

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DANIEL CARCILLO and GARRETT TAYLOR

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67S HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC., KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC.

o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB, 649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, 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. CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. AS CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUEBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENEENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., ~~JOHN DOE CORP. A o/a EVERETT SILVERTIPS HOCKEY CLUB~~, WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., ~~JOHN DOE CORP. B. o/a SEATTLE THUNDERBIRDS~~, BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., ~~JOHN DOE CORP. C o/a SPOKANE CHIEFS~~, TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC. and ~~JOHN DOE CORP. D o/a TRI-CITY AMERICANS~~

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF ROBERT SMITH
(Sworn October 29, 2021)

I, Robert Smith, of the City of Scottsdale, in State of Arizona, **MAKE OATH AND SAY:**

1. I played in the Ontario Hockey Association (the **OHA**) with the Ottawa 67s for three seasons between 1975 and 1978. The OHA is one of the predecessor leagues to the Ontario Hockey League (the **OHL**).
2. I was drafted first overall into the National Hockey League (the **NHL**) in 1978 by the Minnesota North Stars. I played 15 seasons in the NHL, winning a Stanley Cup with the Montreal Canadiens in 1986. My last season was 1992-1993.
3. After my playing career, I worked as the General Manager for the NHL's Phoenix Coyotes from 1996 to 2001.
4. In 2003, I became the majority owner of the Halifax Mooseheads of the Quebec Major Junior Hockey League (the **QMJHL**). I also served head coach of the Mooseheads for the 2010-2011 season.
5. I am on the board of both the Canadian Hockey League (the **CHL**) and the QMJHL.
6. I know about the matters in this affidavit. If I have made statements of my information and belief, the source of the information and the fact of the belief are specified in this affidavit.

My Experience Playing for the 67s

7. I was born in North Sydney, Nova Scotia, and moved to Ottawa, Ontario as a child. I grew up playing minor hockey. In 1975, I was placed on the OHA's protected list for the Ottawa 67s as I lived in Ottawa. My rookie season in the OHA was the 1975-1976 season.

8. During my rookie year with the 67s, there was some minor hazing by veteran players, which I did not consider to be demeaning, humiliating or abusive. For example, the veteran players might shave the rookies' body hair at the beginning of the season. No one was forced to participate in this, and I recall some players who appeared uncomfortable choosing to sit out without any repercussion to them. The veteran players also occasionally played inoffensive pranks on the rookies. I remember everyone having a good laugh at these pranks, including the rookies, and they only ever happened once a season. Early in the season, the rookies might also have to do certain team chores, like carrying the stick bag. Before the season progressed very far, the coach would tell us "we're a team now, there are no veterans or rookies, just members of the 67s" and from then on the chores would be shared equally. I do not recall ever experiencing or witnessing any abusive, forceful, or violent hazing of rookies on the 67s, either as a rookie or as a veteran player, between 1975 and 1978.

9. The head coach of the 67s at the time was Brian Kilrea. Mr. Kilrea was aware of the initiation traditions on the team, and set careful limits on them. For example, Mr. Kilrea would not allow any rookies' heads to be shaved, as almost all the rookies would have just started at a new high school in Ottawa, and showing up at a new school with a shaved head could have been embarrassing or humiliating for those players. Mr. Kilrea also made a point to learn about each players' personality, and would communicate to his captains if certain rookies appeared shy or were dealing with any personal issues, and instruct the captains to refrain from pranking them. Every time a rookie was drafted by the 67s, Mr. Kilrea would drive from Ottawa to their hometown to meet with the new player and his family, to welcome them to the team and get to know them. Mr. Kilrea is an Honoured Member of the Hockey Hall of Fame in the Builders category (which includes coaches, general managers, commentators, team owners, and others

who have helped build the game), which, in my opinion, is partly attributable to his excellent coaching philosophies, both on and off-ice.

10. I am aware of the allegations made by the plaintiffs. The sort of abuse described is sickening to me. This abuse would not have been acceptable on the 67s during my time on the team. Mr. Kilrea would not have allowed any violent or forceful initiation. Had anything like the experiences described by the plaintiffs happened to me, or had I witnessed or heard about them happening, I would have reported it, most likely to Mr. Kilrea or another member of the 67s coaching staff.

11. As far as I was aware, both from what I observed and the conversations I had with players on other teams at the time (I had friends on several other major junior teams), abusive hazing like that described by the plaintiffs was not normal or even common in major junior hockey when I was a player. In fact, until this lawsuit, I had never heard of the sort of abuse the plaintiffs have described. That said, there was a greater tolerance for the more minor forms of hazing and initiation at that time in the OHA.

Doug Smith's Affidavit

12. I have reviewed the affidavit of Doug Smith in the plaintiffs' motion record for certification. Mr. Smith played on the 67s from 1979 to 1982. His rookie year was the year after I was drafted into the NHL. Mr. Kilrea would have been the 67s' head coach during Mr. Smith's rookie season.

13. Mr. Smith describes a terrible incident when he was a rookie where, among other things, he was blindfolded, covered in Rub A535, tied up in a metal grocery cart, and left at centre ice with the arena lights turned off by several veteran players.

14. I was shocked when I read about Mr. Smith's experience, as this sort of hazing is inconsistent with my experience on the 67s, which was right before he joined the team. I never witnessed anything like that during my time as a player. I do not suggest that this did not happen to Mr. Smith, but, in my experience, it was not the norm and would not have been acceptable to Mr. Kilrea or the 67s' management. I suspect that the veteran players who inflicted this violence on Mr. Smith were acting well outside the knowledge or authority of the rest of the team. I can't think of any other way to explain such behaviour.

My Experience in the NHL

15. After my third season with the 67s, I was drafted into the NHL by the Minnesota North Stars. During my rookie season with the North Stars, the initiation was much like what I experienced with the 67's—hair shaving, pranks, and rookie chores. I played with many other players who had come up from the CHL. I did not hear about any violent or abusive hazing like that described by the plaintiffs.

My Experience with the Halifax Mooseheads

16. In 2003, I became re-involved with major junior hockey when I bought the QMJHL's Halifax Mooseheads. I remain the majority owner of the team today.

17. The culture of major junior hockey in 2003 and today has changed since I was a player in the 1970s. While I never experienced or witnessed any abusive hazing as a player, even the

minor initiation traditions that were accepted during my time as a player are not permitted in the QMJHL today. There is now a zero-tolerance approach to hazing in any form.

18. The Mooseheads have embraced this change. For example, the only rookie events the Mooseheads will host this year are “Rookie Idol”, where, on the first road trip of the year, each rookie performs their favourite song on the bus microphone, and Halloween, where rookies wear their Halloween costumes to school and practice. Based on feedback from the players, the rookies enjoy taking part in these events. Anyone who appears uncomfortable is not made to participate. Rookies are no longer assigned team chores. Every player on the Mooseheads is responsible for picking up the pucks after practice, loading the bus, and carrying the stick bag.

19. As a team, we take the safety and wellbeing of our players very seriously. Players see their coaches and teammates more than their own parents, and, as a team owner, I consider myself responsible for ensuring a safe and productive environment during their time with the Mooseheads. As an organization, we work hard to make sure players have an extensive support network, and to make sure they know they can reach out to anybody on the team about any issues they are having.

20. Ensuring my players are healthy and happy is the most important objective for the Mooseheads, including winning hockey games. When a new player joins my team, I tell them that, whether or not they make it to the NHL, they will have a great experience on the Mooseheads and develop as individuals. My most prized moments as a team owner are when I hear parents describe the positive experience their son had on the Mooseheads. This means more to me than when one of my players is drafted first overall into the NHL.

21. I do not tolerate any hazing on my team. The Mooseheads have a strong anti-hazing culture, and our leadership is constantly emphasizing the importance of respect among players.

22. Part of this culture is making sure that players know that they can bring any sort of concern to the team. If a Moosehead player is bullied or harassed, for example, they can talk to any member of the team's staff, including the head coach, trainers, physical therapists, billet family, or to me. We also have a "one-on-one" program, where each player is paired with a member of the Halifax Regional Municipality police force, who serve as mentors for the players. We also have a team chaplain, who has an excellent rapport with the players. Further, the QMJHL has its own independent reporting program in place that is available should a player not feel comfortable bringing a concern to the organization's leadership for whatever reason.

23. I am glad to say that in the 18 years that I have been the owner of the Mooseheads, there have been no reported hazing incidents. I attribute this to our strong team culture, and I am proud that the Mooseheads organization has created an environment where players feel safe and supported.

24. In my view, abuse like what the plaintiffs describe is limited to isolated incidences, not a common practice, and, when it does occur, results from poor leadership, a problematic team culture, or several difficult veteran players. When I was player, there were about 30 major junior teams; there are now 60. Each team is different. Because team culture varies between teams, and team culture influences the player experience, the player experience can vary widely between teams. Whether individual teams may, for a period, have a toxic team culture, is not, in my view, reflective of major junior hockey as a whole, when I played in the 1970s or now. It does not reflect my experience as a player with the 67s or as an owner with the Mooseheads.

SWORN by Robert Smith of the City of Scottsdale, in the State of Arizona, before me at the City of Toronto, in the Province of Ontario, on October 29, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:

Marshall Tongva

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Commissioner for Taking Affidavits
(or as may be)

DocuSigned by:

Robert D. Smith

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ROBERT SMITH

DANIEL CARCILLO et al.
Plaintiff

-and-

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE et al.
Defendants

Court File No. CV-20-00642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ROBERT SMITH

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Michael A. Eizenga (#31470T)

Email: eizengam@bennettjones.com

Ranjan K. Agarwal (#49488H)

Email: agarwalr@bennettjones.com

Ashley Paterson (#61973B)

Email: patersona@bennettjones.com

Telephone: 416.863.1200

Lawyers for the defendants