

Court File No. CV-14-514423

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SAMUEL BERG

Plaintiff

and

**CANADIAN HOCKEY LEAGUE, ONTARIO MAJOR JUNIOR HOCKEY LEAGUE,
ONTARIO HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR
HOCKEY LEAGUE INC., WINDSOR SPITFIRES INC., LONDON KNIGHTS HOCKEY INC.,
BARRIE COLTS JUNIOR HOCKEY LTD., BELLEVILLE SPORTS AND ENTERTAINMENT
CORP., ERIE HOCKEY CLUB LIMITED, GUELPH STORM LIMITED, KINGSTON
FRONTENAC HOCKEY LTD., 2325224 ONTARIO INC., NIAGARA ICEDOGS HOCKEY
CLUB INC., BRAMPTON BATTALION HOCKEY CLUB LTD., GENERALS HOCKEY INC.,
OTTAWA 67'S LIMITED PARTNERSHIP, THE OWEN SOUND ATTACK INC.,
PETERBOROUGH PETES LIMITED., COMPUWARE SPORTS CORPORATION, SAGINAW
HOCKEY CLUB, L.L.C., 649643 ONTARIO INC c.o.b. as SARNIA STING, SOO
GREYHOUNDS INC., McCRIMMON HOLDINGS, LTD. AND 32155 MANITOBA LTD., A
PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS., 1056648 ONTARIO INC., REXALL
SPORTS CORP., EHT, INC., KAMLOOPS BLAZERS HOCKEY CLUB, INC., KELOWNA
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

NOTICE OF MOTION FOR CERTIFICATION

THE PLAINTIFF will make a motion to the Honourable Justice Perell, on a date and time to be set at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR ORDERS:

1. Certifying this action as a class proceeding;
2. Defining the "Class" as collectively:
 - a) all players who are members of a team owned and/or operated by one or more of the defendants located in the Provinces of British Columbia, New Brunswick, and Nova Scotia (a "team") or at some point commencing October 17, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 19 on October 17, 2012 (the "BC/NB/NS Class");
 - b) all players who are members of a team owned and/or operated by one or more of the defendants located in the Provinces of Ontario, Alberta, Manitoba, Prince Edward Island (a "team") or at some point commencing October 17, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2012 (the "Ontario/Alberta/Manitoba/PEI/Saskatchewan Class");
 - c) all players who are members of team owned and/or operated by one or more of the defendants located in the State of Pennsylvania, USA (a "team"), or at some point commencing October 17, 2010 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2010 (the "Pennsylvania Class");
 - d) all players who are members of a team owned and/or operated by one or more of the defendants located in the Province of Quebec (a "team"), or at some point commencing October 17, 2011 and thereafter, were members of a team and all players who were members of a team who were under the age of 16 on October 17, 2011 (the "Quebec Class"); and
 - e) all players who are members of a team owned and/or operated by one or more of the defendants located in the States of Maine, Michigan, Oregon, and Washington, USA, (a "team"), or at some point commencing October

17, 2008 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on October 17, 2008 (the "US Class");

3. Appointing Samuel Berg as the representative plaintiff of the Class;
4. Granting leave to permit the plaintiff to file a consolidated statement of claim, without delineations, substantially in the form attached hereto as schedule "A";
5. Stating that the nature of the claims asserted on behalf of the Class to be breach of statute, breach of implied term of employment contract, conspiracy, and waiver of tort;
6. Stating the relief sought by the Class is as set out in paragraph 2 of the consolidated statement of claim;
7. Stating that for the purpose of the common issues, the term "Applicable Employment Standards Legislation" means legislation governing wages including: the *Employment Standards Act, 2000*, S.O., 2000, c. 41, *Employment Standards Code*, R.S.A. 2000, c. E-9; the *Employment Standards Act*, R.S.B.C. 1996, c. 113; *The Employment Standards Code*, C.C.S.M. c.E110; *Employment Standards Act*, S.N.B. 1982, c.E-7.2; *Labour Standards Code*, R.S.N.A. 1989, c. 246; *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2; *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1; *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1; Or. Rev. Stat. tit. 51 §653; Mich. Stat. §408, Pa. *Minimum Wage Act of 1968* Pub. L. No. 11, No. 5, as amended; Wash. Rev. C. tit. 49,

§49.46, as amended; Me. Rev. Stat. tit. 26, §664, as amended; and their respective regulations.

8. Stating that the common issues to be the following list of common issues or such amendment thereto or such other common issues that counsel may advise:
 - (1) Are, or were, the Class Members employees of the defendant teams?
 - (2) Do the defendant teams have an obligation to the Class Members under the Applicable Employment Standards Legislation to pay them minimum wages, overtime pay, holiday pay, and/or vacation pay?
 - (3) If the answer to (2) is yes, did the defendant teams breach the Applicable Employment Standards Legislation by failing to pay the Class Members minimum wages, overtime pay, holiday pay, and/or vacation pay?
 - (4) Was there a common contractual term that required the defendant teams to pay the Class Members minimum wages, overtime pay, holiday pay, and/or vacation pay?
 - (5) If the answer to (4) is yes, did the defendant teams breach the common contractual term to pay the Class Members minimum wages, overtime pay, holiday pay, and/or vacation pay?
 - (6) Did any or all of the defendants conspire to violate the Applicable Employment Standards Legislation? If so, when, where, and how?
 - (7) Is this an appropriate case for the defendants to disgorge profits?
 - (8) Can any or all of the claims be assessed on an aggregate basis?
 - (9) Are the defendants liable for punitive damages?
 - (10) Should the defendants pay prejudgment and postjudgment interest, and at what annual interest rate?
 - (11) Should the defendants pay the costs of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If yes, who should pay what costs, why, and in what amount?

9. Approving the form and content of the notice to be published and the manner of publication to notify the Class that this action has been certified as a class proceeding;
10. Restraining the defendants from having any communications with the Class Members regarding the within action during the notice period.
11. Requiring the defendants to identify the size of the Class, the names and last known residential home addresses for all of the Class Members;
12. Specifying that the personal information of the Class Members who opt-out of this action, including their names, dates of birth, the team for whom they played, phone numbers and last known residential addresses, be kept confidential;
13. Specifying that:
 - (1) a Class Member may opt out of this proceeding by sending a written election by email or regular mail before a date fixed by the court to a person designated by the court;
 - (2) no Class Member may opt out of this proceeding after the fixed date;
 - (3) by a fixed date, the person appointed by the court shall report to the court the names of the persons who have opted out of this class proceeding; and
 - (4) The personal information of all Class Members who opt-out of this proceeding will be kept confidential and will not be disclosed to the defendants.
14. Requiring the defendants to forthwith pay the costs of the notice program and the costs of the person appointed by the court to accept the elections to opt out;

15. Granting summary judgment in favour of the plaintiff by answering in the affirmative common issues 1 through 5 at paragraph 8 herein, including that the players are or were employees of the defendant teams and directing that the teams then produce all records the teams are required to maintain of hours worked by the class members, in accordance with Applicable Employment Standards Legislation, so that the Court may determine aggregate damages from the defendants' records;
16. Awarding costs of this motion to the plaintiff on a partial indemnity basis, including any applicable taxes;
17. Such further and other relief and directions as counsel may request and this Honourable Court permit.

THE GROUNDS FOR THE MOTION ARE:

1. Samuel Berg is willing and able to act as representative plaintiff in this action;
2. The claims made in this action raise common questions of law and fact and arise out of the same series of events;
3. The court should certify this action as a class proceeding because the section 5(1) criteria of the *Class Proceedings Act, 1992*, are met;

4. The notice program for the certification of this action is a reasonable method of notifying members of the putative Class;
5. It is fair, just, and reasonable that the defendants should pay the costs of the notice program for the certification of this action and the costs associated with collecting the opt outs and reporting to the court;
6. The directions as to the conduct of the class proceeding are sought to ensure a fair and expeditious determination of this action;
7. The *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, including sections 1, 2, 5, 6, 8(1), 9, 12, 13, 17, 19, 20, 21, 22, 34(1) and 35;
8. The *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended, including Rules 1, 2, 6, 12, 20, 26, and 57; and
9. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the pleadings herein;
2. the affidavit of Samuel Berg;
3. the affidavit of Andrew J. Eckart;

4. Such further and other evidence as counsel may advise and this Honourable Court permits.

February 20, 2015

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SAMUEL BERG

-and- CANADIAN HOCKEY LEAGUE et al.

Plaintiff

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Proceedings commenced in TORONTO

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