes me as having “exceptional skills and abilities”. I believe this to be true of me and all players competing at the extremely demanding major junior level of hockey.

Player gives services to best of abilities

116. The SPA at section 4.1 requires that I provide my services to the best of my abilities as a hockey player in all games leading to the championship of the OHL. Prior to being sent down by the IceDogs and then injuring my shoulder severely, I did so. I knew what was expected of me, as do all players. I attended all training sessions, practices and games – where I pushed myself to my athletic peak. I ate well. I slept as much as possible. I abstained from drugs. I took hockey extremely seriously and dedicated every day of the season to improving my performance.

117. Every OHL player understands that he is competing at a high level and must work exceptionally hard to distinguish himself to NHL scouts. Players who do not work hard will not be given ice time and will not be permitted to continue with the team, so everyone prioritizes hockey in their life.

Report to training camp in good physical condition

118. The SPA at section 4.2(a) required that I report to training camp in good physical condition. I had been playing in the Carnevale summer league before IceDogs training camp, so I had been working hard and had stayed in game shape all summer. We were also subjected to fitness testing (endurance running, weight testing, etc.) in the weeks prior to training camp. We all understood the expectation to arrive at camp in top physical form.

119. The OHL is a fast-paced and physical league. All players were required to stay in top shape in order to compete.

Play exclusively for the club

120. The SPA at section 4.2(c) required that I not play for another club. I understood that, after signing the SPA, I could not play for other hockey teams. This was common knowledge and obvious to all players that signing with one club meant you would only play for that club.

Participate in promotional events

121. The SPA at sections 4.2(d) and (i) required that I cooperate with and participate in promotional activities sponsored by the Club. As I state above, some community activities or activities were framed as being voluntary, but all the players knew that we were expected to do as the team instructed us. Players had no discretion to decline a promotional event if the club asked them to do it. And in addition to formal events, we all knew that being OHL players carried a certain celebrity. Some of my teammates' images were featured on billboards or advertising around the Niagara region. We frequently saw our team covered in news stories. We understood that part of being an OHL player is an obligation to interact with the community, generate goodwill for, and interest in, the club, in hopes of gaining community support, including game attendance and merchandise sales.

122. As I state above, and as I state in my previous affidavit sworn in support of this motion, I attended numerous promotional events. Attending promotional events was a normal part of being an OHL player. All clubs make efforts to engage the community and to court sponsorships by having players attend events.

Behave with good standards of honesty, morals, fair play

123. The SPA at section 4.2(e) required that I behave with good standards of honesty, morals, and fair play. I knew that the league and the club held standards about being a good person in the community and not making them look bad. We were shown videos at training camp explaining the zero tolerance policies towards hazing, underage drinking, drug use, and so on. The players all understood that we were expected not to get into trouble. This was common knowledge across the league.

124. We were also expected to know and generally abide by the on-ice rules, save for minor deviations from the rules, such as fighting, which is sanctioned with penalty minutes.

Use of equipment and supplies

125. The SPA at 4.2(f) required that I only use the team's equipment. While with the IceDogs, I was not allowed to use my own equipment, except for my skates, which the team never provided to me.

Use of my image

126. The SPA at sections 5.1 to 5.6 provides that the IceDogs and the OHL could use my likeness, image, statistical record, biography and autograph. I understood that the club could make use of my image. I was never explained the legal intricacies, but it was a common sense conclusion because photos and videos were being taken of me and I saw images of other OHL players being used for commercial purposes.

127. Use of image was obvious to all players. When travelling to games, we would all see the star players in banners hanging from the arena, in posters around town, in magazines, advertisements, printed on tickets and brochures, and elsewhere. This kind of attention was part of the fun in playing in a high-level competition.

Medical examinations

128. The SPA at section 6.1 required me to obtain a medical examination. The IceDogs sent me forms which I filled out with my family doctor at home, and then forwarded to the club. I knew the club required me to obtain a complete physical examination once per year. This was standard for all players.

Best reasonable efforts to pursue an education

129. The SPA required at section 4.2(g) that I make reasonable efforts to pursue an education. I worked very hard to try to complete my classes, despite devoting full-time hours to the IceDogs and therefore missing several hours of schooling per week. Playing for the IceDogs made schooling difficult and I only credit myself for performing as well as I did.

130. There was a league-wide understanding amongst players that the OHL require players to attend high school until graduation.

Other expectations and restrictions

131. Players were expected to be available for any game and practice. This meant closely following the schedule, never being late, never delaying travel, and generally staying organized, professional and prepared. This was common knowledge across the league as all teams practiced, played and traveled according to a demanding and carefully itemized schedule.

132. Players were randomly drug tested, so no drugs were permitted. After a game, a drug tester could come to the dressing room and require a random player to provide a urine sample. All players were aware that this was a possibility. We would see players get tested on occasion, and the topic of drug testing might come up at parties or other social events where players might encounter marijuana.

133. The IceDogs installed a curfew that required players to leave a voicemail message on our assistant coach's phone every night, by 11 p.m. on non-game nights and 12.30 a.m. on game nights. I know other teams had this system in place as well.

Termination

134. The SPA at section 12 provides that players may be terminated from their club in four situations: if the player defaults, neglects or refuses to provide the services required by the SPA,

if the player violates the rules of the club or OHL, if the player lacks the requisite skill to play in the OHL, or if the player is suspended from the OHL for one year or more. The third situation is written as follows:

If the Player fails, in the sole opinion of the Club, to demonstrate sufficient skill and ability to deserve a position as a Player with the Club.

135. I believe section 12 means that a club can cut a player if the club decides in its sole discretion that he is not playing well enough.

136. All players knew that they could be scratched or sent home if they did not perform at a sufficient level.

CONSEQUENCES OF THIS CLASS ACTION

137. In the section of the Burke Affidavit entitled “Consequences of this Class Action”, Ms. Burke states at paragraph 136 that the only way that the IceDogs could continue to operate if the players receive minimum wage is to reallocate money from the scholarships and other benefits to fund the minimum wage payments. Ms. Burke states that there is a real risk that the team would have to be shut down if the players receive minimum wage payments.

138. As I state above, the IceDogs are, in fact, a very successful franchise, with a great deal of community support and corporate sponsorship. Not only does the Burke Affidavit fail to disclose this, but it also does not address any other options to pay players minimum wage. Attached hereto and marked as Exhibit “H” is a list of employees from the IceDogs’ website. Since the team currently has approximately two dozen employees, it is “ironic” (to use Ms. Burke’s own expression) that the Burkes have taken the position that the first service that the team would cut would have to be the scholarships for their “adopted children”.

OBSTACLES TO CURRENT PLAYERS BEING REPRESENTATIVE PLAINTIFFS

139. Based on my experience playing in the OHL, the chances of a current OHL player agreeing to become a representative plaintiff in a class action against his club is nil. Almost every player would be worried that, if he sued his club, he would be blacklisted as a troublemaker or terminated outright. No current player is going to jeopardize his entire hockey career by suing his club, even though he may be in favour of the proposed class action.

140. Players in the OHL are closely scrutinized by the clubs, as well as the league and commissioner. From the start of the rookie season, players are socialized into believing the idea that they are at the bottom of a strict hierarchical organization. The coaches and managers control everything and players are expected to obey their commands, follow their rules and satisfy their expectations dutifully. Players are also instilled with the idea that they should be grateful to play in the OHL, and therefore that they should appreciate that the opportunities provided by the league can be taken away on a moment's notice (*i.e.*, being cut or terminated).

141. Current players would also be worried about suing their club from fear of being characterized by the clubs and coaches as a traitor to the team. The possibility of being singled out by the club or the commissioner for a perceived wrong would be highly intimidating to most players.

142. Attached hereto and marked as Exhibit "I" is a copy of a letter which appears to have been sent jointly from the commissioners of the OHL, WHL and QMJHL to "all current players". This letter is consistent with how the WHL and the QMJHL exercised their powers over players during my career. The clear message from this letter is, "stay away from the class action". If I were a current player, aged 16 to 19, who was hoping to return to a CHL team for the upcoming season, I would be intimidated by this letter and likely avoid the class action.

143. For similar reasons, players would be reluctant to disclose their identities in a player survey arranged by my lawyers.

OBSTACLES TO FORMER PLAYERS BEING REPRESENTATIVE PLAINTIFFS

144. Former players with whom I've spoken are reluctant to sue their clubs because they are worried it could jeopardize their scholarships and harm their hockey careers. My experience with being denied three of my four years of scholarship funding has been widely publicized, and is precisely the form of reprisal which other former players fear and are seeking to avoid.

145. Former players still participate in the hockey community in various ways, including playing in small professional leagues or collegiate hockey. The coaches, scouts, and management at most universities and in most high level hockey leagues across North America all know each other and all talk to each other. If a former player were to sue his club, then his role on a college hockey team or on a professional team could be in jeopardy because of the pressures the CHL clubs can exert on coaches and general managers, and because it would not be seen as a popular decision by the hockey establishment.

146. For similar reasons, former players would be reluctant to disclose their identities in a player survey arranged by my lawyers. I have talked to some former players and they will only agree to do a survey if their identities are kept strictly confidential.

147. I make this affidavit in support of the motion for certification and for no other or improper purpose.

SWORN BEFORE ME at the)
City of Toronto, in the Province of)
Ontario, this 14th day of June, 2016,)
via video conference)


(A Commissioner, etc.)


SAMUEL BERG

SAMUEL BERG
Plaintiff

-and- **CANADIAN HOCKEY LEAGUE et al**
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

AFFIDAVIT OF SAMUEL BERG
Sworn June 14, 2016
(Motion for Certification)

CHARNEY LAWYERS PC
151 Bloor Street West, Suite 602
Toronto, ON M5S 1P7

Theodore P. Charney LSUC# 26853E
Tel: (416) 964-7950
Fax: (416) 964-7416

Lawyers for the Plaintiff

TAB A



Niagara IceDogs Yearly Attendance




Regular Seasons

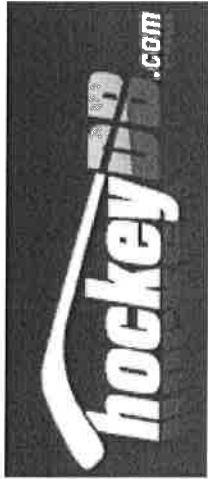
Season	Name	Avg.	% Cap.	Gms	Total
2005-06 (/team/mississauga-icedogs/2005/)	Mississauga IceDogs (/team/mississauga-icedogs/2005/)	2,996	55.3%	34	101,853
2006-07 (/team/mississauga-icedogs/2006/)	Mississauga IceDogs (/team/mississauga-icedogs/2006/)	2,225 -25.7%	41.1% -14.2%	34	75,662
2007-08 (/team/niagara-icedogs/2007/)	Niagara IceDogs (/team/niagara-icedogs/2007/)	2,773 +24.6%	99.0% +58.0%	34	94,278
2008-09 (/team/niagara-icedogs/2008/)	Niagara IceDogs (/team/niagara-icedogs/2008/)	2,962 +6.8%	105.5% +6.5%	34	100,704
2009-10 (/team/niagara-icedogs/2009/)	Niagara IceDogs (/team/niagara-icedogs/2009/)	2,914 -1.6%	104.1% -1.4%	34	99,076
2010-11 (/team/niagara-icedogs/2010/)	Niagara IceDogs (/team/niagara-icedogs/2010/)	2,913 -0.0%	104.0% -0.0%	34	99,050
2011-12 (/team/niagara-icedogs/2011/)	Niagara IceDogs (/team/niagara-icedogs/2011/)	2,982 +2.4%	106.5% +2.5%	34	101,388
2012-13 (/team/niagara-icedogs/2012/)	Niagara IceDogs (/team/niagara-icedogs/2012/)	3,046 +2.1%	108.8% +2.3%	34	103,573
2013-14 (/team/niagara-icedogs/2013/)	Niagara IceDogs (/team/niagara-icedogs/2013/)	2,989 -1.9%	106.8% -2.0%	34	101,642

Playoffs

Season	Name	Avg.	% Cap.	Gms	Total
2006-07 (/team/mississauga-icedogs/2006p/)	Mississauga IceDogs (/team/mississauga-icedogs/2006p/)	2,151	39.7%	3	6,453
2007-08 (/team/niagara-icedogs/2007p/)	Niagara IceDogs (/team/niagara-icedogs/2007p/)	3,145	112.3%	5	15,725
2008-09 (/team/niagara-icedogs/2008p/)	Niagara IceDogs (/team/niagara-icedogs/2008p/)	3,004	107.3%	5	15,022
2009-10 (/team/niagara-icedogs/2009p/)	Niagara IceDogs (/team/niagara-icedogs/2009p/)	2,963	105.8%	2	5,926
2010-11 (/team/niagara-icedogs/2010p/)	Niagara IceDogs (/team/niagara-icedogs/2010p/)	3,067	109.5%	7	21,471
2011-12 (/team/niagara-icedogs/2011p/)	Niagara IceDogs (/team/niagara-icedogs/2011p/)	3,145	112.3%	10	31,450
2012-13 (/team/niagara-icedogs/2012p/)	Niagara IceDogs (/team/niagara-icedogs/2012p/)	3,145	112.3%	2	6,290
2013-14 (/team/niagara-icedogs/2013p/)	Niagara IceDogs (/team/niagara-icedogs/2013p/)	3,145	112.3%	3	9,435

This is Exhibit "A" referred to in the affidavit of SAMUEL BERG sworn before me, this 14th day of JUNE, 2016

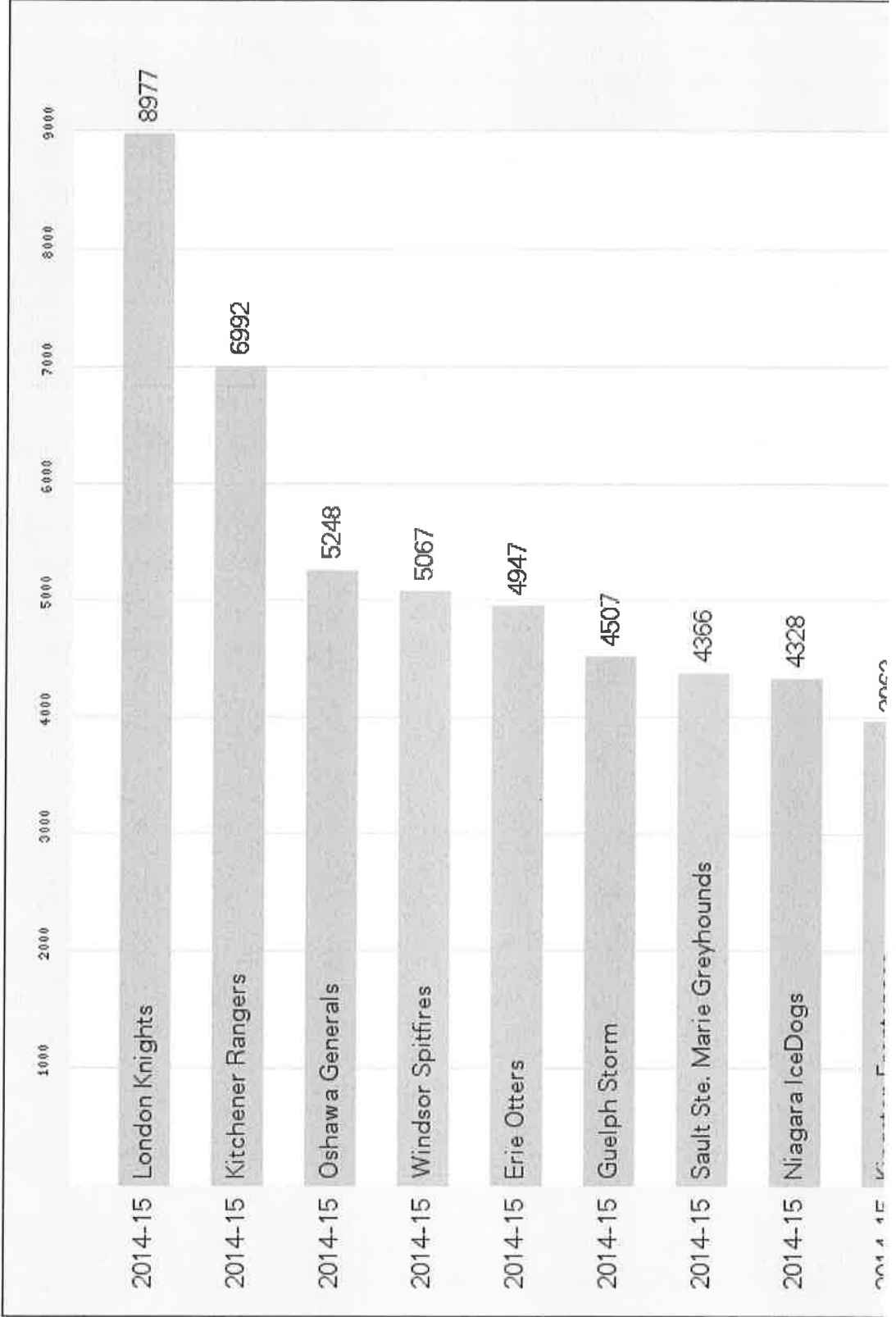

A commissioner for taking affidavits

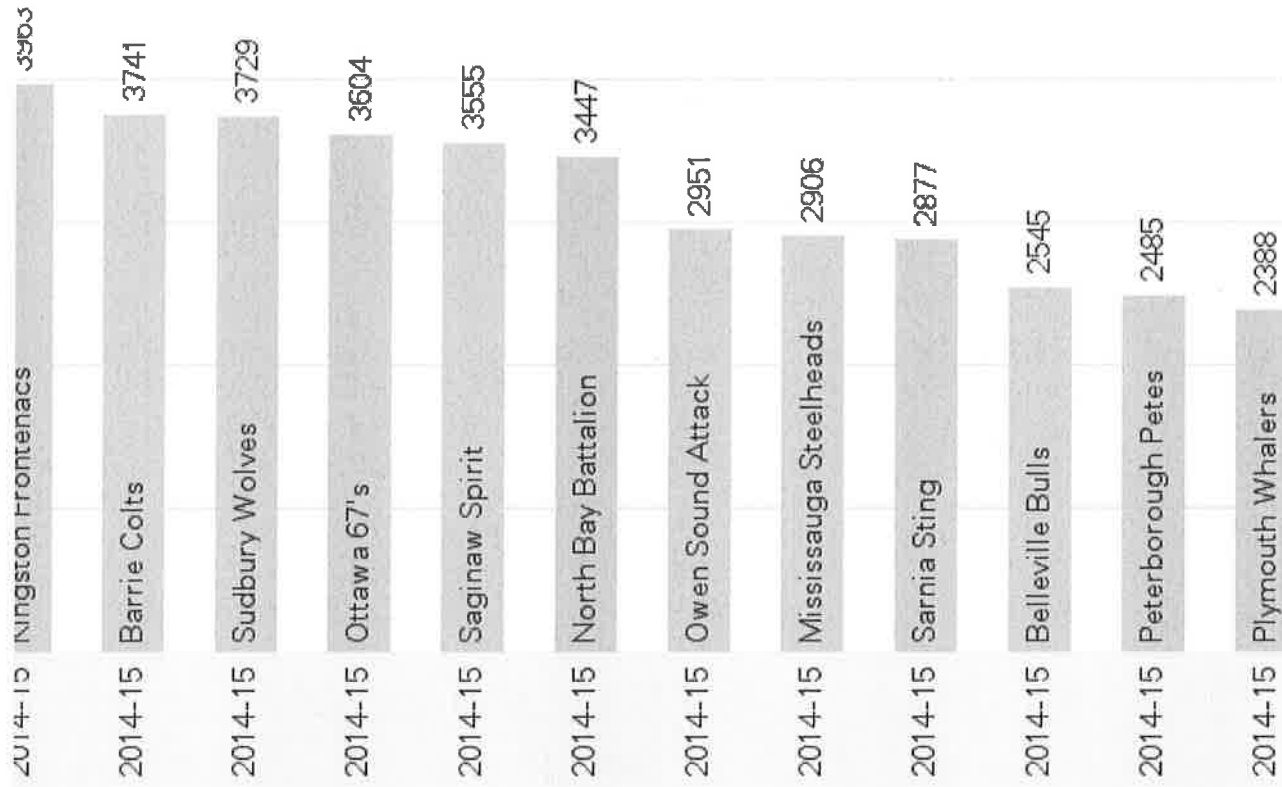


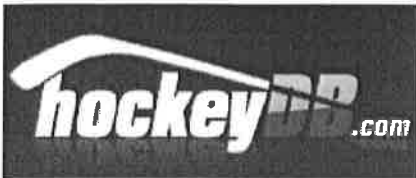
Ontario Hockey League 2014-15 Attendance Graph

Attendance Home -> OHL -> Attendance

This is a graph of the attendance of the Ontario Hockey League for the 2014-15 season. Attendance is based on numbers from a team or league, either released as an official yearly per-game average figure, or compiled into an average from individual boxscore attendance. In some cases when boxscore attendance is unavailable for a small number of games, the attendance is computed omitting the missing games and annotated as approximate. Clicking on a team's bar in the graph will display a graph of that team's attendance across all seasons.



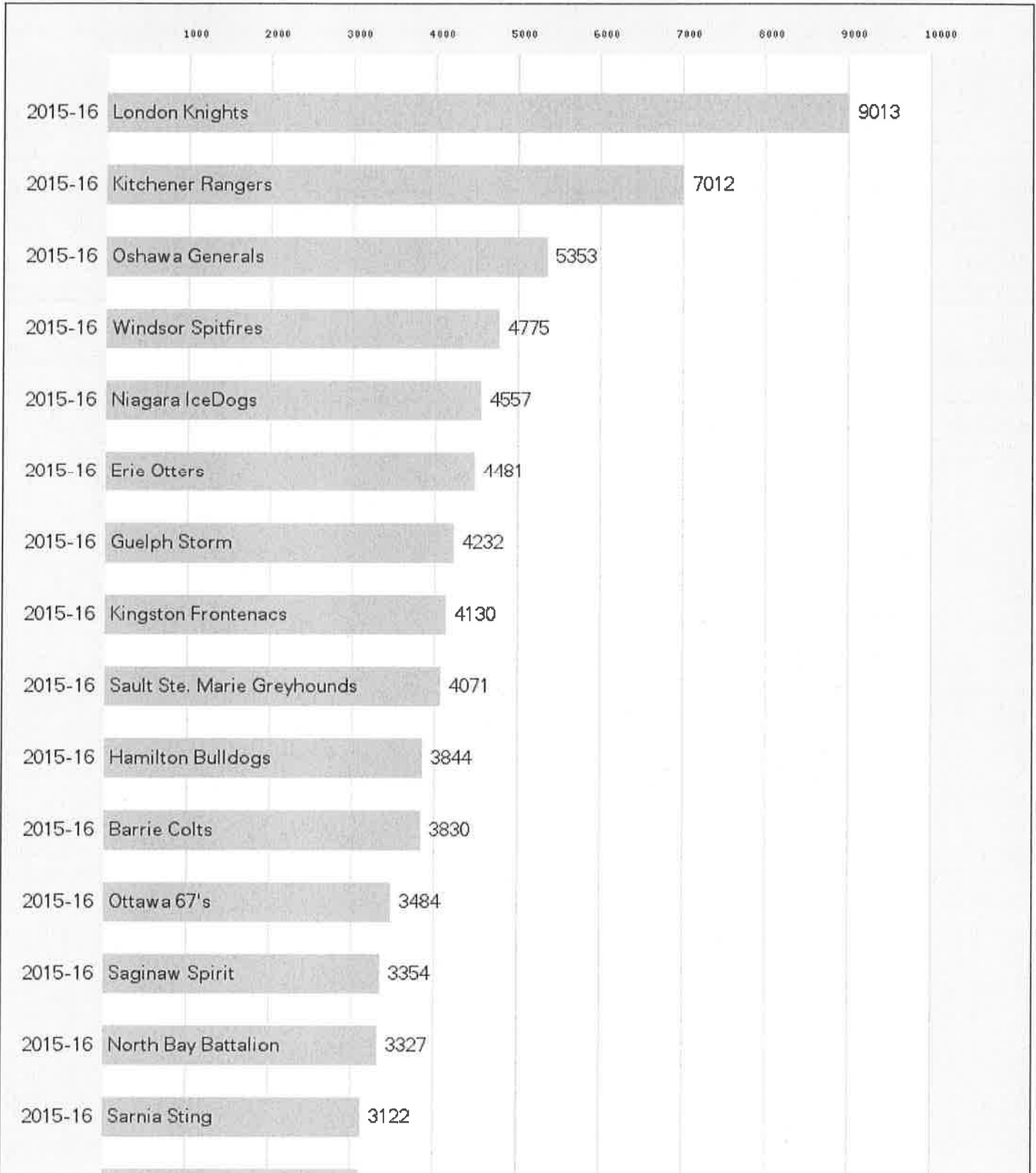




Ontario Hockey League 2015-16 Attendance Graph

Attendance Home -> OHL-> Attendance

This is a graph of the attendance of the Ontario Hockey League for the 2015-16 season. Attendance is based on numbers from a team or league, either released as an official yearly per-game average figure, or compiled into an average from individual boxscore attendance. In some cases when boxscore attendance is unavailable for a small number of games, the attendance is computed omitting the missing games and annotated as approximate. Clicking on a team's bar in the graph will display a graph of that team's attendance across all seasons.



2015-16	Sudbury Wolves	3108
2015-16	Mississauga Steelheads	3025
2015-16	Flint Firebirds	2984
2015-16	Owen Sound Attack	2839
2015-16	Peterborough Petes	2573

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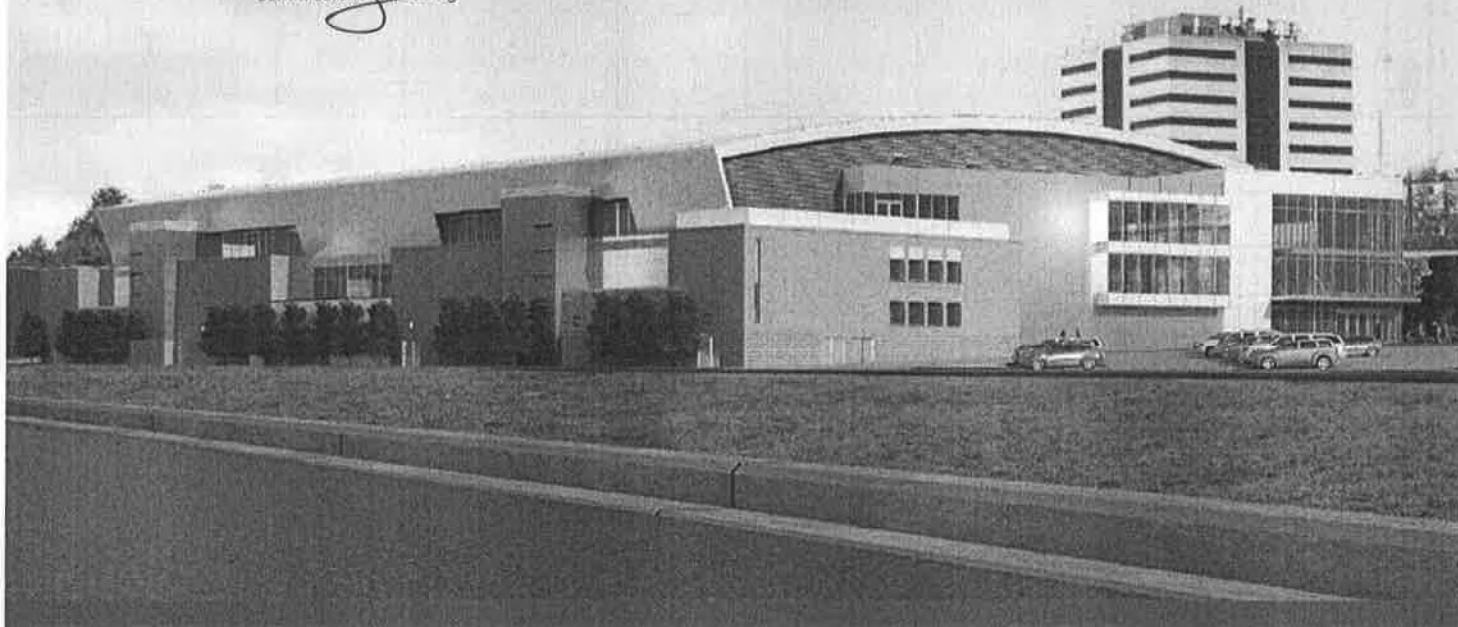
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TAB B

LAST YEAR IN THE JACK

It will be a year full of memories and celebration!

This is Exhibit "B" referred to in the
affidavit of SAMUEL BERG
sworn before me, this 14th
day of JUNE, 2016
Zell
A commissioner for taking affidavits



CORPORATE PARTNERSHIP AVAILABLE INVENTORY 2013-2014 SEASON

NIAGARA ICEDOGS

35 Queen Street, St. Catharines
905.687.3641





IceDogs In The News

Pair of IceDogs Ranked in NHL Central Scouting 2013 Midterm Entry Draft Rankings

IceDogs forwards Carter Verhaeghe (122nd among North American skaters) and Anthony DiFruscia (184th among North American skaters) both cracked NHL Central Scouting's Midterm rankings ahead of June's NHL Entry Draft in New Jersey.

Trio of IceDogs Part of Team Canada at 2013 World Junior Hockey Championship

Ryan Strome and Dougie Hamilton were both named to their second straight Team Canada World Junior roster, while Brett Ritchie would also be selected. The trio of Team Canada members would give the IceDogs the most players from a single team on Team Canada for the second straight year.

Ground is Broken on the New St. Catharines Spectator Facility

Another exciting step in the process of the New St. Catharines Spectator Facility took place in December of 2012 when the official groundbreaking was held. The IceDogs new future home is well underway and will be completed for September of 2014.

IceDogs Well Represented in Eastern Conference Coaches Poll

The IceDogs were extremely well represented in the Eastern Conference Coaches Poll once again, being named in seven categories, with a conference best five of those rankings being first place. Ryan Strome led all players by being named in six categories, including four first place finishes, while Brett Ritchie also picked up a first place ranking.

Dougie Hamilton Makes the Jump to NHL Bruins

After being a key member of the IceDogs during the first half of the OHL season, the IceDogs would see Dougie Hamilton make the jump to the NHL once the NHL lockout ended in early January. Hamilton has been a key part of the Boston Bruins during the shortened season and created a great deal of excitement in both Boston and Niagara with his play.

IceDogs Begin Youth Movement in Preparation for New Facility

While the IceDogs may not have enjoyed quite the level of success that they had in the previous two years, they did enjoy a solid season despite making a move towards youth. With their moves at the deadline, the IceDogs finished the 2012/13 season with one of, if not the youngest team in the OHL. The IceDogs featured a league high five 1996 born players on their roster and another eight 1995 born players. With those players continued development over the coming years, combined with what should be another strong group of draft picks, the IceDogs are well situated for their move into the new Spectator Facility in September of 2014.

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Market Profile

Population: 431,346 in the Niagara Region

Arena Capacity: 2,741 (Including Standing room - 3,145)

Television Broadcast: TVCogeco

Radio Broadcast: 610 CKTB

Website: www.niagaraicedogs.net

Attendance: The average attendance during the 2012/2013 regular season was 3,046 per game. The IceDogs sold-out both of their home games in the playoffs. Total attendance during the 2012/2013 season was almost 110,000.

TV Coverage: TVCogeco televised 33 of 34 regular season home games and both playoff home games during the 2012/2013 season (other home game was broadcast on Rogers Sportsnet, where the IceDogs were featured a total of three times in 2012/13). TVCogeco has an average of over 70,000 viewers watching an IceDogs game every week.

The Region: There are twelve municipalities that make up the region of Niagara. The Regional Municipality of Niagara receives up to twelve million visitors each year, so there is no shortage of people passing through the area which may want to take in a Major Junior hockey game.

Major Junior Hockey: Major Junior hockey, and more specifically the Canadian Hockey League (CHL), is the most attended Sport Entertainment Property in Canada. In 2011/2012, 8.4 million fans attended CHL games. That was more fans than all of the Canadian franchises in the NHL, AHL, NBA and CFL combined.

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35 QUEEN STREET, ST. CATHARINES
905-687-DOG1 (3641)

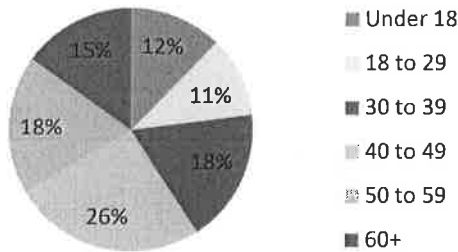




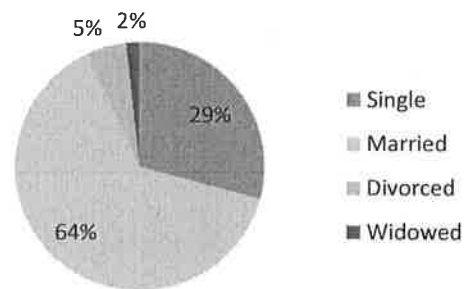
Demographics

The following charts outline the demographics of the Niagara IceDogs fan base. 59% of IceDogs fans are 40 years of age or older. 64% are married and 62% live in a household of 3 or more. 45% of our fans have a minimum household income of \$75,000 and 58% have at least post secondary education.

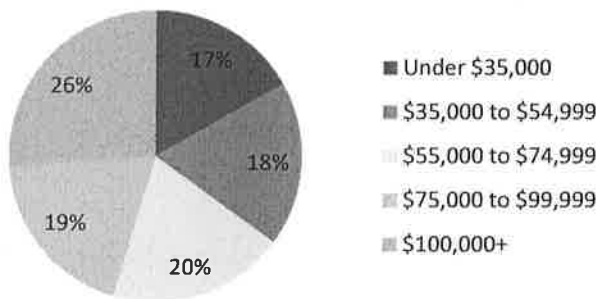
Age



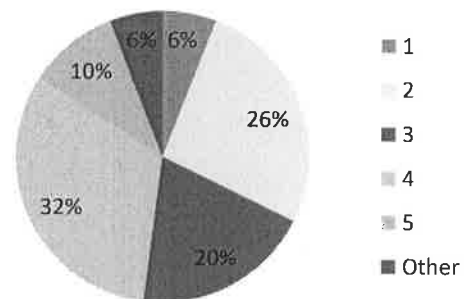
Marital Status



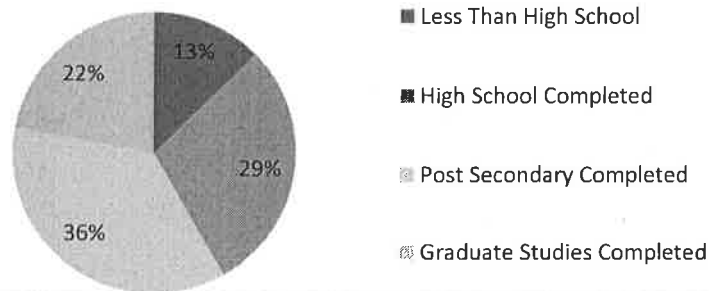
Annual Household Income



Household Size



Education



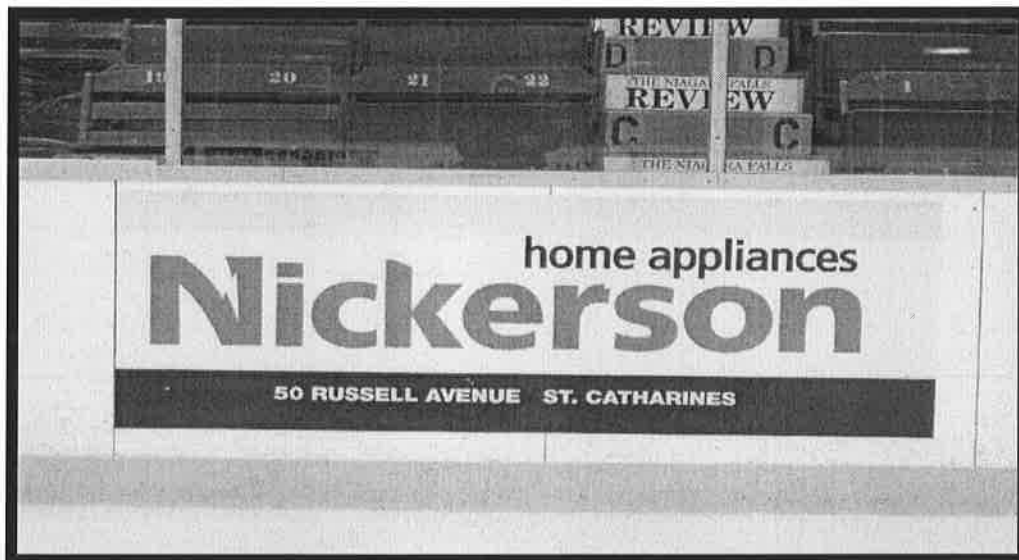
NIAGARA ICEDOGS
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AVAILABLE INVENTORY

2013-2014

RINKBOARD SIGNS



- Rinkboards remain one of the most popular in-arena advertising properties.
- Rinkboards are the most visible signage located directly in the action with maximum exposure created during games. All IceDogs home games are televised on TVCogeco.
- Rinkboards are also visible during all other ice rentals during the winter.
- Rinkboards range from \$4,000 to \$5,000.

ON CAMERA AVAILABLE: 1

OFF CAMERA AVAILABLE: 4

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BACKLIT SIGNS



- There are two options available for backlit signs. The end signs are located above each net, while the side backlit signs are alongside each press box.
- A backlit sign is the most vibrant signage in the arena.
- Backlit signs range from \$2,500 to \$4,000.

AVAILABLE SIDE BACKLIT: 4

AVAILABLE END BACKLIT: 6

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SCORE CLOCK



- The score clock is centrally located in the arena and is the spectators sole reference for game time, scoring and penalties
- There are four panels at the top, one on each side, which are visible from all angles inside the arena

Investment: \$10,000

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IN-ICE LOGO



This high profile opportunity at the Gatorade Garden City Complex can showcase your brand in front of a large audience and to the TVCogeco viewing audience.

INVESTMENT: \$8,000

AVAILABLE IN-ICE LOGO: 1

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AVAILABLE INVENTORY

2013-2014

PENALTY BOX SIGNS



The penalty box signs are highly visible and highly focused for fans and media coverage. They are located on camera side and can be seen on the TV COGECO broadcasts.

INVESTMENT: \$5,000

AVAILABLE PENALTY BOX SIGN: 1

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AVAILABLE INVENTORY

2013-2014

IceDogs' bench



The signs behind the IceDogs' bench are highly visible and highly focused for fans and media coverage. They can also be seen on the TV COGECO broadcasts.

INVESTMENT: \$5,000

AVAILABLE INVENTORY: 1

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AVAILABLE INVENTORY

2013-2014

GAME DAY SPONSOR



A Game Day sponsorship is a great way to profile your company. With attendance averaging over 2,900 fans per game, your company can be the main attraction throughout the game of your choice.

A Game Day sponsorship includes:

- 50 complimentary tickets
- Kiosk space in the main concourse area
- PA announcements throughout the game
- Access to the video screens (graphics, video)
- Intermission promotion
- Opportunity to do giveaways
- Logo recognition in the IceDogs newspaper ad prior to your game.

INVESTMENT: \$3,000

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VIDEO SCREENS



The video screens provide a great opportunity to show your company brand. By sponsoring one of the in-game features we will make an announcement and display your logo during every home game.

If repetition is what you are looking for, these properties should be considered.

INVESTMENT: \$2,000 - \$2,500

Available properties:

Shots on Goal

Best Seats In The House

Out of Town Scores

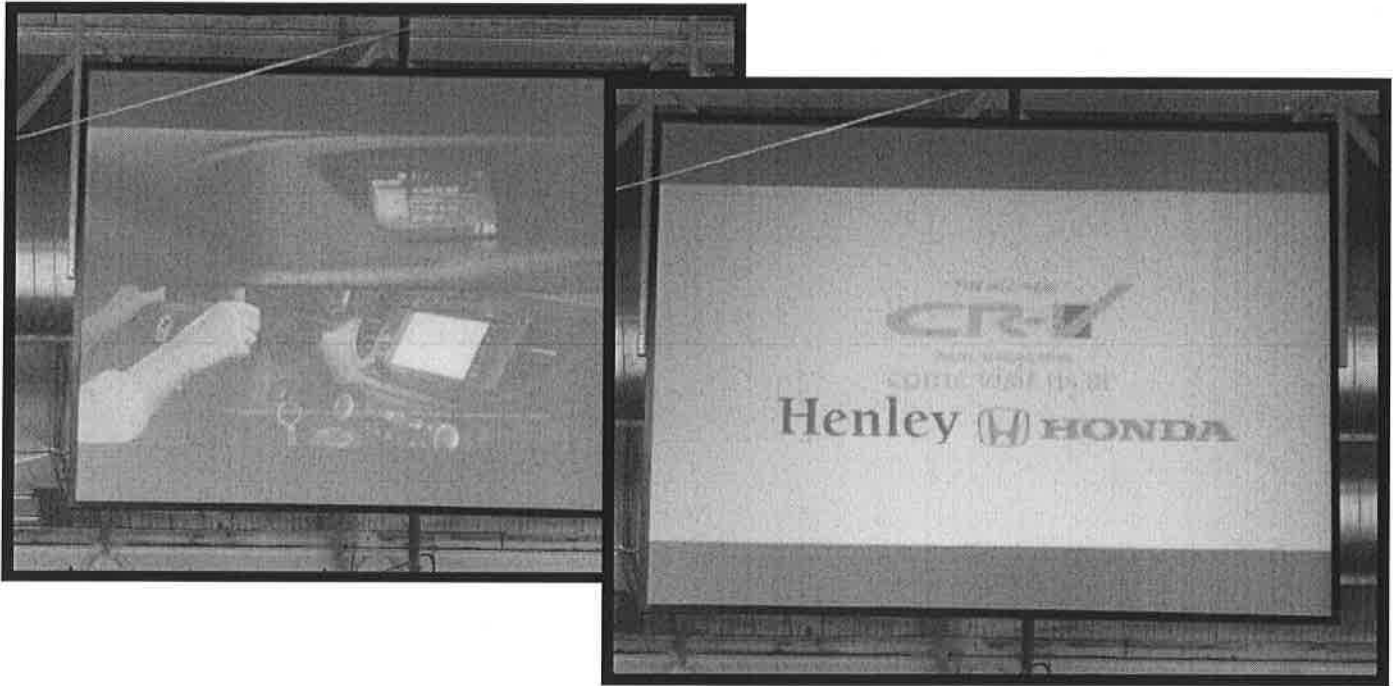
Groups Announcement

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VIDEO SCREEN COMMERCIALS



Use our four highly visible video screens to play your 15 or 30-second commercial during every home game.

INVESTMENT: \$3,000

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35 QUEEN STREET, ST. CATHARINES
905-687-DOG1 (3641)



AVAILABLE INVENTORY

2013-2014

TVCogeco Play-by-play



TVCOGECO

truly local television

Every Niagara IceDogs home game is broadcast live on TVCOGECO. It represents a great opportunity to market your business to the thousands of loyal fans who tune in for all of the game-day action.

Whether you tie your business to a specific feature or present your selling message during commercial breaks, there are many affordable ways to communicate to the Niagara IceDogs fan in the Niagara Region.

VIEWERS: 70,000 people per home game

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TVCOGECO Play-By-Play

FEATURE	DESCRIPTION	INVESTMENT
3-Stars	Exclusive feature which is presented at the end of each home game. Business sponsorship recognition and logo representation.	\$3,000
Starting Goaltenders	Exclusive feature which is presented at the start of each home game. Business sponsorship recognition and logo representation.	\$3,000
Shots On Goal	Exclusive feature which is presented in the intermissions and post-game of each home game. Business sponsorship recognition and logo representation.	\$3,000
Out of Town Scoreboard	Exclusive feature which is presented in the intermissions and post-game of each home game. Business sponsorship recognition and logo representation.	\$3,000
In-period Commercial	15-sec produced commercial for your business. Presented three (3) times during the broadcast.	\$3,000
Intermission Commercial	30-sec produced commercial for your business. Presented two (2) times during the broadcast.	\$3,000

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OTHER ADVERTISING OPTIONS

FEATURE	DESCRIPTION	INVESTMENT
Ticket Sleeves	Each time a ticket is sold for a home game, it is inserted into a ticket sleeve. Your logo would be viewed by hundreds of people each game.	\$3,500
Pocket Schedule	One of the most highly distributed properties, the pocket schedule is a great means to showcase your company.	\$2,000
Poster Schedule	5000 of these posters will be printed and distributed around the Niagara region, in local stores, restaurants and bars.	\$2,000
Hockey Card Set	A very popular item among fans, the hockey card set is a great way to reach the consumer. Your logo would be displayed on each individual card printed.	\$5,000
Cheer Card/ Noisemaker	These noisemakers are handed out before a given home game for fans to use and make noise during the game. Your logo would be going straight into the hands of the consumer.	\$TBD

NIAGARA ICEDOGS
35 QUEEN STREET, ST. CATHARINES
905-687-DOG1 (3641)



TAB C

SCHEDULE "B"
ALLOCATION OF REVENUE BETWEEN PARTIES

Retail Store	IceDogs receive 100% from sales from their retail store.
Concessions	IceDogs receive 50% of net food and beverage revenue collected during the team games and other IceDogs events, from opening of the Facility for each game or event, until closing, including concessions sold in club seats and suites.
Rink Advertising	IceDogs will receive 100% net revenue of advertising in the "bowl", including but not limited to the following: <ul style="list-style-type: none">- Ice resurfacers (i.e., Zamboni)- Rink boards (dasherboards)- In-ice logos- Time clocks- Players benches- Scoreboard- Shot clock- walls
Other Advertising limited to:	IceDogs will receive 100% net advertising revenue of the following, including but not limited to: <ul style="list-style-type: none">- Game program revenue- Hockey equipment sponsorship- Team and OHL/League sponsorship and advertising- Back of IceDogs tickets
In-house Advertising	IceDogs receive 50% of net advertising revenue not defined as rink or "bowl" advertising net of the cost of sales and marketing expenses after the initial capital cost has been recovered
Media Fees	IceDogs receive 100% of all media revenues from team games.
Suites and Club seats	IceDogs to receive 50% of the revenue from the sale/lease of luxury suites, club seats and party suites (excluding ticket sales which are referenced in the main portion of the License Agreement) net of the cost of sales and marketing expenses
Naming Rights/ Building Sponsorships	City to retain 100% of revenues from naming rights, including but not limited to, the building, club lounge, box office, theatre configuration, Building exterior signage, etc. In the event naming rights include rinks boards or on-ice logos, the IceDogs shall be reimbursed for such signage space based on their standard signage rates in effect at the time.
Pouring Rights	IceDogs to receive 50% of revenues from pouring rights from alcoholic beverages
Other Venue Supplier Sponsorships	City to retain 100% of revenues from other venue supplier sponsorships.

This is Exhibit "C" referred to in the affidavit of SAMUEL BERG sworn before me, this 14th day of JUNE, 2016
Zilfy

Parking Revenue The City will receive 100% of parking revenues.

TAB D

This is Exhibit "D" referred to in the affidavit of **SAMUEL BEGGS** sworn before me this 11th day of JUNE, 2011.

A commissioner for taking affidavits



15% Off on all **Friends & Family** purchases. **Free estimates on all Watch & Jewellery Repairs**

Seals Watch & Jewellery Repair

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Mississauga: 416-603-6443 ext 318
Head Office: 416-603-6443 ext 318

Steelheads comeback spoils IceDogs home opener

BY STEPHEN LEITHWOOD
STAFF

It wasn't a fairy-tale ending to the Niagara IceDogs' final home opener of Jack Casselliff Arena.

Mississauga Steelheads defenseman Jacob Graves scored the game-winning goal in overtime to spoil the IceDogs' opener by a score of 6-5 at the Second World War-era rink on Thursday night.

The first game of the season had everything from ruckus scoring their first goals, blood on the ice, hard hits and a thrilling overtime in front of a sellout crowd.

"It didn't end well. We want to come out and win every game, especially the home opener in front of our fans," said Jesse Graham. "We're a young team. It's a learning experience for us. We know how that feels now and we don't want to ever feel like that ever again."

The IceDogs carried a 4-2 lead into the third period, but it would end with Dylan Snookowitz taking advantage of a defensive breakdown to send the game into overtime.

The play which resulted in the game winner was started by 15-year-old defenseman Sean Day, who fed an outlet pass to Bobby MacIntyre who in turn carried into Niagara's zone before Graves picked up the puck and fired it past netminder Brent Moran.

"We're a young team, but even our oldest guys who were playing in those last minutes weren't in that situation before," said assistant coach David Bell. "There's a big learning curve. Those are big moments in games that involve pressure. They're going to learn from that."

The bench was run by assistant Bob and Billy Burke while head coach Marty Williamson recovered from kidney stone surgery.

Casselliff opened the scoring with a laser-beam wrist shot from the wall after receiving a pass from Brook Hedlund through the neutral zone.

"I've never scored from that angle before. Maybe back in

minor hockey, but not in the OHL," said Graham. The Steelheads yanked goalie Dawson Carly in favour of Spencer Martin when Carter Verheughe scored an identical goal to put the IceDogs up 2-0.

"They put in pretty darn good goals in there to stabilize the feet for them," said Bell of Martin, who was returned by the Colorado Avalanche.

Mississauga got on the board with a messy goal that slipped over Moran's right pad.

Bonkie Graham Knott netted his first career goal off of a 2-on-1 rush with Verheughe.

Steelheads defenseman Eric Diodati walked in alone and beat Moran to pull Mississauga within one before the IceDogs survived a 6-on-3 near the end of the frame.

Blue-liner Aaron Haydon, who recently recovered from a broken ankle, got the crowd roaring when he stepped up for teammate Alexander Protopovich by stripping the gloves with Ryan Duhaime. Protopovich was trampled in the corner by Duhaime after a whistle.

"That first period was just crazy with the amount of stuff going on," said Graham.

Niagara defender Brian Brogan left the game in the second period with a shoulder injury, and is currently day-to-day.

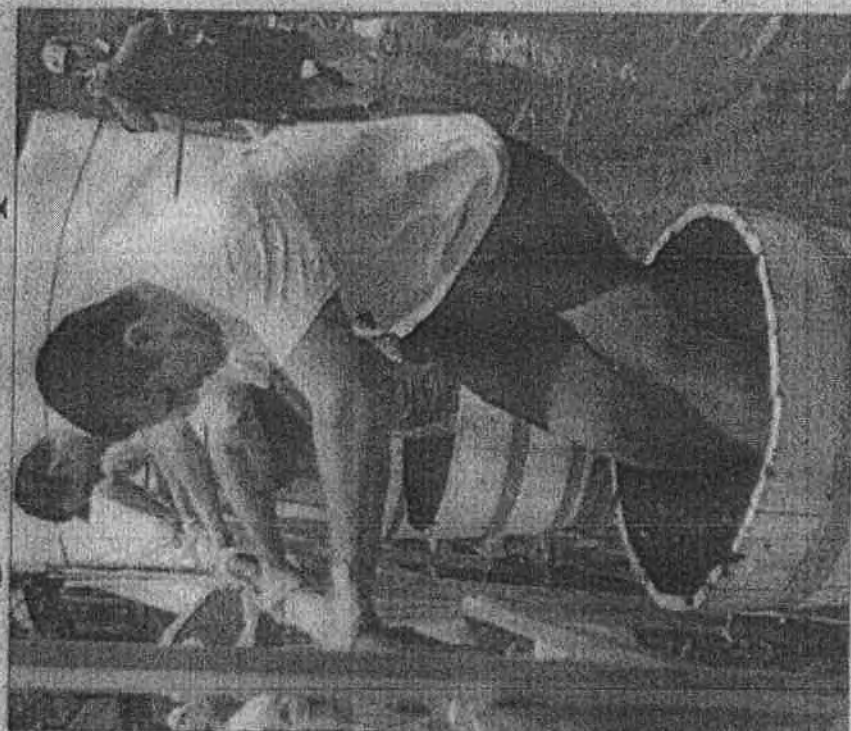
The 'Dogs scored their fourth goal with less than 30 seconds left in the second. Hedlund pushed the puck forward and Ben Hughes picked it up and beat Martin with a shot under his arm.

Mississauga opened the third with a goal from Trevor Carrick. Moran fell out of the crease when Snookowitz had him biting on a change.

Brendan Purkin scored on a breakaway goal, but Bryson Quattrone made it interesting with a one-timer with less than five minutes remaining.

The IceDogs struggled in the faceoff circle by winning only 46 per cent of their draws and were outshot 44-36.

Up next, Niagara embarks on a three-game road trip beginning on Friday, Sept. 27 in Kingston.



Niagara IceDogs rookie forward Sam Berg stomped his way to victory during the 'Dogs stomp off Saturday at the Mayor's International Grape Stomp at the Niagara Wine Festival celebrations in Montebello Park in St. Catharines. Berg nearly filled his measuring cup with juices stomped during the one-minute stomp, defeating his teammates Zach Winkle and Hayden McCool.

SCOTT POSTS/STAFF PHOTO

TAB E



ohlicedogs



This is Exhibit "E" referred to in the
 affidavit of SAMUEL BERG
 sworn before me, this 14th
 day of JUNE, 20 16
[Signature]
 A commissioner for taking affidavits.

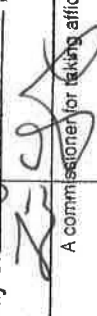
♥ 162 likes

ohlicedogs Graham Knott, Vince Dunn and Jordan Maletta at the ribbon cutting ceremony for the Grand Opening of St. Louis Bar & Grill in St. Catharines!
 #IceDogsinthecommunity #StLouisWings

TAB F

NIAGARA ICEDOGS 2013/2014 BILLET CALENDAR

SEPTEMBER 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
1	2	3	4	5	6	7	
8	9	10	11	12	13	14	
				This is Exhibit "F" referred to in the affidavit of <u>DANIEL BERG</u> sworn before me, this <u>14th</u> day of <u>JUNE</u> , 20 <u>16</u>  A Commissioner for taking affidavits			
15	16	17	18	19	20	21	
			BILLET MEETING	BFC - White Oaks 9:30am Maid of The Mist - 4pm and Team Dinner at the Regency - 5pm Curfew - 10:30pm			
22	23	24	25	26	27	28	
Practice - Noon Curfew - 10:30pm	BFC - White Oaks 9:30am Practice - 2:30pm School - White Oaks 4:30pm Curfew - 10:30pm	BFC - White Oaks 9:30am Practice - 2:30pm School - White Oaks 4:30pm Curfew - 10:30pm	BFC - White Oaks 9:30am Practice - 2:30pm School - White Oaks 4:30pm Curfew - 10:30pm	HOWE DENEVER VS MISSISSAUGA BFC - White Oaks Curfew - 10:30pm			Practice - Noon Possible extended curfew
29	30						
@ OHTAWA 2PM See trip itinerary					@ KINGSTON 7PM See trip itinerary	@ BELLEVILLE 7:05PM See trip itinerary	

TAB G

OHL Announcement Regarding the Windsor Spitfires



Toronto, ON - Ontario Hockey League Commissioner David Branch met with representatives of the Windsor Spitfires Hockey Club to review the sanctions taken by the League against the Windsor Spitfires for violations of the League's Player Recruitment Policy which resulted in the team having to make a payment of \$400,000.00, losing three (3) first round draft selections, and two (2) second round draft selections.

During the meeting with the Commissioner the Windsor Spitfires accepted that there were certain violations of the League's Recruitment Policy.

In recognition of the acknowledgement and the cooperation of the Windsor Spitfires, Commissioner Branch modified his earlier decision and the team will pay to the League a payment of \$250,000.00 and will lose a first round draft pick in 2013, a second round draft pick in 2015 a first round draft pick in 2016 and a second round draft pick in 2017.

As a result the Windsor Spitfires will not appeal the decision.

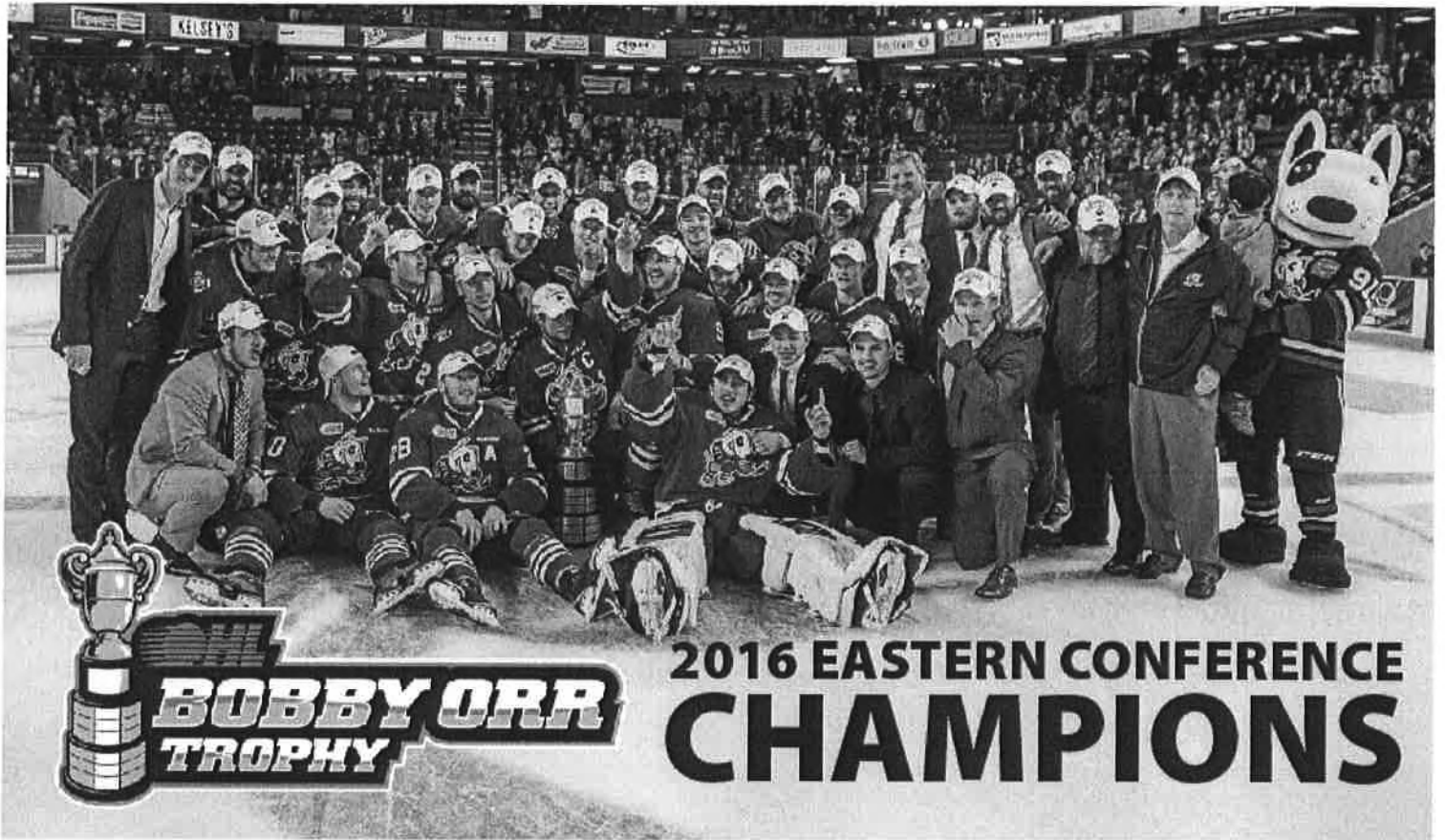
Neither the League nor the Windsor Spitfires will be making any further comment in relation to this matter.

This is Exhibit "G" referred to in the
affidavit of SAMUEL BERG
sworn before me, this 14th
day of JUNE, 20 16
[Signature]
A commissioner for taking affidavits

TAB H



2016-2017 Season Tickets Available Now Starting at \$399



This is Exhibit MH^u referred to in the
 affidavit of SAMUEL BERG
 sworn before me, this 14th
 day of JUNE, 2016

Hockey Operations


 A commissioner for taking affidavits



Dave Bell

Billy Burke

Joey Burke

Ryan Ludzik

Head Coach

Email

Assistant
Coach

Email

Director of
Player Personnel

Email

Goaltending
Coach

Email



Pete Dobbin

Athletic
Therapist

Email



Kevin Emo

Equipment
Manager

Email



Rick Martin

Video
Analyst

Email

SCOUTS

Roger Macleod

Rob McCrae

Darren Pankhurst

Mark Seidel

Kenny Fleck

Marty Hogan

Rich Lisk

Michael Raskin

Matt Milne

Director of Scouting

ETA

SCTA

Northern Ontario

Ottawa

USA

New Jersey Area

Scouting Intern

Goalie Scout

MEDICAL STAFF

Dr. John Ostrowski

Dr. David Dec

Dr. Daryl Smith

Orthopaedic Surgeon

Family Doctor

Team Dentist

OTHER STAFF

Tim Tope

Jill Saxton

Pastor Moe Gillard

Academic Advisor

Billet Coordinator

Team Pastor

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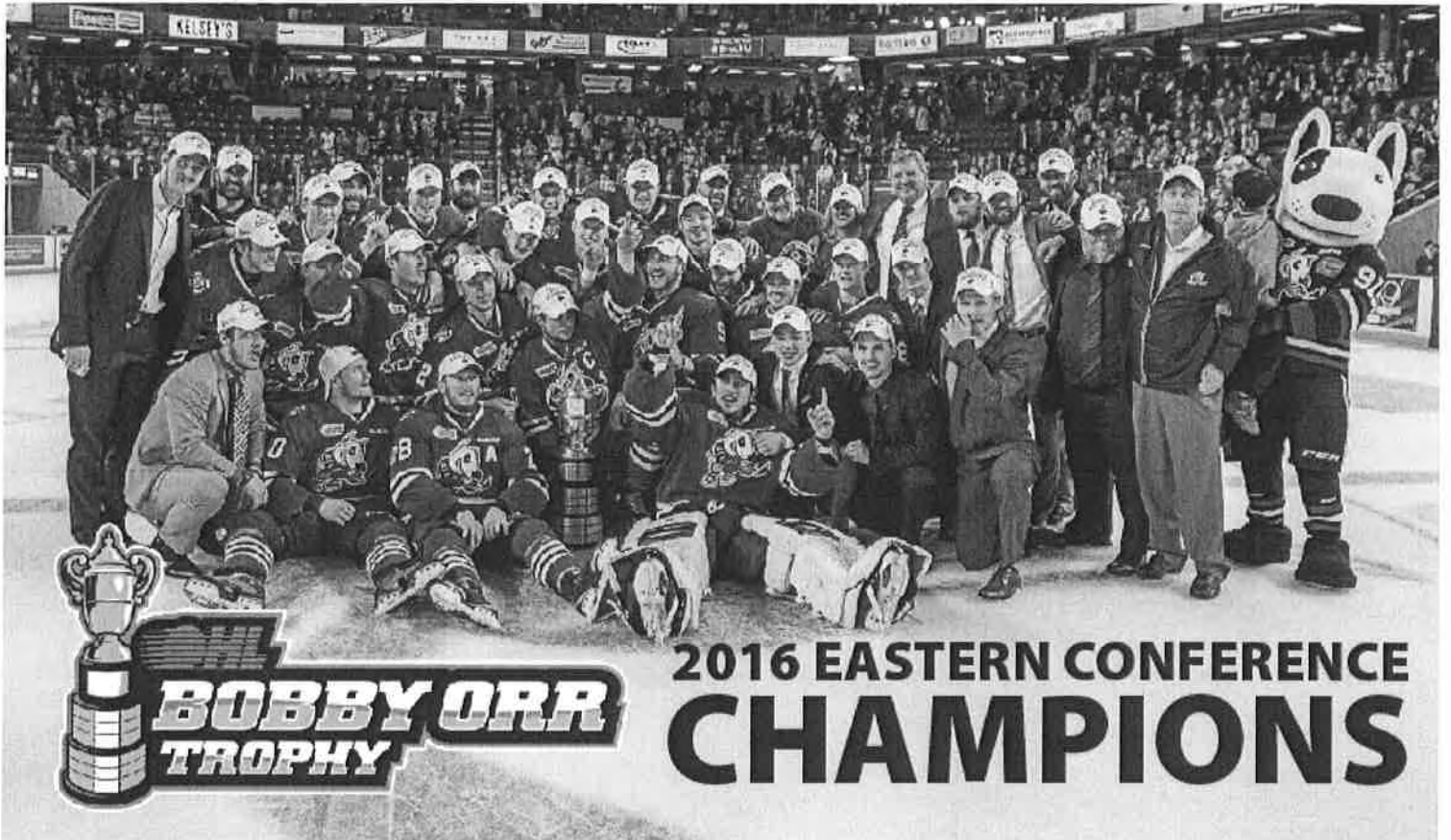
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Business Staff



Matt Johnston
Manager,
Business



Jamie Amell
Office & Retail



Cori Jackson
Corporate

Operations

Email



Nick Williams

Manager, Game
Day Operations

Email

Manager

Email



Nino Bourikas

Manager,
Group Sales &
Community
Relations

Email

Sponsorship

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Brianne Whitty

Manager,
Ticket Sales

Email



Bones
Team Mascot



Kirsten Haymes
Intern



Raiven Desouza
Intern

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[READ OUR PRIVACY POLICY.](#)


TAB I



Canadian Hockey League

305 Milner Ave., Suite 201
Scarborough, Ontario M1B 3V4
Tel: 416 332-9711 Fax: 416 332-1477

This is Exhibit "1" referred to in the
affidavit of SAMUEL BERG
sworn before me, this 14th
day of JUNE, 20 16


A commissioner for taking affidavits

Dear CHL Player:

By now you may have read about proposed class action lawsuits that have been commenced against the CHL, OHL, WHL, QMJHL and their member teams in Ontario, Alberta and Quebec. These lawsuits were commenced by two former CHL players, Sam Berg and Lukas Walter.

In order for these lawsuits to proceed, they must be certified as class actions, which has not yet occurred.

We understand that Mr. Berg's and Mr. Walter's lawyers in Ontario and Alberta, Charney Lawyers, have been contacting current and former players using a letter that includes several inaccuracies and misstatements.

This is unfortunate and we will be addressing these inaccuracies and misinformation with the Courts. In the meantime, we wanted to bring this to your attention and provide you the opportunity to read the court-filed documentation and other information with regards to this lawsuit.

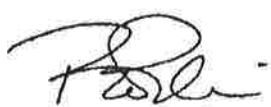
We have delivered statements of defence in the Ontario and Alberta proceedings, which can be found on the following website: www.CHLDefence.ca. The case in Quebec will be defended along the same lines. Mr. Berg's and Mr. Walter's statements of claim are also posted on this website for your reference.

We encourage you to take a moment and read the Statement of Defence.

Yours truly,



David Branch



Ron Robison



Gilles Courteau



Official Supplier
to the National
Hockey League