

**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 67's 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 THE 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 QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC 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. 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 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, 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*

**FACTUM OF THE MOVING PLAINTIFFS  
MOTION RE: INDEPENDENT PANEL REPORT**

(returnable February 15, 2022)

February 4, 2022

**KOSKIE MINSKY LLP**  
900-20 Queen Street West  
Toronto, ON M5H 3R3

**James Sayce** LSO#: 58730M  
jsayce@kmlaw.ca  
Tel: 416-542-6298  
Fax: 416-204-2809

**Nathalie Gondek** LSO#: 77660H  
ngondek@kmlaw.ca  
Tel: 416-542-6286

**Sue Tan** LSO#: 74826A  
stan@kmlaw.ca  
Tel: 416-595-2117

**Lawyers for the Plaintiffs**

**TO: BENNETT JONES LLP**  
3400-1 First Canadian Place  
PO Box 130  
Toronto, ON M5X 1A4

**Ranjan Agarwal** LSO#: 49488H  
Tel: 416-777-6503  
agarwalr@bennettjones.com

**Mike Eizenga** LSO#: 31470T  
Tel: 416-777-4879  
eizengam@bennettjones.com

**Lawyers for the Defendants**

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## PART I - INTRODUCTION

1. The Plaintiffs' original motion sought an order to produce an Independent Panel Report ("**IRP Report**") authored by Mr. Kennedy, Mr. Thériault and Ms. Sauvageau on the subject of systemic abuse within the Canadian Hockey League ("**CHL**"). In addition, the Plaintiffs sought the issuance of a certificate under section 5(1) of the *Interprovincial Summonses Act* to compel the attendance of Sheldon Kennedy, Camille Thériault and Danièle Sauvageau for examination under Rule 39.03. However, the Plaintiffs' motion is now slightly different.

2. The Plaintiffs now seek much narrower relief, given events that have taken place since the Plaintiffs' motion was filed. The Plaintiffs seek a ruling that the Affidavit of Catherine MacDonald dated January 27, 2022, is admissible evidence for use on the certification motion.<sup>1</sup> This affidavit attaches the IRP Report as an exhibit. The Court can consider what weight to give the IRP Report at the return of the certification motion in June 2022.

3. After the Plaintiffs served their motion, the Defendants made the IRP Report public by posting it on the CHL website. The Plaintiffs subsequently filed the IRP Report in the certification motion file by attaching it to the Affidavit of Catherine MacDonald dated January 27, 2022. The Plaintiffs now seek to rely on this affidavit in support of certification rather than engaging in the disproportionate exercise of a full cross-examination of the IRP Report authors, who all live outside of Ontario.

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<sup>1</sup> Affidavit of Catherine MacDonald, sworn January 27, 2022 ["**MacDonald 2022 Affidavit**"], Plaintiffs' Second Supplementary Certification Motion Record ["PSSCMR"], Tab 1.

4. The test for the issuance of a certificate under section 5(1) of the *Interprovincial Summonses Act* requires the Plaintiffs to establish that the *viva voce* evidence is: a) necessary; and, b) reasonable and essential to the due administration of justice.<sup>2</sup> In considering these criteria, the proportionality of compelling the attendance of the witnesses is a relevant factor.

5. If the IRP Report as exhibited to the Affidavit of Catherine MacDonald is admissible hearsay for use on the certification motion, the Plaintiffs will not meet the above-noted test for an interprovincial summons. However, the Plaintiffs submit this is the more proportionate and reasonable approach on a certification motion where the merits of the case are not at issue. Cross-examinations are not necessary, as the IRP Report satisfies the principled approach to hearsay.

6. The IRP Report contains highly relevant evidence with respect to the certification criteria:

(a) It provides "some basis in fact" for the allegations that the culture throughout the CHL is singular, problematic and toxic;

(b) it provides "some basis in fact" for the proposed common issues in this systemic negligence case;

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<sup>2</sup> *Flying E Ranche Ltd. v. Canada (Attorney General)*, [2020 ONSC 8094](#), at para. 5, Plaintiffs' Book of Authorities ["PBOA"], Tab 5

(c) it provides "some basis in fact" with respect to the preferable procedure criteria, including evidence relevant to the goal of behaviour modification and access to justice;

(d) it provides "some basis in fact" with respect to the proposed class definition, which includes all CHL players, as not being overbroad given the IRP Report speaks to a ubiquitous and toxic culture;

(e) it provides "some basis in fact" with respect to systemic failures in the CHL *today*, while the Plaintiffs' other evidence focuses on shortcomings in the CHL system over time. In many ways, it mirrors the Plaintiffs' common and systemic allegations in their Amended Statement of Claim.

7. Now is not the time to extensively test the merits of this evidence, however, some of the contents of the IRP Report constitute the only source of highly relevant evidence. The IRP Report reflects an "all-access" pass to the inner workings of the CHL, the certification motion should not proceed without it.

8. Alternatively, if this Honourable Court rules that some testing of the IRP Report is necessary, the Plaintiffs request a direction that the examinations proceed via written interrogatory and be limited to: a) the authentication of the IRP Report; and, b) confirmation that the IRP Report accurately reflects the work of the IRP Members. This would be a proportionate approach and would reflect the scope of relevance at a certification motion.

9. In the further alternative, if full cross-examinations are necessary, the Plaintiffs request that the court issue the interprovincial certificate order so that the IRP Members can be cross-examined.

10. In addition, the Plaintiffs also request that this Honourable Court direct this motion as being "Phase 1" of the certification motion. The certification motion would be adjourned when the reasons on this motion are delivered and would resume at "Phase 2" of the certification motion on June 13, 2022.

11. This "phased" approach will allow any appeals or motions for leave to appeal, brought by either side, to be heard alongside appeals of certification. This will avoid the derailing of the June 13-17 certification hearing dates and will inflict no prejudice on either side. Justice Perell adopted this practical approach in *Price v. Smith & Wesson Corp.*<sup>3</sup> and in *Evensen v. Nissan Canada Inc.*, Court File No. CV-17-583843.<sup>4</sup>

12. The Plaintiffs have requested the Defendants' consent to proceed in two phases, however, the Defendants have not provided a position.

## **PART II - THE FACTS**

13. This action was commenced under the *Class Proceedings Act, 1992*,<sup>5</sup> on June 18, 2020. The action alleges that the Defendants have acted in concert in perpetuating a toxic system which condones violent, discriminatory, racist, sexualized, and homophobic conduct, including physical and sexual assault, on the players the Defendants are obliged

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<sup>3</sup> *Price v. Smith & Wesson Corp.*, [2021 ONSC 1114](#) at para. 12, PBOA, Tab 6.

<sup>4</sup> *Evensen v. Nissan Canada Inc.*, Court File No. CV-17-583843, (File/Direction/Order dated February 12, 2021), PBOA, Tab 3.

<sup>5</sup> *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("CPA").



to protect.<sup>6</sup> It asserts claims in systemic negligence, systemic breaches of fiduciary duty and breaches of common standard form contracts. The Plaintiffs plead that the Defendants are jointly and severally liable for their systemic failures.<sup>7</sup>

14. Mr. Carcillo and Mr. Taylor allege horrifying acts of sexual assault and violence perpetrated on them while they were minors.<sup>8</sup> Fifteen other affiants describe similar experiences.<sup>9</sup>

15. The Plaintiffs seek damages on behalf of the Class for, *inter alia*, the Defendants' failure to protect, to respond to or make meaningful attempts to prevent the systemic toxic environment and abuse of players on the teams and in the Leagues.<sup>10</sup>

16. On June 26, 2020, one week after this class proceeding was issued, the Defendant, the Canadian Hockey League (the "CHL") announced that it would appoint an Independent Review Panel to review the effectiveness of current policies and practices

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<sup>6</sup> Amended Statement of Claim dated May 19, 2021 ["Amended SOC"], at paras. 3-4, Affidavit of Catherine MacDonald (sworn November 29, 2021) ["MacDonald Affidavit 2021"], Exhibit A, Plaintiffs' Motion Record ["PMR"], Tab 2, p. 20,

<sup>7</sup> Amended SOC, at paras. 3-4, Affidavit of Catherine MacDonald (sworn November 29, 2021) ["MacDonald Affidavit 2021"], Exhibit A, PMR, Tab 2.

<sup>8</sup> Affidavit of Daniel Carcillo, sworn August 27, 2020, Plaintiffs' Certification Motion Record ["PCMR"], Tab 15, p. 110; Affidavit of Garrett Taylor, affirmed November 23, 2020, PCMR, Tab 17.

<sup>9</sup> Affidavit of Mark Howery, affirmed July 9, 2020, Tab 2; Affidavit of Ryan Munce, affirmed July 10, 2020, PCMR, Tab 3; Affidavit of Doug Smith, affirmed July 10, 2020, PCMR, Tab 4, Affidavit of Chris Festarini, affirmed July 17, 2020, PCMR, Tab 5, Affidavit of John Strait, sworn July 28, 2020, PCMR, Tab 6, Affidavit of Dirk Jellito, affirmed July 30, 2020, PCMR, Tab 8, Affidavit of Fred Ledlin, sworn August 4, 2020, PCMR, Tab 9; Affidavit of Gene Chiarello, affirmed August 4, 2020, PCMR, Tab 10; Affidavit of Jeff Andrews, affirmed August 4, 2020, PCMR, Tab 11; Affidavit of David Pszenyczny, affirmed August 4, 2020, PCMR, Tab 12; Affidavit of Cory Bricknell, sworn August 11, 2020, PCMR, Tab 13; Affidavit of Brad Hammet, sworn August 11, 2020, PCMR, Tab 14; Affidavit of Dan Fritsche, sworn October 9, 2020, PCMR, Tab 16; Affidavit of Stephen Quirk, Plaintiffs' Supplementary Certification Motion Record, Tab 1.

<sup>10</sup> Amended SOC at para. 4, MacDonald Affidavit 2021, Exhibit A, PMR, p. 20

that relate to hazing, abuse, harassment, and bullying and the allegation that players do not feel comfortable reporting behaviours that contravene these policies.<sup>11</sup>

17. On July 23, 2020, the CHL announced the members of the Independent Review Panel: junior hockey abuse survivor, NHL veteran and co-founder of the Respect Group,<sup>12</sup> Sheldon Kennedy; former Premier of New Brunswick, Camille Thériault; and, former RCMP officer and Order of Canada recipient, Danièle Sauvageau, known for her extensive experience in investigation, public safety, high level sport, business and sport coaching.<sup>13</sup>

18. The IRP Report was completed on October 31, 2020. However, it was only publicly released on January 21, 2022, which is almost 15 months after it was completed. The IRP Report was released when it was posted on the CHL website following service of the Plaintiffs' Motion Record on this motion.<sup>14</sup>

19. The Defendants quickly went to work after being served with this motion on November 30, 2021. They retained the Toronto workplace investigation lawyer Rachel Turnpenney in December 2021 to produce a workplace investigation report (the "**Turnpenney Report**").<sup>15</sup> The Turnpenney Report was completed in January 2022 and was published along with the IRP Report on the CHL website. Ms. Turnpenney's report appears to seek to refine some, but not all, aspects of the IRP Report. The Turnpenney

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<sup>11</sup> CHL Press Release dated July 23, 2020, MacDonald Affidavit 2021, Exhibit E, PMR, Tab 2, p. 146

<sup>12</sup> Canada's leading on-line training provider focused exclusively on the prevention of abuse, bullying and harassment and discrimination.

<sup>13</sup> CHL Press Release dated July 23, 2020, MacDonald Affidavit 2021, Exhibit F, PMR, Tab 2, pp.149-150

<sup>14</sup> CHL Update on Player Wellbeing dated January 21, 2022, MacDonald 2022 Affidavit, PSSCMR, Tab 1.

<sup>15</sup> Report on the CHL's Player Wellbeing Programs and Related Recommendations by Rachel Turnpenney dated January 14, 2022 ["Turnpenney Report"], MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 12

Report is also attached to the Affidavit of Catherine MacDonald dated January 27, 2022 affidavit and has been filed for use the certification motion.<sup>16</sup>

**A. The Independent Review Panel Report**

20. The CHL drafted terms of reference which mandated the Independent Review Panel to make recommendations to league officials. The Independent Review Panel employed the following methodology:

- (a) reviewed existing policies of the Quebec Major Junior Hockey League, the Ontario Hockey League and the Western Hockey League;
- (b) reviewed complaints for the three seasons 2017-2019;
- (c) heard presentations from senior leaders of the CHL;
- (d) interviewed and presented with experts on sexual violence, sports welfare, forensic traumatologists, and sports psychologists;
- (e) engaged in confidential interviews with agents, players, former players, General Managers, coaches, owners, senior leaders of other Canadian sport organizations, representatives of other leagues, within and outside of Canada, and leaders of Hockey Canada;
- (f) reviewed research papers; and,
- (g) the market research company Léger conducted a web survey of 665 members of the CHL, including players, coaches, General Managers, staff and families.<sup>17</sup>

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<sup>16</sup> Turnpenney Report, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 12.

<sup>17</sup> The Impact is Real...Action is Needed, Independent Panel Review Report dated October 31, 2020 ["IRP Report"], MacDonald 2022 Affidavit, Exhibit A, PSSCMR, Tab 1, p. 72.

21. The IRP Report contains statements about the existence of and systemic nature of off-ice misconduct and abuse:

(a) "A systemic culture exists in the CHL that results in maltreatment becoming an embedded norm. The systemic nature of the issue results in a perpetuated state of acceptance and lack of change. ... There is a code of silence around maltreatment that helps perpetuate it";<sup>18</sup>

(b) "These norms blur the boundaries of what is defined as acceptable, they desensitize individuals to bullying, harassment, hazing, and other forms of maltreatment in hockey. These behaviours have been embedded as part of the game, and that must change";<sup>19</sup>

(c) "Off-ice misconduct, including bullying, harassment and discrimination, exists in the CHL";<sup>20</sup>

(d) "Off-ice misconduct...is an unspoken cultural norm that must be changed";<sup>21</sup>

(e) "the systemic culture in the League has allowed [off-ice misconduct] to become the norm";<sup>22</sup>

(f) "Maltreatment that, outside of hockey would not be acceptable, has become an embedded behaviour in this hierarchical organization and the level of acceptance is too high";<sup>23</sup>

(g) "Reasons for accepting the behaviour include modelling by more senior members (owners, GMs, coaches, older players), stressors experienced by players,

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<sup>18</sup> IRP Report, Finding #2, p. 5, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 66.

<sup>19</sup> IRP Report at p. 12, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 73.

<sup>20</sup> IRP Report, Finding #1, p. 5, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 66.

<sup>21</sup> IRP Report at p. 12, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 73

<sup>22</sup> IRP Report, p. 3, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 64.

<sup>23</sup> IRP Report, p. 3, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 64.

desensitization over time to the perpetuated behaviours, and general acceptance of the behaviour by others";<sup>24</sup>

(h) "A systemic structural deficiency exists in the support and mentoring of coaches and GMS regarding ethical coaching and addressing off-ice misconduct in its day to day application";<sup>25</sup>

(i) "Self-regulation of the CHL, and by the individual leagues in particular, results in a lack of independence that compromises the integrity of the process";<sup>26</sup>

(j) "There was a significant percentage of survey respondents<sup>27</sup> that indicated problems exist within the CHL around bullying, harassment and discrimination";<sup>28</sup>

(k) "This 'acceptance' of off-ice misconduct is clearly demonstrated in the responses to the Léger survey on whether harassment, bullying and discrimination is a main challenge of the CHL";<sup>29</sup>

(l) "This culture is passed from team to team as new players learn from the hierarchy: owners, GMs, coaches, and older players";<sup>30</sup>

(m) "Despite recent efforts by the individual leagues in the CHL to protect players from off-ice misconduct through enhanced policies and procedures, maltreatment continues to occur";<sup>31</sup>

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<sup>24</sup> IRP Report, p. 3, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 64.

<sup>25</sup> IRP Report, Finding #3, p. 5, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 66.

<sup>26</sup> IRP Report, Finding #6, p. 5, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 66.

<sup>27</sup> The IRP commissioned a survey to gather information from GMs, coaches, staff, players, and families (CHL members from the past three years to understand the current state of off-ice misconduct in the CHL and perceptions of the CHL. See IRP Report at p. 14, PSSCMR, Tab 1, p. 75.

<sup>28</sup> IRP Report at p. 14, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 75.

<sup>29</sup> IRP Report at p. 15, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 76.

<sup>30</sup> IRP Report at p. 15, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 76.

<sup>31</sup> IRP Report at p. 19, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 80.

22. Léger surveyed General Managers (GMs), coaches, staff, players and families of players to determine the extent of discrimination, harassment, bullying and abuse, for example:

- (a) 52% of players' families and 40% of CHL staff believe that bullying is a problem in the CHL and 41% of families believe that harassment and discrimination is a problem;<sup>32</sup>
- (b) 45% of players, 45% of players' families, and 32% of staff have heard of cases or situations of bullying or harassment in the CHL, other than those reported in the media in the past 4 years;<sup>33</sup>
- (c) Only 3% of players, 12% of family members, 21% of staff, and 15% of coaches reported cases of bullying, harassment or hazing;<sup>34</sup> none of the GMs reported hazing;<sup>35</sup>
- (d) 65% of GMs and 54% of coaches don't believe the CHL is facing any challenges with bullying, harassment and discrimination;<sup>36</sup>

23. The IRP Report also refers to internal league complaints between 2017 and 2019.<sup>37</sup> With respect to the QMJHL, the IRP noted "it was not clear what the data was on off-ice misconduct", no investigations were done in 2017-2018 by the WHL, and only two in 2018-2019 and 2019-2020. The IRP also considered the Léger survey which stated that

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<sup>32</sup> IRP Report at p. 14, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 75.

<sup>33</sup> IRP Report at p. 21, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 82.

<sup>34</sup> IRP Report at p. 21, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 82.

<sup>35</sup> IRP Report at p. 21, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 82.

<sup>36</sup> Léger Survey at p. 7, IRP Report, p. 37 MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 98

<sup>37</sup> IRP Report at p. 11, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 72.

incidents were not reported for a variety of reasons, including individuals' fear of jeopardizing their career, a belief that nothing will be done, confidentiality at the players' request, that bullying is a normal part of hockey and that it was acceptable behaviour.<sup>38</sup>

24. The IRP Report also comments on the role of reporting measures within the leagues and its contribution to maltreatment:

The CHL complaint procedures in the [sic] related to off-ice misconduct are self-regulating: the teams and leagues administer the reporting of complaints, determine whether an investigation is required, conduct the investigation and determine and administer sanctions, if any. This self-regulation, combined with infrequent education programs that are inconsistent across stakeholders and across the CHL, unclear and inaccessible reporting policies and a systemic culture that accepts maltreatment, results in incidents going unreported.<sup>39</sup>

25. These statements provide evidence that establish "some basis in fact" for the class definition, "some basis in fact" that the common issues "exist"<sup>40</sup> and "some basis in fact" that a class proceeding is the preferable procedure, taking into account the goal of behaviour modification.<sup>41</sup>

26. The Plaintiffs' proposed class definition is "all former and current players who played or play in the Leagues".<sup>42</sup> The IRP Report supports the proposition that the Plaintiffs' class is not over-inclusive, as it supports the allegation of a toxic culture that permeates the CHL.

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<sup>38</sup> IRP Report at p. 22, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 83.

<sup>39</sup> IRP Report at p. 23, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 84.

<sup>40</sup> See Appendix I to this factum.

<sup>41</sup> See Appendix I to this factum.

<sup>42</sup> See Amended SOC at para. 1, MacDonald Affidavit 2021, Exhibit A, PMR, p. 18

27. When considered alongside the first-hand accounts of the player-affiants who swore evidence in support of certification, these alleged systemic failures crystallize as something that should be litigated in common at a common issues trial.

28. The IRP report's statements provide "some basis in fact" for continuing the proposed class definition to 2022, given that this survey was completed after the class proceeding was commenced.

29. These statements as well as the statements about the deficiencies of the existing reporting mechanisms provide "some basis in fact" for the existence of the common issues which ask whether the Defendants breached their duty of care, fiduciary duties to players,<sup>43</sup> their common contractual duties,<sup>44</sup> and the common issue of whether the Defendants committed actionable fault pursuant to the Quebec Civil Code in failing to prevent the Abuse.

30. Finally, the IRP Report's statements about the "culture of embedded behaviours" are relevant to behaviour modification. This includes the "unspoken code of silence around maltreatment that enables off-ice misconduct to continue", which also prevents athletes from disclosing their experiences out of reasons of fear of retaliation or punishment, power imbalances and loyalty.<sup>45</sup> A class proceeding may also serve the goal of behaviour modification in the present case given that the Defendants' certification affiants, including

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<sup>43</sup> See common issue (iv), Appendix I to this factum.

<sup>44</sup> See common issue (vi), Appendix I to this factum.

<sup>45</sup> IRP Report at p. 3, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 64.



those in power (such as GMs, coaches, owners, Board of Directors) dispute that hazing is a current problem within the Leagues, contrary to what is set out in the IRP Report.

### **PART III - ISSUES AND THE LAW**

31. The nature of this motion has changed slightly since the Plaintiffs served their motion record. The Defendants responded to the Plaintiffs' motion by making the IRP Report public, 15 months after its completion. The IRP Report is now filed with the court in support of the certification motion. The Plaintiffs seek the Court's direction with respect to its use at the certification motion this June. The Plaintiffs also request that this motion be considered "Phase 1" of the certification motion, so as to avoid any unnecessary delay.

32. The Plaintiffs submit that the Court has at least four options: 1) Rule that the IRP Report is admissible as attached to a clerk's affidavit; 2) Rule that the IRP Report is not admissible in its current form, but direct the parties to proceed via limited written interrogatories to confirm its provenance; 3) Rule that the IRP Report is not admissible in its current form, and grant the interprovincial summons to allow the parties to cross-examine Mr. Kennedy, Mr. Theriault and Ms. Sauvageau; or, 4) Deny the Plaintiffs' motion to cross-examine, or engage in written interrogatories, and rule that the IRP Report is inadmissible hearsay.

33. The Plaintiffs' preference is number 1 or 2, above. However, the Plaintiffs stand willing to cross-examine, if necessary, pursuant to number 3. The Plaintiffs submit that number 4 would be unjust, as the IRP Report is key evidence and it would be inappropriate to require the parties to proceed without it.

34. The Plaintiffs also respectfully request that this Court treat this motion as "Phase 1" of the certification hearing, as it has done on numerous occasions.<sup>46</sup> This will allow for any motions for leave to appeal, brought by either side, to be combined with any motions for leave to appeal on the certification criteria. This will avoid unnecessary delay associated with interlocutory procedural appeals and will allow the June motion dates to proceed.

**A. The Court Should Consider Whether the IRP Report is Admissible First**

35. The relevant statutory provisions for obtaining the attendance of a witness outside of Ontario are Rules 34.04(7), 53.04(1), 53.05 of the *Rules of Civil Procedure*<sup>47</sup> and section 5(1) of the *Interprovincial Summonses Act*.<sup>48</sup> The combined effect of these provisions require the party seeking to compel the attendance of witnesses outside of Ontario for examination in Ontario to obtain a certificate under section 5(1) of the *Interprovincial Summonses Act*. If the certificate is granted, the Plaintiffs would need to seek three separate orders from the Alberta Court of Queen's Bench,<sup>49</sup> the Court of Queen's Bench of New Brunswick,<sup>50</sup> and the Quebec Superior Court<sup>51</sup> to have the summons adopted locally (which is where the three IRP Report panelists reside) and the various orders and summonses would then need to be served on the IRP Panellists.

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<sup>46</sup> *Evensen v. Nissan Canada Inc.*, Court File No. CV-17-583843, (File/Direction/Order dated February 12, 2021), PBOA, Tab 3; *Price v. Smith & Wesson Corp.*, [2021 ONSC 1114](#) (ONSC) aff'd [2021 ONSC 8471](#) (Div Ct.), PBOA, Tabs 6 & 7

<sup>47</sup> [Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rr. 34.04\(7\), 53.04\(1\) and 53.05, Schedule "B"](#)

<sup>48</sup> [Interprovincial Summonses Act, R.S.O. 1990, c. I.12, s. 5\(1\), Schedule "B"](#)

<sup>49</sup> [Interprovincial Subpoena Act, RSA 2000,c I-9, s 2](#)

<sup>50</sup> [Interprovincial Subpoena Act, RSNB 2011, c. 180, s. 2](#)

<sup>51</sup> [Code of Civil Procedure, CQLR, c C-25.01, s. 498](#)

36. A court may only issue a certificate under section 5(1) of the *Interprovincial Summonses Act* if the court is satisfied that the attendance of the witness in Ontario is (1) necessary for the due adjudication of the proceeding in question; and (2) reasonable and essential to the due administration of justice.<sup>52</sup> The determination of whether evidence is necessary and essential to the administration of justice requires consideration of whether there are other sources for the evidence.<sup>53</sup>

37. Accordingly, in order to determine whether a certificate under section 5(1) should issue, the Court must first determine the admissibility of the IRP Report as filed in the Court file. If the IRP Report is admissible, the certificate under section 5(1) is no longer necessary. If it is not admissible, the Court should then proceed to apply the test for issuance of a certificate.

#### **B. The IRP Report is Admissible under the Principled Approach to Hearsay**

38. While a certification motion has a unique standard of proof, it remains a normal interlocutory motion with respect to the admissibility of evidence, including hearsay evidence. While the evidentiary burden on a certification motion is the low ("some basis in fact test"), that burden must be discharged by admissible evidence; the evidence tendered on a certification motion must meet the usual criteria for admissibility.<sup>54</sup>

39. On a certification motion, the Court has an important gate-keeping role with respect to the admissibility of evidence, and it is not appropriate or fair to shirk that

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<sup>52</sup> *Flying E Ranche Ltd. v. Canada (Attorney General)*, [2020 ONSC 8094](#) at para. 5, PBOA, Tab 5

<sup>53</sup> *Flying E Ranche Ltd. v. Canada (Attorney General)*, [2020 ONSC 8094](#) at para. 5, PBOA, Tab 5 citing *CanWest MediaWorks Inc. v. Canada (Attorney General)* [2007 ONCA 567](#).

<sup>54</sup> *Carter v Ford*, [2021 ONSC 4137](#) at para. 9, PBOA, Tab 1.

responsibility by saying let it in, and the objections will go to weight rather than admissibility.<sup>55</sup>

40. For documentary evidence to be admissible through an affidavit of a lawyer, the evidence must be probative of a material fact in issue, and that probative value must outweigh any prejudice to admitting the evidence.<sup>56</sup>

41. It is well-established that under the principled exception, hearsay can be "admitted into evidence when the party tendering it demonstrate that the twin criteria of necessity and threshold reliability are met on a balance of probabilities."<sup>57</sup>

42. In the present case, the inconvenience of the process of obtaining the same evidence satisfies the necessity criterion. Save for the admission of the report, the statements of the IRP are unavailable unless all three authors of the report are compelled to attend and provide their testimony through examinations under Rule 39.03. Requiring the parties to pursue such a course of action would be disproportionate given that the evidence is sought only for a certification motion, for which the low "some basis in fact" standard applies.

43. Indeed, the well-recognized public documents exception for admitting hearsay evidence was developed based on the inconvenience of the ordinary modes of proof.<sup>58</sup> In

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<sup>55</sup> *Carter v. Ford*, [2021 ONSC 4137](#) at para. 9, PBOA, Tab 1.

<sup>56</sup> *Carter v. Ford*, [2021 ONSC 4137](#) at para. 11, PBOA, Tab 1.

<sup>57</sup> *R. v. Khelawon*, [2006 SCC 57](#) (CanLII) at para. 47 & 49, PBOA, Tab 9.

<sup>58</sup> *Finestone v. The Queen*, [\[1953\] 2 SCR 107](#), 1953 CanLII 81 (SCC), at p. 109, PBOA, Tab 4.

*R v. Starr*, the Supreme Court of Canada recognized that the traditional exceptions to hearsay have, in some cases been born out of "expediency or convenience".<sup>59</sup>

44. Moreover, the necessity criterion is not an inflexible one – it can be met on varied basis.<sup>60</sup> For example, the necessity criterion has been interpreted flexibly in *Coldwater First Nation v. Canada (Attorney General)*, and was found to be satisfied based on the simple impracticability of having numerous affidavits on an application for judicial review.<sup>61</sup> The inherent flexibility of the necessity criterion allows this criterion to be met in the present case, based on the impracticability of summoning all three authors.<sup>62</sup>

45. Further, the necessity and reliability criteria work in tandem, such that the necessity criterion can be relaxed where there is high reliability of the statements.<sup>63</sup> In the present case, the reliability of IRP Report can hardly be disputed – the authors of the report as Independent Review Panel Members were selected by the Defendants; the report was prepared by the authors in the course of the exercising their duties as Independent Review Panel Members; the IRP Report details the methodology followed; the Léger survey results appended to the report were commissioned by the Defendants; and the Defendants have published the report publicly and acknowledged the report as "informative".<sup>64</sup> Put simply, the circumstances in which the IRP Report came about would be "such that

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<sup>59</sup> *R v. Starr*, [2000 SCC 40](#) at para. 206, PBOA, Tab 10.

<sup>60</sup> *R. v. Khelawon*, [2006 SCC 57](#) (CanLII) at para.78, PBOA, Tab 9.

<sup>61</sup> *Coldwater First Nation v. Canada (Attorney General)*, [2019 FCA 292](#) at para. 53 & 59, Tab 2.

<sup>62</sup> *R v. Baldree*, [2013 SCC 35](#) at para. 72, PBOA, Tab 8.

<sup>63</sup> *R. v. Khelawon*, [2006 SCC 57](#) (CanLII) at para. 86, PBOA, Tab 9; *R v. Baldree*, [2013 SCC 35](#) at para. 72, PBOA, Tab 8.

<sup>64</sup> CHL Update on Player Wellbeing dated January 21, 2022, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 6

contemporaneous cross-examination of its authors would add little if anything to the process".<sup>65</sup>

46. Additionally, the Defendants are free to reference the Turnpenney Report at the certification motion, if they take issue with the contents of the IRP Report. Any potential problems with respect to reliability (which the Plaintiffs deny) can be addressed by the existence of the Turnpenney Report in the certification motion record.

**C. The Probative Value of The Independent Review Panel Report Outweighs Any Prejudicial Effect**

47. The IRP Report has probative value to most of the certification criteria.

48. The Plaintiffs' motion record contains 17 affidavits from former players describing extraordinary stories of abuse and a closed culture of silence. The record also contains an expert report from one of Canada's leading experts on hockey hazing, Dr. Jay Johnson. In addition, the Plaintiffs have filed news stories and other public documents relating to toxic hockey culture attached to a clerk affidavit.

49. In response, the Defendants filed 21 affidavits, including affidavits from Presidents, GMs, owners of Teams disputing the existence of abuse, hazing, a toxic environment or a culture of silence within the CHL. These affiants' denials sometimes come after statements minimizing hazing. For example, Robert Smith, the majority owner of the Halifax Moosehead, and board member of the CHL and QMJHL stated in his affidavit:

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<sup>65</sup> *R. v. Khelawon*, [2006 SCC 57](#) (CanLII) at para. 49, PBOA, Tab 9.

"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."<sup>66</sup>

50. Dave Lorentz, current Vice President of the Peterborough Petes' Board of Directors describes the "hot box" experience,<sup>67</sup> as a "team building 'race against the clock' activity that was all in good fun."<sup>68</sup>

51. Overall, the 21 affidavits filed by the Defendants are aimed at establishing that hazing does not exist within the CHL, and that the Defendants have implemented various policies to address hazing, thus negating any alleged breach of their duties to players.

52. The evidence in the IRP Report shows that a trial will be required to resolve differences of opinion between the Plaintiffs' affiants and the Defendants' affiants. While the certification judge is not equipped to resolve these disagreements, the IRP Report establishes "some basis in fact" for the existence of systemic issues giving rise to abuse and hazing within the CHL.

53. The IRP Report also demonstrates that these systemic issues are capable of determination in common across the CHL. This is a "top-down" system, where the teams and leagues all share responsibility, and liability, for the children in their care.

54. Evidence may be excluded if its probative value is overborne by its prejudicial effect, including the tendencies: to yield irrational conclusions; to confuse, mislead, or

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<sup>66</sup> Affidavit of Robert Smith, sworn October 29, 2021, para. 8.

<sup>67</sup> Mr. Lorentz describes the "hot box" experience as involving "four or five rookies went into the bus bathroom on a road trip ... Our clothes were tied up into a ball and we had to untie the ball, get dressed, and come out as quickly as possible" at para. 6 of his affidavit.

<sup>68</sup> Affidavit of Dave Lorentz, sworn November 1, 2021 at para. 6.

distract the trier of fact's attention from the main issues; to unduly occupy the trier of fact's time; and to surprise the opponent unfairly and impair a fair hearing.<sup>69</sup> None of these concerns are present here. The certification judge will not be asked to accept the evidence of the IRP Panel at this stage.

55. Any prejudicial effect to the Defendants from admission of this evidence would be minimal. First, the IRP Report was commissioned by the Defendants. They appointed a highly credible panel to great public fanfare in response to this lawsuit – it is a public document of their own making. Second, the Defendants have been in possession of the report since October 2020, and as such have had notice of the existence of the evidence.<sup>70</sup> Thirdly, the certification motion is a procedural motion, not a determination of the merits. While the Plaintiffs will almost certainly seek to rely on the evidence of the IRP Report's authors on the merits (should this case be certified), the Plaintiffs intend to rely on the IRP Report simply to establish "some basis in fact" for the certification criteria at this stage.

56. The Plaintiffs' filing of the Turnpenney Report further minimizes any prejudicial effect the Defendants may face.

57. The Plaintiffs will not be asking the Court at the certification motion to rule on whether the Independent Review Panel or Ms. Turnpenney is correct. The Plaintiffs will rely on this evidence to show that there is a genuine debate to be had at the common issues trial.

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<sup>69</sup> *Carter v Ford*, [2021 ONSC 4137](#) at para. 10, PBOA, Tab 1.

<sup>70</sup> CHL Update on Player Wellbeing dated January 21, 2022, MacDonald 2022 Affidavit, PSSCMR, Tab 1, p. 6



**D. Written Interrogatories Should be Employed or, in the alternative, a Certificate under the Interprovincial Summonses Act Should Issue if the IRP Report is Inadmissible for Hearsay**

58. In the event the Court finds the IRP Report to be inadmissible for failing to meet the principled exception to hearsay, the Plaintiffs submits that written interrogatories are the appropriate and proportionate approach given the nature of the procedural motion at issue. The only questions that need be answered are: 1) is the IRP Report authentic; and, 2) does the IRP Report reflect the IRP Members' work?

59. This would avoid a full-blown merits inquiry at cross-examination, which would be inappropriate at this stage of the litigation. This Court can order the abovementioned questions to be answered under Rule 34.07(1)(f),<sup>71</sup> which permits the Court to determine "any other matter respecting the holding of the examination" and by issuing a certificate under section 5(1) of the *Interprovincial Summonses Act* to compel the answers of the authors. The Court also has additional authority under s. 12 of the *Class Proceedings Act, 1992*.

60. If this Court rules that written interrogatories are not appropriate, the Court should issue a certificate to compel the attendance of the authors for examination. In this regard, the attendance of the IRP Members for examination under Rule 39.03 is : (1) necessary for the due adjudication of the certification motion; and (2) reasonable and essential to the due administration of justice.

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<sup>71</sup> [Rules of Civil Procedure, RRO 1990, Reg 194](#), R. 34.07(1)(f).

61. The authors' statements about systemic abuse and hazing within the CHL are necessary for the fair determination of the certification motion, especially since the Defendants have filed evidence in their responding record on the certification motion that contradict both the existence of the proposed common issues and the conclusions of the report.<sup>72</sup>

#### **PART IV - ORDER REQUESTED**

62. The Plaintiffs respectfully request that:

(a) this Court make an order declaring that the Affidavit of Catherine MacDonald sworn January 27, 2022 and the IRP Report attached as Exhibit "A" thereto is admissible pursuant to the principled exception to hearsay for establishing "some basis in fact" on the certification motion; or,

(b) in the alternative, the Court should order that the parties proceed via written interrogatories pursuant to Rule 34.07(1)(f) and order a certificate under section 5(1) of the *Interprovincial Summonses Act* to compel the answers from Sheldon Kennedy, Camille Thériault and Danièle Sauvageau pursuant to Rule 39.03; or,

(c) in the further alternative, if the IRP Report is deemed to be inadmissible and written interrogatories inappropriate, this Court order a certificate under section 5(1) of the *Interprovincial Summonses Act* to compel the attendance of

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<sup>72</sup> Defendants' Certification Motion Record

Sheldon Kennedy, Camille Thériault and Danièle Sauvageau for examination pursuant to Rule 39.03; and,

(d) this Court order or direct that this motion be treated as "Phase 1" of the certification motion, with it being adjourned after the release of reasons in this motion until June 13, 2022 when "Phase 2" of the certification motion will resume.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of February, 2022.



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**James Sayce / Sue Tan**  
**KOSKIE MINSKY LLP**

Lawyers for the Plaintiffs

**APPENDIX I: PROPOSED COMMON ISSUES**

- (i) Did the Defendants, or any of them, owe a duty of care to the Class in the management, operation and oversight of the Teams and/or Leagues?
- (ii) If the answer to (i) is yes, did the Defendants, or any of them, breach that duty of care?
- (iii) Did the Defendants, or any of them, owe a fiduciary duty to the Class in the management, operation and oversight of the Teams and Leagues?
- (iv) If the answer to (iii) is yes, did the Defendants, or any of them, breach that fiduciary duty to the Class?
- (v) Did the Defendants, or any of them, breach their contracts with the Class? If so, how?
- (vi) Did the Defendants, or any of them, breach any duties of good faith in their contractual performance? If so, how?
- (vii) Did the Defendants, or any of them, commit actionable faults in failing to prevent the Abuse pursuant to the *Quebec Civil Code*? If so, are the Defendants liable for such faults?
- (viii) Did the Defendants, or any of them, breach sections 1, 10, 10.1 or 39 of the *Quebec Charter of Human Rights and Freedoms*?
- (ix) If the answer to any of the common issues (i) through (viii) is “yes”, can the Court make an aggregate assessment of some or all of the damages suffered by some or all Class Members?
- (x) If the answer to any of the common issues (i) through (viii) is “yes”, were the Defendants guilty of conduct that justifies an award of punitive and/or exemplary damages including damages pursuant to s. 49 of the *Quebec Charter of Human Rights and Freedoms*?
- (xi) If the answer to common issue (x) is “yes”, what amount of punitive and/or exemplary damages ought to be awarded?

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Carter v Ford*, [2021 ONSC 4137](#)
2. *Coldwater First Nation v. Canada (Attorney General)*, [2019 FCA 292](#)
3. *Evensen v. Nissan Canada Inc.*, Court File No. CV-17-583843, (File/Direction/Order dated February 12, 2021)
4. *Finestone v. The Queen*, [\[1953\] 2 SCR 107](#) (SCC)
5. *Flying E Ranche Ltd. v. Canada (Attorney General)*, [2020 ONSC 8094](#)
6. *Price v. Smith & Wesson Corp.*, [2021 ONSC 1114](#) (ON SC)
7. *Price v. Smith & Wesson Corp.*, [2021 ONSC 8471](#) (Div Ct.)
8. *R v. Baldree*, [2013 SCC 35](#)
9. *R. v. Khelawon*, [2006 SCC 57](#)
10. *R v. Starr*, [2000 SCC 40](#)

**SCHEDULE “B”  
RELEVANT STATUTES**

1. [Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#)

**34.01** Rules 34.02 to 34.19 apply to,

...

(d) the examination out of court of a witness before the hearing of a pending motion or application under rule 39.03; ...

**34.04(7)** Rule 53.05 (summons to a witness outside Ontario) applies to the securing of the attendance for examination of a person outside Ontario and the attendance money paid or tendered to the person shall be calculated in accordance with the Interprovincial Summonses Act. R.R.O. 1990, Reg. 194, r. 34.04 (7).

**34.07 (1)** Where the person to be examined resides outside Ontario, the court may determine,

- (a) whether the examination is to take place in or outside Ontario;
- (b) the time and place of the examination;
- (c) the minimum notice period;
- (d) the person before whom the examination is to be conducted;
- (e) the amount of attendance money to be paid to the person to be examined; and
- (f) any other matter respecting the holding of the examination. R.R.O. 1990, Reg. 194, r. 34.07 (1)

**34.07(7)** Rule 53.05 (summons to a witness outside Ontario) applies to the securing of the attendance for examination of a person outside Ontario and the attendance money paid or tendered to the person shall be calculated in accordance with the Interprovincial Summonses Act. R.R.O. 1990, Reg. 194, r. 34.04 (7).

**39.03(1)** Subject to subrule 39.02 (2), a person may be examined as a witness before the hearing of a pending motion or application for the purpose of having a transcript of his or her evidence available for use at the hearing. R.R.O. 1990, Reg. 194, r. 39.03 (1).

**53.04(1)** A party who requires the attendance of a person in Ontario as a witness at a trial may serve the person with a summons to witness (Form 53A) requiring him or her to attend the trial at the time and place stated in the summons, and the summons may also require the person to produce at the trial the documents or other things in his or her possession, control or power relating to the matters in question in the action that are specified in the summons. R.R.O. 1990, Reg. 194, r. 53.04 (1).

**53.05** A summons to a witness outside Ontario to compel his or her attendance under the Interprovincial Summonses Act shall be in Form 53C. R.R.O. 1990, Reg. 194, r. 53.05.

2. [Interprovincial Summonses Act, R.S.O. 1990, c. I. 12, s. 5\(1\)](#)

**5 (1)** Where a party to a proceeding in Ontario causes a summons to be issued for service in another province, the party may attend upon a judge of the Superior Court of Justice, who shall hear and examine the party or the party's counsel if any, and, upon being satisfied that the attendance in Ontario of the person required in Ontario as a witness,

(a) is necessary for the due adjudication of the proceeding in which the summons or other document has been issued; and

(b) in relation to the nature and importance of the proceeding, is reasonable and essential to the due administration of justice in Ontario,

shall sign a certificate which may be in the form set out in the form prescribed under subsection 2 (3) and shall cause the certificate to be impressed with the seal of the court. R.S.O. 1990, c. I.12, s. 5 (1); 2000, c. 26, Sched. A, s. 10 (4); 2009, c. 33, Sched. 2, s. 37

3. [Interprovincial Subpoena Act, RSA 2000, c. I-9, s. 2](#)

**2** The Court of Queen's Bench shall receive and adopt as an order of the Court of Queen's Bench a subpoena from a court outside Alberta if

(a) the subpoena is accompanied with a certificate attached to or endorsed on the subpoena signed by a judge of a superior, county or district court of the issuing province or territory and impressed with the seal of that court, signifying that, on hearing and examining the applicant, the judge is satisfied that the attendance in the issuing province or territory of the person subpoenaed

(i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and

(ii) in relation to the nature and importance of the cause or proceeding, is reasonable and essential to the due administration of justice in that province or territory,

and

(b) the subpoena is accompanied with the prescribed witness fee and travelling expenses.

4. [Interprovincial Subpoena Act, RSNB 2011, c. 180, s. 2](#)

**2** The Court of Queen's Bench of New Brunswick shall receive and adopt as an order of the court a subpoena from a court outside New Brunswick if

- (a) the subpoena is accompanied by a certificate attached to or endorsed on the subpoena in the prescribed form signed by a judge of a superior, county or district court of the issuing province and impressed with the seal of that court, signifying that, on hearing and examining the applicant, the judge is satisfied that the attendance in the issuing province of the person subpoenaed
  - (i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and
  - (ii) in relation to the nature and importance of the cause or proceeding, is reasonable and essential to the due administration of justice in that province, and
  - (iii) the subpoena is accompanied by the prescribed witness fees and travelling expenses. 1979, c.I-13.1, s.2; 2000, c.30, s.2

5. [\*Code of Civil Procedure, CQLR, c. C-25.01, s. 498\*](#)

**498.** The court homologates a subpoena issued by an authority in another province or in a territory of Canada if it is accompanied by the advance on the witness indemnity and a certificate stating that the authority is convinced that the witness's attendance at court is necessary to resolve the matter regarding which the witness is called to attend.

If the witness's attendance in person is required, the court homologates the subpoena only if the law of the witness's place of residence provides for immunity similar to that provided for in article 497.

Once homologated, the subpoena must be notified to the witness at least 10 days before the time at which the witness is scheduled to attend at court.

6. [\*Class Proceedings Act, 1992, S.O. 1992, c 6\*](#)

**12** The court, on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate. 1992, c. 6, s. 12.



Carcillo et al.      Canadian Hockey League et al.  
Plaintiffs      and      Defendant

Court File No.: CV-20-642705-00CP

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**FACTUM OF THE MOVING PLAINTIFFS  
(RETURNABLE FEBRUARY 15, 2022)**

**KOSKIE MINSKY LLP**  
900-20 Queen Street West  
Toronto, ON M5H 3R3

**James Sayce** LSO#: 58730M  
jsayce@kmlaw.ca  
Tel: 416-542-6298

**Nathalie Gondek** LSO#: 77660H  
ngondek@kmlaw.ca  
Tel: 416-542-6286

**Sue Tan** LSO#: 74826A  
stan@kmlaw.ca  
Tel: 416-595-2117

Lawyers for the Plaintiffs

