

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SAMUEL BERG

Plaintiff

and

**CANADIAN HOCKEY LEAGUE, ONTARIO MAJOR JUNIOR HOCKEY LEAGUE,
ONTARIO HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR
JUNIOR HOCKEY LEAGUE INC., WINDSOR SPITFIRES INC., LONDON KNIGHTS
HOCKEY INC., BARRIE COLTS JUNIOR HOCKEY LTD., BELLEVILLE SPORTS
AND ENTERTAINMENT CORP., ERIE HOCKEY CLUB LIMITED, GUELPH STORM
LIMITED, KINGSTON FRONTENAC HOCKEY LTD., 2325224 ONTARIO INC.,
NIAGARA AMERICANS 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 LUKAS WALTER

Sworn June 14, 2016

(Motion for Certification)

I, LUKAS WALTER, OF THE TOWNSHIP OF LANGLEY, IN THE PROVINCE OF BRITISH COLUMBIA, MAKE OATH AND SAY:

1. I am the proposed representative plaintiff in companion actions filed in the provinces of Québec and Alberta which pertain to the same issues as those in the within action and, as such, 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 Bob Tory, sworn December 16, 2015 (the “Tory Affidavit”), the co-owner and general manager of the Tri-City Americans (the “Americans”) of the Western Hockey League (the “WHL”). I spent two seasons (2011/12 and 2012/13) as a player on the Americans, following which I played the 2013/14 season with the Saint John Sea Dogs (the “Sea Dogs”) of the Quebec Major Junior Hockey League (the “QMJHL”).
3. The WHL and the QMJHL, together with the Ontario Hockey League (the “OHL”) are the three major junior leagues which comprise the Canadian Hockey League (the “CHL”), which is the highest level of hockey for 16- to 20-year-olds in Canada.
4. I was completely immersed in the world of major junior hockey during the seasons I played with the Americans and the Sea Dogs. I spent many hours with my teammates every day, and even more hours with the teammates who I billeted with. Over the course of my three seasons in the CHL, I played against every team in the WHL and the QMJHL. Numerous players were traded to and from my teams, which also broadened my perspective of the various major junior clubs and leagues. Prior to joining the Americans, I played for a variety of lower level league teams, and several of my teammates from those teams went on to play for different WHL teams. In short, I had friends on major junior hockey teams across the country.

5. During our time together, my teammates and friends and I constantly discussed hockey, from our love of the game and our big dreams of playing senior level hockey to the day-to-day details of our schedules, remuneration, relationships with our coaches, etc. Over the course of these conversations, I learned that the roles of players across the WHL, the QMJHL and the OHL are largely identical. In particular, I believe that my experiences in major junior hockey are representative of a common CHL experience. I believe that I am qualified to discuss how the leagues operate, and to speak in generalities about the roles and experiences of players with all major junior hockey clubs during the relevant timeframe.

6. The essential role of a CHL 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 healthily, getting enough sleep, and staying physically fit throughout the season; attending all training sessions, workouts, and practices; travelling with the team 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: dressing professionally, including wearing a suit to games; engaging with the community; interacting with the media; signing autographs and taking pictures with fans; allowing the club to use our images for promotional materials; and generally maintaining the reputation of the club through good behaviour and staying out of trouble.

7. The basic experience which I had in the CHL was shared almost universally by my friends, teammates, and acquaintances who played for teams across all three major junior leagues. The players' roles and responsibilities were the same: they were expected to play excellent hockey for their clubs. The clubs' expectations of players were the same and their means of disciplining and exerting control over players were the same. The benefits to both the

players and 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 as many games as possible.

8. Major junior hockey is not a recreational activity. It is a full-time job. Players provide full-time hours of work every week. Our work consists of practices, workouts, travel and games in a highly professionalized environment. The demanding schedule and constant pressure are very hard work. We sometimes have fun because we love hockey and make friends with our teammates, but players do not enter major junior hockey to have fun. Our objective is to perform well enough to garner more ice time and, ultimately, recognition from NHL scouts.

9. In light of my experiences described above, I disagree with the comments and themes which are emphasized throughout the Tory Affidavit. In this affidavit, I will reply to the Tory Affidavit and address some of the additional issues raised in the defendants' certification motion record.

THE BUSINESS OF WHL CLUBS

10. I particularly disagree with Mr. Tory's statements beginning at paragraph 8 of the Tory Affidavit, and continuing throughout, that the WHL and its member clubs are in the business of providing players "with a development program that includes premier hockey, education, and character development".

11. Mr. Tory repeatedly states throughout the Tory Affidavit that WHL owners, including himself and his three ownership partners, are in the business of developing and supporting young hockey players and are not driven by the possibility of earning a profit.

12. To the contrary, in my experience playing for the Americans, it was always apparent to me that Mr. Tory and the other Americans owners, management and coaches were in the

business of operating a hockey franchise, with the primary goal being not to develop the players but to win more games and therefore increase revenue.

13. At paragraph 99 of the Tory Affidavit, Mr. Tory notes that the average ticket price for an Americans game is \$10.97, and not \$20, as I state in my previous affidavit sworn in support of this motion. A review of the Americans' website shows that the club is currently offering 2016-17 season tickets at a price of \$550 for adults, \$460 for seniors, \$340 for teens, and \$250 for youths. These prices are advertised as being a 35% savings from normal ticket prices. If it is assumed that almost all tickets are sold to adults, then the average ticket price is even higher than I estimated, at just above \$21. Even assuming that the tickets are sold at a 1:1:1:1 ratio of age groups, the average ticket price is still almost \$16. Given the Americans' strong attendance (6th in the league during my first season, and 7th in the league during my second season), I believe that Mr. Tory's statements regarding the Americans' revenues are misleading. Attached hereto and marked as Exhibits "A" and "B" are the Americans' attendance statistics from my seasons in the CHL and a screenshot of the home page from the Americans' website, respectively.

14. The Tory Affidavit also does not discuss how heavily sponsored the Americans club is. In my previous affidavit sworn in support of this motion, I state that Americans corporate sponsors would advertise at games, on the Americans' website, and at promotional events. It is important to understand the extent of the marketing opportunities available to sponsors – not only are the physical equipment and arena spaces covered in advertisements, but special moments in the game (for example, when there is an infraction and one team has a power play) are also branded, as are little details like the programmes and the ticket sleeves, and sometimes even the ice itself.

Focus on team success

15. At paragraph 23 of the Tory Affidavit, Mr. Tory states that the main driving force for WHL clubs has always been to provide the best possible hockey development opportunities to players, while maintaining their educations and fostering their personal growth. This is not true. The main driving force for each and every WHL club is to assemble a team of the best players so as to win a large of games, qualify for the playoffs so there are more games to play, and then win championships – therefore increasing attendance, as well as attention on the team, and generating more revenue.

16. If Mr. Tory intended to state that WHL clubs are focused on improving players' hockey skills through coaching, training, and playing competitive hockey, that is inconsistent with my experiences and knowledge. The general managers' and the coaches' primary focus is not on developing every player into the best hockey player that he can be, but rather on obtaining the best results for the team. Thus, every WHL 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.

17. A player's development is largely contingent on how the coaches train the player, particularly whether they provide a player with individualized feedback on his performance, and ice time during games. In my experience, and based on what I have been told by my friends from other WHL clubs, the teams do not provide significant individualized feedback or ice time to players who are not already performing well. The teams do not work on developing on all of their players – rather, they focus only on the players who have already proven themselves to be the best. This is why, generally speaking, the top players in the WHL are the same players who

were top draft picks and top players in the lower level leagues, rather than significant new talents emerging.

18. 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.

19. The teams are not concerned with how a player could potentially play, if his development is assisted, but rather with his existing skill set. The teams simply do not put in the necessary work to develop junior hockey players into great senior hockey players. Instead, the teams improve by drafting or trading 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 receiving the majority of the ice time, they become more seasoned and come to the notice of the NHL, potentially getting drafted.

20. At paragraph 52 of the Tory Affidavit, Mr. Tory states that the Americans are committed to ensuring that each player is given the opportunity to reach his hockey goals. Again, this is incorrect. My goal of becoming a better hockey player was never a concern for the Americans. The team is committed only to its own goal, which 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.

21. My teammate and co-billet Brendan Shinnimin was the team's star player during my first season with the Americans. During games, he would frequently be sent out for double shifts (*i.e.*, he would stay on the ice for twice as long as the other players did) even though he was already

the best player and had been signed by an NHL team, and so did not need extra ice time. By contrast, I asked for additional ice time after my first year, when I played only 49 of the team's 72 games. I was told that I would receive more ice time during my second year, but that did not happen.

22. I was also sometimes told that I should fight players on the opposing teams, but fighting meant that I would be penalized for many minutes, or even ejected from the game, and therefore would not get ice time. I could not win, because if I refused to fight, my coaches also would not give me more ice time for failing to obey them.

23. I was asked to fight particularly in situations where our team's star players had been targeted for hits by the other team. My coaches informed me that if I fought in those situations, then other teams would be more respectful of our team and would not target our star players. In essence, they informed me that my usefulness was not in my hockey skills, but as a threat to the opposing team. I was told that I offered the team "great presence just playing on the bench" – there was no consideration for my need for ice time to become a better hockey player.

Discipline

24. Every WHL club uses standard disciplinary measures which are focused on punishing poor performance both on and off the ice, and which are therefore completely at odds with the idea that the league and club's focus is on player development.

25. All WHL players want regular ice time because they are pursuing their dreams to have a career in hockey or simply to become better hockey players. Typically, to get drafted by an NHL club, a player has to establish himself as a top WHL 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. Although coaches know that ice time is critical to player development and to the

potential of a senior professional career, ice time is not guaranteed to players and the amount of ice time players receive is completely at the discretion of the coaches.

26. 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, rather than supporting their need for consistent ice time.

27. 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" league – where he will not interfere with the WHL team's success. The player must report to that club or he will not be able to play anywhere, since the WHL club controls his rights. WHL players do not want to be sent down to the Junior "A" or "B" leagues because it is effectively a workplace demotion and significantly impacts a player's chances of being drafted into the NHL. For example, there were sometimes scouts at the Junior "B" league games that I played, but they were mostly NCAA and WHL scouts, not NHL scouts.

28. CHL players follow the rules, work hard and do not complain, out of fear that there will be repercussions, including being sent down lower level leagues.

29. Clubs 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 club's right to cut a player is called "termination". Being placed "on waivers" means a player is cut, but the club also waives its exclusive rights over the player, allowing other clubs to sign him at their discretion.

30. The clubs can also trade players at any time, for any reason. Clubs will trade players if they are not happy with their performance but they will also trade players for perceived

infractions which have nothing to do with hockey – for example, if they perceive the player to be a complainer (including players who ask for more ice time). 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. In my first season with the Americans, my teammate Riley Guenther was traded mid-season to the Prince Albert Raiders. The Raiders are located far away from Kennewick in Prince Albert, Saskatchewan, and they were known to be a rebuilding team which performed poorly. The Raiders finished last in the Eastern Conference that season, while the Americans finished first in the Western Conference.

31. If a player refuses to report to his new team but his WHL club does not put him on waivers, then his only other option is to quit hockey and go home.

32. 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. In my example above, my teammate Riley Guenther was only 17 when he was traded. I do not know if he had a no-trade clause, but I do know that he was still in high school when he was traded and I do not think that he would have wanted to go to the Raiders if he had been given any choice. Since Riley was not a top player, however, he had no leverage over the team and probably would have been scratched for the rest of the season if he had tried to reject a trade.

33. 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 I saw numerous teammates

be forced to uproot their lives on a moment's notice. Sometimes we would become upset when our friends and teammates were traded, particularly mid-season, but we were told repeatedly by team staff, including Mr. Tory, that "[major junior hockey] is a business". It was made apparent to us that the goal of building a stronger team outweighed our needs as young men and young hockey players. I therefore disagree with Mr. Tory's statement at paragraph 22 of the Tory Affidavit that the Americans "provide all players with a positive development experience in a caring and supportive environment".

34. In summary, CHL hockey 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 WHL, OHL and QMJHL. None of these disciplinary measures are reflective of the idea that the WHL, OHL or QMJHL are development leagues which prioritize player learning over everything else.

The role of coaches

35. 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 as many games as possible and to advance as far as possible 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.

36. 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 Americans, I would be encouraged while I was on the ice to be physical and to "punish" the other team. This type of play did not increase our chance of scoring or preventing the other team from scoring, but merely tired opposing players out so that our best players could play in more comfort.

37. If WHL 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.

38. 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.

39. I was interested in learning the skills to be on the Americans' power play unit, but power play practices were reserved for the best players and the coaches would have the rest of us

players sit to the side while the top players practiced. There was never any opportunity for us to learn how to be effective contributors on the power play, and, as a result, we remained less developed and less well-rounded in our hockey skills.

Mr. Tory's role

40. At paragraph 42 of the Tory Affidavit, Mr. Tory states that he makes himself available to players for support and guidance, and that he spends "a lot of time and energy counselling" players. I disagree. As far as I am aware, Mr. Tory never encouraged the players to use him as a counselling resource. I might have sought out support and guidance from Mr. Tory had I been aware that he was so passionate about our futures, but he certainly never made it known to me or to my teammates.

41. For the duration of my time with the Americans, Mr. Tory served an administrative role. He primarily stayed in his office while we were at the arena. Being asked to see Mr. Tory in his office was usually an intimidating event because Mr. Tory was the one who would tell players that they were being cut or traded or otherwise disciplined. I recall speaking to Mr. Tory in his official capacity only once while I was with the Americans, to discuss changing my billet assignment because I did not get along with the first family with whom I billeted. I did not feel comfortable looking to him as a source of support, particularly because when he felt that we were not performing well on-ice, he would come into our dressing room and become very upset at us.

42. I also do not agree with the Tory Affidavit at paragraph 20, where Mr. Tory states that the Americans act as a "guardian" for the players. Neither Mr. Tory nor my coaches ever did anything for me or the other players on my team that could be considered guardianship. While I was on the Americans, all of the players used to talk amongst ourselves about our experiences on

the team, including the contact we had with Americans staff. Not one player ever mentioned to me the type of guardianship role described in the Tory Affidavit.

MY TIME IN THE WHL

Joining the Americans

43. WHL players are typically drafted when they are 15. I was not drafted into the WHL, but I still hoped to have a senior hockey career, so I continued playing lower level junior hockey, including with the Devils. As I state in my previous affidavit sworn in support of this motion, one of my Devils coaches was a scout for the Portland Winterhawks (the “Winterhawks”) and invited me to the club’s training camp in August 2011.

44. Each day of training camp was very structured. I stayed in a hotel which my parents paid for but spent almost all of my time with all of the other camp invitees, who included the returning players from the previous season’s team, the new draft picks, and some other players like me who had not been drafted but who had caught the club’s attention and therefore received training camp invites.

45. At training camp, and during the pre-season, the new players knew that we were all competing for a limited number of openings on the team because most of the players had returned from the previous season. Players regularly return to their teams until they are traded or become too old to play in the WHL, but they are also sometimes replaced by incoming players who out-perform them in the eyes of the team coaches and managers. Some of the players cut during training camp and the pre-season included veteran third- and fourth-line forwards, or bottom pairing defencemen, who were replaced by new prospects.

46. Aside from the first day, which was primarily an orientation day, we spent each day of camp participating in the same activities at the same times. Our days would begin with eating

breakfast together, followed by group on-ice drills, then a group off-ice workout, lunch together, a scrimmage game, and finally dinner together. All of the players spent the entire day together doing the same activities, at the direction of the club coaches and managers.

47. I attended other training camps later on with the Americans and with the Sea Dogs. Based on my experience attending three training camps, and based on my discussions and friendships with other major junior players from various teams, I am confident in stating that all of the events I have described with respect to training camp are typical of what happens at all training camps for all of the CHL hockey clubs.

48. After training camp was over, we started to play in pre-season exhibition games. We travelled to the games on the team bus and followed the regular season schedule for game days. The new players, including me, were given more ice time, as were 3rd and 4th line players from the previous year. This was because players were still getting cut during the pre-season exhibition games, so we were being tested to see how we performed in inter-league competition.

49. I felt that I had performed well at training camp and was gratified when, half-way through the pre-season, I was informed that the Winterhawks wanted to sign me to a contract. I was very confused when I then learned that I could not sign a contract with the Winterhawks because the Americans had placed me on their protected player list. I had never spoken to the Americans prior to learning this, and did not understand how a club that was a complete stranger to me could claim my rights without any warning.

50. Later that day, I received a call from the Americans, who asked me to fly to join the team in Kennewick as soon as possible. I arrived in Kennewick the next morning and began practicing with the team and playing with the team in pre-season exhibition games.

Signing my SPA

51. Approximately three days after I arrived in Kennewick, on September 15, 2011, I signed an SPA with the Americans. I did not have a player agent and my parents were not in Kennewick, so nobody was there to help me protect my own interests in negotiating with the Americans. Nobody from the team ever encouraged me to speak with an agent or lawyer or my parents prior to signing my SPA.

52. As I state in my earlier affidavit sworn in support of this motion, I was told that my contract was the standard form, and I had to sign it or I would not be able to play in the WHL at all. Since I still dreamed of playing hockey in the NHL, and I believed that the WHL would help me reach the NHL, I signed the contract. I was never informed that the education package could be further negotiated, or that it was possible to negotiate for a no-trade clause.

53. Later the night that I signed my SPA, I was sent to a sponsor dinner to represent the team, and then I went to my billet house.

Time commitment

54. In the section of the Tory Affidavit entitled "Player Experience with the Tri-City Americans", Mr. Tory states his description of a typical week in the life of an Americans player.

55. I have also reviewed the affidavit of Kiara Sancler, sworn November 18, 2015, which attaches various documents, including: a letter dated February 11, 2014, from Barry Alan Johnsrud, counsel for the WHL (at Exhibit "D"); and a letter dated December 30, 2013, also from Mr. Johnsrud (at Exhibit "J").

56. Both Mr. Johnsrud and Mr. Tory are correct in stating that 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 Americans.

57. All players were expected to arrive on time for practices, workouts and games. We were given a schedule of practices, workouts and games at the start of the season. We also received an itinerary before every road trip that we were expected to follow. The calendar attached as Exhibits "C" and "I" to the Tory Affidavit is incomplete because it does not include away game day itineraries.

58. At paragraph 59 of the Tory Affidavit, Mr. Tory 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 frequently would watch game film, as well as spend half an hour getting dressed/undressed and showering, plus travel time, which was approximately twenty minutes for me. In total, I spent approximately five hours a day on team-related services, plus whatever time I spent attending promotional events after practice which could be up to several hours.

59. At paragraph 60 of the Tory Affidavit, Mr. Tory states that, on home game days, players not in high school "may" attend a brief morning stretch. This was not my experience, as I was always expected to be at the rink in the morning on game days to do a stretch and workout for approximately an hour. Following this, we would review video of the opposing team for another 45 minutes to an hour. As well, virtually every player used to arrive at the rink two to three hours early, because we had developed our own routines to get ready for the games.

60. At paragraph 61 of the Tory Affidavit, Mr. Tory states that home games typically ended around 9:30 p.m. This was true if the game proceeded quickly and there was no overtime, which occurred not infrequently. On average, I would not get back to my billet's home until about 11 p.m. after home games, which meant approximately eight to nine hours a day devoted to team-related services.

61. In my previous affidavit sworn in support of this motion, I state that I devoted approximately 66.5 hours/week to team-related services when we had long road trips. I can add that, because the Americans frequently played Canadian teams, border crossings added a significant amount of time to our anticipated travel time. Once, the entire team was detained for approximately four hours while returning to Kennewick because of lengthy questioning by U.S. border officials.

62. The coaches ran the drills for all of our practices. Everything we did at the practice was directed by the coaches. We were given very specific instructions and were closely monitored.

63. Similarly, an assistant coach or team trainer directed all of our workouts. Everything we did at a workout was carefully directed and monitored by the team.

64. During the game, the coach determined who would play on each line and defence pairing, and when the lines and defence pairings should come on and off the ice. The coach also determined who would play on the powerplay or the penalty kill units, as well as generally directing the style and strategy of play. The coach could instruct players to be more physical, to play more offensively or defensively, or to adjust the structure of the plays. All activities during the game were tightly directed, controlled and supervised by the club.

Community activities

65. With respect to paragraph 77 of the Tory Affidavit, I disagree with Mr. Tory'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.

66. Attending promotional events was a standard part of being a CHL player. All clubs make efforts to engage the community and to court sponsorships by having players attend events. I attended numerous promotional events at my club's request. At paragraphs 83 and 113 of the

Tory Affidavit, Mr. Tory states that each of the promotional events I attended were only one hour in length. This is untrue. Some of the events were only one hour in length, but many of them extended to two, three, or even more hours.

67. At paragraph 111 of the Tory Affidavit, Mr. Tory states that I attended 26 promotional events while I was a player with the Americans. Of those 26 events, 10 of those events were purely promotional, while the remainder were in the service of charity. Even the charitable events also served somewhat to promote the club, because our involvement generated increased goodwill and positive attention for the club – I know this is true because attendees at the charitable events would sometimes make comments to me or my teammates to the effect that they were more likely to support our team because we were contributing to charitable efforts.

68. At paragraph 112 of the Tory Affidavit, Mr. Tory suggests that I was mistaken in my previous affidavit sworn in support of this motion. At paragraph 30 of my previous affidavit, I state that I was required to stand in front of a big box store such as Target and ask people in the community to donate money to the team's scholarship fund. I was not referring to the Salvation Army Kettle Bell fundraiser, as Mr. Tory suggests, but rather to a promotional player autograph session held outside of a Target store.

69. At paragraph 112 of the Tory Affidavit, Mr. Tory further states that Americans players have never been asked to raise funds for the team or its scholarship fund. This is untrue, since all of the 10 purely promotional events I attended were intended primarily to solicit financial support of the team. I recall that, at autograph sessions and booster club events, the Americans solicited donations specifically on the basis that the money would go towards the players' education fund.

70. At many of our promotional events, the clubs sold memorabilia, including jerseys and equipment that players had spent time autographing. Sometimes the proceeds were explicitly directed toward charity, but otherwise, I believe the clubs themselves collected the proceeds. In other words, the club was using player labour to generate more money so that the club could avoid having to pay for the full financial commitments it had made to the players.

Educational supports

71. In the section of the Tory Affidavit entitled "*Education Supports Provided by the Americans*", Mr. Tory repeatedly emphasizes the Americans' commitment to education. This was not my experience while I was playing for the Americans. Although I had graduated from high school before joining the Americans, I was never encouraged to take post-secondary courses while I was with the club.

72. It was understood by all the players that the club required that we graduated from high school successfully, but the interest in our education stopped there. Nobody with the club ever discussed my academic future with me or my family.

MY TIME WITH THE SEA DOGS

73. Attached hereto and marked as Exhibit "C" is my QMJHL SPA, dated September 10, 2013.

74. When I joined the Sea Dogs, I took on more of a mentorship and guidance role for young players on the team, but I did so of my own volition, because I was the oldest player on the team, and never received any instructions from the club or my coaches in this regard. Other than that, my duties as a Sea Dogs player were identical to my duties as an Americans player.

75. The players' schedule with the Sea Dogs was similar to the Americans in the sense that we had a fixed daily schedule for practices, workouts and games, and an itinerary for away

games. On the Sea Dogs, the players devoted approximately the same number of hours to the team, but some of the workouts and training took place at different times during the day than they did with the Americans.

76. When I first joined the Sea Dogs, the coach, Mike Kelly, really focused on helping me to become a better hockey player. Unlike the Americans' coaches, Mr. Kelly would work with me to target my own individual strengths and weaknesses on the ice. I observed him doing the same for the other players on the team, and I believe his strategy was very effective for player development.

77. Unfortunately, Mr. Kelly was fired by the club early on in the season, and the new coach, Ross Yates, did not share Mr. Kelly's focus on individual player development. Once Mr. Yates took over, the drills, workouts, practices, etc., with the Sea Dogs became all essentially the same as the ones I participated in with the Americans. Everything from the off-ice training to the on-ice practice to the games themselves was very structured and controlled by the coaches, and everything was focused on winning games as a team, to the exclusion of individual concerns.

78. Based on my experiences and conversations with other major junior players, I am confident in stating that the schedules I have described for the Americans and the Sea Dogs, including the types of activities that the players perform at workouts, practices, pre-game preparation, game time, post-game time, showering, dressing, community events, away-game routine, travelling, etc., are typical of what all players do and their schedules, on every major junior hockey team. While there may be some minor differences in the hours spent or the actual time of day when these events occur, the teams all follow the same type of schedule for the entire season.

THE EMPLOYMENT RELATIONSHIP

79. The defendants' certification motion record states that WHL players are not employees, despite receiving paycheques for the services that they provide to their clubs. The Tory Affidavit and the affidavit of WHL Commissioner Ron Robison (the "Robison Affidavit"), sworn December 22, 2015, both state that WHL players are "student athletes".

80. I viewed myself as a professional or semi-professional hockey player, as did other players who I knew. "Semi-professional" is a term that is frequently used by major junior hockey players to reflect the fact that we were professional hockey players in terms of workload, but that our leagues have age caps and very low salaries.

81. 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. WHL 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 Americans.

82. Clubs 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.

83. 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 WHL clubs "derive little, if any, benefit" from the players.

84. To the extent that WHL 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.

85. The players do not replace other club employees unless, again, it is accepted that WHL 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.

86. The training that WHL 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.

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

88. Players are told that they will be paid for their time spent working for a WHL 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.

Club payments

89. I am informed by my lawyers that, in or around 2014, the WHL changed how they pay players to a “reimbursement” model. I am also informed by my lawyers that the defendants’ motion materials indicate that they take the position that the payments made to players were always reimbursements, and that the revised naming was to correct a past error. I do not believe this is correct.

90. Every WHL player devotes many hours of work each day in service of their for-profit clubs. During my time with the Americans, I estimate that I and my teammates each committed,

on average, 43-50 hours/week to providing services to the Americans, with extra time for travel when the team was on a road trip.

91. For the first season that I played with the Americans, I was paid \$200/month, in biweekly paycheques. For the second season that I played with the Americans, I was paid \$240/month, in biweekly paycheques. These were the league standard amount for players aged 16 to 19. The league standard amount for overage players was \$600/month. I was never required to fill out any reimbursement forms to receive any of my paycheques

92. I considered the club's biweekly payment to me to be my paycheque for my services to the Americans and I recall that this understanding was shared generally amongst the other players and coaches.

93. My SPA refers to these payments as an "allowance", but also states that said allowance is subject to any statutory withholdings and deductions with the pay period. The other Americans players and I referred to our payments as our "paycheques", and our coaches also did the same when distributing the physical cheques to us. On occasion, Mr. Tory would distribute our cheques to us himself, and he would also refer to them as "paycheques" when he did so.

94. For both seasons that I played for the Americans, I recall that my paycheques were somewhat less than the bi-weekly amounts that I was owed and I believe that the deductions were intended to be payroll deductions. When I asked for a T4 from the club, however, I never received a response. I also never received a Record of Employment from the club.

95. I felt that the amount of my paycheque from the Americans was minimal, and it was very much insufficient to pay for the expenses I incurred. I recall discussing this issue with other Americans players, and we agreed that we were being paid essentially nothing, certainly not

enough to reimburse us for our various out-of-pocket expenses or to be a fair compensation for the work that we had done.

96. Being an overage player is generally reserved for the best players who were not drafted to the NHL. They are older and more experienced than the other players and may take on mentorship roles – however, their duties and the services that they provide to the clubs are the same as every other player, yet they received \$600 a month while everyone else only received \$200 or \$240 a month. It was also a common feeling among the players that I played with, and the players on the other teams that I knew, that this was not really fair.

97. At paragraph 120 of the Robison Affidavit and paragraph 74 of the Tory Affidavit, Mr. Robison and Mr. Tory claim that incurring the level of debt that I did (approximately \$4,000/season) was highly unusual because players have no expenses. This is not true. I incurred this level of debt because I had ordinary expenses of daily living and because I earned negligible wages for my work. My billet family did not pay for my personal cellphone plan, my clothes, any of my entertainment costs, or some of my food – nor did I or the team expect them to. The level of debt I incurred was not uncommon amongst my Americans teammates who were not overage players.

98. 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 Americans staff because all of our behaviour as players was controlled by the threat of being cut from 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 everything else, as stated in the Tory Affidavit, we would not have feared reprisal and been made to feel that our ice time could be jeopardized by questioning our low pay.

99. Despite providing the exact same services to the Sea Dogs as I did to the Americans, I was paid \$476.66 a week for my work, and received \$90 a week for accommodation expenses. My paycheque was placed in my stall or given to me at the same time that the younger players received their paycheques. Since one of the Sea Dogs' major sponsors is Irving Oil, the players with vehicles also received gift cards for free gas with every paycheque.

100. My QMJHL SPA referred to my pay properly as a "salary" and payroll deductions were taken from my pay. When I completed my season with the Sea Dogs, I received a Record of Employment and T4 Statements of Remuneration Paid for the 2013 and 2014 tax years. Attached hereto and marked as Exhibits "D" and "E" are my Record of Employment and T4 slips from the Sea Dogs, respectively.

Risk of physical injury

101. Part of the environment in which we perform our services for the clubs as CHL players is that all players have to accept the risk of physical injuries and pressures to fight in games.

102. Players are routinely injured during their time in the CHL. Some receive short-term injuries while others receive permanent injuries like concussions or orthopaedic injuries such as fractured bones, and others face career-ending injuries. Being injured while playing in the CHL is a fact of life for every CHL player.

103. I was lucky because I did not sustain any career-ending injuries, but I did endure quite a few injuries during my three CHL seasons. In particular, due to the number of times I was encouraged to fight by my coaches, as I discuss above, I suffered injuries to my hands, including inflammation and fractured knuckles, which continue to affect me to this day.

104. I also suffered minor head traumas during several fights. I recall feeling dizzy and experiencing headaches after the fights, but I did not tell my coaches that I was feeling unwell

because I was already getting a low amount of ice time and did not want to miss any further ice time.

Professional structure

105. Given the demanding, repetitive daily schedules and long away game road trips, the commitment made by the players to their clubs can only be described as work. We are also constantly reminded by our coaches to work hard or to work harder. For me and all of my teammates, every moment of every day was focused on playing hockey, getting more ice time, staying in shape, going to bed early – all to improve our game day performance. Playing in the CHL is a full-time sacrifice.

106. At paragraph 99 of the Robison Affidavit, Mr. Robison states that the commitments made by WHL players under their standard player agreements are substantially the same as the commitments made by amateur athletes more generally. As described in this affidavit and in my earlier affidavit sworn in support of this motion, I played in a Junior “B” league, which is two levels below the CHL. In my opinion, the differences between the major junior leagues and the lower level junior hockey leagues are much more significant than Mr. Robison claims.

107. My teammates on the Devils took a less professional attitude toward hockey than my teammates on the Americans and Sea Dogs did. CHL players tend to be extremely disciplined and to prioritize hockey over all other aspects of their lives, because they are hoping to progress to senior level hockey. By contrast, Junior “A” and “B” league players have a more casual approach to hockey and typically do not expect to move up to any more advanced level of hockey. Although I felt that my Devils teammates were very talented, they tended to prioritize their outside lives, including school and socializing, more than my teammates on the Americans and Sea Dogs did.

108. Many of my Devils teammates had part-time jobs or attended school full-time and paid registration fees to play in the league for fun. This was also true of players on other teams in the league, and so the quality of competition was also correspondingly lower.

109. The demands on CHL players are more intense than those on Junior “A” and “B” players. The OHL schedule is longer and the travel times are further. CHL practices are longer, more highly structured and more frequent. For example, while I played with the Devils, we practiced only twice a week, and then played games once or twice a week. While I played with the Americans and the Sea Dogs, we had practice nearly every day and played games two or three times a week.

110. CHL players face many demands in addition to the practice, training, and game schedule. We are expected to give media interviews, sign autographs, and engage with the community on a consistent basis. CHL players are expected to exhibit professionalism at all times. Players must wear suits to games, and carry themselves with dignity around the community, even when not at team events. While I was playing with the Americans or Sea Dogs, I could be disciplined for not dressing professionally or for misbehaving while socializing in my free time, but I did not have to meet those same high standards when I was playing with the Devils.

111. CHL teams all have a large base of loyal fans and play in large arenas. The Americans had a strong following in the community which grew while I was with the team. The Sea Dogs always had a steady, loyal fanbase in Saint John, and correspondingly good attendance. CHL players are recognized in the community, their statistics are studied by the public, and their accomplishments are reported in the media. Team merchandise is sold at the arena, and team jerseys can frequently be seen worn by the public.

112. By contrast, relatively few people attended Devils games, many of whom were the players' friends and families. Players were not particularly well-known or recognized in the community. Also, there was minimal media presence at Devils games, whereas newspaper, radio and TV reporters would all attend Americans and Sea Dogs games.

113. CHL players are generally given state-of-the-art equipment, they are coached by NHL veterans, and they travel to games in luxury coach buses, whereas Junior "A" and "B" league players have less high-quality equipment, their coaches are typically not NHL alumni, and they travel in school buses or drive themselves to their games.

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

115. In all of the respects discussed above, the CHL leagues are much more similar to the NHL and to other professional senior hockey leagues than to other junior hockey leagues. In fact, the CHL is often described by players as a "mini-NHL".

116. The full-time sacrifice of playing in the CHL is not just about an increased number of workouts and practices and demanding travel commitments. It also includes moving away from home as a teenager, leaving behind your family, your friends, your high school, and everything you had ever known. Many Junior "A" and "B" league players are staying at home, or near their homes, as I did during my time with the Devils. In the CHL, players are cut off from their past lives, become isolated from everything else, and all they have left is hockey – that is, to perform for their clubs playing hockey.

117. While I was at Winterhawks training camp, I was informed that the team motto was "dress like a pro, act like a pro, and you'll play like a pro". There was significant emphasis on being part of a professional hockey club, to the point where the Winterhawks required their

players to dress professionally every time they could be seen publicly, not just at or around games and club events.

118. In the CHL, we were no longer kids playing hockey for fun – we became part of an organization which had high expectations that we would perform both on and off the ice.

119. Most of the games I played for the Americans and the Sea Dogs, either home or away games, were in arenas that were sold out or nearly sold out with thousands of fans. These games had all of the same features that you would normally see at an NHL game. There were professional linesmen and referees. The arenas could hold up to 10,000 fans that paid for admission. There were many different corporate sponsors featured in ads all around the rink, as well as contests and giveaways. The fans could purchase food and alcohol at the games and buy club branded memorabilia. The games were broadcast over the television, radio and the internet. Reporters from many different outlets would cover the games. The teams all had a mascot and offered fans an in-arena entertainment experience. If you did not know any better, you would not be able to tell the difference between a CHL game and an NHL game, except maybe in the size of the players, given our ages.

The SPA defines the employment relationship

120. My WHL SPA accurately identified what was expected of me in my work duties for the Americans.

Play exclusively for the club

121. The SPA at section 4.1 required that I not play for another club and that I participate in all Americans games and any other WHL-sanctioned games (e.g., the “CHL Top Prospects Game” for top prospects prior to the annual NHL draft). 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. I also understood that I could be asked to participate in games or tournaments aside from the Americans' schedule and I, like any player, would have been happy for the opportunity.

122. In accordance with the SPA at section 4.2 (l), I also did not participate in hockey games which were not sanctioned by the WHL, without the prior written consent of the club.

Report to training camp in good physical condition

123. The SPA at section 4.2(a) required that I report to training camp in good physical condition and at section 4.2(b) required that I maintain my physical condition throughout the season. My parents hired an off-season trainer for me every summer, so I always arrived at training camp in good shape to begin the season. I maintained my physical condition throughout the season to the best of my ability – I attended all training sessions, practices and games and I spent time in the club's training facility above and beyond what was required of me. I ate well, I slept as much as possible, and I abstained from drugs. I took hockey extremely seriously and dedicated every day of the season to maintaining my physical condition and improving my performance. We all understood the expectation to arrive at camp in top physical form and to remain that way throughout the season.

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

Participate in promotional events

125. The SPA at sections 4.2(c) and (g) required that I cooperate with and participate in promotional activities sponsored by the club. 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.

126. In addition to formal events, we all knew that being WHL players carried a certain celebrity. Some of my teammates' images were featured on billboards or advertising around the Kennewick region. We frequently saw our team covered in news stories. We understood that part of being an WHL 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.

Behave with good standards of honesty, morals, fair play

127. The SPA at section 4.2(d) required that I behave with good standards of honesty, morals, and fair play, and at section 4.2(e) required that I abide by the club's rules and regulations governing player conduct and behaviour. 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.

128. In an effort to enforce the club's morality standards, and therefore maintain community goodwill, the clubs would monitor our social media accounts. I was never reprimanded for my social media postings, but I know that teammates and other players around the league were sometimes required to delete Twitter or Facebook postings which the club deemed inappropriate, and sometimes the league would issue team fines for players' social media postings.

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

Provide services faithfully, diligently, and to the best of my abilities as a hockey player.

130. The SPA at section 4.2 (j) required that I provide my services to the best of my abilities as a hockey player. I fulfilled that obligation. I knew what was expected of me, as do all WHL 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. As required by the SPA at section 4.2(k), I abstained from hazardous activities and avocations without the prior consent of the club.

131. I took hockey extremely seriously and dedicated every day of the season to improving my performance.

132. Every WHL 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 may not even be permitted to continue with the team, so everyone prioritizes hockey in their lives.

Use of equipment and supplies

133. The SPA at 4.2(f) required that I only use the team's equipment. At paragraph 117 of the Tory Affidavit, Mr. Tory states that the club purchases all of a player's equipment and none of it is required to be returned. This is untrue. I received all of my equipment from the Americans, but was required to return my jerseys and helmets to the club at the end of each season.

Use of my image

134. The SPA at sections 4.3 to 4.7 provides that the club and WHL may 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 myself and other WHL

players being used for commercial purposes. I know that my likeness and statistical record are in a commercially available video game as well.

135. Use of image was obvious to all players. When travelling to games, we would all see the star players on 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

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

Other expectations and restrictions

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

138. 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.

139. The Americans had a curfew for players of 10 p.m. I know other teams had curfews for players, although the methods of enforcement differed.

Termination

140. The SPA at section 10.1 provides that players may be terminated from their club in three 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 WHL, or if the player lacks the requisite skill to play in the WHL. The third situation is written as follows:

If the Player fails, in the opinion of the Club, acting reasonably, to demonstrate sufficient skill, competence and ability as a hockey player at the time of termination to retain a position as a hockey player on the Club's roster.

141. I believe section 10.1 means that a club can cut a player if the club decides in its opinion that he is not playing well enough to be on the team

142. All players knew that they could also be given no ice time, scratched or sent home if they did not perform at a sufficient level.

CONSEQUENCES OF THIS CLASS ACTION

143. In the section of the Tory Affidavit entitled "Consequences of Paying Minimum Wage", Mr. Tory states at paragraph 100 that the only way that the Americans could continue to operate if the players receive minimum wage is to reallocate money from the player benefits and supports to fund the minimum wage payments.

144. As I state above, the Americans are, in fact, a very successful franchise, with a great deal of community support and corporate sponsorship. Not only does the Tory Affidavit fail to disclose this, but it also does not address any other options to pay players minimum wage. Given Mr. Tory's repeated insistence that the player experience is the club's number one concern, it

seems illogical and unfair that his first resort for paying player wages would be to cut player benefits and supports.

145. At paragraph 100 of the Tory Affidavit, Mr. Tory also states that there is a real risk that the team would have to be shut down if the players receive minimum wage payments because he would then not find it as rewarding to “guide and assist the boys as they develop into young men and learn about the challenges that life and hockey have to offer”. I do not understand what this means, since paying a legal minimum wage does not preclude employers from offering guidance and mentorship to employees at any other workplace.

OBSTACLES TO CURRENT PLAYERS BEING REPRESENTATIVE PLAINTIFFS

146. Based on my experience playing in the CHL, the chances of a current CHL 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.

147. Players in the CHL are closely scrutinized by their clubs, as well as by the leagues and commissioners. From the beginning of their rookie season, players are socialized into believing the idea that they are at the bottom of a strict hierarchical organization. The coaches and team 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 CHL, 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).

148. 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.

149. Attached hereto and marked as Exhibit "F" 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.

150. 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

151. Former players with whom I have spoken are reluctant to sue their clubs because they are worried that doing so could jeopardize their education packages and/or harm their future hockey careers.

152. 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.

153. 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.

154. 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.)

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LUKAS WALTER

SAMUEL BERG
Plaintiff

-and-

CANADIAN HOCKEY LEAGUE et al
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

AFFIDAVIT OF LUKAS WALTER
Sworn June 14, 2016
(Motion for Certification)

CHARNEY LAWYERS PC
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Toronto, ON M5S 1P7

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Lawyers for the Plaintiff

TAB A

Tri-City Americans Yearly Attendance

This is Exhibit "A" referred to in the affidavit of Lukas Walter sworn before me, this 14th day of June, 20 16
Ziggy
 A commissioner for taking affidavits

Regular Seasons

Season	Avg.	% Cap.	Gms	Total
2011-12	4,653	81.2%	36	167,524
2012-13	4,495 -3.4%	78.4% -2.8%	36	161,836
2013-14	4,226 -6.0%	73.7% -4.7%	35	147,904

Playoffs

Season	Avg.	% Cap.	Gms	Total
2011-12	4,156	72.5%	8	33,246
2012-13	3,462	60.4%	3	10,385
2013-14	2,100	36.6%	2	4,199

TAB B



☰
VS

2016-17 Season Tickets

2016-17 SEASON TICKETS

Adult (20-61 yrs) \$550	Senior (62+ yrs) \$460
Teen (10-19 yrs) \$340	Youth (3-9 yrs) \$250

Season Ticket Advantages:

- 35% Savings
- 39 Games from your very own seat
- Never-A-Wasted Ticket Program
*Some restrictions apply
- Exclusive Season Ticket Events & Offers
- Convenient Monthly Payments as low as \$31 per month

Contact us today to reserve your seat! 509-736-0606

Season Tickets

2016-17 Season Tickets

Seasons Ticket Advantages:

- 35% Savings
- 39 Games from your very own seat
- Never-A-Wasted Ticket Program*
- Exclusive Season Ticket Events & Offers
- Convenient Monthly Payments as low as \$31 per month

*some restrictions apply

For more information or a complete listing of all the added benefits of this new plan contact us below:

This is Exhibit "B" referred to in the affidavit of Lukas Waller sworn before me, this 14th day of June, 2016

[Signature]
A commissioner for taking affidavits

Season Ticket Information Request Form

How Many Games Do You Attend Per Season: *

Name: *

First

Last

E-mail: *

Phone: *

Would you like to receive our Americans Insider E-Newsletter? *

Yes

No

Submit

ABOUT

[Request Ticket Information](#)

[Contact Us](#)



SUBSCRIBE TO OUR NEWSLETTER

E-mail Address



PROSPECTS HOCKEY

Official Magazine of the Canadian Hockey League.

[Read](#)

© 2016

THE CANADIAN HOCKEY LEAGUE (CHL) CARES ABOUT YOUR PRIVACY. THANK YOU FOR YOUR INTEREST IN OUR NETWORK OF WEBSITES, NEWSLETTERS, AND OTHER SERVICES. WE BELIEVE IN FULLY DISCLOSING THE METHODS TO WHICH WE COLLECT AND USE YOUR PERSONAL INFORMATION. WE ALSO INVITE YOU TO ASK US ABOUT OUR POLICIES OR FEEL FREE TO LET US KNOW HOW WE CAN BETTER SERVE YOUR PRIVACY CONCERNS.

[READ OUR PRIVACY POLICY](#)

TAB C

Player's Copy

SCHEDULE B: STANDARD CONTRACT -- 20-YEAR-OLD PLAYER

Agreement between

Saint John Sea Dogs, hereinafter called « the Club », member of the Quebec Major Junior Hockey League, hereinafter called « the League ».

and

Lukas Walter, hereinafter called « the Player »

This is Exhibit "C" referred to in the affidavit of Lukas Walter

The parties agree as follows:

sworn before me, this 14th day of June, 2016

[Signature]

Rights and obligations of the parties

The Player bound by the Regulation of the QMJHL

The Player acknowledges to be bound by the Constitution, the Regulations, the Policies and the Directives of the QMJHL and to comply with their provisions throughout the player's association with the QMJHL as a 20 year old player.

Without limiting the general spirit of the previous paragraph,

- The Player hereby acknowledges to have received the QMJHL Regulation related to Rights and Obligations of Players (R-11) and its Education Policy (P-1), to have read and to understand their provisions;
- The player acknowledges that he has read article 3.1.3 of the present regulation on the rights and obligations of players (R-11) which pertains to the mandatory requirement that players wear a mouthguard, neck guard and visor. The player understands its content and agrees to comply. Therefore, the player agrees to clear, release and exonerate the League from any claim, action or cause of action in the event that the player fails to wear or use the mandatory protective equipment, that he wears or uses equipment which has been modified or altered in any way, that he wears or uses protective equipment which has not been authorized by the League;
- The player acknowledges that he has read article 3.2 of the present regulation on the rights and obligations of players (R-11) which pertains to the various medical requirements. The player understands its content and agrees to comply;
- The player acknowledges that this present contract terminates, cancels and replaces any existing standard contract, if any, between the player and the club,

Power of the League to amend its regulation

The Player acknowledges that the League may amend the content of its Constitution, its Regulations, its Policies and its Directives in accordance with its constitutional decision-making procedure. The enforcement of an amendment related to the conditions applied to players may only be done after appropriate and complete information is provided to the Player.

This agreement is the sole understanding relating to the rights of the Player for his services as a 20-year-old player, and it supersedes or replaces any other prior verbal or written agreement or statement of intent.

Remuneration conditions of the Player:

Base weekly gross salary to be paid to the Player for regular season and playoffs:	# 476.66	WK
Accommodation expenses:	# 90.00	WK
Local transportation expenses, in cash or in tickets:		
Other conditions:	/	

Disagreement

Power of the Commissioner

In case of disagreement between the Club and the Player, as to the application of this agreement, the question shall be submitted to the Commissioner of the League, who shall render a final decision binding all the parties after receiving and reviewing the contingency of both parties and hearing in the presence of their attorneys, if any. The decision of the Commissioner is final and is not subject to appeal.

Exclusive Jurisdiction of the Courts of the Province of Quebec

Notwithstanding the place where the contract is concluded, the parties also agree that any dispute arising from this agreement that is not within the scope of the Commissioner's jurisdiction be submitted to the exclusive jurisdiction of the courts of the province of Quebec, for the resolution of the matter in accordance with the laws applicable in the province of Quebec.

Term of this agreement

Subject to the provisions of this agreement, the Club hires the Player for a period starting not sooner than the opening week of the regular schedule and ending immediately upon the occurrence of one of the following events: the release of the player by the Club, his exchange to another team of the League, the elimination of his team at the end of the regular schedule or during the playoffs, or at the end of the Memorial Cup contest.

In witness, thereof, the parties to this agreement have signed at the date and location indicated below.

(The contract is signed in four (4) originals: one for the Player, one for the Club and two for the League.)

Club member of the QMJHL

Name of the Club: SAINT JOHN SEA DOGS

Authorized signatory of the Club MIKE KELLY

Signature: [Signature] at SAINT JOHN, this 10 th day of September 2013
Date: Sept 10 2013

Address of the club: 99 STATION STREET, SUITE 200, SAINT JOHN N.B. E2L 4;

Tel: 506 632 8153

Email: mike.kelly@SAINTJOHNSEA.DOGS.COM

Player

Name of the Player: LUKAS WALTER

Signature: [Signature] at SAINT JOHN, this 10 th day of SEPTEMBER 20 13

Permanent address of the Player: 25645 - 82ND AVE, LANGLEY BRITISH COLUMBIA V3M 2

Tel: 778 809 1055

Email: gm.walter@SHAW.ca

Approved by

Quebec Major Junior Hockey League

Commissioner: Gilles Courteau:

Signature: [Signature] at BOUCHERVILLE, this 6 th day of October 20 13

TAB D

RECORD OF EMPLOYMENT (ROE)

EMPLOYER: SEE THE GUIDE - HOW TO COMPLETE THE RECORD OF EMPLOYMENT, IT IS ALSO AVAILABLE ON THE WEB SITE AT: WWW.SERVICECANADA.GC.CA

Protecte compl

1 SERIAL NO. E24771016		2 SERIAL NO. OF ROE AMENDED OR REPLACED		3 EMPLOYER'S PAYROLL REFERENCE NO.																																																																																											
4 EMPLOYER'S NAME AND ADDRESS Saint John Major Junior Hockey Club Ltd. 99 St-John Street Suite 200 Saint John, NB				5 CRA'S BUSINESS NO. (BN) 859730376 RPO001																																																																																											
6 EMPLOYEE'S NAME AND ADDRESS Walter, Lukas M 25645 82 Ave Langley, BC V1M 2M8				7 POSTAL CODE E2L 4X4																																																																																											
8 SOCIAL INSURANCE NO. 736 821 240				9 PAY PERIOD TYPE Bi-weekly																																																																																											
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21 TELEPHONE NO. (506) 632-8155				22 I AM AWARE THAT IT IS AN OFFENCE TO MAKE FALSE ENTRIES AND HEREBY CERTIFY THAT ALL STATEMENTS ON THIS FORM ARE TRUE.																																																																																											

Canada
 SIGNATURE OF ISSUER: *[Signature]* NAME OF ISSUER (please print): **Rick WALSH**
 DATE: **17 03 1**

TAB E

T4 (13) Protected B when completed / Protégé B une fois rempli

Employer's name - Nom de l'employeur
Saint John Sea Dogs
98 Station Street, Suite 200
Saint John, NB E2L 4X4

Year / Année: 2014

Statement of Remuneration Paid / État de la rémunération payée

Employment income - line 101 / Revenus d'emploi - ligne 101: 7028.70

Income tax deducted - line 437 / Impôt sur le revenu retenu - ligne 437: 741.60

Employee's CPP contributions - line 308 / Cotisations de l'employé au RPP - ligne 308: 254.46

Employee's EI premiums - line 312 / Cotisations de l'employé à l'AE - ligne 312: 111.84

RRSP contributions - line 207 / Cotisations à un RPA - ligne 207: [blank]

Pension adjustment - line 206 / Facteur d'équivalence - ligne 206: [blank]

Employee's PPIP premiums - see over / Cotisations de l'employé au RPAP - voir au verso: [blank]

Eligible savings / Gains admissibles d'AE: 5948.70

RRSP/RRPP personal savings / Gains personnels cotés à pension - RPP/RRPP: 5948.70

Union dues - line 212 / Cotisations syndicales - ligne 212: [blank]

Charitable donations - line 249 / Dons de bienfaisance - ligne 249: [blank]

RRSP or DPSP registration number / N° d'adhésion d'un RPA ou d'un RPDS: [blank]

RRSP/RRPP eligible savings / Gains admissibles du RPAP: [blank]

Other information (see over) / Autres renseignements (voir au verso): 30, 1080.00

This is Exhibit "E" referred to in the affidavit of Lukas Walter sworn before me, this 14th day of June, 2016

[Signature]

T4 (13) Protected B when completed / Protégé B une fois rempli

Employer's name - Nom de l'employeur
Saint John Sea Dogs
98 Station Street, Suite 200
Saint John, NB E2L 4X4

Year / Année: 2014

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Pension adjustment - line 206 / Facteur d'équivalence - ligne 206: [blank]

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Union dues - line 212 / Cotisations syndicales - ligne 212: [blank]

Charitable donations - line 249 / Dons de bienfaisance - ligne 249: [blank]

RRSP or DPSP registration number / N° d'adhésion d'un RPA ou d'un RPDS: [blank]

RRSP/RRPP eligible savings / Gains admissibles du RPAP: [blank]

Other information (see over) / Autres renseignements (voir au verso): 30, 1080.00

Employee's name and address - Nom et adresse de l'employé
WALTER Lukas M
25645 82 Ave
Langley, BC V1M 2M8

Protected B when completed / Protégé B une fois rempli

Employer's name - Nom de l'employeur
 Saint John Sea Dogs
 99 Station Street, Suite 200
 Saint John, NB E2L 4X4

Canada Revenue Agency / Agence du revenu du Canada
 Year / Année: 2013

T4
 Statement of Remuneration Paid / État de la rémunération payée

54 Employer's account number / Numéro de compte de l'employeur
 Social insurance number / Numéro d'assurance sociale: 12 736 821 240

Exempt - Exemption
 CPP/QPP EI PPIP
 RPC/RRQ AE RPAP

Province of employment / Province d'emploi: 10 NB
 Employment code / Code d'emploi: 29

14	Employment income - line 101 / Revenus d'emploi - ligne 101	8314.29	22	Income tax deducted - line 437 / Impôt sur le revenu retenu - ligne 437	871.85
16	Employee's CPP contributions - line 308 / Cotisations de l'employé au RPC - ligne 308	296.87	24	EI insurable earnings / Gains assurables d'AE	7039.29
17	Employee's QPP contributions - line 308 / Cotisations de l'employé au RPPQ - ligne 308		26	CPP/QPP pensionable earnings / Gains ouvrant droit à pension - RPC/RRQ	7039.29
18	Employee's EI premiums - line 312 / Cotisations de l'employé à l'AE - ligne 312	132.34	44	Union dues - line 212 / Cotisations syndicales - ligne 212	
20	RPP contributions - line 207 / Cotisations à un RPA - ligne 207		46	Charitable donations - line 349 / Dons de bienfaisance - ligne 349	
52	Pension adjustment - line 206 / Facteur d'équivalence - ligne 206		50	RPP or QPP registration number / N° d'agrément d'un RPA ou d'un RPPQ	
55	Employee's PPIP premiums - see over / Cotisations de l'employé au RPAP - voir au verso		56	PPIP insurable earnings / Gains assurables du RPAP	

Employee's name and address - Nom et adresse de l'employé
 Last name (in capital letters) / Nom de famille (en lettres majuscules): WALTER
 First name / Prénom: Lukas
 Initial / Initiale: M
 25645 82 Ave Langley, BC V1M 2M8
 This is Exhibit _____ referred to in the affidavit of _____ sworn before me, this _____ day of _____, 20____

A commissioner for taking affidavits

Other information (see over)	Box - Case	Amount - Montant	Box - Case	Amount - Montant	Box - Case	Amount - Montant
	30	1275.00				
Autres renseignements (voir au verso)	Box - Case	Amount - Montant	Box - Case	Amount - Montant	Box - Case	Amount - Montant

RC-13-107

Protected B when completed / Protégé B une fois rempli

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 99 Station Street, Suite 200
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Canada Revenue Agency / Agence du revenu du Canada
 Year / Année: 2013

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 First name / Prénom: Lukas
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 25645 82 Ave Langley, BC V1M 2M8

Other information (see over)	Box - Case	Amount - Montant	Box - Case	Amount - Montant	Box - Case	Amount - Montant
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Autres renseignements (voir au verso)	Box - Case	Amount - Montant	Box - Case	Amount - Montant	Box - Case	Amount - Montant

RC-13-107

TAB F



Canadian Hockey League

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

referred to in the
referred to in the
Lukas Walter
this 14th
of June, 2016
[Signature]
for taking affidavits
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