

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

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., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C, BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**TRANSCRIPT BRIEF
(Certification)**

VOLUME 9 OF 9

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

2
3 ONTARIO
4 SUPERIOR COURT OF JUSTICE

5 BETWEEN:

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7 Plaintiffs

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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

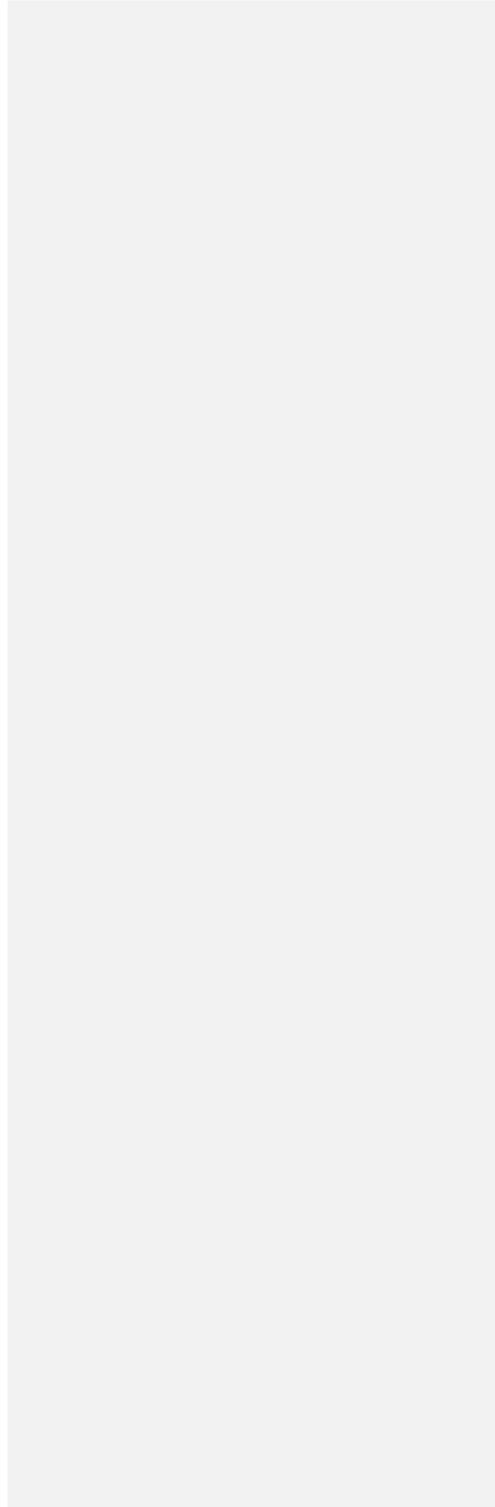
1 HOCKEY CLUB, 649643 ONTARIO INC. c.o.b. as SARNIA
2 STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER
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10 REMPARTS DE QUEBEC INC., LE CLUB DE HOCKEY JUNIOR
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12 CLUB DE HOCKEY L'OCEANIC DE RIMOUSKI INC., LES HUSKIES
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18 o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. AS
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20 c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENEENS JAW
21 HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS IMS HOCKEY
22 c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C.,
23 EHT, INC., JOHN DOE CORP. A o/a EVERETT SILVERTIPS
24 HOCKEY CLUB WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND
25 WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES,
26 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

18 CROSS-EXAMINATION OF DAN MacKENZIE
19 on Affidavits dated December 30, 2020; October 29, 2021
20 March 4, 2022 and April 20, 2022
21 held via Arbitration Place Virtual
22 on Friday, June 3, 2022, at 10:06 a.m.
23

24 Arbitration Place © 2022
25 940-100 Queen Street 900-333 Bay Street
26 Ottawa, Ontario K1P 1J9 Toronto, Ontario M5H 2R2
(613) 564-2727 (416) 861-8720

3

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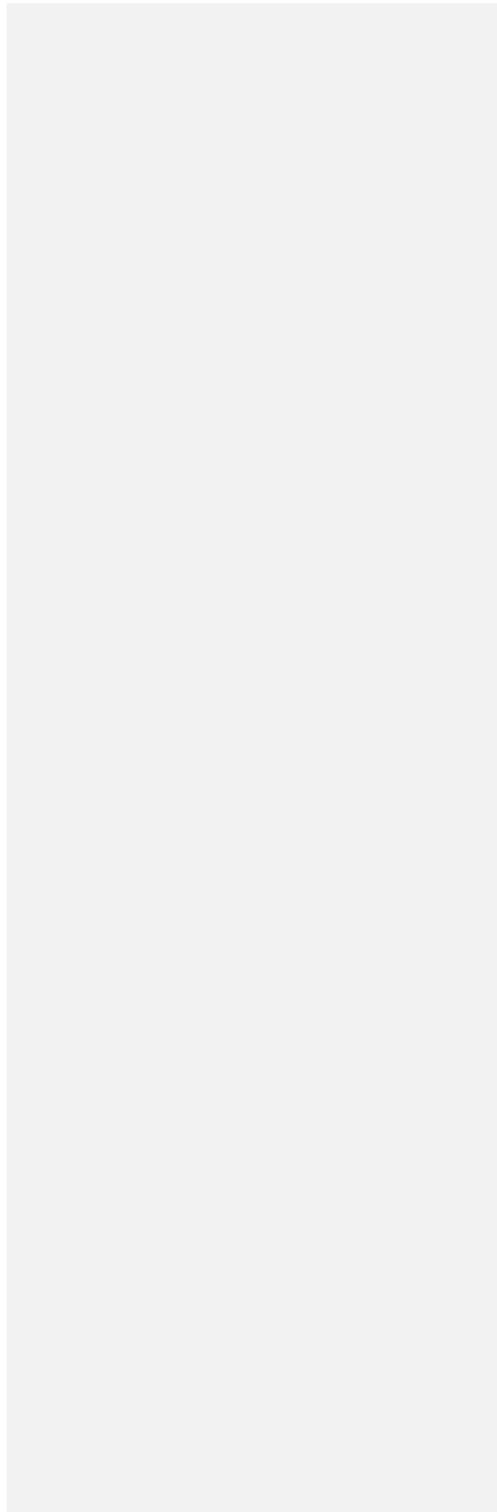
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1	LIST OF EXHIBITS		
2	NO.	DESCRIPTION	PAGE
3	A	Agreement dated July 21, 2020 between the	
4		Canadian Hockey League including the Western	
5		Hockey League, the Ontario Hockey League and	
6		the Quebec Major Junior Hockey League	
7		(collectively the "League" or the "CHL") and	
8		Danièle Sauvageau (the "Panelist").	99
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11		including the Western Hockey League, the Ontario	
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1 Arbitration Place Virtual

2 --- Upon commencing on Friday, June 3, 2022

3 at 10:06 a.m.

4 AFFIRMED: DAN MacKENZIE

5 EXAMINATION BY MR. SAYCE:

6 1 Q. Good morning Mr. MacKenzie.

7 A. Good morning.

8 2 Q. Thanks so much for joining us
9 today over Zoom. I think you understand what we're
10 going to be doing today; yes?

11 A. Yes.

12 3 Q. You've sworn a number of
13 affidavits on this certification motion and on a
14 jurisdiction motion. In fact, you've sworn four
15 affidavits; yes?16 A. I believe I've sworn three
17 affidavits.18 MR. EIZENGA: Mr. MacKenzie, there was
19 an earlier affidavit with respect to jurisdiction --

20 A. Okay.

21 MR. EIZENGA: -- that you may not be
22 counting. Do you have that in front of you?23 A. I don't. I have three in front
24 of me, but to answer your question, Mr. Sayce, yes,
25 four affidavits.

1 BY MR. SAYCE:

2 4 Q. I can give you the date of that
3 first affidavit. I don't blame you for losing track.
4 There's a lot of paper here.

5 It's December 30, 2020.

6 A. I don't have that one in front of
7 me.

8 MR. EIZENGA: Mr. Sayce, if you're
9 going to ask him questions on that, we have the full
10 day, we'll make sure we get a copy in front of
11 Mr. MacKenzie before you ask him any questions on
12 that.

13 MR. SAYCE: Yeah. I think it's
14 probably best that he has it in front of him. I don't
15 intend to spend too much time on that affidavit, but I
16 will have a few questions.

17 Do you have access to a printer,
18 Mr. MacKenzie, or a computer screen so you can have a
19 look at that affidavit today?

20 A. Yes. I can print it out.

21 5 Q. Okay. So to go through the other
22 affidavits that you swore, there's that one we just
23 discussed from December 30, 2020. I will just go in
24 chronological order. You also swore an affidavit on
25 October 29, 2021; yes?

1 A. Correct.

2 6 Q. Do you have that one in front of
3 you too?

4 A. Yeah.

5 7 Q. And then after that you swore an
6 affidavit on March 4, 2022; yes?

7 A. Correct.

8 8 Q. And then you swore another
9 affidavit on April 20, 2022; yes?

10 A. Correct.

11 9 Q. And have you had a chance to
12 review all -- one of them you haven't had a chance to
13 review, but I'll just ask you about the last three
14 affidavits you swore. Have you had a chance to review
15 those in advance of today's cross-examinations?

16 A. Yes.

17 10 Q. Okay. And I believe that your
18 counsel advised before we started this
19 cross-examination that you may have a correction to
20 make or more than one correction to make, so please
21 let us know what that correction is.

22 A. Sure. So it would be from the
23 April 20 affidavit and it would be section 8 on my
24 page 4, and it would be the fourth sentence. It just
25 talks about distribution, and what it says is:

1 At the end of the year, the CHL,
2 given it's a not-for-profit, makes a
3 distribution to the teams.

4 The correction would just be that the
5 process for that distribution, it would go -- we would
6 actually make a distribution to the regional leagues
7 and then the regional leagues would make a
8 distribution to the teams, if it was deemed
9 appropriate.

10 So I just want to clarify that because
11 we actually don't ever distribute directly to teams.

12 11 Q. Okay. And we'll get to that
13 clarification at some point today for certain. We'll
14 write down what you just said word for word just so
15 you know what we're talking about.

16 So let's pull up what we're calling
17 your certification affidavit, which is the October 29,
18 2021 affidavit. Do you have it?

19 A. Yes, I do.

20 12 Q. Okay. Can you please flip to
21 page 9 of this affidavit. This is where there's a
22 signature line?

23 A. Yeah.

24 13 Q. That's your signature there?

25 A. Correct.

10

1 14 Q. And just before I jump into
2 questions on this affidavit, are you at home right
3 now?

4 A. Yes.

5 15 Q. And you're in a room; you're
6 alone?

7 A. Yes.

8 16 Q. Okay. So if anybody comes into
9 the room or if your, I guess, privacy is somehow
10 infringed upon, just let us know and we'll take a
11 break.

12 A. Yes.

13 17 Q. And another thing to remember is
14 that in the world of Zoom cross-examinations, if you
15 need a break, just put up your hand and let us know.
16 You can get coffee, go to the bathroom; we can do the
17 same. It's actually a lot easier to conduct
18 examinations in this way, I think. It saves everybody
19 a lot of time and money.

20 One of the good things about COVID.

21 Now, going back to your affidavit, at
22 paragraph 1 it states you are the president of the
23 Canadian Hockey League, right?

24 A. Correct.

25 18 Q. It says you have served in this

1 role since September 2019.

2 A. Correct.

3 19 Q. And in your role as president you

4 oversee all of the Canadian Hockey League's

5 operations?

6 A. Correct.

7 20 Q. Okay. So before you took on this

8 position, I guess in the summer of 2019, you worked as

9 an executive with NBA Canada, the National Basketball

10 Association of Canada?

11 A. Correct.

12 21 Q. So you moved straight from NBA

13 Canada to the Canadian Hockey League?

14 A. Correct.

15 22 Q. And with the NBA you were an

16 event and development manager until October 20, 2003?

17 A. Correct.

18 23 Q. That was the job you held for

19 about five years?

20 A. Correct.

21 24 Q. Then you spent about a year with

22 TSN, The Sports Network, right?

23 A. Correct.

24 25 Q. And you were the senior marketing

25 manager?

1 A. Correct.

2 26 Q. So was that sort of a sales job?

3 A. It was more of a marketing job.

4 27 Q. Okay. So you liaised with

5 sponsors?

6 A. No, not so much in that job. It

7 was more of an internal promotional function, so

8 promoting the upcoming, you know, events and

9 properties that TSN had acquired. So that was a part

10 of it. And then some other elements -- that was a big

11 part of it. So the on-air promotion group was a large

12 physical group, and it reported to me. PR and coms --

13 communications -- reported to me. Corporate events

14 reported to me, as well as affiliate marketing

15 reported to me.

16 I believe those were all of the main

17 areas. But the job was basically to promote the

18 programming on TSN. So we were the group that were

19 sort of out front of everything, you know, working

20 three to six months out.

21 28 Q. Okay. And I apologize, I'm not a

22 marketing person. What is affiliate marketing?

23 A. Affiliate marketing would be the

24 marketing that -- can I ask you a question?

25 29 Q. Sure. I mean typically I'm

1 asking the questions, but, you know.

2 A. Just to clarify for you. Do you
3 have a cable subscription at home, or a satellite? Do
4 you have TSN?

5 30 Q. You know, I'm one of these guys
6 who actually do have TSN, yes.

7 A. Okay. So who do you pay your
8 monthly cable bill to?

9 31 Q. So I don't know if you're going
10 to try to switch me over to Rogers, but I'm with Bell.

11 A. Okay, that's fine. So you're
12 with Bell. So affiliate marketing would be the
13 marketing that Bell would do to you; so mailings. If
14 they were trying to incent you to buy a different
15 package, that's called affiliate marketing. So Bell
16 would be an affiliate of TSN, Rogers would be an
17 affiliate of TSN, Shaw would be an affiliate of TSN,
18 et cetera, et cetera.

19 32 Q. Okay. That makes sense.

20 And then you became senior marketing
21 manager with TSN in October 2003. So you focused more
22 on marketing in that position; yes?

23 A. Correct.

24 33 Q. And was that different from some
25 of the jobs that -- the titles or responsibilities you

1 described to me, or did you sort of blend your roles
2 at TSN in that description?

3 A. I was there for about a year,
4 just over a year, and it was the same job through the
5 entire period.

6 34 Q. Okay. And then you moved back to
7 TSN -- sorry, pardon me, to NBA Canada in October 2004
8 where you were a director of marketing?

9 A. Correct.

10 35 Q. And is it safe to say that your
11 focus was in marketing the NBA products to Canadians?

12 A. Yes.

13 36 Q. Okay. And then you were promoted
14 to general manager in 2006 and then managing director
15 in 2011. Were those also marketing positions?

16 A. No. They would be broader
17 positions than just marketing. The functions of the
18 NBA, the business functions of the NBA, of NBA Canada,
19 would be very similar to the kinds of things that I'm
20 doing at the Canadian Hockey League. So that would be
21 things like negotiating media arrangements, selling
22 sponsorships, operating digital -- like managing
23 digital products, running licensing programs,
24 communications -- PR communications, running events,
25 et cetera, et cetera. So it was a broader role.

1 37 Q. Okay. So I think you just said
2 that your current role at the Canadian Hockey League,
3 which we'll get into, is quite similar to what you
4 were doing with NBA Canada; yes?

5 A. Yes, very similar functions in
6 terms of the business -- the business operations are
7 very similar, just on a much, much smaller scale.

8 38 Q. Well, maybe NBA Canada is
9 comparable to the CHL, but the NBA proper is obviously
10 a larger operation; yes?

11 A. Correct, correct.

12 39 Q. Okay. So from 2014, when you
13 were appointed vice-president and managing director at
14 NBA Canada, to September 2019, you held that
15 vice-president role, and then you moved over to the
16 Canadian Hockey League in September 2019?

17 A. Correct.

18 40 Q. And you've had that same title
19 since then?

20 A. Correct.

21 41 Q. Okay. So in terms of your time
22 with the NBA -- I think it's probably safe to say that
23 you were a fan of hockey; yes?

24 A. Yeah, it would be safe to say,
25 yeah.

1 42 Q. Okay. And you probably had some
2 awareness of the Canadian Hockey League and how it
3 operated, correct?

4 A. I did. I mean, I live --
5 probably the most knowledge I would have would be as a
6 local fan. So I live in a community that has a team
7 that's in the OHL, and therefore the CHL, so the
8 Guelph Storm. So as a fan I would attend games and
9 that kind of thing. So it was more like a general fan
10 knowledge.

11 And then I'd say from a career -- sort
12 of a business perspective, the segment of the CHL's
13 business that I had the most knowledge of was their
14 sponsorship business. That was a business that I was
15 really heavily involved with when I was at the NBA.
16 And then ultimately I was involved with an industry
17 association that had multiple industry folks part of
18 it, and there was someone from CCMC, which is the
19 organization that sells sponsorships to the CHL, as
20 part of it. So I had some understanding of the fact
21 that the CHL has licensed out their sponsorship rights
22 to this company called CCMC.

23 That would be about the extent of what
24 I knew about the Canadian Hockey League.

25 43 Q. Can you tell me what CCMC stands

1 for?

2 A. Yeah. Canadian Controlled Media
3 and Communications, I believe.

4 44 Q. Okay.

5 A. And what they do, they're a third
6 party agency who sells sponsorships for the teams --
7 for the league; the CHL and the CHL's national events
8 as well as the regional leagues and the teams.

9 45 Q. And you deal with the CCMC in
10 your role as --

11 A. Correct, correct.

12 46 Q. -- CHL president.
13 And you've worked with your Toronto
14 team -- do you commute into Toronto for -- I know that
15 COVID has changed everything, but I think you said you
16 live in Guelph, right?

17 A. Correct.

18 47 Q. So when you go into the office,
19 you drive down to Toronto?

20 A. Correct.

21 48 Q. And the CCMC is one of the many,
22 many marketing roles that -- liaising with the CCMC is
23 one of the many marketing roles that you engage in;
24 yes?

25 A. The CCMC's role is very much

1 sales. You might be interchanging sales and
2 marketing, but it really is a sales function,
3 sponsorship sales, so trying to find companies to
4 become sponsors of our leagues and our teams.

5 49 Q. And you fulfill that sales role
6 as the president of Canadian Hockey?

7 A. When needed I have a role in that
8 process, correct.

9 50 Q. You have people who work with you
10 and for you in Toronto at the CHL office who also
11 assist in that function; yes?

12 A. Yeah. Some of them are in
13 Toronto, some of them are in other parts of the
14 country, but yes.

15 51 Q. Okay. Sorry; the people who work
16 with you in other parts of the country working with
17 the CCMC or other sales functions, where would they
18 be?

19 A. So CCMC has staff in Calgary and
20 in Montreal. I have a staff person in Calgary who
21 works with CCMC -- who does some work with CCMC, a
22 marketing person. So directly sort of CHL, that would
23 be -- those would be some of the people, and then
24 obviously, because we sell sponsorship for the
25 regional -- the CCMC also sells for the regional

1 leagues, there are regional league staff; so WHL
2 employees in Calgary, there are QMJHL employees in
3 Montreal.

4 52 Q. And you work with those
5 employees; yes?

6 A. Correct, yeah. It depends on the
7 project, but yes, they would be involved.

8 53 Q. So let's talk a little bit about
9 when you showed up at the Canadian Hockey League to
10 take on your current position. There was probably a
11 bit of a learning curve when you showed up in
12 September 2019; is that fair to say?

13 A. Correct, but probably more of a
14 learning curve not so much on the business side but
15 moving from one sport to another and one organization
16 to another definitely -- then there's definitely a
17 learning curve there.

18 54 Q. Yeah. I mean, the culture in the
19 Canadian Hockey League is quite different from the
20 culture in the NBA; yes?

21 A. Yes, I would say, yeah.

22 55 Q. So in September 2019 you take on
23 this role. You have no idea the pandemic is coming.
24 So you show up at the office in Scarborough and you're
25 sort of parachuted into this role as president; yes?

1 A. Yeah. So I started as president
2 September 2019, correct.

3 56 Q. Okay. And I'm going to make an
4 assumption, you tell me if I'm correct or incorrect,
5 but I know that you work with the three commissioners
6 quite closely. This is Mr. Branch, Mr. Robison, and
7 I'm not going to speak in French, I'm going to call
8 him Mr. Courteau.

9 A. Yes.

10 57 Q. And you work with those three
11 fellows pretty closely, right?

12 A. Correct.

13 58 Q. And so is it safe to say that
14 those three people, the three commissioners, that they
15 also sit as vice-presidents of the Canadian Hockey
16 League, right?

17 A. Correct.

18 59 Q. And they also sit on the -- is it
19 called the executive council?

20 A. Correct.

21 60 Q. -- of the Canadian Hockey League?

22 A. Yes they do, yeah.

23 61 Q. So am I correct in saying that
24 you were the first president of the Canadian Hockey
25 League who wasn't also a commissioner of a

1 member league at the same time?

2 A. I believe that's correct.

3 62 Q. And before you, Mr. Branch, David
4 Branch, was the president of the Canadian Hockey
5 League and the commissioner of the Ontario Hockey
6 League?

7 A. Correct.

8 63 Q. And I don't expect you to have
9 the exact dates, but he held those two roles for a
10 very long time; yes?

11 A. Yes.

12 64 Q. And I think it's safe to say he
13 held those two roles at the same time for decades?

14 A. I believe that's correct, yeah.

15 65 Q. And so is it safe to say that
16 Mr. Branch helped you acclimatize yourself to the
17 Canadian Hockey League business in 2019 when you
18 showed up?

19 A. Yes.

20 66 Q. And --

21 A. Sorry; I would say along with
22 some staff, right. So I think he also -- you know, I
23 inherited a staff and there were some people on that
24 staff who had lots of experiences, so Mr. Branch and
25 also some of his staff, to the day-to-day operations

1 of the Canadian Hockey League.

2 67 Q. Of course. We'll get to staff in
3 a bit, but Mr. Branch was there to help you understand
4 how the business worked; yes?

5 A. Yes. It's a fair way to put it.

6 68 Q. And Mr. Branch was there to help
7 you understand how the culture worked?

8 A. Yeah, sure. I mean, I think how
9 the business worked and who our relationships were
10 with and what the history on those relationships was
11 pretty straightforward, right, in terms of -- because
12 it's very clear, it's very tangible. The culture --
13 I'm not exactly sure what you mean by how the culture
14 worked, but in terms of getting acclimatized,
15 absolutely.

16 69 Q. I can dig into culture. What I
17 really meant though -- I mean, culture, I guess, is --
18 hockey's got a culture, baseball's got a culture and
19 then each league has its own culture; is that fair to
20 say?

21 MR. EIZENGA: Mr. Sayce, you were
22 asking him the question in the context of business.
23 If you're going beyond that, particularly given the
24 nature of this litigation, I think you should be clear
25 exactly what aspect of the culture you're asking him

1 about. But if you're talking about business culture,
2 I think he's started to answer that question. If you
3 want to go back at that, of course I'm comfortable
4 with that, but if you're doing something other than
5 that, I'd like --

6 COURT REPORTER: Excuse me a moment.
7 Someone has messages coming in and the alert is
8 interfering with the audio.
9 --- OFF THE RECORD

10 BY MR. SAYCE:

11 70 Q. So we're back on the record and I
12 think that Mr. Eizenga took issue with my question
13 about the culture but, I mean, we may or may not get
14 into culture, but earlier Mr. MacKenzie, do you recall
15 when I said that the NBA has a different culture from
16 the Canadian Hockey League and I think you said that
17 yes, there's a different culture.

18 Do you remember that question?

19 A. Yes.

20 71 Q. What did you mean when you said
21 the Canadian Hockey League has a different culture?

22 A. I think when -- again, not --
23 again, just taking it on sort of my interpretation of
24 the word "culture", you have to remember that the NBA
25 is obviously a global property, you know, 2,000

1 employees. I was the leader of a regional office, an
2 office that's a similar size to what the Canadian
3 Hockey League office is. But being part of a
4 collective that was pretty significant and had grown
5 up -- that organization had grown up a certain way
6 under David Stern and then transitioned to Adam
7 Silver. So when I was referencing culture, I guess in
8 my mind I was more from a corporate culture
9 perspective.

10 72 Q. That's fine.

11 A. In terms of how it's operated
12 versus a league like the Canadian Hockey League, which
13 has grown up a different way and is obviously much
14 different. That's all.

15 73 Q. I understand. So getting back to
16 when you showed up in 2019 here, I think you were
17 saying that Mr. Branch gave you a pretty warm welcome,
18 right?

19 A. Yeah, I'd say that.

20 74 Q. And he had teams and they
21 transitioned you into this very important position;
22 yes?

23 A. Yeah. I mean, I think the way it
24 worked practically was I think there were some pretty
25 longstanding employees that were there, and I think

1 whenever a new boss comes in there's always, you know,
2 always some concern about what's going to happen and
3 what does it mean for me. So there was a feeling-out
4 process. And I'd say that the -- the other piece --
5 it's interesting we were talking about CCMC because
6 another thing that was happening at the time was there
7 was a significant amount of people, about six to seven
8 staff of a total staff of about 16 at the time, that
9 had just transitioned into -- become under the purview
10 of the CHL. These were -- you know how I mentioned
11 earlier CCMC sells sponsorship. Well, after you sell
12 a sponsorship, the people who sell it are not the
13 people who we would call service it, right, the people
14 who make sure that all the things that were promised
15 are delivered. So there's a sales function and a
16 service function. In the summer of 2019, the service
17 team, which is a team of about six people, had just
18 transitioned to the CHL.

19 So anyway, I don't know if it's
20 relevant to your questioning, but ultimately the
21 transition that I encountered was a bit of -- there
22 was a transition for me, for some people who had been
23 there a while, but there was also a significant amount
24 of my staff who were also getting acclimated, so the
25 timing of it was interesting and I'd say a significant

1 portion of my staff were also getting acclimated at
2 that time.

3 75 Q. Okay. I guess what I'm trying to
4 get at here is that sounds like one of your roles,
5 this is the marketing role, and you're trying to
6 transition into this role and CCMC is also involved,
7 and further you said some of your service team, which
8 I believe you said works with the member leagues, is
9 involved, and this is all on the marketing side,
10 right?

11 A. Correct.

12 76 Q. But there's also an operation
13 side of what it is that you do; yes?

14 A. There's a business operations
15 side. If you're talking about the operations of the
16 hockey teams, those aren't the responsibility of the
17 CHL corporate league office, those are
18 responsibilities of the regional leagues and the
19 teams.

20 77 Q. We'll get into that, what the
21 responsibilities are and what you mean by that, but
22 what I'm asking you about is, you know, the business
23 operation is one thing, but then there's the hockey
24 operation. Like the Canadian Hockey League also is in
25 charge of certain hockey operations; am I correct?

1 A. No, no. Well, I guess depends on
2 what your definition of hockey operations is, so I'll
3 give you an example.

4 So we operate a national event called
5 the Kubota CHL/NHL Top Prospects Game. So we bring in
6 the top 40 players from across the CHL. Normally it
7 happens in January in a non-COVID -- it happened in
8 March this year, but in a normal year that's what --
9 we would operate that -- that game would be operated
10 under the banner of the CHL.

11 So for that game, that particular
12 game, we would work with -- I have a director of
13 national events; her name is Carla Graansma. Carla
14 would operate that game in conjunction -- so this year
15 it was in Kitchener -- in conjunction with the
16 Kitchener Rangers, and then the hockey ops staff of
17 the OHL, the QMJHL and WHL, the rules that are played
18 that night are decided by that group of hockey
19 operations staff from the regional leagues, et cetera,
20 et cetera.

21 So for that night the CHL is, I guess,
22 in charge of operating a game, but outside of that,
23 the other 2,400 games that happen during the year,
24 they're operated at the regional league level.

25 78 Q. I understand. The Top Prospects

1 Game is one of the -- I think one might call that the
2 national events that the --

3 A. Correct. That's correct.

4 79 Q. -- that the Canadian Hockey
5 League is in charge of; yes?

6 A. Correct.

7 80 Q. Okay. And so this year the Top
8 Prospects Game was in Kitchener, right?

9 A. Correct.

10 81 Q. And I'm not going to ask you for
11 a list of the top prospects, but the top prospects
12 come from across the Canadian Hockey League, right?

13 A. That's correct.

14 82 Q. And the purpose of the Top
15 Prospect Game is to showcase top prospects so that
16 they get drafted into the NHL, right?

17 A. That's correct.

18 83 Q. There's also a business side of
19 it where the Canadian Hockey League makes money on the
20 Top Prospects Game, right?

21 A. Correct. Well, whether we make
22 money or it breaks even. It's not necessarily a
23 significant money maker, but we do sell sponsorships
24 too and try to cover our costs, and if there's profit
25 at the end of the day, it's distributed.

1 84 Q. So the Top Prospects Game, you
2 said it's Kubota. Is that the sponsor?

3 A. Correct.

4 85 Q. Okay. And what is Kubota? Maybe
5 I should look that up on Google.

6 A. Kubota is a manufacturing -- like
7 they make tractors and snowblowers. They're kind of
8 like a farm equipment company.

9 86 Q. Okay. And I think that in one of
10 your affidavits -- I didn't intend to jump around in
11 your affidavits so much, but you've brought it up so I
12 think it's fair to do, because I think you talk about
13 the Kubota game in your April 20, 2022 affidavit.

14 Let's pull that up.

15 A. Okay. Where would you like me to
16 look?

17 87 Q. Paragraph 17.

18 A. Yeah.

19 88 Q. You say:

20 The CHL/NHL Top Prospects Game is
21 not "organized in Ontario" or "takes
22 place in Ontario" as alleged in
23 paragraph 204 (d).

24 And you're talking about the
25 Plaintiff's Fresh Amended Statement of Claim when

1 you're talking about paragraph 204 (d); yes?

2 A. Correct.

3 89 Q. Okay. So I think that you just

4 said it took place in Kitchener; yes?

5 A. In 2022 it did, yeah. In 2023

6 it's going to take place in Vancouver, and in -- yeah.

7 90 Q. Okay.

8 A. It basically moves around.

9 91 Q. I got you. And then you list a

10 number of different jurisdictions in which this game

11 was held or hosted; yes?

12 A. Correct.

13 92 Q. And so you listed -- it's been

14 held in Alberta five times, Quebec three times,

15 British Columbia three times, Nova Scotia once,

16 Saskatchewan twice and New Brunswick once?

17 A. Correct.

18 93 Q. And this game has taken place,

19 since 1992, every year; however, once it was canceled

20 because of COVID, right?

21 A. Correct.

22 94 Q. So that's 30 games. If you need

23 to break out a pen and do some math, you can. It's

24 not a trick. I count 30 games between 1992 and 2022,

25 excluding 2021 when COVID canceled the game.

1 MR. EIZENGA: I don't think we have
2 any problem with that math.

3 A. Yeah. I have no issue.

4 MR. EIZENGA: Mr. MacKenzie, Mr.
5 Eizenga is (indiscernible) run the math, that's all.

6 A. Sure.

7 BY MR. SAYCE:

8 95 Q. Okay. So that means that it was
9 hosted in Ontario in 1995, 1996, 1997, 1998, 2000,
10 2003, 2004, 2006, 2009, 2010, 2011, 2015, 2018, 2020
11 and 2022.

12 If you need me to say that over again,
13 counsel, I can.

14 MR. EIZENGA: Were you reading from
15 the affidavit?

16 MR. SAYCE: I am giving you a number
17 of dates in which I'm asking the witness to confirm
18 if the Kubota -- or I guess it wasn't always a Kubota
19 event, this is the CHL Top Prospects Game or the CHL
20 All Star game -- I'm asking him to confirm that it
21 took place in Ontario in the years I just listed.

22 MR. EIZENGA: I understand. We'll
23 take that under advisement just because I doubt he has
24 it at his fingertips, unless you're reading from some
25 document that he has in front of him that I haven't

1 caught up with.

2 MR. SAYCE: So that's a refusal or
3 that's an undertaking?

4 (U/T) MR. EIZENGA: We'll undertake to --
5 we don't need to take that under advisement. We'll
6 undertake to confirm or not the information that you
7 just requested in your --

8 A. Can I just say something,
9 Mr. Eizenga?

10 MR. EIZENGA: Yes.

11 A. I do think the one element that
12 we haven't addressed here is that in those years that
13 you read, Mr. Sayce, the events could have happened in
14 the United States, because we have teams in the United
15 States, and I know they've hosted Top Prospects Games
16 in the past, so we would just need to --

17 MR. EIZENGA: But we've undertaken to
18 get you that information, Mr. Sayce. That's not a
19 problem.

20 MR. SAYCE: Thank you. So I just read
21 off those years and I'm looking for an undertaking --
22 I guess two undertakings. The first one is that it
23 was hosted in Ontario over those 15 years that I just
24 listed, and that indeed it has never been hosted in
25 the United States.

1 MR. EIZENGA: Well, I'm not going to
2 give you an undertaking that it's never been hosted in
3 the United States. I'll give you an undertaking of
4 where it happened. I'll answer the question of when
5 and where it happened.

6 MR. SAYCE: Okay.

7 BY MR. SAYCE:

8 96 Q. So Mr. MacKenzie, you say you
9 think it's happened in the United States. I guess I'm
10 asking for an undertaking for confirmation of when it
11 took place in the United States.

12 Is that okay, Mr. Eizenga?

13 (U/T) MR. EIZENGA: Well give you that
14 undertaking.

15 MR. SAYCE: Thank you.

16 BY MR. SAYCE:

17 97 Q. So I think you said that you work
18 with Ms. Graansma from your office --

19 A. Correct.

20 98 Q. -- in organizing that event?

21 A. Correct.

22 99 Q. And Ms. Graansma works with you
23 in the Toronto office?

24 A. Correct.

25 100 Q. And then you would engage the CHL

1 member club which is hosting the Top Prospects Game to
2 assist in the organization?

3 A. Correct. Yeah. The key groups
4 in that organization would be the CHL member club, the
5 CHL member league, and sometimes the arena if there's
6 a special arena arrangement basically, but that's the
7 working group.

8 101 Q. I've seen it where -- I'm not
9 trying to quiz you here, but I think that sometimes it
10 will be hosted in a bigger arena that's not a CHL
11 arena, right?

12 A. That has happened in the past,
13 correct.

14 102 Q. So for example, what was once
15 known as the Air Canada Centre, which I think we now
16 call the Scotiabank Centre; is that right?

17 A. Yeah. I don't know -- sorry,
18 again, I've only been with the organization since 2019
19 so I don't know if it's ever been done there. I think
20 it -- just my -- this may be incorrect, but I believe
21 it's been more outside of Ontario when it's been
22 hosted in NHL style arenas.

23 103 Q. You know, this isn't a huge deal,
24 but perhaps you can confirm -- and your counsel can do
25 this by way of undertaking -- that it's been held at

1 Maple Leaf Gardens and it's been held at what we now
2 call the Scotiabank Centre, which was previously known
3 as the Air Canada Centre in Toronto.

4 (U/T) MR. EIZENGA: I understand the
5 question and we'll take that on as another aspect of
6 the undertaking.

7 MR. SAYCE: Thank you, counsel.

8 BY MR. SAYCE:

9 104 Q. Nothing turns on this. I'm
10 blanking. There was no name before the Air Canada
11 Centre, right? Because I know you worked at the NBA
12 at the time, right, so it was the Air Canada Centre
13 and then it was the Scotiabank Centre, right?

14 A. Correct.

15 105 Q. And at that Top Prospects Game --
16 at least 2022 -- the players wore CHL logos on their
17 sweaters?

18 A. Correct.

19 106 Q. They didn't wear their team logos
20 on their sweaters?

21 A. No. The teams were -- basically
22 red and white was kind of what they were.

23 107 Q. Yeah, I think you used to do it
24 as -- you broke it into Team Cherry and Team Orr?

25 A. I believe that's the way it was,

1 correct, prior to my being with the organization.

2 108 Q. That's before your time so you
3 can't say for sure, right?

4 And while we're on the subject of the
5 national events, we might as well keep talking about a
6 national event.

7 So is it fair to say there are three
8 national events -- three primary national events that
9 the Canadian Hockey League has responsibility for?

10 A. Yes. Traditionally there has
11 been, and those three would be the Canada-Russia
12 Series, the Top Prospects Game and the Memorial Cup.
13 The Canada-Russia series has been canceled the last
14 couple of years and will be canceled this year as well
15 given the situation in terms of Russia's invasion of
16 the Ukraine.

17 109 Q. That's a bit of a complicated
18 situation, eh?

19 A. Yes.

20 110 Q. The Canada-Russia series was
21 canceled last year because of COVID; yes?

22 A. Correct.

23 111 Q. Was it canceled the year before
24 because of COVID?

25 A. Correct.

1 112 Q. Okay. And the Russia based
2 calculation, that was a call that the Canadian Hockey
3 League made?
4 A. That was a call -- yes, correct.
5 113 Q. And that national event started
6 in 2003?
7 A. I can't confirm that. We'd have
8 to check on that.
9 114 Q. Okay, that's fine. I don't want
10 to spend too much time asking you about things that
11 took place before you worked at the Canadian Hockey
12 League because I think you'd agree that's not really
13 fair, right?
14 A. Correct.
15 115 Q. And I will be cross-examining
16 Mr. Branch because he's sworn an affidavit. He was
17 the president before 2019, so he's probably the person
18 who's better situated to answer pre-2019 questions,
19 yes?
20 A. Yes.
21 116 Q. Okay. But the Canada-Russia
22 series, as far as you know, the way it operates is
23 that each of the three member leagues takes part in
24 that Canada-Russia series, right?
25 A. Correct.

1 117 Q. So it's a six-game mini
2 tournament?

3 A. Yeah. It would be more of an
4 exhibition than a tournament because there isn't --
5 normally a tournament would have a champion. There's
6 no real -- well, I guess there is. Yeah, we did
7 provide an award. I'm just remembering my first one I
8 went to, which was in Prince Albert, where we actually
9 did have a playoff at the end, but it's a six-game
10 exhibition basically.

11 118 Q. Right. With a winner and a
12 loser?

13 A. Sure.

14 119 Q. And the way I understand this
15 works is that Russia sends over a team to play in
16 Canada; yes?

17 A. Correct.

18 120 Q. And they've got a team of
19 approximately, I don't know, 20 players? Does that
20 sound about right?

21 A. Yeah, correct.

22 121 Q. And these are junior players?

23 A. Correct.

24 122 Q. Like in the same age group that
25 you would have -- an under-20 type age group?

1 A. Correct.

2 123 Q. And the CHL always hosts the
3 Canada-Russia series?

4 A. Outside of the situations that
5 we've just chatted about, yes.

6 124 Q. So of course it's been canceled
7 this year but the CHL doesn't go to Russia?

8 A. Correct, yeah.

9 125 Q. So you have six games; two in, I
10 guess, Western Canada, two in Central Canada and two
11 in Eastern Canada; yes?

12 A. Yeah. It would be two that are
13 hosted in the WHL potential markets, two in the
14 Ontario Hockey League markets and two in the Quebec
15 Major Junior League markets.

16 126 Q. And at the end of the six games,
17 whoever has won more games, either the CHL players or
18 the Russia players, is the winner of the Canada-Russia
19 international hockey series; yes?

20 A. Yeah.

21 127 Q. I think if it's a three-three tie
22 it goes to a shootout?

23 A. Correct.

24 128 Q. Has that ever been held in an
25 American location?

1 A. I don't believe so, because of
2 the obvious --

3 MR. EIZENGA: Your question was with
4 respect to the tournament, not the shootout, and I
5 think you were asking him whether the Canada-Russia
6 series has ever been held in the United States.

7 BY MR. SAYCE:

8 129 Q. Yes, that's correct. Sorry if I
9 was unclear.

10 A. I don't believe it has been
11 because it is a Canada-Russia series, but that might
12 be something we can -- I don't know, Mr. Eizenga, if
13 --

14 130 Q. I can ask for the undertaking --

15 MR. EIZENGA: You don't need to ask
16 me. I'll jump in if we're going to make an
17 undertaking. If you don't know the answer, you just
18 say no.

19 MR. SAYCE: Yeah.

20 A. I'm not aware of it ever having
21 existed in the United States.

22 MR. SAYCE: Let's get an undertaking.
23 Again, I'm asking you questions about events that took
24 place before you were the president and I understand
25 that that's not something you can speak to. But

1 anyway, I don't really need an undertaking, but sure,
2 I mean, just for trivia's sake let's get an answer to
3 that question.

4 MR. EIZENGA: So you're asking me --
5 and like I say, I don't really care -- you're asking
6 me to undertake to get an answer to whether the
7 Canada-Russia series was ever played in the United
8 States?

9 MR. SAYCE: You got it, sir.

10 (U/T) MR. EIZENGA: Okay.

11 BY MR. SAYCE:

12 131 Q. And that is a national CHL event,
13 yes?

14 A. Yes.

15 132 Q. It's organized by you and
16 Ms. Graansma?

17 A. No, because Ms. Graansma hasn't
18 been in her position since we've done one. There was
19 a former employee who used to -- in the ones that
20 you've been asking me about, the ones that happened in
21 the past, it was another employee who was in charge.

22 133 Q. Who was that person?

23 A. Cole Butterworth is the
24 gentleman's name.

25 134 Q. And he had the same title as

1 Ms. Graansma?

2 A. It was a bit of a broader title.

3 He was the director of business operations.

4 135 Q. And Ms. Graansma is the...

5 A. Director of national events.

6 136 Q. Director of national events,

7 okay. But you and the person whose responsibility it

8 is for national events would be in charge of

9 organizing that international hockey series from

10 Toronto, right?

11 A. Yes, with the assistance of the

12 regional league people in the markets.

13 137 Q. Yes, because there's six games

14 being held in the arenas or in the markets of various

15 CHL member clubs, correct?

16 A. Correct.

17 138 Q. Okay. Does the CHL run the

18 import draft?

19 A. So the CHL -- I think the -- the

20 answer would be yes, and the way it works is the rules

21 for the import draft are set by the CHL hockey

22 operations committee, which is comprised of the head

23 of hockey operations for each of the three regional

24 leagues. So they set the rules and set the way the

25 draft's going to work, and then it gets approved by

1 the CHL executive council.

2 139 Q. Okay. The executive council is
3 the commissioners of the three leagues?

4 A. Correct.

5 140 Q. So they're acting in their roles
6 as Canadian Hockey League vice-presidents and Canadian
7 League executive council when they are approving the
8 process you just described for the import draft; yes?

9 A. I believe so.

10 141 Q. Is it possible that they are
11 acting in a different capacity?

12 A. I'm not sure I understand the
13 question.

14 142 Q. Okay, I'll ask it again.

15 MR. EIZENGA: Just ask it again.

16 BY MR. SAYCE:

17 143 Q. Sure. So I think that you said
18 that the import draft, that there are certain -- is it
19 CHL staff who are putting together the import draft
20 processes?

21 A. No, it's regional league staff.
22 The rules around it are sort of constructed by the
23 regional league hockey operations people.

24 144 Q. The rules around the import
25 drafts? What type of rules are you talking about?

1 A. So you know, the order of
2 selection, who's eligible, the players who are
3 eligible, what sort of documentation do they have to
4 show, what are the requirements that teams need to
5 follow in order to make a selection, you know, those
6 types of things.

7 145 Q. So then there's three staff
8 members, one from each of the three leagues, working
9 together to establish those rules around the draft?

10 A. Around the import draft, correct.

11 146 Q. Okay. And then they set the
12 rules working in conjunction and then they present the
13 rules to the Canadian Hockey League executive council?

14 A. Correct, yeah.

15 147 Q. And then the Canadian Hockey
16 League executive council approves those rules?

17 A. Correct.

18 148 Q. So the import draft is a CHL
19 event. It's not a national event but it's the
20 responsibility of the Canadian Hockey League, right?

21 A. Correct.

22 MR. SAYCE: Can we go off the record
23 for one second.

24 --- OFF THE RECORD

25 --- Recess taken at 10:57 a.m.

1 --- Upon resuming at 11:07 a.m.

2 BY MR. SAYCE:

3 149 Q. We were talking about the import
4 draft before we took a health break, and I wanted to
5 ask you about that draft. I'm correct in that the
6 import draft is how international players are drafted
7 to the CHL, and I'll be more specific, non-Canadian
8 and American players, right?

9 A. That's correct.

10 150 Q. So it's an important draft?

11 A. I think it depends on the
12 individual team situations. Some teams really use the
13 import draft, others don't, but -- so I guess it sort
14 of depends on the situation of your individual club,
15 but it is something we've done every year and some
16 teams find it very valuable.

17 151 Q. You have some pretty high profile
18 players that come to play in the CHL through the
19 import draft, yes?

20 A. Correct.

21 152 Q. Like future NHL players?

22 A. Correct.

23 153 Q. And players who have assisted
24 various teams in winning Memorial Cups?

25 A. Correct.

1 154 Q. The Memorial Cup, that's another
2 one of these national events you were talking about,
3 right?

4 A. That's correct.

5 155 Q. That's a CHL event?

6 A. It's a CHL national event,
7 correct.

8 156 Q. And you and your Toronto staff at
9 the CHL take on the organization of that event?

10 A. I'd say it's interesting. The
11 process has changed a little bit, and actually this
12 will be my first one, this one in 2023, next month,
13 will be the first one that I've been involved in.

14 The process, the way it works is I
15 have -- the national event director is part of a group
16 that helps organize the Memorial Cup. A really
17 critical part of the Memorial Cup organization would
18 be the host organizing committee. So the CHL would
19 grant the rights to host the Memorial Cup to -- in
20 2023 it was Saint John, New Brunswick, and then --
21 2022, I'm sorry. It was done in September 2021 this
22 year. Because of COVID we were a little bit delayed.

23 But we grant the rights to the city
24 and the team and then the team puts together --
25 transfers those rights to the host organizing

1 committee. So there's a group of folks on the ground
2 in Saint John who are responsible for a significant
3 amount of the planning of the Memorial Cup.

4 157 Q. Right, because the Memorial Cup
5 is also -- you know, it's not just a game, there's all
6 sorts of celebrations surrounding the Memorial Cup,
7 right?

8 A. Correct. Yeah, there's the
9 hockey tournament and then there are other events that
10 occur around it, that's correct.

11 158 Q. Does it take place in July?

12 A. No. This year it's going to be
13 in June. It's normally at the end of May, but because
14 of COVID we ended up pushing the dates till the end of
15 June. So it's basically the last two weeks of June.

16 159 Q. And you have all sorts of --
17 well, as I said, you know, public celebrations
18 surrounding the Memorial Cup, right?

19 A. Correct.

20 160 Q. And you might have a public
21 square downtown where there would be various Memorial
22 Cup events?

23 A. Correct.

24 161 Q. You might have some bands
25 playing?

1 A. Yeah, correct.

2 162 Q. I don't mean to quiz you. Who is
3 the band that's the headliner for this year? Do you
4 know?

5 A. Depends I guess on what kind of
6 music you like. The lead band -- the event is opening
7 on -- the concert series is opening on June 19 with
8 the Strumbrellas.

9 163 Q. Okay.

10 A. But Classified is part of the
11 lineup over the ten days, Allen Doyle from the --

12 164 Q. Great Big Sea?

13 A. -- Great Big Sea.

14 165 Q. Classified, he's an East Coast
15 rapper?

16 A. Yeah, I believe so.

17 166 Q. Starting to sound pretty good.
18 So the way I understand it is that
19 there is a Memorial Cup -- a CHL Memorial Cup site
20 selection committee, right?

21 A. Correct. So for 2022 there
22 absolutely was, yeah.

23 167 Q. Okay. And there is a group of
24 people who decide which CHL member club will be
25 hosting the Memorial Cup in that year, right?

1 A. Correct.

2 168 Q. Okay. And whenever the decision
3 was made, the selection committee arrived on Saint
4 John -- with no apostrophe-S -- right?

5 A. Correct.

6 169 Q. And you're on that committee,
7 right?

8 A. I was on that committee for 2022,
9 correct.

10 170 Q. So the CHL site selection
11 committee chooses the site, then a local organizing
12 committee organizes what bands play, what food vendors
13 show up and sell food, things like that, right?

14 A. Well, that's not the only -- like
15 it's more than that.

16 171 Q. Of course, of course. I don't
17 mean to sell the --

18 A. No, no, sorry. I guess what I'm
19 saying, Mr. Sayce, would be that, as an example,
20 something that would be related to the hockey
21 tournament such as what are the ticket prices, that
22 gets set locally. They sell sponsorships locally; the
23 companies who might get some benefits in the arena.
24 So there's an integration in some respects between
25 what's happening in the arena and what's happening

1 outside, and the local host organizing committee is
2 responsible for all of that.

3 172 Q. But the CHL, like you and Carla
4 Graansma, retain some Memorial Cup organizational
5 responsibility, right?

6 A. Yeah. I'd say yes. I mean,
7 there's a working group, we'll call it, that includes
8 Carla, would include the host organizing committee
9 chair, a representative from the team, et cetera, et
10 cetera.

11 173 Q. I think you described how the
12 Memorial Cup rotates from, I guess, market to market,
13 from the OHL market to the QMJHL market to the WHL
14 market, and that each market will hold the Memorial
15 Cup every three years, right?

16 A. That's been the current practice,
17 correct.

18 174 Q. Do you have any awareness -- this
19 happened in 2018 before you were the president, so you
20 were probably focusing on Kawhi Leonard at the time.
21 In 2018 there was a 100th anniversary of the Memorial
22 Cup. Do you remember that?

23 A. I believe -- I learned about that
24 when I arrived.

25 175 Q. Okay. So you have some knowledge

1 even though you showed up after the event took place;
2 yes?

3 A. Well, I know it was the 100th.
4 That's about the extent of my knowledge, to be honest.

5 176 Q. I was going to ask you to confirm
6 that they abandoned rotation because of the -- so it
7 was a full CHL league-wide bidding process because of
8 the importance of the 100th anniversary, but if you
9 don't have any knowledge of it, I'll skip it. Do you
10 have any knowledge of that?

11 A. No; that process, no.

12 177 Q. Just so you know, Don Cherry was
13 the honorary chairman and The Eagles played at that
14 one. A different type of fun.

15 Does the CHL make money from the
16 Memorial Cup process?

17 A. Well, the way it would work would
18 be we have a budget, right, we have a CHL budget that
19 includes all of our events and everything else that we
20 do, and then when -- at the end of the year, if there
21 are profits at the end of the year, they get
22 distributed to the regional leagues and down to
23 the teams. So if the Memorial Cup were to make money,
24 it would get distributed to the teams through the
25 regional leagues.

1 178 Q. But do you know anything about
2 the local community providing a profit guarantee to
3 the Canadian Hockey League with respect to the
4 Memorial Cup? Do you have any awareness of that?

5 A. I believe that has been practice
6 in the past, correct.

7 179 Q. Where either the local city or
8 the local province will guarantee a particular amount
9 of profit for the Canadian Hockey League?

10 A. I don't -- the way you describe
11 it, that doesn't necessarily jive with my
12 understanding of it, I would say. I think that
13 governments -- local governments or local tourism
14 bureaus, provincial entities that are -- or local
15 entities that are about trying to promote their
16 region, contribute to -- may contribute funds to help
17 operate the Memorial Cup, but those fund aren't
18 necessarily allocated to guarantee a profit to the
19 Canadian Hockey League.

20 180 Q. So from your understanding, I
21 guess, from 2019 forward, if the profit that the CHL
22 makes on the Memorial Cup is zero, or it falls below a
23 certain threshold, is there a mechanism where the
24 local government would top up the CHL's take, or is
25 that not something you're aware of?

1 A. No, that's not something I'm
2 aware of.

3 181 Q. But the local tourism board may
4 inject money into the process to help the Canadian
5 Hockey League make a profit; is that a fair depiction?

6 A. No.

7 182 Q. Maybe describe to me how the
8 local government subsidy works.

9 A. Well, it depends on the
10 individual event and the situation. There's some
11 Memorial Cups where the government provides very
12 little. Again, I've only been here since 2019 so I've
13 only seen what's gone on in Saint John, but my
14 understanding is it fluctuates kind of depending on
15 where the event is being held in terms of government
16 support.

17 I think when you talk about a
18 guarantee or -- so prior to -- my understanding of the
19 way it worked prior to 2019 -- or prior to 2022, which
20 I was involved in, is the site selection process was
21 handled by the regional league. So when the event was
22 in the WHL, the WHL was responsible for setting up the
23 process to choose the city; same in Ontario and same
24 in Quebec.

25 And my understanding is it was

1 dependent upon the league approach as to whether or
2 not there was some level of a minimum that was
3 required for the team to come forward with, and I
4 think that differed -- my understanding is that it
5 differed between the three leagues. So in one league
6 they might say, listen, there's a minimum that's
7 expected in terms of a distribution. And in those
8 days, in those times, that minimum would get
9 distributed just amongst the league, not among all the
10 teams in the CHL.

11 183 Q. You're basing that on something
12 that one of the other commissioners told you or
13 something that you learned when you became the
14 president of the CHL?

15 A. Correct.

16 184 Q. You don't have any direct
17 knowledge of how that worked because that's before
18 your time; yes?

19 A. Correct.

20 185 Q. And I guess it's fair to say that
21 the Memorial Cup -- I don't mean to repeat myself;
22 perhaps I should keep better notes. Is it fair to say
23 that final control and approval of Memorial Cup
24 matters falls with the CHL?

25 A. I think it would depend on the

55

1 matter and it would depend on -- like it kind of
2 depends on what you're talking about. So if it was a
3 question of a questionable hit, say, or a discipline
4 matter, I believe -- actually, to be honest I'm
5 just -- next week I'm beginning to meet with some
6 people on that in terms of what all the processes are
7 so I'm not fully -- maybe I'll just say I'm not fully
8 apprised yet on a situation like that, how it would
9 play out. But my understanding is that there's a -- I
10 believe there's a role that the NHL plays to kind of
11 be an independent sort of third party in this.

12 186 Q. The NHL gets involved, but you
13 don't know for sure?

14 A. No. Again, I'll know more next
15 week.

16 187 Q. What types of things -- the CHL
17 has some control over, you know, final approval over
18 some things to do with the Memorial Cup, right?

19 A. Give me an example.

20 MR. RIZENGA: Just a second before you
21 answer, Mr. MacKenzie.

22 One of the problems we had with the
23 last exchange was that I think Mr. MacKenzie wasn't
24 clear on what you meant by "matters". So some things,
25 control over some things; maybe what you could do,

Deleted: SAYCE

1 Mr. Sayce, is just tell him what matter or things
2 you're interested in and he'll be able to answer the
3 question.

4 BY MR. SAYCE:

5 188 Q. I guess I'm more concerned with
6 the word "final". So let's say that the local
7 committee that's tasked with the on-the-ground
8 selection of the bands or the sponsors or what have
9 you, if they made a decision that was, I suppose,
10 completely inappropriate in the eyes of the president
11 of the CHL or the executive committee of the CHL, the
12 CHL could step in and veto that, right? They have
13 final approval over the sort of operations and
14 functionality of the Memorial Cup?

15 MR. EIZENGA: Just a second,
16 Mr. Sayce, again. Until you got to the second part of
17 the question I was fine, because first you said the
18 bands and sort of the celebrations and could the CHL
19 step in, in the form of Mr. MacKenzie, and then you
20 broadened it out to say operations generally. So
21 maybe we could just do them in pieces.

22 MR. SAYCE: Happy to.

23 BY MR. SAYCE:

24 189 Q. So let's say in the Memorial Cup,
25 let's use the example of, instead of The Eagles, the

1 local committee decided to choose a performer, a
2 headline performer, that was perhaps inappropriate,
3 let's just say a politically inappropriate performing
4 artist that the Canadian Hockey League executive
5 committee thought, that's not going to reflect very
6 well on the Canadian hockey league.

7 MR. EIZENGA: Like, Mr. Sayce, your
8 former punk band, for example?

9 MR. SAYCE: Oh no, I was never in a
10 punk band, Mr. Eizenga.

11 MR. EIZENGA: Oh, sorry.

12 MR. SAYCE: But maybe your former
13 political party. I'm joking.

14 MR. EIZENGA: Fair enough. Anyways, I
15 think the question is clear. Great Big Sea was
16 selected and could you overturn that, or the other way
17 around?

18 BY MR. SAYCE:

19 190 Q. I wouldn't use Great Big Sea.
20 Anyway, I think you understand the question.

21 A. I understand the question in that
22 scenario. To be honest, there's nowhere where
23 formally we have a veto. I think what we would -- in
24 actual practice what we would do is if we didn't like
25 Great Big Sea and we felt they were going to be

1 offensive, we'd talk to the organizing committee, but
2 ultimately the organizing committee would have the
3 final say.

4 191 Q. Okay. So let's take it broader
5 then. In terms of the operations of the Memorial
6 Cup -- again, I don't want to make this question too
7 complicated because not much really turns on it, but I
8 think that what you said was that the CHL plays a part
9 in the organization of the Memorial Cup, right?

10 A. That's correct.

11 192 Q. And that you supervised that
12 organization, right? That stops with you?

13 A. No, it stops with the steering
14 committee, which includes CHL representation.

15 193 Q. So the CHL -- you disagree with
16 the following statement: The CHL organizes the
17 Memorial Cup under your supervision?

18 A. Could you restate the question?

19 194 Q. Sure. Do you agree with this
20 proposition -- say "yes" or "no". Well, you can say
21 whatever you want, but I'm asking you a "yes" or "no"
22 question.

23 The CHL organizes the Memorial Cup
24 under your supervision?

25 A. I don't think it's really a "yes"

1 or "no" answer, to be honest.

2 195 Q. That's fine.

3 A. We're a significant part of the
4 organization of it, but I think it kind of depends on
5 what you're talking about. So I'll give you an
6 example. So if it's a question about a hockey related
7 matter, again, there's a hockey operations group with
8 representatives from each regional league. The CHL
9 doesn't have hockey operations people; that's not our
10 role.

11 So a decision around a hockey issue
12 would be made by the hockey operations group, and
13 ultimately, you know, they're acting on the CHL's
14 behalf, but it kind of -- it's a nuanced answer, I
15 guess, depending on what you're talking about.

16 196 Q. All right. So they're operating
17 on the CHL's behalf, right?

18 A. Like the hockey operations
19 committee, yes, would be operating on the CHL's
20 behalf, correct.

21 197 Q. Okay. And so I guess my question
22 was final control and approval rests with the CHL --
23 and I don't want to ask the same question. I think
24 you said no, final approval and control did not
25 necessarily rest with the CHL.

60

1 A. Well, I think it depends on what
2 you're talking about.

3 198 Q. So you say...

4 A. Like the band wouldn't be
5 something that -- there's nowhere that it grants the
6 CHL president the ability to rule on who the band is
7 at the Memorial Cup. That decision is a local
8 decision.

9 199 Q. But who the sponsor is, is that
10 something that you would have final control?

11 A. Sponsorship we would have --
12 well, yeah, I mean, we would have control over what
13 sponsors would affiliate themselves with the CHL mark.
14 They would need to have a contract with us, we'd have
15 to grant them the intellectual property rights, et
16 cetera, et cetera.

17 200 Q. And you said the rules of play
18 you're not totally clear on because you're going to
19 figure that out in a couple weeks?

20 A. Yeah. I need to be -- I need to
21 get a bit more up to speed on that and, again, I'm
22 having some meetings next week on it.

23 201 Q. I think we can probably stop
24 talking about the Memorial Cup and move on to
25 something else.

1 Go off the record for one sec.

2 --- OFF THE RECORD

3 BY MR. SAYCE:

4 202 Q. So let's go back to your October

5 29 affidavit.

6 A. Yes.

7 203 Q. At paragraph 11 you list some of

8 your roles and responsibilities?

9 A. Yes.

10 204 Q. And I think that you are just

11 providing a sampling of your roles and

12 responsibilities here; is that fair? It's not an

13 exhaustive list?

14 A. It's pretty exhaustive in terms

15 of what I'm responsible for, yes.

16 205 Q. So you say you provide directions

17 for CHL business operations?

18 A. M'hm.

19 206 Q. To clarify and provide direction.

20 Is it fair to say that you are responsible for the

21 CHL's business operations?

22 A. Yeah.

23 207 Q. Do you manage the affairs of the

24 Canadian Hockey League?

25 A. The business affairs I do, yeah.

1 208 Q. Do you develop and implement
2 marketing and promotion for the CHL?
3 A. Yes.
4 209 Q. Do you negotiate and implement
5 agreements with third parties?
6 A. With some third parties;
7 broadcasters, sponsors, licensees, yeah.
8 210 Q. By licensees do you mean...
9 A. CCM would be an example.
10 211 Q. Hockey equipment suppliers?
11 A. Yeah, hockey equipment suppliers,
12 appareling companies, technology providers. There
13 would be a few depending on what it is, but yeah.
14 212 Q. Are you the public face of the
15 Canadian Hockey League?
16 A. Yes.
17 213 Q. Do you run that CHL office in
18 Toronto?
19 A. Yes.
20 214 Q. And do you hire and manage those
21 CHL staff in Toronto?
22 A. Yes. If they're located in
23 Toronto, yes.
24 215 Q. How many staff do you have?
25 A. I believe full-time staff as of

1 now are a complement of 16 and then we have some part
2 time that take us up to about 20 in total,
3 approximately.

4 216 Q. And are you in charge of
5 accounting?

6 A. Ultimately, yes. I have a VP
7 finance, but yes.

8 217 Q. You are VP finance of the
9 Canadian Hockey League? Or sorry, you have a VP?

10 A. I have someone who plays that
11 role, correct.

12 218 Q. I understand. But
13 (indiscernible) accounting; yes?

14 A. Yes.

15 219 Q. Do you organize the Canadian
16 Hockey League annual meeting?

17 A. I think, per our constitution,
18 they're actually organized -- like I set them up on
19 behalf of the board of directors, but I would be
20 present at them and would help set the agenda and lead
21 the meetings.

22 220 Q. Did COVID get in the way of the
23 CHL's in-person annual meeting?

24 A. Yes. So we have not held a live
25 CHL executive meeting since January of 2020.

1 221 Q. Where did you have that?
2 A. I believe it was in Hamilton.
3 222 Q. Representatives of the 60 members
4 would show up to that meeting?
5 A. No. It would be the CHL board,
6 which consists of two members of -- two owners from
7 each league, plus the three commissioners and myself.
8 223 Q. Okay. So the members don't
9 attend the annual general meeting?
10 A. They do, or they should, but it
11 doesn't have to be held live, I guess, would be the
12 point.
13 224 Q. So the one in Hamilton they did
14 not attend?
15 A. Sorry; the one in Hamilton was a
16 CHL board of directors meeting and it was live and
17 there were nine individuals there, plus myself.
18 225 Q. I'm talking about just the annual
19 general meeting with the members.
20 A. Yeah. So sorry, that meeting
21 has -- that wasn't the Hamilton meeting I was talking
22 about.
23 226 Q. Okay. Have you done a live
24 version of that meeting since you've been the
25 president?

1 A. No.

2 227 Q. So you do that online over Zoom?

3 A. We have not held a live or online

4 meeting of the members since I've been president, of

5 all 60 clubs.

6 228 Q. Will you have a general meeting

7 of the Canadian Hockey League this year?

8 A. That decision hasn't been made

9 yet. We're still -- I mean, COVID has, as you know,

10 been pretty difficult for meetings, live meetings.

11 229 Q. I understand. So you don't know

12 if you will have a Zoom meeting or a live meeting, a

13 general meeting of the Canadian Hockey League this

14 year?

15 A. It has not been determined yet.

16 230 Q. Do you know when the last annual

17 general meeting of the Canadian Hockey League took

18 place? Was it before --

19 A. I don't know. I don't know the

20 answer to that.

21 231 Q. Just to get back into your

22 responsibilities, do you have authority to resolve

23 disputes between teams or leagues?

24 A. The constitution gives me some

25 authority, and it's -- I know you have the

1 constitution as part of the documents we provided, so
2 the powers that are outlined in the constitution are
3 powers that I would hold.

4 232 Q. Okay. And I think we talked
5 about you meeting with the executive council, which is
6 the three vice-presidents, who are also known as the
7 three member league commissioners, right?

8 A. Sorry; could you repeat the
9 question?

10 233 Q. Earlier we talked about you
11 meeting with the executive council, right?

12 A. Correct. Yeah, we have executive
13 council meetings, yeah.

14 234 Q. And I just wanted to clarify who
15 that is. The executive council is made up of --

16 A. The three commissioners.

17 235 Q. -- the three commissioners of the
18 three member leagues?

19 A. And myself, yeah.

20 236 Q. How often do you meet with the
21 executive council?

22 A. It has really been affected by --
23 the cadence would be dependent -- has been a little
24 bit dependent upon COVID, to be honest. Prior to
25 COVID hitting we were meeting once every couple months

1 and then, given the events of COVID and how much was
2 happening, we started to meet more often. So during
3 COVID we would meet a couple times a week and now
4 we're sort of kind of in between. We meet fairly
5 regularly, I guess would be the way to describe it; at
6 least once a week.

7 237 Q. At least once a week?

8 A. At present, but it's changed
9 because of COVID. So as we've gotten out of COVID
10 we've reduced those meetings, but yeah.

11 238 Q. During the, let's call it, the
12 middle of COVID, you would meet a few times a week
13 with the executive council?

14 A. Correct.

15 239 Q. Now that we are in what I hope is
16 the post-COVID era, you meet maybe once a week, maybe
17 a little more?

18 A. Yeah. I mean, we're moving in
19 that direction. Some weeks more than others depending
20 on what's happening.

21 240 Q. Okay. And I think we were
22 talking earlier -- I was asking you about when you
23 were brought in and you were being trained up to be
24 the president, and I think you said that the executive
25 committee was sort of an important tool for you to

1 acclimatize yourself to the position that you had
2 taken on as president. Is that fair to say?

3 A. Yeah. I mean, given -- coming in
4 from obviously a long career at another organization
5 that wasn't in the sport, and the reality of this
6 situation of first-time full-time president, you know,
7 the former president being part of sort of the
8 management team, and also just three commissioners who
9 had been around for -- had a fair amount of
10 experience, it was helpful to be able to get -- to
11 begin to get sort of up to speed on the role.

12 241 Q. And you shared an office with
13 Mr. Branch, David Branch, the former president of the
14 CHL and current commissioner of Ontario Hockey League?
15 When you came on board, you shared an office with him,
16 right?

17 A. Sorry; when you say "shared", we
18 were in the same office space for about three months
19 and then the CHL moved its offices in January of 2020.

20 242 Q. I didn't mean physically sharing
21 a desk, I meant in the same office space. Right.

22 A. Right. I had an office in the
23 CHL -- the way the physical construction of the office
24 was, was the CHL was on one side kind of the office
25 and the OHL was on the other side, but it was the same

1 address, yeah.

2 243 Q. So you could just poke your head
3 into Mr. Branch's office and get him to walk you
4 through some of the transition that was taking place,
5 right?

6 A. Yes. David was accessible.

7 244 Q. And you trust David, you trust
8 his judgment, you have a positive impression of his
9 character?

10 A. Yes.

11 245 Q. You think that he's trustworthy?

12 A. Yes.

13 246 Q. He's generally truthful, as far
14 as you know, when he speaks?

15 A. My experience since 2019 has been
16 that David is trustworthy and truthful, correct, in my
17 dealings with him.

18 247 Q. I'm not asking you to say that
19 he's always told the truth at all times, but he's a
20 straight shooter, you would say, right?

21 A. Yes.

22 248 Q. Is it correct to say that the CHL
23 and the OHL shared some staff members when you first
24 arrived at the CHL?

25 A. No. Sorry; let me correct that.

70

1 So before my arrival there was a -- Dave had talked to
2 the staff about whether or not, before I got there,
3 there would be staff that would be -- basically there
4 was a bit of a bifurcation of sort of CHL staff and
5 OHL staff.

6 So when I arrived that was complete,
7 with the exception of one staff person, who was our
8 finance director, and he was a joint sort of OHL-CHL
9 employee for a period before we switched, and the
10 finance person I have now is fully a CHL employee.
11 When I arrived there was one employee that was still
12 sort of playing the dual role.

13 249 Q. That was Ray Hollowell?

14 A. Correct.

15 250 Q. So he was the CHL director of
16 finance and the OHL director of finance?

17 A. Correct.

18 251 Q. So now he's just the OHL director
19 of finance?

20 A. Correct.

21 252 Q. Okay. And Cole Butterworth was
22 CHL director of business operations, and did he hold
23 two roles or one role?

24 A. No. Cole Butterworth was a
25 dedicated CHL employee.

1 253 Q. But now he's the vice-president
2 of business at the OHL?

3 A. Correct.

4 254 Q. And then Paul Krotz was the CHL
5 manager of media and information services as well as
6 the OHL director of communications?

7 A. No. When I arrived he was the
8 CHL director of communications.

9 255 Q. Okay, but you don't know if he
10 held two -- this dual role for him?

11 A. Prior to my arrival, yes, he did.
12 He was a dual role employee prior to my arrival.

13 256 Q. And Scott van Koughnett?

14 A. I believe he was a dual role
15 employee, and when I arrived he was -- he's on my
16 staff now. He's a CHL employee.

17 257 Q. But he was the manager of web
18 content at the CHL and the OHL manager of video and
19 web content?

20 A. I believe that may have been his
21 role before. I'm not aware because I wasn't there,
22 but since he's been with me he's our manager of video
23 content.

24 258 Q. Was Wade Branch the CHL manager
25 of league programs when you showed up?

1 A. Wade Branch was an OHL employee
2 when I showed up, so he was not a CHL employee.
3 259 Q. But do you know he was a CHL
4 employee before?
5 A. I'm not aware. I believe he was
6 also a dual employee, OHL-CHL.
7 260 Q. But it's tough for you to say for
8 sure because you're going off what people have told
9 you after you arrived, right?
10 A. Yeah.
11 261 Q. Is he related to David Branch?
12 A. Correct. He's David's son.
13 262 Q. Josh Sweetland, was he a dual
14 role guy or do you not know?
15 A. I don't know if he was dual. I
16 would guess that he wasn't. I would guess he was OHL
17 specific.
18 MR. EIZENGA: Mr. MacKenzie, Mr. Sayce
19 isn't asking you to guess ever, so if you don't know,
20 then say you don't know, or if you think you know,
21 that's fine, but he doesn't want you to guess.
22 MR. SAYCE: Well, Mr. Eizenga, thank
23 you.
24 A. So I would say I don't know if
25 Josh was dual. I don't believe he was but --

1 BY MR. SAYCE:

2 263 Q. I don't know if you know the
3 organization of our cross-examination schedule, but
4 David Branch was the president right up until you were
5 and I haven't had the opportunity to cross-examine
6 David yet, so I can just ask him that question to
7 confirm.

8 Just go off for one sec.

9 --- OFF THE RECORD

10 BY MR. SAYCE:

11 264 Q. So I think that in your evidence
12 you say some policies are drafted and administered at
13 the member league level and some policies are drafted
14 and administered at the CHL level. Is that fair to
15 say?

16 A. Yes. I think what -- the
17 administration of policies are all done at the
18 regional league level. Anything we do is administered
19 at the regional league level.

20 265 Q. Okay. Now, the policies
21 themselves sometimes, some policies do exist at the
22 CHL level; yeah?

23 A. There are some policies that
24 exist that have CHL letterhead on them, yeah.

25 266 Q. I mean, they are CHL letterhead

1 because they're CHL policies, right?

2 A. Well, they have CHL letterhead --

3 not -- I mean, it depends, I guess, on the

4 individual -- why don't you ask about individual

5 policies and we can talk about it.

6 267 Q. Anti-doping policy; is that a CHL

7 policy?

8 A. That's on CHL letterhead.

9 268 Q. Is it a CHL policy?

10 A. Yeah. It's the CHL's anti-doping

11 policy, yeah.

12 269 Q. Okay. So every team in the

13 Canadian Hockey League must abide by the same

14 anti-doping policy?

15 A. Correct. But can I provide some

16 history in terms of how the policy came to be, or are

17 you going to ask me that?

18 270 Q. Well, the thing about the history

19 is I don't want to get into areas that you don't have

20 direct knowledge of, so we'll stick to -- I don't want

21 to cross-examine you on things you don't know about.

22 It's not fair to you.

23 MR. EIZENGA: Do you know about it,

24 Mr. MacKenzie? You indicate -- I mean, obviously --

25 MR. SAYCE: Mr. Eizenga, that's not my

1 question. You're not asking the questions; I am. I
2 was going to ask a different question, which is --

3 MR. EIZENGA: Well, no, you actually
4 asked him a question and he said that it's not quite
5 like that, he would like to give you the history.

6 You can either let him do it now or --
7 obviously it's pretty clear that he wants to say
8 something. I can pick it up at the end of the day,
9 but if you want to do it while you're at it, that's
10 fine.

11 MR. SAYCE: Okay. Thank you, Mr.
12 Eizenga. I'll ask my questions about the anti-doping
13 policy.

14 BY MR. SAYCE:

15 271 Q. So there's a CHL anti-doping
16 policy, right?

17 A. Correct.

18 272 Q. And that is not restricted to
19 performance enhancing drugs, right?

20 A. What do you mean?

21 273 Q. Right; actually I knew that was
22 coming.

23 So the anti-doping policy, part of
24 that policy is to -- part of the reason for the
25 existence of that policy is to make sure that players

1 don't take steroids or drugs that will give them an
2 unfair advantage, right?

3 A. Well, this was really, I think,
4 the history of what I was going to provide in terms of
5 how this policy came to be. The reason -- even though
6 I wasn't at the organization at the time to be -- I
7 did ask about the evolution of the policy and why it
8 was administered and why it was a CHL policy and not a
9 regional league policy. And what I was told was that
10 I guess in 2006 the QMJHL -- I don't know if they were
11 approached or if they approached a vendor, the
12 Canadian Centre for Ethics in Sport about anti-doping,
13 about an anti-doping policy and beginning to kind of
14 move into that area.

15 That was an area that was new for any
16 of the three leagues. It wasn't something that had
17 existed and sort of grown up over time. And so the
18 QMJHL entered a relationship with CCS, and as part of
19 that process of entering into a relationship with CCS,
20 CCS required that there be an anti-doping policy.

21 So the QMJHL and CCS worked that
22 policy out and then over time the other two leagues
23 agreed that it would make sense for them to also put
24 in place an anti-doping policy, and because it was --
25 and to use CCS to administer it. So one vendor and

1 the policy was just extended across the three leagues.

2 But if you look at that policy, the
3 way it works is it's administered and each league has
4 sort of the authority to administer it on the ground
5 per the policy, but they have the ability to do that.

6 I think that's the background, and so
7 I think the -- I think at the time -- to answer your
8 question, I think at the time, you know, given where
9 sport was going -- safe sport -- or sorry, clean sport
10 was a thematic that was moving across amateur sports
11 at the time -- there was a desire to ensure that our
12 players were not using performance enhancing drugs or
13 using anything that might assist their performance,
14 and so that was the need and that's why I guess the
15 QMJHL reached out to CCS or they decided that it was a
16 good thing to put in place a policy.

17 274 Q. I think you said what you were
18 told. Who told you all of that?

19 A. I spoke to Gilles Courteau about
20 it.

21 275 Q. When?

22 A. It's been over the last --
23 because we meet and -- we actually, to be honest,
24 we -- or just sort of an update, we ended up
25 transitioning vendors, so we no longer work with CCS,

1 we work with a company called CDT. So in the process
2 of going through that, working with the regional
3 leagues on that process and getting their approval for
4 it, I learned some of the history.

5 276 Q. So Gilles Courteau told you but
6 you don't remember exactly when?

7 A. Correct.

8 277 Q. And the anti-doping policy -- and
9 this was my earlier question -- it's a performance
10 enhancing drug policy, right? Part of the policy is
11 to avoid -- or to enforce a zero tolerance policy on
12 performance enhancing drugs, right?

13 A. I mean, I think if you look at
14 sort of the sanctioning that can happen, it is -- when
15 you say zero tolerance, it depends on the situation.
16 And the policy that you have is, again, that sort of
17 sanctioning mechanic, the range of sanctions is not
18 always expulsion or zero tolerance.

19 278 Q. It depends on the drug you take?

20 A. Right. I think it also
21 depends -- there's some intent stuff. It says in
22 there, et cetera, et cetera; there's some other things
23 that aren't just about your result.

24 279 Q. So is marijuana one of the drugs
25 that is caught by the anti-doping policy?

1 A. Yeah.

2 280 Q. And is there random drug testing?

3 A. Yes.

4 281 Q. Throughout the CHL?

5 A. Yes.

6 282 Q. Is cocaine one of the drugs

7 that's tested for?

8 A. I believe it is. Again, I

9 believe based on the list -- the list is fairly

10 extensive. It's the WADA banned substance list that

11 gets used, I believe.

12 283 Q. WADA -- you mean W-A-D-A?

13 A. Correct.

14 284 Q. And so the leagues determined

15 that there should be a uniform policy for anti-doping;

16 yes?

17 A. Well, the leagues -- I don't know

18 if the leagues -- you'd have to ask the leagues. I

19 don't know if the leagues agreed on that. I think the

20 leagues identified that the policy that was in the

21 QMJHL was appropriate to be administered in their

22 league, but I don't think there was a mandate at the

23 league level back in 2008, I don't believe, that this

24 needs to be CHL-wide. I think it was working in the Q

25 so they adopted it. They liked the vendor at the

1 time, they adopted the vendor and they moved forward.

2 285 Q. Did you ask Mr. Courteau that
3 question?

4 A. What question?

5 286 Q. If the leagues determined that
6 there had to be a uniform policy?

7 A. I did not.

8 287 Q. I guess you're just sort of --
9 your previous answer was not -- you weren't informed
10 by Mr. Courteau. That previous answer was sort of
11 something you are assuming?

12 A. Yeah, I did not speak to
13 Mr. Courteau specifically about whether or not there
14 was a requirement -- or that they decided that it
15 needed to be CHL-wide, but given the fact that they
16 adopted it in 2008 -- given the fact the other two
17 leagues adopted it, it wouldn't be an assumption that
18 they adopted it, because it's clear that they did.

19 288 Q. So you got this nationwide
20 anti-doping policy and it catches performance
21 enhancing drugs but it also catches recreational
22 drugs; is that right?

23 A. Correct.

24 289 Q. And so part of this -- well, the
25 reason for existence of this policy is for fair play

1 in the sport of hockey, right?

2 A. Correct, yeah.

3 290 Q. And another part of the reason
4 that this policy exists is to protect the health and
5 safety of CHL hockey players; yes?

6 A. Yes, and to educate our players
7 in this area. Like education, from my understanding,
8 probably the main thrust of it was -- yes, there was
9 the testing and the sanctioning portion, but education
10 was a critical piece to it, from my understanding.

11 291 Q. So you're educating young,
12 impressionable CHL players about the dangers of drug
13 use; yes?

14 A. Yeah, education was very
15 important, correct.

16 292 Q. And the best way to do that is to
17 have the same policy across the CHL, right?

18 A. Again, I don't know if that was
19 the intent. Again, I think each of the regional
20 leagues made the determination in 2008 that what was
21 happening in the QMJHL would be appropriate for their
22 league, administered at the regional league.

23 293 Q. Do you believe that the best way
24 of addressing the concerns we just discussed now, as
25 you sit here today, the best way to do that is by

1 having a single CHL-wide anti-doping policy?

2 A. I don't think that my view really

3 matters given the way we're structured. I think the

4 regional leagues have to make that decision.

5 294 Q. So your view on player safety

6 policies doesn't matter?

7 A. I didn't say that.

8 MR. EIZENGA: That's not fair.

9 MR. SAYCE: Okay.

10 MR. EIZENGA: He made a comment about

11 the --

12 MR. SAYCE: Mr., Mr. -- I mean, he

13 disagreed with me. I think he's able to do that.

14 BY MR. SAYCE:

15 295 Q. So you said given the structure

16 of the Canadian Hockey League your view on whether the

17 best way to administer the CHL's anti-doping policy

18 didn't matter. Am I stating your evidence correctly?

19 A. No. I don't think -- I wouldn't

20 say it that way. I think that the way we're -- I

21 mean, that's not the CHL's role in terms of the

22 administration of the policies. The administration of

23 policies occur at the regional league level.

24 296 Q. So the CHL does not have any

25 responsibility over player safety?

1 A. That responsibility falls at the
2 regional league level.

3 297 Q. Okay. So the CHL doesn't have
4 any responsibility over player safety?

5 MR. EIZENGA: I think he answered your
6 question.

7 MR. SAYCE: I just want to make sure.
8 Is it a "no"?

9 MR. EIZENGA: He said the
10 responsibility is at the regional level.

11 BY MR. SAYCE:

12 298 Q. Is it solely at the regional
13 level or does the CHL also have a responsibility over
14 player safety?

15 A. It falls with the regional --
16 again, when you say "player safety", what exactly are
17 you talking about?

18 299 Q. Talking about the CHL. I'm using
19 an example of the anti-doping policy. Is that a
20 player safety policy?

21 A. It's an anti-doping policy.

22 300 Q. Is the anti-doping --

23 MR. EIZENGA: I don't -- I'm not going
24 to be obstreperous, but the issue is that when you
25 talk about player safety there's such a wide range of

1 issues. You could be talking about people --

2 MR. SAYCE: Mr. Eizenga --

3 MR. EIZENGA: Let me finish. Let me
4 finish. You could be talking about issues that are on
5 the ice, you could be talking about misconduct off the
6 ice, you could be talking about anti-doping, so just
7 put them to him and then he'll answer.

8 This isn't a lawsuit about the proper
9 legal structure of the CHL and its member leagues and
10 whether that's appropriate, but put to him what issues
11 you're talking about and whether he feels the CHL has
12 responsibility over that and he'll answer those
13 questions.

14 MR. SAYCE: Mr. Eizenga, I think that
15 if you think the legal structure of the league is not
16 a relevant aspect of what's being discussed today, I
17 would disagree with you. Anyway, let's get back to --
18 I did ask him about the anti-doping policy.

19 BY MR. SAYCE:

20 301 Q. So I'll ask him the question. Is
21 the anti-doping policy a player safety policy or a
22 policy that is meant to impact player safety?

23 A. I would say -- my interpretation
24 of it would be that it's a performance -- you asked
25 earlier about whether it's sort of like a fair play

1 sort of level playing field policy, and I would say
2 the answer would be yes, and I think there is a very
3 important educational component for the players in
4 that policy, because drugs can be detrimental.

5 302 Q. Okay. So I'm going to ask the
6 question. I don't think you answered the question.
7 Maybe Mr. Eizenga will say I'm asking the same
8 question and just not getting the answer to the
9 question, and maybe there's a problem with that, maybe
10 there's not.

11 Is the anti-doping policy a player
12 safety policy? Is it concerned with the safety, the
13 health and the well-being of CHL hockey players?

14 A. I think that it is.

15 303 Q. Okay. And the best way to
16 address that player safety concern is at the CHL
17 level, to have a single policy; yes?

18 A. No, I don't think necessarily it
19 does because of the way we're structured.

20 304 Q. So --

21 A. In our current construct, it
22 needs to be -- again, we don't have the authority to
23 administer that policy. It's done at the regional
24 league level.

25 305 Q. I'm not talking about the

1 administration, sir, I'm talking about the actual
2 policy itself, having a uniform policy across the
3 leagues. Is that the best approach to anti-doping in
4 the Canadian Hockey League?

5 A. Not necessarily. That's the
6 current situation that exists. The leagues chose to
7 adopt, again, the anti-doping policy that the Q had
8 tested in 2006. It was a new policy and they chose to
9 adopt it that way. But I'm not saying that that's the
10 case in every issue as it relates to player safety or
11 player well-being, given the way that the leagues
12 operate.

13 306 Q. Does the Canadian Hockey League
14 have the authority to create other league-wide player
15 safety policies or not?

16 A. No. It's not -- we're not a
17 top-down organization.

18 307 Q. Well, I understand that wording
19 and I understand how that wording has been used in the
20 case law.

21 I'm not asking you whether you do
22 that, whether you have those policies in place. I'm
23 saying, is there some sort of impediment to you having
24 such policies. Is there a legal impediment or is
25 there some sort of -- I mean, I think in one of your

1 affidavits you refer to a legal impediment to having
2 league-wide policies.

3 MR. EIZENGA: Just let me make sure I
4 have it -- make sure that his previous answer -- that
5 I understand why you think his previous answer doesn't
6 cover this. You asked if he could put in place the
7 policy, the CHL could impose such a policy and he said
8 no.

9 MR. SAYCE: I don't know if that's how
10 I heard his answer. For some reason your audio is a
11 little funny, so why don't I just make sure I
12 understood.

13 MR. EIZENGA: I'm sorry.

14 MR. SAYCE: It's probably the
15 computer's fault, or maybe my speaker's fault.

16 BY MR. SAYCE:

17 308 Q. Let me just be clear here.
18 Mr. MacKenzie, I'm not talking about past practices.
19 I'm saying, is it possible under the organizational
20 structure of the Canadian Hockey League for the
21 Canadian Hockey League to have Canadian Hockey
22 League-wide standard player safety policies?

23 A. Yes, it's possible. I don't
24 believe that was what the question you asked me
25 earlier was.

1 309 Q. Okay, I'm sorry. Maybe I was
2 unclear.

3 So it's possible but that's just not
4 how it's done?

5 A. Yeah. So I mean, again, I
6 think -- I explained the process via which the
7 anti-doping policy, you know, is a CHL policy, and
8 that process could play out today in a new area, like
9 in another area.

10 If there's an area that's evolving and
11 we don't have a policy for it and the process plays
12 out that the regional leagues agree that we need a
13 policy and that we -- maybe it gets tested in a
14 regional league and then picked up, but the CHL
15 doesn't have the ability to make policy and tell the
16 regional leagues they need to adopt it. That's not
17 the way it works.

18 310 Q. So the executive committee of the
19 Canadian Hockey League cannot create a nationwide
20 policy?

21 A. You didn't ask the question about
22 the executive committee. You said could the CHL.
23 Because the executive committee is -- they're
24 representatives of the league, right, they -- again,
25 the leagues need -- the leagues and the teams need to

1 adopt it. So again, that's their rights and their
2 role.

3 311 Q. So the executive committee of the
4 Canadian Hockey League can implement nationwide player
5 safety policies?

6 A. Sorry; could you repeat that?

7 312 Q. The executive committee or the
8 executive council -- is it the executive committee or
9 the executive council?

10 A. We use the terms interchangeably.

11 313 Q. The executive council, which is
12 the three commissioners of the Canadian Hockey League,
13 can implement nationwide player safety policies, it's
14 just that they haven't done that aside from certain
15 examples like the anti-doping policy?

16 A. No, I don't believe that's the
17 case.

18 314 Q. Okay. Sorry; are you agreeing
19 with the statement or are you disagreeing with the
20 statement?

21 A. I'm disagreeing with the
22 statement.

23 315 Q. You're saying they cannot do it?

24 A. No, I don't believe they can.

25 316 Q. Okay. If the executive council,

1 acting as the executive council, chose to adopt one of
2 the three member leagues' policies and implement that
3 policy on a national scale, is that possible in the
4 organizational structure of the Canadian Hockey
5 League?

6 A. I don't believe so.

7 317 Q. Isn't that what you described
8 happened with the anti-doping policy?

9 A. But they weren't acting as the
10 CHL executive council; they were --

11 MR. EIZENGA: He was clear that each
12 of the individuals did it. I know it's a confusing,
13 maybe, ambiguity in the discussion because the members
14 of the executive council are each of the commissioners
15 --

16 MR. SAYCE: Mr. Eizenga, you're going
17 to have to stop testifying, please.

18 MR. EIZENGA: I'm summarizing what he
19 said.

20 MR. SAYCE: You're not -- I don't
21 believe you are; I'm sorry. I don't think --

22 MR. EIZENGA: Well, we'll have a look
23 at the transcript to see.

24 MR. SAYCE: Exactly.

25 MR. EIZENGA: But the fact is it might

1 be helpful for you to identify when you're talking
2 about one of the commissioners acting in their role as
3 commissioner and when the executive council acting as
4 executive council, because when he's answered that
5 question he's been clear. You simply haven't accepted
6 his answer.

7 MR. SAYCE: Well, I disagree with you,
8 Mr. Eizenga, but that's part of the fun of this.

9 MR. EIZENGA: Right.

10 MR. SAYCE: So why don't we --

11 MR. EIZENGA: That's why we have
12 transcripts.

13 MR. SAYCE: Exactly; that's why we
14 have transcripts.

15 BY MR. SAYCE:

16 318 Q. So I guess what I'm saying to
17 you, Mr. MacKenzie, is that the three commissioners,
18 when they are acting as the executive council of the
19 Canadian Hockey League, they didn't adopt -- the
20 Canadian Hockey League didn't adopt a Canadian Hockey
21 League-wide anti-doping policy. Is that your
22 evidence?

23 A. So at the time -- again, I wasn't
24 there at the time when --

25 319 Q. Right --

1 A. I'm sorry?

2 320 Q. And this is all -- you're going
3 off what Mr. Courteau has told you?

4 A. Right. So again, in terms of the
5 structure and the roles by which they agreed to adopt
6 the Q's policy, I don't know if it was done at the --
7 like I don't know if it was a CHL executive council
8 decision, because I wasn't there, but again, I believe
9 that it was done -- sorry, I guess I can't really -- I
10 can't really answer your question on that one.

11 321 Q. There's a league-wide
12 anti-concussion policy, right; a Canadian Hockey
13 League-wide anti-concussion policy?

14 A. No. Concussions are dealt with
15 regionally, at the regional league level. Each league
16 has its own concussion policy.

17 322 Q. Is there a respect in sport for
18 activity leaders program?

19 A. Yes. There's a program that we
20 work with a vendor that -- or the CHL basically pays
21 for it but ultimately it gets -- again, it gets
22 delivered at the regional league level, a respect in
23 sport -- it's a program; it's not a policy.

24 323 Q. Okay. And that program, so you
25 pay for it at the CHL level, but is it the same

1 program across the entire Canadian Hockey League?

2 A. Yeah, I believe it is. It gets
3 administered a little bit differently. Like in the
4 West, for example, I know they combine that program
5 with another program because they work with a vendor
6 on a specific program in the West. I think it's
7 called Respect in Hockey. So I think portions of the
8 program have been sort of integrated into some other
9 elements, but that's a specifically Western Hockey
10 League initiative.

11 I know in the other two leagues they
12 also -- they combine respect -- when their respect in
13 sport program was operated, other programs were
14 operated during a similar time frame, similar time of
15 a year, normally at the beginning of the season.

16 MR. SAYCE: It's now 12:20, so why
17 don't we go off the record for a minute.

18 --- OFF THE RECORD

19 --- Recess taken at 12:20 p.m.

20 --- Upon resuming at 1:20 p.m.

21 BY MR. SAYCE:

22 324 Q. We're back on the record after
23 lunch.

24 I'm going to move on to your March 4,
25 2022 affidavit, if you can just turn that up there.

1 I'm not going to go through the protocol of asking you
2 if you signed each one of these affidavits because
3 it's clear that you have and I'm sure you checked
4 before we commenced this cross-examination, right?

5 A. Yeah. No, that's correct.

6 325 Q. Yeah. And so this March 4
7 affidavit. It's the first time in your affidavit --
8 or in any of your evidence that you mention the
9 Independent Review Panel report, right?

10 A. I believe so, yes.

11 326 Q. So you had sworn an affidavit in
12 November, a few months earlier, right?

13 A. October and then December, I
14 think.

15 327 Q. You swore an affidavit October
16 29, 2021; yeah?

17 A. Correct.

18 328 Q. And you didn't mention the
19 Independent Panel report in that affidavit?

20 A. Correct.

21 329 Q. But you had a copy of the
22 Independent Panel report at that time, right?

23 A. No. I received that panel report
24 in December of 2020.

25 330 Q. Sorry; I'm talking about your --

1 A. Oh, I'm sorry, 2021. Yeah, yeah.

2 331 Q. You had that report for almost a
3 year when you swore that October 29, 2021 affidavit,
4 right?

5 A. Correct, yeah.

6 332 Q. Okay. But you didn't mention it?

7 A. Correct.

8 333 Q. And you swore an affidavit after
9 the Plaintiffs filed the Independent Panel report with
10 the court, right?

11 A. I'm not sure of the -- sorry; do
12 you have the dates?

13 334 Q. Yeah. So I'm talking about your
14 affidavit dated March 4, 2022.

15 A. Okay.

16 335 Q. This affidavit was sworn after
17 the Plaintiffs' filed the Independent Panel report
18 with the court; yes?

19 A. I believe so, yes.

20 336 Q. Okay. And you are responding to
21 the contents of the Independent Panel report in this
22 affidavit; yes?

23 A. Yes.

24 337 Q. Okay. And just after paragraph 1
25 of your affidavit you say you're providing the CHL's

1 perspective on the IRP report; yes, the heading?

2 A. Sorry; where is that? Could you
3 point me to that?

4 338 Q. Paragraph 1 of your affidavit
5 dated March 4, 2022, there's a heading, heading A just
6 after paragraph 1 and it says "The CHL's Perspectives
7 on the IRP Report".

8 A. Okay, yeah.

9 339 Q. So you're providing the Canadian
10 Hockey League, their perspectives on the IRP report?

11 A. Correct.

12 340 Q. So when you say CHL, you mean
13 your personal view on the -- or your personal
14 perspective on the IRP report or are you speaking on
15 behalf the Canadian Hockey League?

16 A. The Canadian Hockey League.

17 341 Q. Okay. So the entire Canadian
18 Hockey League has a perspective on this report?

19 A. Well, I mean, as the
20 representative the Canadian Hockey League responsible
21 for interfacing with the Independent Review Panel, I'm
22 providing, on behalf of the organization, a
23 perspective for this action.

24 Now, whether these exact words jive
25 with the 60 team owners and 300 coaches and 1,500

1 players, I can't attest to that, but in my role as
2 president this is -- and the person who was
3 interfacing with the IRP group, this is the
4 perspective of the Canadian Hockey League.

5 342 Q. Okay. So it's your personal
6 perspective acting as president of the Canadian Hockey
7 League?

8 A. Correct.

9 343 Q. So you're not speaking for the
10 other three member leagues, you're just speaking for
11 the Canadian Hockey League?

12 A. Sorry; I think in this situation
13 the perspectives -- like the perspectives here would
14 be -- would encompass the perspectives of the three
15 regional leagues as well.

16 344 Q. Okay. So the CHL and the WHL and
17 the QMJHL and the OHL are all -- you're including all
18 of those entities when you refer to the CHL in this
19 affidavit; yes?

20 A. Yes.

21 345 Q. Okay. And I'd like to just bring
22 up on the screen the retainer letters.

23 Can you see the screen we're sharing
24 with you yet?

25 MR. CALINA: You should see now,

1 Mr. MacKenzie.

2 A. Yeah, I can see it.

3 BY MR. SAYCE:

4 346 Q. So your counsel sent us three
5 contracts. This is one of those three contracts and
6 at the top it says "Agreement Independent Review
7 Panel", and it says:

8 This agreement is made between the
9 Canadian Hockey League including the
10 Western Hockey League, the Ontario
11 Hockey League and the Quebec Major
12 Junior Hockey League (collectively
13 the "League" or the "CHL") and
14 Danièle Sauvageau (the "Panelist").

15 Do you see that?

16 A. Yeah.

17 347 Q. So we're going to scroll down
18 just so you can look at the whole document. There at
19 the bottom is a signature line signed the 21st day of
20 July 2020, and it says "Canadian Hockey League" and
21 there's a signature there. Do you see that?

22 A. M'hm.

23 348 Q. Is that your signature?

24 A. Yes.

25 349 Q. Okay. And the panelist, that's a

1 signature -- it's probably -- would you agree that
2 that's Danièle Sauvageau's signature?

3 A. I would expect that it would be,
4 yeah.

5 MR. SAYCE: We're going to mark this
6 as Exhibit A. Is that okay, Mr. Eizenga?

7 MR. EIZENGA: Yes.

8 EXHIBIT A: Agreement dated
9 July 21, 2020 between the
10 Canadian Hockey League
11 including the Western Hockey
12 League, the Ontario Hockey
13 League and the Quebec Major
14 Junior Hockey League
15 (collectively the "League"
16 or the "CHL") and Danièle
17 Sauvageau (the "Panelist").

18 BY MR. SAYCE:

19 350 Q. Unfortunately we're going to have
20 to do this twice more.

21 Next agreement, the same aside from
22 the fact that Camille Theriault is defined as one of
23 the parties and that he is the chair. Do you see
24 that, Mr. MacKenzie?

25 A. Yes.

100

1 351 Q. We'll scroll down in the
2 document. That is the signature line again and that's
3 your signature; yes?

4 A. Yes.

5 352 Q. And it's signed by Mr. Sauvageau,
6 and we will enter this as Exhibit B.

7 Is that okay, Mr. Eizenga?

8 MR. EIZENGA: I think you mean
9 Mr. Theriault, though.

10 MR. SAYCE: That is that I meant,
11 sorry.

12 MR. EIZENGA: That's fine.

13 MR. SAYCE: So that is Exhibit B.

14 EXHIBIT B: Agreement
15 between the Canadian Hockey
16 League including the Western
17 Hockey League, the Ontario
18 Hockey League and the Quebec
19 Major Junior Hockey League
20 (collectively the "League"
21 or the "CHL") and Camille
22 Theriault (the "Chair").

23 MR. SAYCE: And we're going to do the
24 same with Mr. Kennedy's agreement. We'll scroll down
25 so you can see it.

1 Is that your signature at the bottom
2 there, sir?

3 A. Yes.

4 353 Q. So we'll enter the Sheldon
5 Kennedy Independent Panel Agreement as Exhibit C.

6 MR. EIZENGA: That's fine.

7 EXHIBIT C: Sheldon Kennedy
8 Independent Panel Agreement.

9 BY MR. SAYCE:

10 354 Q. So these are largely the same, so
11 I'll talk about the terms of reference here. You
12 retained the panel to review WHL, OHL, QMJHL and the
13 CHL current policies and procedures to determine
14 whether changes would assist in the protection of
15 players from off-ice misconduct related to hazing and
16 harassment by other players or team staff or
17 representatives, which you have defined in this
18 document as off-ice misconduct; yes?

19 A. Yes.

20 355 Q. And then (b) their job also is to
21 review current education and awareness programs to
22 ensure that best practices are implemented to enhance
23 player safety from off-ice misconduct, as previously
24 defined; yes?

25 A. Yes.

1 356 Q. And (c), to review current
2 complaint procedures and education programs to
3 determine whether changes would increase the
4 likelihood that complaints related to off-ice
5 misconduct are brought forward for investigation
6 by team or league officials. See that?

7 A. Yes.

8 357 Q. Okay. So that is their mandate?

9 A. Correct.

10 358 Q. Now, you say at paragraph 3 of
11 your affidavit, if you can put that back up --
12 paragraph 3, second sentence, "The IRP provided its
13 report to the CHL in December 2020." Yes?

14 A. Yeah.

15 359 Q. And there are 13 findings and 13
16 recommendations; yes?

17 A. Yeah.

18 360 Q. And is it safe to say that the
19 CHL, the perspective you're putting forward as the
20 representative of the CHL, is that you don't agree
21 with much of what is in this report?

22 A. No, I wouldn't say that. I think
23 the report -- I think the report had some issues with
24 it in terms of, you know, the way some of the
25 information that was provided. I'd say that the

1 biggest ones came in a few areas.

2 So the first would be that it didn't
3 really -- that the IRP didn't really take into account
4 sort of the way the CHL is structured. Many of the
5 recommendations were things that they felt should be
6 operated on a national scale or by the CHL, when, as
7 we've talked about in this today, the way we're
8 structured, a lot of the responsibility for policies
9 and implementation happened at the regional league
10 level, and they were very focused nationally.

11 I think, per the first part of what
12 you showed me in terms of what their mandate was,
13 which was really digging in deep on the league
14 policies and the league programs and providing
15 league-specific feedback, I think when they -- I don't
16 know if they actually did that, because there was very
17 little -- there's two things. One was many of the
18 things they recommended were already in place at the
19 league level, and some of the things that they
20 suggested, again, as I said earlier, you know, even
21 though they suggested they happen nationally, they
22 were in place at the league level or we don't have the
23 ability to implement at the CHL level.

24 And I think, thirdly, just the way the
25 information was presented, you know, when we received

1 it and reviewed it, just the way it was written and
2 the way it was sort of, you know -- sort of it was --
3 we found it very confusing, I'd say, given the fact
4 that, again, we asked for feedback specifically on
5 league policies and league education programs and
6 league reporting mechanics, and they either, you know,
7 recommended things that we were already doing or they
8 said, well, the CHL should do it nationally.

9 They didn't really give us really
10 constructive feedback -- "constructive" is not the
11 right word -- I'd say actionable feedback on what
12 could be done -- what each of the leagues could do as
13 it relates to their specific policies.

14 So because of that I think we were a
15 little bit confused in terms of what to do with it
16 when we received it.

17 361 Q. All right.

18 A. Sorry; but the one other thing I
19 would say is, number one, like there's some dynamics
20 at play. COVID had just begun when they did their
21 work, so that didn't make it easy for them.

22 Listen, the panelists themselves did
23 an extremely diligent job. They worked hard, they put
24 forward some good recommendations. The entire report
25 is not flawed. There's some good things in there that

1 we're -- that we do want to try to implement, or the
2 leagues would want to try to implement potentially
3 down the line if it fits with the way they operate
4 their programs regionally. So I don't want to say
5 that nothing in the report -- I forget the way you
6 phrased it in the question -- that we didn't like it.
7 I wouldn't characterize it that way.

8 362 Q. Okay. So you were confused by
9 the report, you said?

10 A. There were elements of it that,
11 in terms of actionable next steps, it wasn't clear,
12 given the way we're constructed, meaning these
13 programs sit at the regional league level. It wasn't
14 really clear to us on how to go forward because,
15 again, some of the recommendations we'd already been
16 doing, or some leagues were doing, other leagues
17 weren't. A lot of it was the CHL at a national level
18 should do XYZ, and that's just not the way we're
19 structured.

20 And then some of the recommendations
21 were more like philosophical elements that were very
22 good and could be viewed as very constructive as we go
23 forward, but I think we were probably looking for a
24 bit more specificity at the league level, and the
25 report didn't really deliver on that.

1 363 Q. All right. So were you surprised
2 when you got this report and it focused so much on the
3 CHL level?

4 A. I don't know if I would say I was
5 surprised. To be honest, Mr. Sayce, my philosophy on
6 this very much was to try to support the IRP, and my
7 direct contact was the chair, Mr. Theriault. So we
8 had discussions and we, you know, through the course
9 of them doing their work and he'd provide updates here
10 and there, I was very sensitive not to try to direct
11 the IRP in any way.

12 So you know, they came to us part way
13 through and said, we want to do a study, we want to
14 hire a third party to interview some of the
15 constituents, would that be okay, you know, can we
16 find the budget for that, et cetera, et cetera. So I
17 kind of worked through with him on some of the
18 logistics, but we didn't really go very deep on what
19 they were going to come back with.

20 Again, their independence was made
21 very clear at the beginning, which is what we wanted.
22 So again, I can't say I was surprised or not surprised
23 because, again, we didn't have a lot of substantive
24 discussions about the direction of what their report
25 was going to say.

1 364 Q. Okay. So you didn't have much of
2 a substantive discussion about what the report was
3 going to say, right?

4 A. Correct.

5 365 Q. So you didn't expect the report
6 to say one thing or a different thing; you weren't
7 surprised, right?

8 A. Well, again, I didn't really have
9 expectations coming in, again, on what they were going
10 to say, so I wouldn't say I was surprised or not
11 surprised. I didn't really have a basis to base
12 surprise on.

13 366 Q. Did you communicate with the
14 Independent Panel when you were in the process of
15 preparing the report -- when they were doing their due
16 diligence, their research, et cetera? I think you
17 said they were quite diligent, right?

18 A. No. I mean the chair -- the
19 chair -- I was discussing -- I would get updates once
20 in a while from the chair in terms of some of the
21 timelines and, you know -- again, I think the report
22 indicates that they were going to deliver the
23 report -- again, I don't have it in front of me -- end
24 of September, October and it got pushed till -- we
25 didn't get it till December. So there were those

1 kinds of issues we talked about. And I was
2 interviewed -- one of the interviews they did is they
3 interviewed me -- but other than that I didn't have a
4 lot of other discussions with the panel other than the
5 calls to them to ask them if they would be a part of
6 it.

7 367 Q. Were you present when they
8 discussed the report with other stakeholders, for
9 example, the commissioners?

10 A. Yes.

11 368 Q. Okay. So did they interview you
12 in front of the commissioners?

13 A. No, I don't believe so. I was on
14 the interviews, I believe, when the commissioners, or
15 when some of the commissioners -- I can't remember if
16 it was all three or just some of them, but I was
17 involved -- I was on the call for -- actually I think
18 I was on the call for each of the commissioner
19 interviews, but when I was interviewed I don't believe
20 the commissioners were present.

21 369 Q. But you don't remember for sure?

22 A. I'm pretty sure in my interview
23 they weren't there.

24 370 Q. Now, we're going to go through
25 the findings and the recommendations, but there are

1 just two pinpoints I'd like to go to. One is at page
2 15 of this report. I don't know if you have -- I can
3 pull it up on the screen so that you can review it
4 with me. I don't think you probably have the report
5 handy.

6 A. That would be great. Thank you.

7 MR. CALINA: Mr. MacKenzie, you should
8 be seeing us sharing our screen and a page that starts
9 with "The Impact is Real... Action is Needed."

10 A. Correct.

11 BY MR. SAYCE:

12 371 Q. So this is attached to the
13 Catherine MacDonald affidavit, but I think you know
14 what the IRP report looks like, right?

15 A. Yeah.

16 372 Q. So this is the IRP report?

17 A. M'hm.

18 373 Q. Okay. So if we go down to page
19 15 of this document, on the right-hand side you will
20 see a paragraph that says "This data..." Do you see
21 that? It's right here.

22 A. Yeah, "This data...", yeah.

23 374 Q. I'm going to read it to you.

24 This data, with divergent reporting

25 as to whether or not off-ice

110

1 misconduct is widespread, combined
2 with recent research demonstrates
3 the systemic culture that permits
4 the behaviours of maltreatment to
5 exist and persist. In discussion
6 with the Panel, one senior league
7 leader acknowledged the systemic
8 culture in the CHL; contrarily,
9 another said there was no problem.

10 Do you see that?

11 A. M'hm.

12 375 Q. Do you know who said -- who
13 acknowledged the systemic culture in the CHL? Do you
14 know who that sentence is referring to, or who,
15 contrarily, said there was no problem? Who was the
16 senior league leader?

17 A. Well, it wasn't me, I don't
18 believe. I don't know who -- I don't know who said
19 that it was no problem. In a discussion that I had
20 with Camille Theriault after the report came out, he
21 had indicated to me that systemic had come from, I
22 believe, a discussion with Dave Branch.

23 376 Q. But you only know that through a
24 discussion with Mr. Theriault?

25 A. Correct.

111

1 377 Q. You didn't hear that from
2 Mr. Branch?

3 A. Correct.

4 378 Q. Do you think there's a systemic
5 culture in the Canadian Hockey League?

6 A. I think -- since I've been
7 involved since 2019, I don't believe a systemic
8 culture exists. I think you have to sort of -- it's
9 interesting. So when I spoke to -- further discussion
10 with Mr. Theriault, when we got the report and we went
11 through it, I called him in December to say -- really
12 the basis for the call was whether or not there was an
13 issue that needed to be addressed as soon as possible
14 because players were at risk and that this was a
15 widespread issue across the CHL, and his response to
16 me was no, that, no, there's not. I think the way I
17 phrased it was, "Camille, are players today at risk,
18 like at risk of harm?" and he said absolutely not.

19 So that was that discussion part, and
20 that was part of the reason why I called him, and that
21 was good in the context, I think, of our next steps
22 with respect to timing.

23 And then secondly, I think when you go
24 back and you look at -- they reference -- I think in
25 that sentence they reference the data and the data

1 that they're using is based on the Léger report, and
2 I'm not exactly sure what data they were using to form
3 the basis for that sentence.

4 When I look at the data from Léger, I
5 believe the number is 12 per cent of players -- of
6 actual players -- have indicated they've been bullied
7 or harassed. I guess it depends on your definition
8 of -- what it is in here; is it "widespread" -- but I
9 don't think 12 per cent is widespread. I think 1 per
10 cent is too much. We need to do more to make sure
11 that players aren't bullied or harassed or anything
12 else, but I don't believe that -- to answer your
13 question -- I don't believe, based on those numbers,
14 that the problem is systemic.

15 379 Q. Okay. So you honed in on that.
16 You read this entire report, which said finding number
17 one, off-ice misconduct, including bullying,
18 harassment and discrimination exists in the Canadian
19 Hockey League, and then it goes on and on and on, and
20 you call Mr. Theriault and he said to you, "Don't
21 worry about it; there's no threat to anyone," right?

22 A. He said -- again, I think I
23 indicated what he said. He said absolutely not.

24 380 Q. Okay. And then that satisfied
25 you that, number one, notwithstanding what the report

1 says, there was no threat and there is no threat to
2 current CHL players?

3 A. Based on the discussion, I think
4 it helped -- it set my mind at ease, I think, in terms
5 of the timing of everything, in terms of what we were
6 going to do with the report, because as I said
7 earlier, we were a bit confused when we received it,
8 given in terms of what the clear next steps were going
9 to be. So that discussion helped ease my mind a bit,
10 that there wasn't an issue that was needed to be
11 addressed immediately.

12 381 Q. Okay. And then you focused on
13 that 12 per cent number?

14 A. Correct.

15 382 Q. Okay. So I guess I'm looking at
16 the Léger report. And we can go through this, but
17 there is a -- I'm just looking at page 20. Do you see
18 it?

19 A. "In the past 4 years...?"

20 383 Q. Yes.

21 A. Yeah.

22 384 Q. In the past 4 years
23 have you ever witnessed cases or
24 situations of bullying or harassment
25 in the CHL, other than those in the

1 media?

2 And 26 per cent of players said yes.

3 Do you see that?

4 A. I do, yeah.

5 385 Q. But that didn't lead you to

6 believe that there was any, I guess, immediately

7 actionable issue with -- or a systemic issue -- well,

8 let's do it both ways. You saw this 26 per cent

9 number and you still felt that there was no need to

10 take immediate action?

11 A. Well, I think, just for clarity,

12 I mean, each of these leagues has policies and

13 procedures, reporting mechanics --

14 386 Q. I know. We've seen --

15 A. -- processes for which players

16 can report, so I think -- yes, I think that, again,

17 there were already programs in place. I think the --

18 again, I focused -- the 12 per cent was the number

19 that was actual players, not hearing about it or, you

20 know, thinking that they saw something, but actually

21 had felt the experience that -- and an interesting

22 part of this as well that I found interesting when I

23 read Léger was that bullying and harassment were terms

24 that weren't defined. So my interpretation of what

25 say maybe harassment was could be very different than

1 what yours was and what the players' was.

2 So I think that was one of the issues
3 with the Léger report as well, was that some of those
4 items were not defined, which I think are really
5 important.

6 387 Q. Okay. So I guess my question
7 was, though, you saw this number, witnessed cases or
8 situations of bullying or harassment, 26 per cent, and
9 so this didn't concern you?

10 Let me be more fair. I'm sure it
11 concerned you, right?

12 A. For sure it concerned me,
13 absolutely.

14 388 Q. Okay. But you didn't feel the
15 need to take immediate action, right?

16 A. No.

17 389 Q. Okay. And you didn't think that
18 there's a systemic problem, right?

19 A. Correct.

20 390 Q. Okay. And so here we get into
21 "have you heard of cases or situations of bullying or
22 harassment in the CHL". This is on page 21. This is
23 other than cases reported in the media, and 45 per
24 cent of players and 45 per cent of family had heard
25 about it. To you this does not indicate a systemic

1 problem, right?

2 A. Well, listen, as I said earlier,
3 again, we have processes in place so that if players
4 are getting bullied or harassed, we take -- any case,
5 Mr. Sayce, is too many. So 45 per cent, 12 per cent,
6 26 per cent; any of them are too many. When they
7 occur, we take them seriously, we investigate them and
8 we, you know, we take action.

9 391 Q. Right, but not so seriously that
10 you'll take any action at the CHL level; yes?

11 A. Well, again, the mechanic for
12 taking action is through the teams and the regional
13 leagues. I mean, the CHL constitution, right,
14 gives -- player safety is included in that, right?

15 392 Q. Okay.

16 A. So just to --

17 393 Q. I'm asking you about the
18 Independent Panel report, sir. I mean, I don't know
19 if you would like to give evidence on something else,
20 but I'm kind of concerned and I -- you know, obviously
21 I'm counsel so my concern needs to be taken with a
22 grain of salt because I represent the Plaintiffs in
23 this action, but I am personally concerned that, you
24 know -- and this is at page 14:

25 In your opinion, do the following

1 problems currently exist within the
2 CHL?

3 Bullying; 40 per cent of staff said a
4 bullying problem exists currently in the CHL. This is
5 the CHL staff, and you still felt there was no
6 systemic problem?

7 A. Correct. I think -- what I --
8 again, what I think here is that, again, when
9 incidents arise the mechanics are in place for players
10 to report. We made those -- some improvements to the
11 policies based on things like the Independent Review
12 Panel in 2021 for this season. And again, I think
13 that our clubs are dedicated -- our clubs and leagues
14 are dedicated to try and ensure this stuff doesn't
15 exist, and when it exists we take it seriously, we
16 investigate, and if there are sanctions to be handed
17 out, we hand them out.

18 394 Q. But you think those policies work
19 even though 40 per cent of staff think there's a
20 problem?

21 A. Forty per cent of staff -- I
22 think the data indicated that they've...

23 395 Q. You have it in front of you right
24 now. It says 40 per cent of staff thinks that
25 bullying is a problem that currently exists within the

1 CHL.

2 A. Right, yeah. No, again, I think
3 that, again, the programs we have in place, they're
4 not perfect, right, they're going to -- you know, I
5 don't think you can ever be perfect in that area for
6 sure, but I think that they are, you know -- again,
7 the policies and the programs are in place for players
8 to identify these issues, our clubs are dedicated to
9 it, and I think that when 12 per cent of players are
10 saying that they've experienced it -- not heard about
11 it or think this or that; when 12 per cent of players
12 are saying, you know -- again, too many players, 12
13 per cent is too much, but that's the number that I
14 focused on in terms of systemic.

15 396 Q. So 12 per cent is an acceptable
16 number?

17 A. No. Zero is acceptable.

18 397 Q. Okay. Now, I understand you
19 focused on that 12 per cent number.

20 So finding number one, which I've just
21 scrolled down to, which is at page 15:

22 Off-ice misconduct, including
23 bullying, harassment and
24 discrimination, exists in the CHL.

25 You would agree with that, right?

119

1 A. Yes.

2 398 Q. Finding number 2:

3 A systemic culture exists in the CHL

4 that results in maltreatment

5 becoming an embedded norm.

6 And it goes on:

7 The systemic nature of the issue

8 results in a perpetuated state of

9 acceptance and lack of change.

10 Would you say you disagree with that

11 finding?

12 A. Yes.

13 399 Q. Okay. And going back to that 12

14 per cent of players quote, which is the 12 per cent

15 who say that they have -- well, sorry, I guess it

16 depends on what stat you're looking at, but 40 per

17 cent of staff saying that a bullying problem exists

18 with the CHL --

19 A. Can I just ask a question on

20 that?

21 400 Q. Sorry, Mr. MacKenzie, I'm halfway

22 through my question, so just give me a moment.

23 A. No problem, no problem.

24 401 Q. With the greatest of respect.

25 It's okay.

120

1 So the 40 per cent number, "In your
2 opinion do the following problems currently exist
3 within the CHL"; 40 per cent of staff, 52 per cent of
4 family members. Notwithstanding those statistics, you
5 still believe that there is no systemic culture
6 existing in the CHL that results in maltreatment
7 becoming an embedded norm, right?

8 A. Correct.

9 402 Q. Okay. Finding number 3 -- again,
10 maybe it has to do with the word "systemic" but:

11 A systemic cultural deficiency
12 exists in the support and mentoring
13 of coaches and GMs regarding ethical
14 coaching and off-ice misconduct in
15 its day-to-day application.

16 I would guess you disagree with that?

17 A. Yes. I mean, our leagues do
18 train on ethical coaching so...

19 403 Q. Right. But they're not saying
20 that the member leagues don't do that, they're saying
21 that there's a systemic structural deficiency in the
22 manner in which you do that. Do you disagree?

23 A. Well, again, I think that -- no,
24 I would disagree, that's correct.

25 404 Q. Okay. Now, finding number 4 --

1 this is at page 18 of the report:

2 Maltreatment has significant
3 psychological impacts on players and
4 jeopardizes their safety and
5 holistic well-being. The impacts
6 can be lifelong.

7 Do you agree with that?

8 A. I mean, that's kind of a general
9 statement. The statement seems reasonable, so yes, I
10 would agree.

11 405 Q. You do agree with that, okay.

12 So let's say there was 12 per cent of
13 players who came out of the CHL with significant
14 psychological impacts and had their safety and
15 holistic well-being jeopardized. That doesn't
16 constitute a systemic problem?

17 MR. EIZENGA: Let's be clear,
18 Mr. Sayce, that's not what your data is giving you.
19 You've gone from 12 per cent has experienced bullying
20 and mistreatment -- or bullying and harassment, to 12
21 per cent have --

22 MR. SAYCE: All right. Mr. Eizenga --

23 MR. EIZENGA: No, no, please let me --

24 MR. SAYCE: Let you make submissions,
25 you mean. Okay, if you want to make submissions, I

1 can't stop you.

2 MR. EIZENGA: I'm not making
3 submissions. Mr. Sayce, I've let you ask a lot of
4 questions that are rambling and multi-paragraph. Now
5 you're pulling two findings together and I'm simply
6 pointing out that it's based on an incorrect premise.
7 The data does not say that 12 per cent of people --

8 MR. SAYCE: Sir, I'm entitled to read
9 from the Independent Panel that has been commissioned
10 by the Defendant. I'm entitled to read the report
11 because the Defendant -- Mr. MacKenzie has put in
12 evidence that he disagrees with these findings, so I'm
13 just making sure that I understand that he disagrees
14 with it.

15 MR. EIZENGA: Mr. Sayce, let's be
16 clear. While I was explaining myself, you and
17 Mr. Calina were speaking so you missed what I was
18 going to say.

19 You have misstated what it says.
20 Mr. MacKenzie agreed with you that maltreatment has
21 significant psychological impacts. What you've done
22 is you've moved finding 3, bullying and harassment --
23 and I suppose if you did it as a hypothetical and said
24 if all of that caused this, then you could say 12 per
25 cent of people have significant psychological impacts

1 on players and jeopardizes their safety.

2 That's just not what they say. So if
3 you want to put it to him in that way, I have no
4 problem with it. I've let you ask a lot of questions.

5 All I'm saying is this assertion
6 doesn't lead Mr. MacKenzie to the conclusion that
7 you're driving him to, unless you put it to him fairly
8 and state the findings fairly.

9 MR. SAYCE: Okay. Thank you for all
10 of that, Mr. Eizenga.

11 Just to clarify the record, I wasn't
12 talking to Mr. Calina. I don't know what it is that
13 you're describing, but in any event, I was listening
14 to you. I still think that your submissions are
15 perhaps unnecessary, but I'm just going to move on
16 with my questions.

17 BY MR. SAYCE:

18 406 Q. Do you believe that -- and I can
19 take you to the specific areas of this report -- in
20 this report is there any description of players who
21 have been subjected to maltreatment?

22 A. Can you repeat the question?

23 407 Q. Does this report describe or
24 refer to the maltreatment of players?

25 A. Was maltreatment defined, is that

1 what you're asking?

2 408 Q. I'm just talking about -- I don't

3 think it needs to be defined. Do you know what

4 "maltreatment" means?

5 A. Why don't you define it for me.

6 409 Q. That's not my job, sir. I'm

7 asking you what maltreatment -- you seem to be having

8 trouble with "maltreatment". Do you know what it

9 means, the word?

10 A. I think I know what it means. It

11 would be very similar to mistreatment. It would be --

12 I think maltreatment also has a -- like there's a

13 Sport Canada definition. Again, I don't have it in

14 front of me but I think I have a sense for what

15 maltreatment would be.

16 410 Q. Why don't you tell me what you

17 think it means?

18 MR. EIZENGA: Is there -- sorry, go

19 ahead.

20 A. I think it would be anything that

21 would make a player feel at risk, would probably be a

22 way to describe it.

23 411 Q. Do you think that bullying is a

24 type of maltreatment?

25 A. Yes.

1 412 Q. Do you think that harassment is a
2 type of maltreatment?

3 A. Yes.

4 413 Q. Okay. So having said all of
5 that, can I ask, do you think that if I were to
6 substitute the word "bullying" for the word
7 "maltreatment, "bullying has significant psychological
8 impacts on players," would that be a fair statement?

9 A. I'd say yes. I think it would
10 depend a bit on, you know, the individual
11 circumstance, but I think generally I'd say yes.

12 414 Q. And it jeopardizes their safety
13 and holistic well-being?

14 A. I think it could.

15 415 Q. And the impacts can be lifelong?

16 A. I think it could, yeah.

17 416 Q. Okay. So would 12 per cent of
18 players who say they were bullied -- these are just
19 the people who say they were bullied because this
20 report gets into the reasons why people can't say they
21 were bullied -- but if it was 12 per cent of your
22 league who was facing significant psychological
23 impacts, do you maintain that that is not a systemic
24 issue?

25 A. Again, my issue is with 12 per

1 cent. Listen, 12 per cent is too many; I've said that
2 multiple times now. So I think we need to get 12 per
3 cent down and we got to get it down to zero, and
4 that's what we're focused on. So, you know, it's too
5 high.

6 417 Q. But it's not high enough to be
7 systemic?

8 A. I don't believe 12 per cent is
9 systemic, in my opinion.

10 418 Q. Okay. Now, are you familiar with
11 the Independent Panel report's statements with respect
12 to a culture of silence in the Canadian Hockey League?

13 A. Yes.

14 419 Q. Do you agree or disagree that
15 there is a culture of silence in the Canadian Hockey
16 League?

17 A. I would say that I think that
18 whether you call it a culture of silence or, you know,
19 teenage boys not being, you know, happy or open to
20 report, that's a problem. I think it's a problem that
21 it happens -- I think it occurs in hockey and I think
22 it occurs in other sports.

23 I think that that's one of the reasons
24 why we've taken a bunch of the steps that we have,
25 including trying to make reporting easier, right. I

1 mean, we know that young men don't feel comfortable,
2 whether it be they don't want to rat on their friends
3 or they think there's -- you know, they're going to
4 lose their best players. Like there's reasons why --
5 real reasons why these players don't want to report.

6 I can tell you that our teams and
7 leagues want them to report, they want to know this
8 stuff and they want to deal with it. You know, I
9 think those are all things that we're -- you know,
10 we're really focused on this area, and it's one that
11 we've got to continue to try to improve on.

12 420 Q. Okay. So I guess what you're
13 saying -- and I don't want to misstate what you're
14 saying, so let's just be careful -- is that there is
15 tremendous pressure on these young players to avoid
16 reporting maltreatment, right?

17 A. No, I think it's more that -- and
18 I don't know your personal situation, Mr. Sayce. When
19 I played sports when I was a teenager -- I think
20 there's a -- between age and the position you're on
21 the team, there's a variety of factors that go into
22 this in terms of your ability or your capability to
23 report.

24 I mean, I think in our league it comes
25 down to, you know, some of it might be your age, it

1 could be your level on the team, whether you have a
2 billet family, you know, your relationships with your
3 peers, the way your coach is. You know, I would say
4 our -- when I look at this, and this entire issue, I
5 would say that issues happen. We have 1,300 players,
6 we got 300 people on coaching staffs, we've got 60
7 clubs, they're spread out across North America. We
8 live in a society where there are bad actors, and if
9 you're in a scenario where you've got a bad actor
10 who's a coach or a bad actor who's maybe in the
11 leadership of your team, you know, it can be a real
12 problem, and I think that's where you get into maybe
13 this 12 per cent.

14 So we've got to make sure that we can
15 root that stuff out and deal with it, but I don't
16 think you can say that every single player who's
17 played in the Canadian Hockey League this year has
18 been bullied or harassed. I don't think the data
19 backs it up and I think when we get to how we try to,
20 you know, take that number down, getting players to
21 report it and feeling comfortable reporting it and
22 making it easier for players to report it, is
23 absolutely critical to how we tackle the issue.

24 421 Q. Okay.

25 A. So that's really important in

1 terms of what we have to do next.

2 422 Q. I asked you a little while ago
3 about whether there was a culture of silence, and I
4 think you said yes.

5 A. Well, what I said was -- I think
6 you described it as a code of silence, and what I said
7 was I don't know if that's the right terminology, but
8 I do know that, again, young men -- young men not
9 feeling comfortable reporting is something, is an
10 issue that we have to deal with.

11 423 Q. Okay, so that's an issue, that
12 exists in the CHL; yes?

13 A. I would say, you know, getting
14 players to feel comfortable reporting and making it as
15 easy as possible to report is something we're focused
16 on because it is -- we know, and you just have to look
17 at across hockey as well as other sports, that young
18 men don't like reporting.

19 424 Q. Okay. So my question for you,
20 and I'm asking it again, is I said culture of silence,
21 you said you might not agree with that term, right?

22 A. Yes.

23 425 Q. But you did say there are
24 pressures in the Canadian Hockey League on the players
25 to not report misconduct, right?

131

1 Okay, I see it, yeah. "There is a
2 code of silence around maltreatment that helps
3 perpetuate..." Yeah.

4 MR. EIZENGA: James, I'm just not
5 seeing the first part of the sentence that starts with
6 "may be accepted as normal".

7 MR. SAYCE: Do you see where the
8 little hand is on the screen right now?

9 MR. EIZENGA: I see that, Mr. Sayce,
10 but the previous column must have something.

11 BY MR. SAYCE:

12 429 Q. So I'll start at the beginning of
13 the finding and I'll read the whole thing.

14 A systemic culture exists in the CHL
15 that results in maltreatment
16 becoming an embedded norm. The
17 systemic nature of the issue results
18 in a perpetuated state of acceptance
19 and lack of change. Maltreatment
20 may be accepted as normal because of
21 general acceptance, pressure,
22 desensitization or lack of
23 understanding of the difference
24 between acceptable and unacceptable
25 behaviours. There is a code of

1 silence around maltreatment that
2 helps perpetuate it. All of these
3 factors contribute to a lack of
4 reporting of incidents.

5 Did you catch all that, Mr. MacKenzie?

6 A. Yes.

7 430 Q. Okay. Now, where the panel says
8 there is a code of silence around maltreatment that
9 helps perpetuate it, you will agree with me that
10 they're describing the code of silence within the
11 Canadian Hockey League, right?

12 A. I believe, yeah, they're
13 describing that, yeah.

14 431 Q. And do you agree or disagree that
15 there is a code of silence around maltreatment that
16 helps perpetuate it in the Canadian Hockey League?

17 A. No, I wouldn't agree with -- I
18 wouldn't agree with that statement. I would agree
19 that reporting can be an issue. I do believe,
20 personally, from what I've witnessed since I've been
21 the president, that again, these incidents are very
22 much based on your individual circumstance and that
23 there's lots of factors that go into it.

24 I don't believe that there's a code of
25 silence across all 60 teams and, you know, in every

1 part of the CHL. I think it's a very individualized
2 circumstance and I think that, you know, human nature,
3 in terms of when you're dealing with young men, makes
4 it difficult to get them to report and we have to try
5 to make it as easy as possible for them to do so.

6 432 Q. Okay. So whether or not a person
7 feels pressure is an individual issue, you say?
8 That's something that each person has to experience
9 separately?

10 A. Well, I think what I'm saying is
11 that your -- everyone obviously deals with pressure
12 differently, but I think that, you know, your
13 propensity to report is individualized depending on
14 your situation.

15 433 Q. So some people are tougher than
16 others?

17 A. No, I wouldn't say that. I think
18 some people just have difference circumstances that
19 they're dealing with that may make it easier for them
20 to report.

21 I mean, to give an example, you could
22 have a great -- you could have a player who's got a
23 great relationship with his academic advisor, and in
24 that situation, if a player were to feel like they
25 were being bullied or harassed, they would feel very

1 comfortable going to that person to address it, and
2 then that person would therefore, you know, feel very
3 comfortable addressing it -- should feel comfortable
4 addressing it with the team to make sure that the
5 situation resolved.

6 So I'm just saying that each situation
7 is different. A statement indicating that -- I don't
8 believe that based on the data that's here or -- you
9 know, I don't know all the interviews that they did,
10 that the IRP did, but to have a statement like that,
11 that it's systemic across the entire league, I believe
12 is -- that's not something that I can agree with.

13 434 Q. So when you think of the word
14 "systemic", it has to be sort of present everywhere
15 with every player in the league? Is that what you
16 think "systemic" means?

17 A. Hundred per cent -- again, I
18 don't want to get into an argument of what exactly the
19 right percentage is, but I think -- again, the number
20 we've been talking about is 12 per cent. In my mind
21 12 per cent doesn't feel systemic.

22 435 Q. Okay. So you focused in on the
23 12 per cent and the other numbers do not impact your
24 view. All you focus on is -- well, I shouldn't say
25 all you focus on, but that 12 per cent number is your

1 primary focus. I think that's what you said at the
2 beginning, right?

3 A. Against the concept of systemic,
4 yes. Again, I also think -- again, the one thing with
5 Léger again that I think is a fair comment is just the
6 definitions. Like bullying and harassment, as an
7 example, were not defined for anybody, so my
8 definition of what harassment is versus yours may be
9 very different. I think that's one of the limitations
10 of that study.

11 436 Q. Okay. So is the Léger survey
12 informative at all?

13 A. Of course. Of course it is. I
14 think absolutely.

15 437 Q. Do you think that more research
16 should be done to determine whether this is systemic
17 or not? Do you already think that, based on what
18 you've seen, it's not systemic?

19 A. No. Listen, I think -- and one
20 of the recommendations from the IRP is we need to --
21 the Canadian Hockey League and the leagues need to
22 improve their access to data and get better data and
23 make better decisions based on data, and I'm wholly
24 supportive of that.

25 438 Q. So the recommendations of the

1 Independent Panel --

2 MR. EIZENGA: This is a really minor

3 thing, Mr. Sayce, but maybe what we should do --

4 MR. SAYCE: Let's just go off the

5 record for a minute then here.

6 --- OFF THE RECORD

7 --- Recess taken at 2:25 p.m.

8 --- Upon resuming at 2:32 p.m.

9 BY MR. SAYCE:

10 439 Q. We just talked about your issues

11 with the IRP report -- and by the way, I should mark

12 the Independent Panel report itself an exhibit, which

13 I think would be Exhibit D.

14 EXHIBIT D: Independent

15 Panel report.

16 BY MR. SAYCE:

17 440 Q. Now, you -- I believe it was

18 you -- retained -- it says the CHL retained Rachel

19 Turnpenny of Turnpenny Milne LLP, right?

20 A. Correct.

21 441 Q. And then you correct something in

22 Ms. Turnpenny's report at paragraph 9 of your

23 affidavit, right?

24 A. Let me just get there.

25 442 Q. Just to be clear which affidavit

1 I'm talking about, this is the March 4.

2 A. Right, correct. I'm sorry; the
3 last sentence of section 9, is that what you're asking
4 about?

5 443 Q. Yeah. There is a heading B, The
6 Turnpenny Report. It's paragraph 9.

7 A. M'hm.

8 444 Q. Then you say at the end of that
9 paragraph:

10 Though Turnpenny says she was
11 retained in December 2021, that is
12 when the CHL formally signed her
13 engagement letter. The CHL engaged
14 her in November 2021.

15 A. Correct.

16 445 Q. What do you mean by "engaged"?

17 A. Began discussions with her about
18 doing a report for us.

19 446 Q. Okay. And was it you who engaged
20 her or was it your counsel?

21 A. My counsel.

22 447 Q. And your counsel is this
23 litigation counsel, Bennett Jones?

24 A. Correct.

25 448 Q. This may be a question for your

1 counsel, but --

2 MR. EIZENGA: I just want to check on

3 something to make sure we're accurate on that, James,

4 okay. Just give me one second.

5 MR. SAYCE: Let's just go off the

6 record for a second.

7 --- OFF THE RECORD

8 BY MR. SAYCE:

9 449 Q. Do you know whether she was

10 engaged through a phone call or through an email?

11 A. I don't.

12 450 Q. Do you know what day she was

13 engaged on?

14 A. I don't. I think -- it was early

15 November. I believe it was early November.

16 451 Q. All right.

17 A. Very early November. It took a

18 while to get everything sort of finalized, but yeah.

19 452 Q. Then can I get an undertaking

20 that sets out the initial contact communication that

21 was made between, I guess, Mr. Agarwal and

22 Ms. Turnpenny? Can I get that email?

23 (U/A) MR. EIZENGA: We'll take that under

24 advisement.

25 MR. SAYCE: Okay.

1 BY MR. SAYCE:
2 453 Q. So I take it the CHL gave these
3 league level policies to Ms. Turnpenny; yes?
4 A. Correct.
5 454 Q. But Ms. Turnpenny didn't have the
6 same type of player access that the IRP had, right?
7 A. Correct.
8 455 Q. In fact she had --
9 A. She looked at -- she was
10 reviewing our policies and education programs in
11 writing. It was all done in writing. There were no
12 interviews.
13 456 Q. She didn't contact any players,
14 right?
15 A. Correct.
16 457 Q. Didn't contact any coaches?
17 A. Correct.
18 458 Q. Parents?
19 A. Correct.
20 459 Q. Staff?
21 A. There was no survey like the
22 Léger report.
23 460 Q. Well, you know, I'm asking --
24 yeah, so there was no survey but she looked at the
25 policies that you gave to her?

1 A. Correct.

2 461 Q. Okay. And you gave her different
3 policies than you gave to the Independent Panel, yes?
4 A. They were substantively similar.
5 I think the only updates were the updates that were
6 made in September of 2021 around independent reporting
7 mechanics.

8 462 Q. Right. So those are the policies
9 you attached to your affidavit. I'll just find the
10 right one. It's the March 4th affidavit. Those are
11 the policies you're talking about, right?

12 A. Yes.

13 463 Q. So she reviewed additional
14 policies that the panel was not given?
15 A. Correct. She was given the same
16 policies and then the update, or the -- what was new
17 as of the time she did her review.

18 464 Q. Okay. And these are the policies
19 that -- for example, the OHL employs the HONE app,
20 right?

21 A. Correct.

22 465 Q. The HONE app is the app that
23 players download onto their phones?
24 A. I believe so, yeah.

25 466 Q. And that allows them to report

1 directly to the league independently?

2 A. Correct.

3 467 Q. All right. But that policy was

4 not in place when the Independent Review Panel

5 reviewed the policies, right?

6 A. Correct.

7 468 Q. What do you think of that

8 reporting policy? It's a pretty good policy, right?

9 A. Sorry; are you talking about the

10 HONE app?

11 469 Q. The reporting policy, the HONE

12 app policy, yeah.

13 A. Yeah. I think it was a useful

14 addition to what already exists and they were done --

15 there again, given sort of the way we're set up,

16 they're a little different in each league, but the

17 ability to have a mechanic that is truly independent,

18 confidential, I think is a useful addition to the

19 suite of policies we currently have.

20 470 Q. Right. That HONE app is truly

21 independent, truly confidential, right?

22 A. I believe so, yes.

23 471 Q. Yeah. So I just want to get the

24 order straight. Those policies you attached to your

25 affidavit were in force at the beginning of the season

1 in 2021, right?

2 A. Yes.

3 472 Q. Okay.

4 A. I believe so. I think each of
5 them were approved at the board level of each of the
6 regional leagues, I believe in September of 2021.

7 473 Q. Sorry; the board level; you mean
8 the board of governors?

9 A. The board of governors or the
10 board of members in the Q. They're called a little
11 differently across the three leagues, but each league
12 approved those policies in September of 2021, I
13 believe.

14 474 Q. Okay. This isn't a memory test.
15 When does the season start? Does it start in
16 September?

17 A. So during COVID we moved the
18 start date because we knew we needed more time given
19 where the virus -- where the pandemic was at. So I
20 believe each league -- each league normally starts in
21 September. This year we started in early October, or
22 mid-October, depending on your league.

23 But when you say the season begins,
24 like in the Q, for example, the players actually begin
25 training camp. Because school starts early in Quebec,

1 they start earlier. They start in August for training
2 camp and then the season started in early October.

3 475 Q. You attached those policies to
4 your March affidavit and am I correct in stating that
5 you reviewed the affidavits of Mr. Branch,
6 Mr. Courteau, and Mr. Robison that were filed in late
7 October, early November before you swore your March
8 affidavit?

9 This again isn't meant to be a memory
10 test. The affidavits I'm talking about are three
11 commissioner affidavits in which they attached their
12 member league abuse and relevant policies. Do you
13 know the affidavits I'm talking about?

14 A. No, I don't believe I reviewed
15 those three.

16 476 Q. Okay. Did you review any
17 affidavit material filed by Mr. Branch, Mr. Robison or
18 Mr. Courteau?

19 A. I don't believe I have.

20 477 Q. Okay. Now, those three policies
21 that you attached to your affidavit, I mean, these
22 are -- you may say these are member league policies so
23 maybe you don't have all that much visibility into
24 their creation. I guess I could just put that as a
25 question.

1 Did you have any visibility into the
2 creation of those policies, the policies you attached
3 to your affidavit?

4 A. No. So each league formed the
5 policies through their own subcommittees, et cetera.
6 I was aware they were doing them, that they were, you
7 know, going to be updating their policies, but I
8 didn't have input into them.

9 478 Q. Okay. So if I were to ask you
10 did the Independent Review Panel report influence
11 those policies, you would say I don't know?

12 A. Yeah. I would say -- I'm not --
13 I would say I don't know, but with the caveat of just
14 saying that, you know, these -- each of the regional
15 leagues, as they sort of -- and you can see from, I
16 think -- I forget; one of the affidavits -- we
17 included all the policy updates that happen every
18 year. They always happen in the summer, and each of
19 the leagues, you know, uses information they gather
20 throughout the year, and because the IRP was, you
21 know, was submitted to us prior to them doing their
22 reviews, I can't say whether or not it was the basis
23 for anything, but it wouldn't shock me if they were --
24 you know, if that was -- if the folks who worked on
25 those policies didn't look at the IRP, because it was

1 useful information, as I said earlier.

2 479 Q. I'm looking at Mr. Eizenga and I
3 think he's probably thinking don't speculate, but I
4 think you're just saying maybe, maybe not, and that's
5 fine.

6 Let's go off the record for one
7 minute.

8 Sorry, Mr. MacKenzie, it won't be
9 long.

10 --- OFF THE RECORD

11 BY MR. SAYCE:

12 480 Q. Mr. MacKenzie, we're winding down
13 to the end of our cross-examination here today. Just
14 before we end things I'm going to ask you some
15 questions about some allegations that were made
16 against the Canadian Hockey League relating to an
17 event in London, Ontario in 2018.

18 I'm going to put a Statement of Claim
19 up on the screen. I'm going to share the screen with
20 you. This is court file number CV-22-00000593-0000
21 dated 20 of April 2022. It's a Statement of Claim
22 issued electronically with the Superior Court of
23 Justice. It is a lawsuit entitled -- or with the
24 style of cause, E.M., who is the Plaintiff, and John
25 Does 1 through 8. Two other Defendants are Hockey

1 Canada and the Canadian Hockey League.

2 Have you seen this document?

3 A. Yes.

4 481 Q. We're going to scroll through it

5 just so you can see the whole thing.

6 Let's go down to the bottom. It's 18

7 pages.

8 Is that the whole document?

9 A. I believe so, yes.

10 482 Q. And so this Statement of Claim

11 has been served on the Canadian Hockey League?

12 A. Yes, I believe it was served a

13 few weeks ago and then I believe it was settled about

14 a week ago.

15 483 Q. Okay. I'm going to enter this as

16 Exhibit E.

17 EXHIBIT E: Statement of

18 Claim in Court File #

19 CV-22-00000593-0000, dated

20 20 of April 2022.

21 BY MR. SAYCE:

22 484 Q. So this is a Statement of Claim,

23 and I'm going to go bit by bit. It reflects some

24 allegations made by a young lady who alleges that

25 eight hockey players sexually assaulted her. Am I

1 correct?

2 A. Yes.

3 485 Q. And she alleges that that sexual
4 assault took place at a bar -- after attending at a
5 bar in London?

6 A. Yes.

7 486 Q. And that the eight John Doe
8 Defendants, or at least most of them, or all of them,
9 were Canadian Hockey League players at the time of the
10 sexual assault?

11 A. Yes.

12 487 Q. And that the Canadian Hockey
13 League players were also members of the gold medal
14 winning under-20 junior hockey team for Canada?

15 A. Yes.

16 488 Q. Okay. And I think that you would
17 agree with me that these are some very serious
18 allegations?

19 A. Yes, I would agree.

20 489 Q. Okay. And this type of conduct,
21 if correct, or if true, reflects very badly on the
22 Canadian Hockey League?

23 A. Yes.

24 490 Q. Okay. Leaving aside when this
25 Statement of Claim was issued or served on you, when

1 did you find out about these allegations?

2 A. When I was served. When the
3 Canadian Hockey League was served, which I believe was
4 May 3. Again, we can -- it was in early May of 2022.

5 491 Q. Okay. And so you had no
6 knowledge -- you had no personal knowledge that these
7 alleged events took place in 2018 until you were
8 served with the Statement of Claim?

9 A. Correct.

10 492 Q. Did these allegations come as
11 news to everyone at the Canadian Hockey League?

12 A. I can't speak to that, again,
13 because I wasn't around when -- in 2018. I can't
14 speak to that.

15 493 Q. Okay. So I guess Mr. Branch was
16 the commissioner -- sorry, the president of the
17 Canadian Hockey League in 2018 when these
18 allegations -- at the time the alleged conduct took
19 place?

20 A. Yes, he was the president when
21 the alleged conduct took place, I believe, yeah.

22 494 Q. And so when you started at the
23 CHL nobody told you about this?

24 A. Correct.

25 495 Q. And then after you were served

1 with the claim, did you ask anyone else at the CHL if
2 they knew about this?

3 A. Sorry; could you repeat the
4 question?

5 496 Q. When you were served with the
6 Statement of Claim, that was the first you found
7 out -- the first time you found out about these
8 allegations? This was the first you heard of these
9 allegations; yes?

10 A. Yes.

11 497 Q. And then once you saw the
12 Statement of Claim I think you thought, "Wow, this is
13 a very serious allegation," right?

14 A. Yes.

15 498 Q. And did you ask anybody else at
16 the CHL, "Did you know about these allegations?"

17 A. No.

18 499 Q. Did you ask Mr. Branch, "Did you
19 know about these allegations?"

20 A. No.

21 500 Q. Now, are you aware that Hockey
22 Canada conducted an investigation?

23 A. Yes.

24 501 Q. When did you find out about the
25 Hockey Canada investigation?

150

1 A. It would have been in the days
2 after getting the Statement of Claim.

3 502 Q. Did you know that a Toronto law
4 firm looked into the allegations; they conducted an
5 investigation?

6 A. Yes.

7 503 Q. And that firm is Henein
8 Hutchison?

9 A. Yes.

10 504 Q. Did you find out about that
11 Henein Hutchison investigation after you were served
12 the Statement of Claim?

13 A. Yes.

14 505 Q. So Henein Hutchison didn't reach
15 out to you at any point during their investigation?

16 A. No.

17 506 Q. And nobody at Hockey Canada told
18 you about this?

19 A. The Henein Hutchison
20 investigation?

21 507 Q. Let's start with that, yes.
22 Nobody at Hockey Canada told you about that?

23 A. No.

24 508 Q. And nobody at Hockey Canada told
25 you that these events had allegedly taken place?

151

1 A. No.

2 509 Q. And so you didn't look through
3 the CHL's records in any way to see if there was any
4 record of any investigation with respect to this
5 issue?

6 A. No, I didn't. No, I didn't.

7 510 Q. So you've taken no steps to
8 investigate these allegations?

9 A. No, I have not.

10 511 Q. Have you reached out to Hockey
11 Canada?

12 A. Yes.

13 512 Q. Have you asked them for a copy of
14 the investigation report?

15 A. Yes.

16 513 Q. The Henein Hutchison
17 investigation report?

18 A. Yes.

19 514 Q. They haven't provided it to you?

20 A. Yes, they have.

21 515 Q. So you do have the Henein
22 Hutchison investigation report?

23 A. I reviewed it. I don't have a
24 copy, but I've reviewed it.

25 516 Q. How did you review it?

1 A. Through a meeting with Hockey
2 Canada.
3 517 Q. So they handed you a hard copy of
4 the report?
5 A. Yes.
6 518 Q. Does the report identify the
7 players?
8 A. No.
9 519 Q. Does Hockey Canada know who the
10 players are?
11 A. No.
12 520 Q. Do you know if Hockey Canada has
13 taken steps to determine who the players are?
14 A. I don't know.
15 521 Q. Are you taking steps to determine
16 who the players are?
17 A. At present, no.
18 522 Q. Is the Canadian Hockey League
19 taking steps to determine who the players are?
20 A. At present, no.
21 523 Q. Are you currently considering
22 whether to conduct an investigation?
23 A. Listen, I think we will consider
24 any and all actions as needed, but as I said I think
25 earlier, the matter is now settled.

1 524 Q. Well, I'm not talking about the
2 lawsuit; I'm talking about, you know, CHL
3 investigation into what happened.

4 A. Right. So the answer is right
5 now -- again, we'll keep all of our options open at
6 this point.

7 525 Q. You have no plans to investigate?

8 A. Not at present.

9 526 Q. And do you know what teams the
10 players played for?

11 A. No.

12 527 Q. Do you know what member league
13 they played within?

14 A. No.

15 528 Q. Did you know that this issue was
16 before the House of Commons yesterday in Ottawa?

17 A. I read about that in the press
18 yesterday, yes.

19 529 Q. Did you know that a unanimous
20 House of Commons adopted a motion to bring Hockey
21 Canada representatives before the Standing Committee
22 on Canadian Heritage?

23 A. Yes, I read about that in the
24 press yesterday, yup.

25 530 Q. And that the national minister of

1 sport, who is Pascale St-Onge, told the House of
2 Commons that she would be ordering a forensic audit
3 with respect to the settlement funds?

4 A. Yes.

5 531 Q. And other issues too?

6 A. Yes, I'm aware, yeah.

7 532 Q. Okay. And do you have any means
8 of obtaining that Hockey Canada report from Henein
9 Hutchison?

10 A. No.

11 533 Q. Do you have any knowledge about
12 the source of the settlement funds?

13 A. No.

14 534 Q. Was the Canadian Hockey League
15 released pursuant to the settlement?

16 A. Yes.

17 535 Q. Did you obtain, I guess, legal
18 counsel with respect to that release?

19 A. Yes.

20 536 Q. Was it Bennett Jones?

21 A. No.

22 MR. EIZENGA: I think you've probably
23 gone maybe about as far as you can go on this,
24 Mr. Sayce, without us being some concerned about
25 privilege issues. I don't have a problem with

1 anything yet.

2 MR. SAYCE: I'm laughing because I did
3 pause there. I had the same thought. I don't want to
4 crawl back into the boardroom over there at First
5 Canadian Place.

6 Just give us a minute to have a quick
7 chat, me and my colleague, just so I don't tread on
8 any inappropriate ground. Is that okay?

9 MR. EIZENGA: Sure.

10 MR. SAYCE: Let's go off the record.

11 --- OFF THE RECORD

12 MR. SAYCE: So we are going to take a
13 five- to ten-minute break. We may be done.

14 Mr. Eizenga, you may -- well, do you
15 know if you intend to re-examine?

16 MR. EIZENGA: I don't know yet, but
17 I'll use the five to ten minutes to come to that
18 conclusion. I kind of doubt it.

19 MR. SAYCE: Okay. So I think that --
20 without 100 per cent committing -- I need to chat with
21 my colleagues -- but I think we're probably done. So
22 let's take ten minutes. It's now 3:02; let's come
23 back at 3:12 and I can commit to ending it, if I can,
24 and you can commit to not re-examining, if you can,
25 and we'll go from there.

156

1 MR. EIZENGA: Thank you.

2 --- Recess taken at 3:03 p.m.

3 --- Upon resuming at 3:10 p.m.

4 MR. SAYCE: Subject to questions taken

5 under advisement and questions arising from

6 undertakings, refusals, et cetera, those are our

7 questions.

8 Mr. Eizenga?

9 MR. EIZENGA: I have no

10 re-examination.

11 Thank you, Mr. Sayce.

12 MR. SAYCE: Thank you, Mr. Eizenga.

13 Thank you, Mr. MacKenzie.

14 Have a wonderful day.

15 --- Upon adjourning at 3:12 p.m.

16

17

18

19

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21

1

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

2 ONTARIO
3 SUPERIOR COURT OF JUSTICE

4 BETWEEN:

5 DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK
6 Plaintiffs

7 - and -

8 ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN
9 HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR
10 JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY
11 LTD., GUELPH STORM LTD., HAMILTON BULLDOGS
12 FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD.,
13 KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON
14 KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY
15 CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA
16 STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC.,
17 NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA
18 GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED
19 PARTNERSHIP c.o.b. OTTAWA 67'S HOCKEY CLUB, THE
20 OWEN SOUND ATTACK INC., PETERBOROUGH PETES
21 LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA
22 ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS
23 INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR
24 SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155
25 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
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

1 JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB,
 2 649643 ONTARIO INC. c.o.b. as SARNIA STING,
 3 KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER
 4 RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE
 5 BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR
 6 DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB
 7 DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS
 8 DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY
 9 CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES
 10 OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS
 11 HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE
 12 QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC.,
 13 MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE
 14 HOCKEY L'OCEANIC DE RIMOUSKI INC., LES HUSKIES DE
 15 ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as
 16 CHARLOTTETOWN ISLANDERS, LES TIGRES DE
 17 VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR
 18 HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN
 19 INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY
 20 JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS,
 21 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE
 22 PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE
 23 SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY
 24 ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY
 25 c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB,
 L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC,
 PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY
 ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT,
 INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY
 LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the Class Proceedings Act, 1992

CROSS-EXAMINATION OF KRUISE REDDICK
 on his affidavit dated October 28, 2021
 held via Arbitration Place Virtual
 on Monday, May 30, 2022, at 6:01 p.m.

APPEARANCES:

Vlad Calina on behalf of the Plaintiffs
 James Sayce
 Nina Butz on behalf of the Defendants
 Ashley Paterson

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940-100 Queen Street 900-333 Bay Street
 Ottawa, Ontario K1P 1J9 Toronto, Ontario M5H 2R2
 (613) 564-2727 (416) 861-8720

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8 LIST OF REFUSALS

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10 Refusals (REF) found at pages: 26, 36

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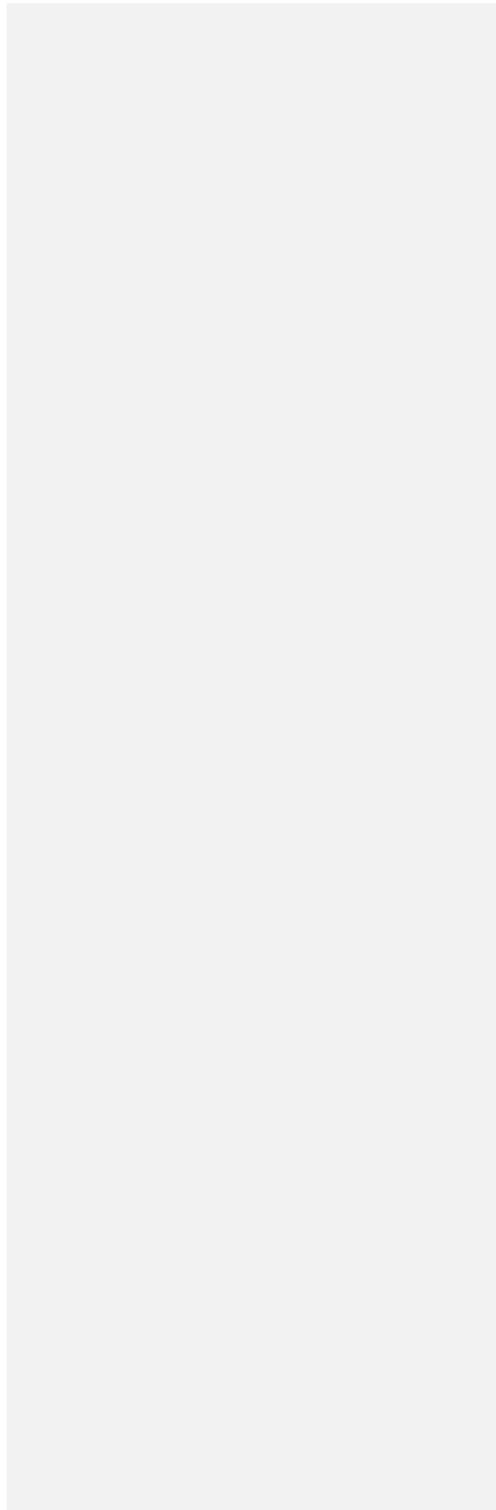
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1		LIST OF EXHIBITS	
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3			
4	A	Affidavit of Kruise	7
5		Reddick, sworn October	
6		28, 2021.	
7			
8	B	Affidavit of Jason	23
9		Clarke, affirmed July	
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12	C	Affidavit of Gene	27
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17		Statement of Claim.	
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Arbitration Place Virtual

1 --- Upon commencing on Monday, May 30, 2022,

2 at 6:01 p.m.

3 AFFIRMED: KRUISE REDDICK

4 CROSS-EXAMINATION BY MR. CALINA:

5 1 Q. Good evening, Mr.

6 Reddick. I'm Vlad Calina, one of the Plaintiffs'

7 lawyers. I'll be cross-examining you today.

8 Where are you right now?

9 A. I'm in my home in

10 Edmonton, Alberta.

11 2 Q. And what room are you in?

12 A. I'm in the spare

13 bedroom/office.

14 3 Q. Are you alone?

15 A. Yes, I am.

16 4 Q. And you'll let me know if

17 anyone comes in the room with you?

18 A. Yes, I can.

19 5 Q. Do you have any documents

20 in front of you?

21 A. No, I do not.

22 6 Q. Do you have any documents

23 open on the computer in front of you?

24 A. No, I do not.

25

1 7 Q. And so you don't have any
2 notes in front of you.

3 A. No, I do not.

4 8 Q. And what device are you
5 using to participate in this examination?

6 A. My Mac laptop.

7 9 Q. And what do you have open
8 on your laptop?

9 A. Just this Zoom meeting.

10 10 Q. Nothing else?

11 A. No.

12 11 Q. You swore an affidavit on
13 October 28th, 2021?

14 A. I don't know the exact
15 date.

16 12 Q. But you recall swearing
17 an affidavit in this proceeding.

18 A. Yes, I do.

19 13 Q. So I'm going to show you
20 a document on my screen. Do you see that clearly?

21 A. Yes.

22 14 Q. So this is a
23 document entitled "Affidavit of Kruse Reddick."
24 I take it that's you?

25 A. Yes.

1 15 Q. Sworn October 28th, 2021.

2 Do you see that?

3 A. Yes, I do.

4 16 Q. And then if we go to the
5 bottom of the document under "DocuSigned," that's
6 your electronic signature?

7 A. Yes, it is.

8 MR. CALINA: And counsel, may
9 we mark Mr. Reddick's affidavit as the next
10 exhibit, Exhibit A?

11 MS. BUTZ: Yes.

12 EXHIBIT NO. A: Affidavit
13 of Kruse Reddick, sworn
14 October 28, 2021.

15 BY MR. CALINA:

16 17 Q. Mr. Reddick, you reviewed
17 that affidavit in preparing for it today?

18 A. I have.

19 18 Q. Do you have any
20 corrections to it?

21 A. I do not.

22 19 Q. You were on the Tri-City
23 Americans for five years from 2006 to 2011?

24 A. Yes, I was.

25 20 Q. And during that time, is

1 it fair to say that the Americans had around 30
2 players?

3 A. I couldn't say for sure.

4 21 Q. If you had to estimate,
5 how many players would you say were on the team in
6 a given season?

7 A. Twenty to 25.

8 22 Q. Twenty to 25. And during
9 that time, the WHL had a 72-game regular season?

10 A. Yes, they did.

11 23 Q. And that was made up of
12 36 home games?

13 A. I believe so, yes.

14 24 Q. And home games are games
15 that were played at the Toyota Center arena in
16 Kennewick, Washington?

17 A. Yes.

18 25 Q. Did you run your
19 practices out of the Toyota Center?

20 A. Yes, for the most part.
21 There's also another rink just next door. If that
22 one's being tied up, we would practise there as
23 well.

24 26 Q. And so the rink next door
25 was occasionally the team's practice facility?

1 A. At some points, yes.

2 27 Q. And the team ran that
3 practice facility?

4 A. No, I don't believe they
5 ran either facility.

6 28 Q. They would rent ice time?

7 A. I couldn't say for sure.

8 29 Q. If I wanted to know the
9 answer, I'd have to ask Bob Tory the GM?

10 A. I also don't know that
11 either.

12 30 Q. When you were practising
13 though, you have all of your team equipment?

14 A. Yes.

15 31 Q. And your practice
16 jerseys?

17 A. Yes.

18 32 Q. And those practice
19 jerseys had the Americans' logo on it?

20 A. I don't think so. I
21 think they had "WHL" on it.

22 33 Q. And the Americans also
23 played about 36 away games; right?

24 A. That's correct.

25 34 Q. And that's in other

1 hockey arenas across the WHL?

2 A. Yes.

3 35 Q. And to travel to these
4 away games, you would use a team bus?

5 A. Yes, we would.

6 36 Q. Is it fair to say that
7 the bus is a second home to players when they go
8 on their away games?

9 A. Other than the hotel
10 rooms, yes.

11 37 Q. Because you end up
12 spending hours and hours on the bus; right?

13 A. Yes, we do.

14 38 Q. And depending on how far
15 you go, you might go spend an entire day or an
16 entire night on the bus.

17 A. Yes, that's possible.

18 39 Q. And the coaches travelled
19 with you on the bus?

20 A. They did.

21 40 Q. As well as the team
22 staff?

23 A. Not all the team staff,
24 no.

25 41 Q. Which team staff?

1 A. Just the immediates, so
2 coaches and trainers.

3 42 Q. The GM didn't travel with
4 you guys?

5 A. Not on the bus.

6 43 Q. Would he travel
7 separately?

8 A. Yes.

9 44 Q. But he'd be at the away
10 games.

11 A. I don't remember if he
12 was at every game, but I would say most of them.

13 45 Q. And when you were going
14 on road trips for away games, sometimes that meant
15 going to two or three cities in a row?

16 A. Yes, it did.

17 46 Q. And so if it was a long
18 trip, it might even mean six or seven cities in a
19 row?

20 A. Yes.

21 47 Q. And the home and away
22 schedule was set by the WHL as far as you know.

23 A. I don't really understand
24 how that got set up, but that was all
25 predetermined before the year starts.

1 48 Q. I'm showing you a copy of
2 your affidavit again. Do you see that clearly on
3 the screen?

4 A. Yes.

5 49 Q. I've zoomed in. Please
6 let me know if for any reason you can't see what
7 I'm showing you clearly.

8 A. Okay.

9 50 Q. At paragraph six of your
10 affidavit, you say:

11 "I am aware of the
12 allegations made by the
13 Plaintiffs. (As read)

14 Do you see that?

15 A. Yes.

16 51 Q. Break that for me. To
17 what allegations are you referring?

18 A. I have read over one of
19 the affidavits.

20 52 Q. Which affidavit was that?

21 A. Garrett Taylor's.

22 53 Q. You didn't read anything
23 else?

24 A. No.

25 54 Q. And what allegations

1 specifically are you referring to?

2 A. The claims he makes in
3 regards to his coaches and his time spent in
4 Lethbridge.

5 55 Q. And what claims are
6 those?

7 A. That his coaches treated
8 him unfairly, making him fight, and receiving a
9 garbage bag treatment.

10 56 Q. Anything else?

11 A. Yes. I'm not sure if I
12 remember it completely right now. I think there
13 was more on just the abuse that he claims he made
14 or endured.

15 57 Q. And what abuse was that?

16 A. The verbal abuse by his
17 teammates.

18 58 Q. And by verbal abuse, what
19 do you mean?

20 A. I don't remember any
21 specifics.

22 59 Q. Okay. So when you refer
23 to the "allegations made by the Plaintiffs" and in
24 the next sentence, you refer to the "abuse,
25 hazing, and general atmosphere described," that's

1 all of the examples that you just gave me; right?

2 A. Yes.

3 60 Q. At the beginning of
4 paragraph seven, you say:

5 "During my rookie year
6 playing for the
7 Americans, I never
8 experienced any hazing or
9 abuse." (As read)

10 Do you see that?

11 A. Yes.

12 61 Q. So by "hazing and abuse,"
13 again, you're referring to the examples that you
14 just gave me before?

15 A. Yes.

16 62 Q. And your understanding
17 for what that "hazing and abuse" means comes from
18 Mr. Taylor's affidavit?

19 A. I'm sorry?

20 63 Q. Your understanding of
21 what "hazing and abuse" means comes from Mr.
22 Taylor's affidavit?

23 A. Not solely.

24 64 Q. What else?

25 A. Just my understanding.

1 65 Q. And what's the source of
2 that understanding?

3 A. Just growing up,
4 acknowledging my everyday life, and in school.

5 66 Q. If you turn to the next
6 sentence in your affidavit, you say:

7 "On the Americans,
8 rookies were responsible
9 for some minor team
10 chores, like loading the
11 bus." (As read)

12 Do you see that?

13 A. Yes, I do.

14 67 Q. The buses are a reference
15 to the official team bus that the Americans use to
16 travel to each away game; right?

17 A. Yes.

18 68 Q. And by loading the bus,
19 you mean that rookies were responsible for loading
20 the players' luggage and their hockey equipment on
21 the bus; right?

22 A. Not solely, but we as
23 rookies took responsibility to pack the bus, yes.

24 69 Q. What do you mean by "not
25 solely?"

1 A. Well, every player
2 basically puts their own hockey bag on the bus or under
3 the storage, and then it was kind of the rookies'
4 job to stack the hockey equipment, and get everything in there.

Deleted: it

5 70 Q. Right. So the veterans
6 left their bags near the bus, and the rookies
7 would actually physically grab the bus [sic] and
8 put them onto the loading dock of the bus?

9 A. They would be handed the hockey
10 bags, yes.

11 71 Q. Right. And they would
12 actually be carrying them onto the bus?

13 A. Not onto the bus but stacking them
14 underneath.

15 72 Q. And is it fair to say
16 that each hockey player's gear weighs around 25
17 pounds?

18 A. I'm not sure.

19 73 Q. And a goalie's hockey
20 gear weighs around 50 pounds?

21 A. I couldn't answer that
22 one either.

23 74 Q. And if you were packing
24 for a multi-day road trip, you'd pack a fair
25 amount of clothes, toiletries, et cetera --

1 everything you needed?

2 A. Everything you needed,

3 yes.

4 75 Q. So the luggage could be

5 pretty heavy.

6 A. I couldn't speak to

7 anyone else's luggage, but everybody packed and carried their

8 own luggage which was separate from their hockey equipment.

9 76 Q. When you were a rookie

10 loading the bus, was the luggage heavy?

11 A. I don't remember.

12 77 Q. And the coaches knew that

13 it was the rookies' responsibility to load the

14 bus.

15 A. Yes.

16 78 Q. And the team staff knew

17 it was the rookies' responsibility to load the

18 bus.

19 A. Yes.

20 79 Q. And rookies would be

21 punished if they refused to load the bus.

22 A. No.

23 80 Q. The coaches would cut

24 their ice time if they refused.

25 A. No.

1 81 Q. So any rookie could just
2 say "I don't want to load the bus?"
3 A. Yes.
4 82 Q. So it wasn't really a
5 responsibility then.
6 A. In my experience, it was
7 a responsibility.
8 83 Q. So help me understand
9 that. How is it a responsibility if they could
10 say "no" and there were no consequences for saying
11 "no?"
12 A. It wasn't something that
13 was pressed very seriously. It was just a minor
14 chore that the rookies were explained they had to
15 do it at the start of the year, and they took care
16 of that for the most part.
17 84 Q. Right, except they didn't
18 have to do it because they could just say "no;"
19 right?
20 A. If they really wanted to
21 just say "no," yes, they could.
22 85 Q. Loading the bus was part
23 of the rookies' initiation as WHL players; right?
24 A. I'm not sure on that.
25 86 Q. Well, it's a "yes" or

1 "no" question. Loading the bus was part of the
2 rookies' initiation as WHL players on the
3 Americans.

4 A. In my experience, I
5 believe it was part of their responsibility, but I
6 don't feel it was part of my initiation.

7 87 Q. So let me see if I have
8 this right. Loading the bus was something that
9 every rookie had a responsibility to do?

10 A. Yes.

11 88 Q. And it was something
12 that, on your five years in the Americans, rookies
13 were asked to do every year?

14 A. Yes.

15 89 Q. And despite that, you say
16 it's not an initiation?

17 A. Yes, I do.

18 90 Q. I'm showing you a copy of
19 the affidavit of Jason Clarke affirmed July 29th,
20 2020. Do you see that?

21 A. Yes, I do.

22 91 Q. Do you recall reading Mr.
23 Clarke's affidavit?

24 A. No, I have not.

25 92 Q. At paragraph five of the

1 affidavit, Mr. Clarke describes the hazing that he
2 experienced on the Erie Otters team bus. He says:

3 "I recall being put in
4 the sweat box on the team
5 bus. It was a very
6 claustrophobic
7 experience. I recall an
8 older player going up to
9 the front of the bus to
10 get the driver to crank
11 up the heat. They
12 stripped eight of us into
13 our boxers and sent us
14 into the bus bathroom.
15 They sprayed us all with
16 Pepsi, so it was sticky
17 in there as well. I had
18 a full-blown panic attack
19 in there. We were left
20 there for hours. Some of
21 the other guys appeared
22 to be losing it as well.
23 It was one of the worst
24 experiences of my life."
25 (As read)

1 Do you see that?

2 A. Yes, I do.

3 93 Q. The sweat box is abuse?

4 A. I'm sorry?

5 94 Q. The sweat box is abuse?

6 A. I'm sorry? I don't

7 understand if that's a question.

8 95 Q. It's a question. The

9 sweat box is abuse. "Yes" or "no?"

10 A. Yes.

11 96 Q. It's hazing?

12 A. Yes.

13 97 Q. And you never witnessed

14 anything resembling the sweat box during your time

15 with the Tri-City Americans?

16 A. No, I did not.

17 98 Q. And something like that

18 couldn't happen on the Americans without the

19 couches and the team staff knowing because they

20 travelled on the bus; right?

21 A. That's right.

22 99 Q. And far as you know, that

23 was the practice across the WHL?

24 A. As far as the coaches

25 travelling with the team?

1 100 Q. Yes.

2 A. I can't speak for every

3 team. But for our team, yes, that was the

4 practice.

5 101 Q. And as far as any other

6 team that you're aware of?

7 A. I'm not completely aware

8 of every other team's practices.

9 102 Q. But are you aware of some

10 teams' practices?

11 A. None than the Tri-City

12 Americans.

13 103 Q. Was there ever a player

14 from the Tri-City Americans traded to another team

15 in the WHL?

16 A. Yes.

17 104 Q. Teammates?

18 A. Yes.

19 105 Q. Friends of yours?

20 A. Yes.

21 106 Q. You never spoke to those

22 players about their experiences on their WHL

23 teams?

24 A. I don't exactly remember.

25 107 Q. You don't remember if you

1 spoke to them about your experiences?

2 A. Correct.

3 MR. CALINA: Counsel, let's

4 mark the affidavit of Mr. Clarke as the next

5 exhibit, Exhibit B.

6 MS. BUTZ: Sure.

7 EXHIBIT NO. B: Affidavit

8 of Jason Clarke, affirmed

9 July 29, 2020.

10 BY MR. CALINA:

11 108 Q. Mr. Reddick, I'm showing

12 you the affidavit of Gene Chiarello affirmed

13 August 4th, 2020. Do you see that?

14 A. Yes.

15 109 Q. Have you seen Mr.

16 Chiarello's affidavit before?

17 A. No, I have not.

18 110 Q. I'm showing you affidavit

19 paragraph six of his affidavit.

20 At paragraph six, Mr.

21 Chiarello describes the abuse that he describes on

22 the London Knights' team bus? I'm going to read

23 that paragraph, and then I'm going to ask you a

24 series of questions about it.

25 "Another method of hazing

1 involved the rearmost
2 seats on the bus where
3 the last row of seats and
4 the second last row of
5 seats faced each other.
6 The veteran players
7 referred to this general
8 area as 'the pit.' One
9 by one, the rookies would
10 be called to the pit over
11 the speaker system by way
12 of a wireless microphone.
13 Once at the back of the
14 bus, we would be thrown
15 into a heap of blankets
16 and more blankets would
17 be tossed on top of us.
18 The veteran players
19 involved would then
20 administer what would
21 only be described as a
22 beating with their fists.
23 Because we were covered
24 in blankets, there was no
25 way for them to know if

25

1 they were punching our
2 faces or other parts of
3 our bodies. The strikes
4 were incredibly violent
5 for a duration that might
6 have lasted up to a
7 minute. This was more
8 than just playful
9 wrestling or
10 roughhousing. It was
11 painful and traumatic,
12 not only in the physical
13 sense but also from a
14 psychological
15 perspective, in that we
16 were all on the same team
17 and expected to pull the
18 same coloured jerseys on
19 once we reached our
20 destination." (As read)

21 Do you see that?

22 A. Yes, I do.

23 111 Q. So "the pit" is abuse?

24 A. Yes.

25 112 Q. And "the pit" is torture?

1 REF MS. BUTZ: Counsel, I'm going
2 to object to that question. "Torture" is a legal
3 term, so can you please either provide a
4 definition or refer to the terms actually used in
5 the Statement of Claim here?

6 BY MR. CALINA:

7 113 Q. "Torture" is not a legal
8 term, Mr. Reddick. Do you understand what the
9 word "torture" means?

10 A. Not exactly, no.

11 114 Q. Have you heard the word
12 "torture" before?

13 A. Yes, I have.

14 115 Q. Are you able to, in your
15 own words, tell us what you understand "torture"
16 means?

17 A. Serious physical harm?

18 116 Q. Is this serious physical
19 harm?

20 A. I'm sorry?

21 117 Q. Is "the pit" serious
22 physical harm?

23 A. Yes.

24 118 Q. So then in your opinion,
25 it's torture?

1 A. Yes.

2 119 Q. And again, if the coaches
3 travelled on the team bus, they would know about
4 this.

5 A. Yes.

6 120 Q. And if the people in
7 charge could have done anything to stop this from
8 happening, they should have done it.

9 A. Yes.

10 MR. CALINA: And counsel, can
11 we mark Mr. Chiarello's affidavit as the next
12 exhibit?

13 MS. BUTZ: Yes.

14 EXHIBIT NO. C: Affidavit
15 of Gene Chiarello,
16 affirmed August 4, 2020.

17 BY MR. CALINA:

18 121 Q. Mr. Reddick, I'm showing
19 you another document entitled "Fresh As Amended
20 Statement of Claim." Do you see that?

21 A. Yes, I do.

22 122 Q. And you haven't seen this
23 document before.

24 A. No, I have not.

25 123 Q. And you haven't seen a

1 document that looks like this before?

2 A. No.

3 MS. BUTZ: Sorry, counsel. Do
4 you mean in general or in this litigation?

5 BY MR. CALINA:

6 124 Q. In this litigation, you
7 haven't seen a document that looks like this
8 before?

9 A. My affidavit looks
10 similar.

11 125 Q. Other than your
12 affidavit?

13 A. No.

14 126 Q. And you haven't seen
15 another document entitled "Statement of Claim;"
16 right?

17 A. Correct.

18 127 Q. I want to focus you on
19 the definition of "abuse" under paragraph 1(n).
20 Do you see that?

21 A. Yes, I do.

22 128 Q. I'm going to read that
23 definition to you and then I'm going to ask you a
24 series of questions about it.

25 "'Abuse' means, inter

1 alia, physical and sexual
2 assault, hazing,
3 bullying, physical and
4 verbal harassment, sexual
5 harassment, forced
6 consumption of alcohol
7 and illicit drugs, and
8 the use of homophobic,
9 sexualized, and/or racist
10 slurs directed against
11 minors playing in the
12 leagues, perpetrated by
13 players, coaches, staff,
14 servants, employees, and
15 agents of the leagues,
16 including players,
17 coaches, staff, servants,
18 employees, and agents of
19 the teams, as further
20 particularized herein."

21 (As read)

22 Do you see that definition?

23 A. Yes.

24 129 Q. And you were never taken
25 to that definition or a definition that looks like

1 that before, sir, in your affidavit; right?

2 A. Yes, I've seen this
3 definition.

4 130 Q. You saw it before
5 swearing your affidavit.

6 A. I'm --

7 MS. BUTZ: Well, both --
8 sorry, Kruse. This first amended Statement of
9 Claim was served well after Mr. Reddick swore his
10 affidavit, so he wouldn't have seen the exact
11 definition before swearing his affidavit.

12 BY MR. CALINA:

13 131 Q. That wasn't my question.
14 My question was: You haven't seen this definition
15 or any definition that looks like this; right, Mr.
16 Reddick?

17 A. I'm sorry. You're going
18 to have to start over. I don't understand.

19 132 Q. We'll take this in
20 pieces. But for the moment, counsel, can we mark
21 this as the next exhibit?

22 MS. BUTZ: Yes.

23 EXHIBIT NO. D: Fresh As
24 Amended Statement of
25 Claim.

1 BY MR. CALINA:

2 133 Q. I'm sharing my screen,
3 Mr. Taylor, and I'm showing you a document. Can
4 you see that? Sorry, Mr. Reddick. Yes, I'm
5 showing you a document. Can you see that?

6 A. Yes.

7 134 Q. It's a document entitled
8 "Statement of Claim." And if you look at the top,
9 the date is the 18th of June 2020. Do you see
10 that?

11 A. Yes.

12 135 Q. And you haven't seen this
13 document before?

14 A. No.

15 136 Q. And then at the top of
16 the document in paragraph 1(a), there's a
17 definition of "abuse." Do you see that?

18 A. Yes, I do.

19 137 Q. And you haven't seen this
20 definition before.

21 A. Not in this document, no.

22 MR. CALINA: Counsel, can we
23 mark this as the next exhibit?

24 MS. BUTZ: Yes.

25 EXHIBIT NO. E: Statement

1 142 Q. And by "hazing," you're
2 meaning the definition that you gave me earlier at
3 the beginning of this examination?

4 A. Yes.

5 143 Q. Bullying. Have you ever
6 seen any bullying while you were on the Tri-City
7 Americans?

8 A. No, I have not.

9 144 Q. Have you participated in
10 any bullying?

11 A. No, I have not.

12 145 Q. What do you understand by
13 "bullying?"

14 A. Picking on someone?

15 146 Q. And you don't consider
16 making the rookies load the bus bullying?

17 A. No, I don't.

18 147 Q. And why not?

19 A. I think it's a chore, and
20 it's not meant to be bullying.

21 148 Q. So something's not
22 bullying if it's not meant to be bullying
23 regardless of how the person feels?

24 A. No.

25 149 Q. Okay. Then I'm just

1 having a hard time following the distinction you
2 draw.

3 A. I can only speak to my
4 experience. And when I was asked to load the bus,
5 I did not feel that was bullying.

6 150 Q. And you can only speak to
7 your experience because it didn't bother you, so
8 you weren't really thinking about whether it
9 bothered anyone else?

10 A. Yes.

11 151 Q. Have you ever seen any
12 physical or verbal harassment?

13 A. Yes.

14 152 Q. Okay. Where did you see
15 it, and what was it?

16 A. Banter in a dressing room
17 or on the ice between opposing teams.

18 153 Q. You say "banter." What
19 do you mean by "banter?"

20 A. Joking where it goes both
21 ways.

22 154 Q. Would that include
23 insults?

24 A. Yes.

25 155 Q. Could it include slurs?

1 A. Yes.

2 156 Q. Homophobic slurs?

3 A. Yes.

4 157 Q. Racist slurs?

5 A. Yes.

6 158 Q. And when you say it was

7 banter in the locker room between both teams, does

8 that include players on the Tri-City Americans?

9 A. Yes.

10 159 Q. Does that include

11 yourself?

12 A. Yes.

13 160 Q. Does that include the

14 coaches?

15 A. Yes.

16 161 Q. And the team staff?

17 A. I can't remember that

18 part.

19 162 Q. Have you seen or heard or

20 witnessed any sexual harassment while you were on

21 the Tri-City Americans?

22 A. No, I have not.

23 163 Q. And what do you

24 understand by "sexual harassment?"

25 A. Forcing someone into a

1 sexual act without their consent.

2 164 Q. And what do you
3 understand a "sexual act" to mean?

4 A. Anything where it
5 involves a sexual act without somebody's written
6 or verbal consent.

7 165 Q. Can you give me a
8 definition without using the same word in the
9 definition?

10 MS. BUTZ: Counsel, these are
11 actual legal terms. So can you put a definition
12 of "sexual harassment" to the witness and give him
13 examples? I don't understand. Needing him to
14 define "sexual" seems kind of irrelevant to
15 answering this question.

16 MR. CALINA: I'm asking for
17 his understanding. He gave evidence that he
18 hasn't seen any hazing or abuse, and I want to
19 understand what he's seen and hasn't seen.

20 BY MR. CALINA:

21 166 Q. So Mr. Reddick, what do
22 you understand by "sexual harassment?"

23 REF MS. BUTZ: He gave the answer
24 to that question. You're repeating your question.

25 MR. CALINA: He gave an answer

1 that used the word in the definition. I want a
2 definition without "sexual act" in it.

3 BY MR. CALINA:

4 167 Q. What do you understand
5 "sexual act" to mean, Mr. Reddick?

6 A. Sex.

7 168 Q. Okay. And so other than
8 unwanted sex, do you understand any other type of
9 conduct to be sexual harassment?

10 A. Yes.

11 169 Q. And what conduct is that?

12 A. Feeling someone
13 inappropriately?

14 170 Q. Any other type of
15 conduct?

16 A. No.

17 171 Q. Would you consider an
18 unwanted come-on sexual harassment?

19 A. Can you repeat that?

20 172 Q. Would you consider
21 hitting on someone when they don't want to be hit
22 on sexual harassment?

23 A. No.

24 173 Q. Did you ever see that
25 behaviour being engaged by anyone on the Tri-City

1 Americans during your time on the team?

2 A. No, I haven't.

3 174 Q. Have you ever seen or

4 heard about or participated in the forced

5 consumption of alcohol and illicit drugs?

6 A. Not on my time with the

7 Tri-City Americans.

8 175 Q. When you say "not on your

9 time," have you heard about the forced consumption

10 of alcohol or illicit drugs on the Tri-City

11 Americans when you weren't with the team?

12 A. No, I haven't.

13 176 Q. And we already talked

14 about the use of homophobic, sexualized, or racist

15 slurs. I'm going to take the document off the

16 screen, Mr. Reddick.

17 Mr. Reddick, I'm showing you a

18 copy of your affidavit again. Can you let me know

19 if you see it on the screen?

20 A. Yes, I see it.

21 177 Q. I'm showing you paragraph

22 11 of your affidavit. I'm going to read it, and

23 then I'm going to ask you a series of questions

24 about it. At paragraph 11, you say:

25 "I recall that, at the

1 start of every season,
2 Mr. Tory held a team
3 meeting." (As read)
4 And that's a reference to Bob
5 Tory, the general manager; right?
6 A. Yes, it is.
7 178 Q. And who is at that team
8 meeting?
9 A. Players and coaches.
10 179 Q. Not the team staff?
11 A. I guess I would need a
12 clarification of who you think the team staff is.
13 180 Q. Trainers, any other
14 employees of the team that help out with the
15 day-to-day of the hockey team.
16 A. So front office people
17 know. So it would be players and coaches, and I
18 can't say for sure if the medical and equipment
19 staff would be there or not.
20 181 Q. The paragraph continues
21 and it says:
22 "We would discuss the
23 season ahead, and Mr.
24 Tory would address issues
25 related to both on and

1 off-ice conduct for all
2 of the players." (As
3 read)
4 Do you see that?
5 A. Yes, I do.
6 182 Q. How long would these
7 meetings last?
8 A. I can't remember how long
9 they would last.
10 183 Q. Longer than an hour?
11 A. No.
12 184 Q. Longer than half an hour?
13 A. Close to half an hour to
14 an hour, I would say.
15 185 Q. And would the meeting
16 also address general things about the team, your
17 strategy for the year, your goals, getting to the
18 Memorial Cup, et cetera?
19 A. I can't say if that was
20 mostly addressed in this team meeting or if that
21 was part of a head coach meeting. I can't
22 remember that exactly.
23 186 Q. Would you be addressing
24 front office issues, trades, potential changes to
25 the teams?

1 A. Yes.

2 187 Q. And you say at the start
3 of every season. Was this during training camp,
4 or was it during the start of the regular season?

5 A. It would be before the
6 pre-season or during pre-season.

7 188 Q. And you say:
8 "Mr. Tory would address
9 issues related to both on
10 ice and off-ice conduct
11 for all of the players."
12 (As read)
13 I'm just trying to understand
14 what that means. What do you mean by "on and
15 off-ice conduct?"

16 A. Mr. Tory would lay out
17 his expectations of how he wanted us or how
18 successful he hoped us to be on the ice and as
19 well as how we conduct ourselves off the ice.

20 189 Q. And so the discussion
21 about the on-ice behaviour was in relation to the
22 team's success, and the discussion about off-ice
23 behaviour was about the players' conduct?

24 A. Yes.

25 190 Q. And that would include

1 things like partying and how you participated in
2 the community, et cetera?

3 A. Yes.

4 191 Q. And the next sentence
5 says:

6 "Hazing was one of the
7 issues that was addressed
8 each year." (As read)

9 Do you see that?

10 A. Yes, I do.

11 192 Q. How much would you say
12 was spent on hazing out of that half an hour to an
13 hour meeting?

14 A. I can't say how much
15 exactly was spent on that, but I know it was one
16 of Bob's pivotal points of every meeting that he
17 held before ever year.

18 193 Q. Was it more than five
19 minutes?

20 A. I also can't say for
21 sure, but I would say it was around five minutes.

22 194 Q. And that was just a talk
23 that he gave you guys. He didn't hand anything
24 out?

25 A. I can't remember.

1 195 Q. You don't specifically
2 remember getting a policy or any other type of
3 document during these talks; right?

4 A. No, I don't remember.

5 196 Q. And in the last sentence,
6 you say:

7 "Mr. Tory made it clear
8 that he would not
9 tolerate hazing of any
10 sort and that any player
11 involved in such
12 behaviour would be
13 dismissed from the team."
14 (As read)

15 Do you see that?

16 A. Yes, I do.

17 197 Q. In your time on the team,
18 was any player dismissed from the team for
19 engaging in hazing?

20 A. No.

21 198 Q. Was any player on the
22 team ever punished for engaging in hazing?

23 A. No.

24 199 Q. Earlier, we look at the
25 definition of "abuse" and we talked about physical

1 and verbal harassment. I take it that no player
2 was dismissed from the team for physical or verbal
3 harassment?

4 A. That's right.

5 200 Q. And so Mr. Tory didn't
6 tell you that you couldn't use slurs to banter
7 with other teams on the ice.

8 A. No, I don't remember
9 that.

10 201 Q. Right. As far as you
11 were concerned, that wasn't an example of hazing.

12 A. Yes.

13 202 Q. Under paragraph 12, you
14 say:

15 "I became captain of the
16 Americans during the
17 2010-2011 season." (As
18 read)

19 Do you see that?

20 A. Yes, I do.

21 203 Q. And is captain one of the
22 leaders of the team?

23 A. Yes.

24 204 Q. And in the next sentence,
25 you say:

45

1 "Part of your
2 responsibilities as a
3 captain and a veteran
4 player were to uphold and
5 reinforce the team
6 culture that made playing
7 for the Americans such a
8 great experience." (As
9 read)

10 A. Yes.

11 205 Q. Did that also mean
12 talking to players about whether they were being
13 hazed?

14 A. I'm sorry?

15 206 Q. Did that also include
16 talking to the other players about whether they
17 felt like they were being hazed?

18 A. I don't remember exactly.

19 207 Q. Do you remember talking
20 to any players about their experience and asking
21 them whether or not they were being hazed when you
22 were captain?

23 A. Not specifically about
24 being hazed, but I remember I would always have
25 conversations to check in with players to see how

1 they were doing and how they were feeling
2 throughout the year.

3 208 Q. And if a player felt like
4 they were being hazed, you were one of the people
5 they could talk to?

6 A. I believe so, yes.

7 209 Q. And then you would make
8 the call about whether or not that should go up
9 the chain to the coaches or the general manager?

10 A. If that happened and
11 somebody came to me with an instance, I would feel
12 comfortable going to one of the coaches or Bob
13 Tory the manager.

14 210 Q. Right, but if someone
15 came to you, you'd first make a decision about
16 whether or not it was hazing; right?

17 A. Yes.

18 211 Q. If you go down through to
19 the middle of the paragraph, you see that you say:

20 "I did not allow hazing
21 to occur on the team
22 while I was captain nor
23 did the other veteran
24 players." (As read)

25 Do you see that?

1 A. Yes, I see that.

2 212 Q. What specifically did you
3 do to not allow hazing to occur on the team?

4 A. I conducted myself in a
5 manner where I showed other people respect, and I
6 feel that's how I was best a leader and by leading
7 them as an example.

8 213 Q. Right. So other than not
9 hazing players yourself, did you do anything else
10 to make sure that hazing didn't occur on the team?

11 A. No.

12 214 Q. I'm showing you a copy of
13 the affidavit of Garrett Taylor, affirmed November
14 23, 2020. Do you see that?

15 A. Yes, I do.

16 215 Q. And this was the
17 affidavit that you reviewed in advance of swearing
18 your own affidavit?

19 A. Yes.

20 216 Q. And I take it then that
21 Mr. Taylor's time at the WHL overlapped with your
22 time.

23 A. Yes, it did.

24 217 Q. So you played for the
25 Lethbridge Hurricanes and the Prince Albert

1 Raiders. And I take it that at least once, you
2 played those teams in the regular season when you
3 were on the Americans?

4 A. Yes.

5 218 Q. So if you look at
6 paragraph 15 of your affidavit, you say that:

7 "The hazing and abuse
8 that Mr. Taylor describes
9 during his time with the
10 Lethbridge Hurricanes did
11 not happen on the
12 Americans." (As read)

13 Do you see that?

14 A. Yes.

15 219 Q. And before you affirmed
16 that paragraph -- or rather, before you said that
17 that paragraph was the truth in your experience,
18 you carefully read Mr. Taylor's affidavit; right?

19 A. Yes.

20 220 Q. Because you wanted to
21 make sure that what you were saying was true.

22 A. Yes.

23 221 Q. If we look at paragraph
24 seven, Mr. Taylor says:

25 "The older players and

49

1 coaches used words like
2 the F word, the B word,
3 or the P word. I heard
4 these types of words
5 every day. I heard these
6 words on the ice, off the
7 ice, in the locker room
8 and/or socially. This
9 language was completely
10 normal. These words were
11 used towards rookies, not
12 the high-ranking older
13 players. You couldn't
14 get away with calling the
15 veteran captain these
16 types of words. Those
17 players were
18 untouchable." (As read)

19 Do you see that paragraph?

20 A. Yes.

21 222 Q. Words like the F word,
22 the B word, and the P word were the words that you
23 heard when you were bantering back and forth with
24 players on opposite teams; right?

25 A. Yes.

1 223 Q. Right. So you in fact
2 did see some of the hazing that's described in Mr.
3 Taylor's affidavit during your time on the
4 Americans; right?

5 MS. BUTZ: Counsel, Mr.
6 Reddick made it clear he doesn't think these terms
7 are hazing in a previous question.

8 BY MR. CALINA:

9 224 Q. Mr. Reddick, do you say
10 that these terms aren't "hazing" anywhere in your
11 affidavit?

12 A. I'm not exactly sure.

13 225 Q. I'm happy to let you take
14 the time to review your affidavit and point it out
15 for me.

16 A. I think you'll have to go
17 over that again with me, please.

18 226 Q. In your affidavit in
19 paragraph 15, you categorically deny that the
20 hazing and abuse that Mr. Taylor describes during
21 his time with the Lethbridge Hurricanes happened
22 on the Americans. Do you see that?

23 A. Yes.

24 227 Q. And earlier, you told me
25 that you did hear words like the F word, the B

1 word, or the P word used in banter between the
2 teams in the locker room and on the ice; right?

3 A. Yes.

4 228 Q. And Mr. Taylor in his
5 affidavit describes that as "hazing;" right?

6 A. Yes.

7 229 Q. And so when you say in
8 your affidavit that you didn't see this type of
9 hazing and that it didn't happen on the Americans,
10 that's not true?

11 MS. BUTZ: Mr. Reddick
12 explained that he does not consider these words
13 "hazing." His affidavit is from his perspective.
14 He didn't quote "hazing and abuse" through Mr.
15 Taylor's affidavit, so you're putting words in his
16 mouth.

17 MR. CALINA: I'm not putting
18 words in his mouth. I'm testing his evidence.
19 And counsel, I'd ask you not to testify for the
20 witness.

21 BY MR. CALINA:

22 230 Q. Mr. Reddick, when you
23 said that the hazing and abuse that Mr. Taylor
24 describes, you're referring to what he describes
25 didn't happen on the Americans, that's actually

1 not true.

2 A. I can only speak for
3 myself and my experience during the Americans.
4 And in those types of banter, I did not consider
5 that hazing.

6 231 Q. But the hazing and abuse
7 that Mr. Taylor describes did happen on the
8 Americans.

9 A. As I would say again, I
10 don't consider that hazing as my experience
11 showed.

12 232 Q. But again, you don't say
13 that in your affidavit; right?

14 A. Correct.

15 MR. CALINA: I don't recall if
16 we did this. Counsel, can we mark Mr. Taylor's
17 affidavit as the next exhibit?

18 MS. BUTZ: We didn't, and yes.

19 EXHIBIT NO. F: Affidavit
20 of Garrett Taylor,
21 affirmed November 23,
22 2020.

23 BY MR. CALINA:

24 233 Q. Mr. Reddick, if we go
25 down to paragraph ten of Mr. Taylor's affidavit,

1 you'll see that he says:

2 "Early on that year, the

3 older players made the

4 rookies dress up in

5 women's clothing to wear

6 to the rookie party.

7 Veteran players organized

8 the party, picked the

9 location, and invited the

10 girls to the party. I

11 was told that the same

12 thing had gone on with

13 the rookies in the

14 previous year, and I even

15 saw photos of it." (As

16 read)

17 Do you see that paragraph?

18 A. Yes, I do.

19 234 Q. Making rookies dress up

20 in women's clothing is hazing?

21 A. Yes.

22 235 Q. And it doesn't matter if

23 everyone's having a good time or laughing about

24 it.

25 A. Yes.

1 236 Q. And you never saw rookies
2 being forced to dress up as women on the
3 Americans.

4 A. No, I didn't.

5 237 Q. I just have a couple of
6 questions in general for you, Mr. Reddick, on the
7 general WHL experience, and I just want to make
8 sure I understand how things work correctly.

9 And you were a rookie around
10 when you were about 16 years old; right?

11 A. I was 16, yes.

12 238 Q. And you were living away
13 from home as a rookie?

14 A. Yes.

15 239 Q. So you were placed with
16 what's called the "billet family."

17 A. Correct.

18 240 Q. And that's a family that
19 you live with while you were playing for your WHL
20 team?

21 A. Yes.

22 241 Q. And the billet family is
23 assigned to you by the team.

24 A. Yes.

25 242 Q. And that was true for

1 every player on the Americans that lived with a
2 billet family?

3 A. Yes, I believe so.

4 243 Q. And as far as you know,
5 that's true across the WHL.

6 A. I can't say for sure, but
7 yes, on the Americans, that's exactly how it was
8 worked.

9 MR. CALINA: Can we just go
10 off for five minutes, counsel? I'm really close
11 to the end of my examination. I just want to
12 review my notes and then we can circle back.

13 MS. BUTZ: No problem.

14 --- Recess taken at 6:51 p.m.

15 --- Upon resuming at 6:53 p.m.

16 MR. CALINA: So Mr. Reddick,
17 subject to any undertakings, under advisements,
18 and refusals -- of which I believe there are
19 none -- those are my questions for you. Thank you
20 for your time today.

21 THE WITNESS: You're welcome.

22 --- Whereupon the proceeding concluded

23 at 6:53 p.m.

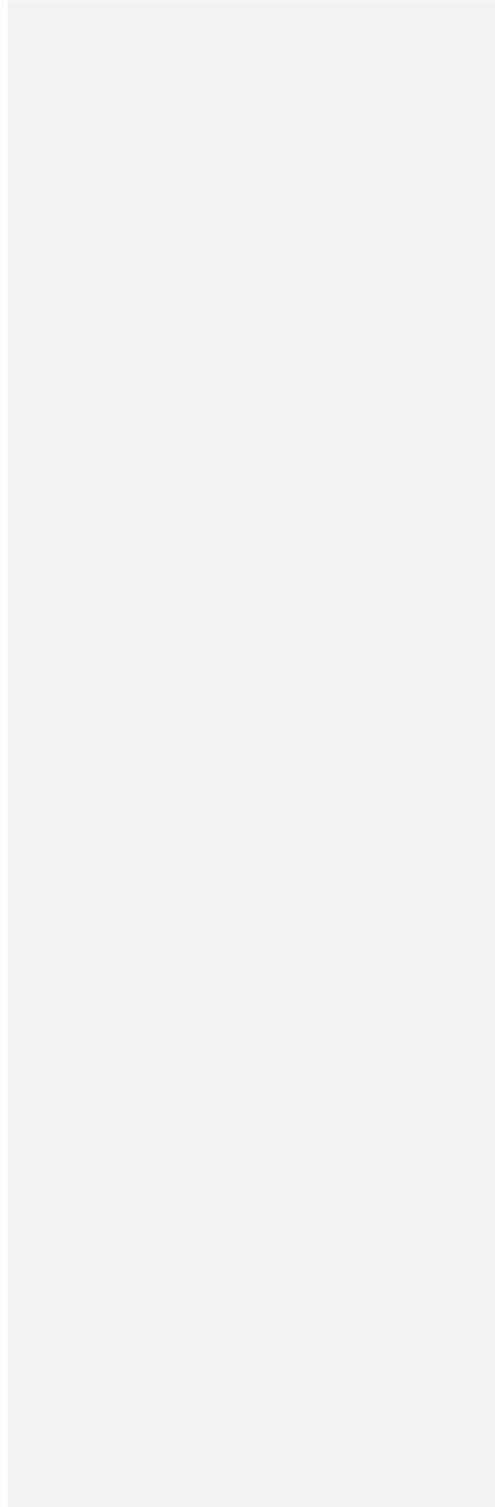
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I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately
transcribed, from a pre-existing recording,
the foregoing proceeding.

Karen Mak, CSR, Certified Court Reporter



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

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DANIEL CARCILLO, GARRETT TAYLOR, and STEPHEN QUIRK
Plaintiffs

- and -

CANADIAN HOCKEY LEAGUE ET AL.
Defendants

CROSS-EXAMINATION OF RON ROBISON
held via Arbitration Place Virtual
on Monday, June 13, 2022 at 11:06 a.m.

REVISED TRANSCRIPT

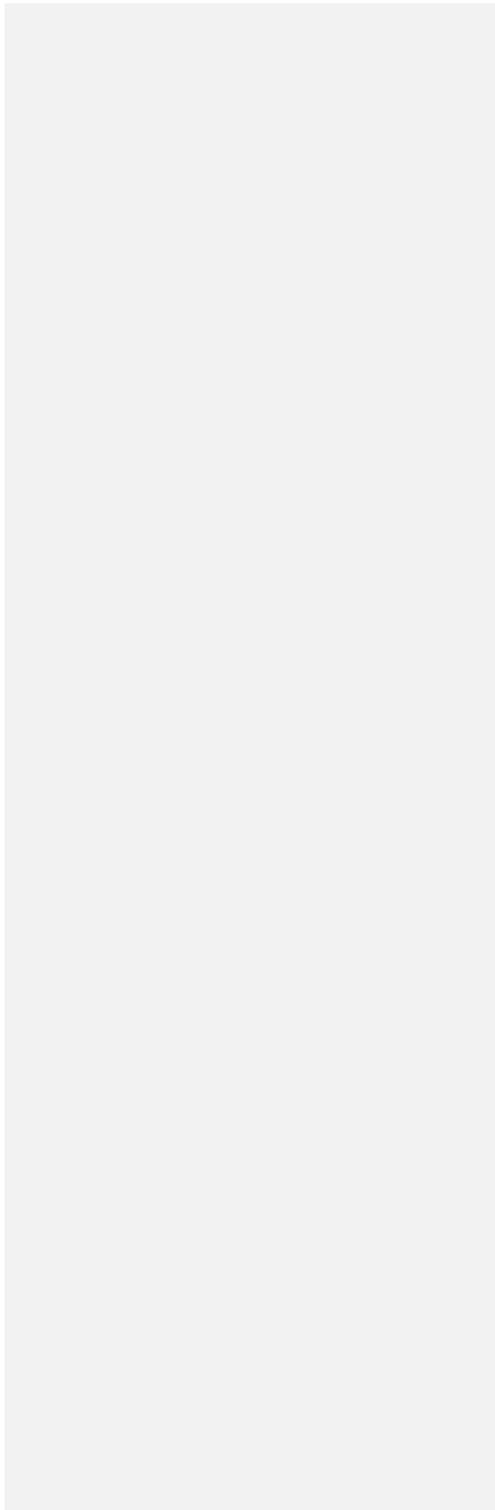
APPEARANCES:

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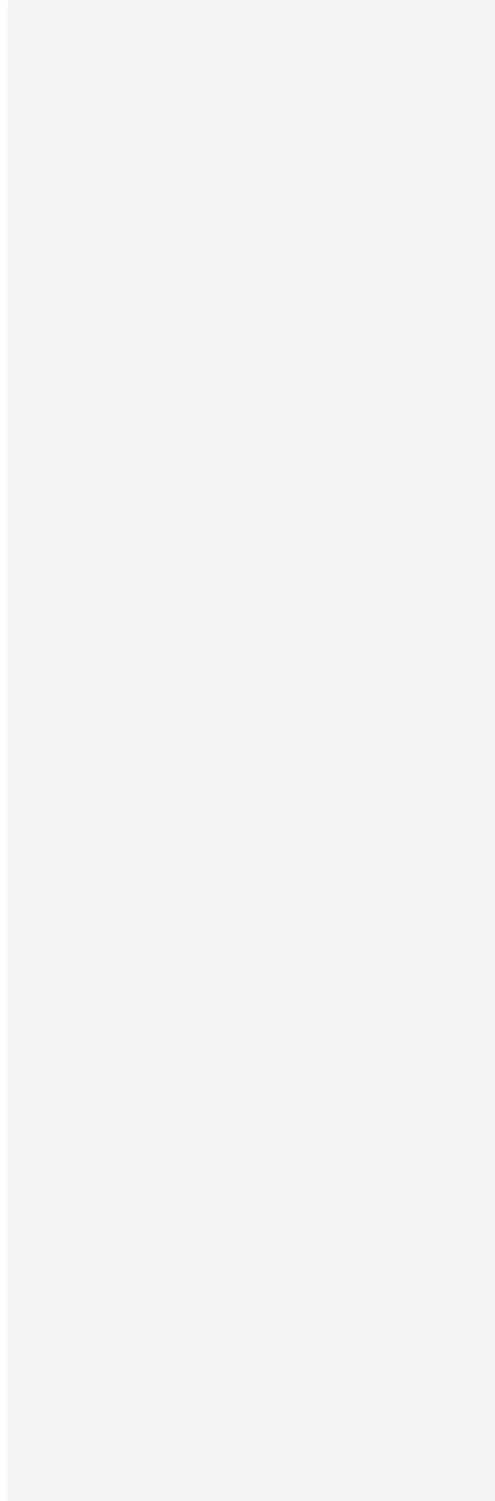
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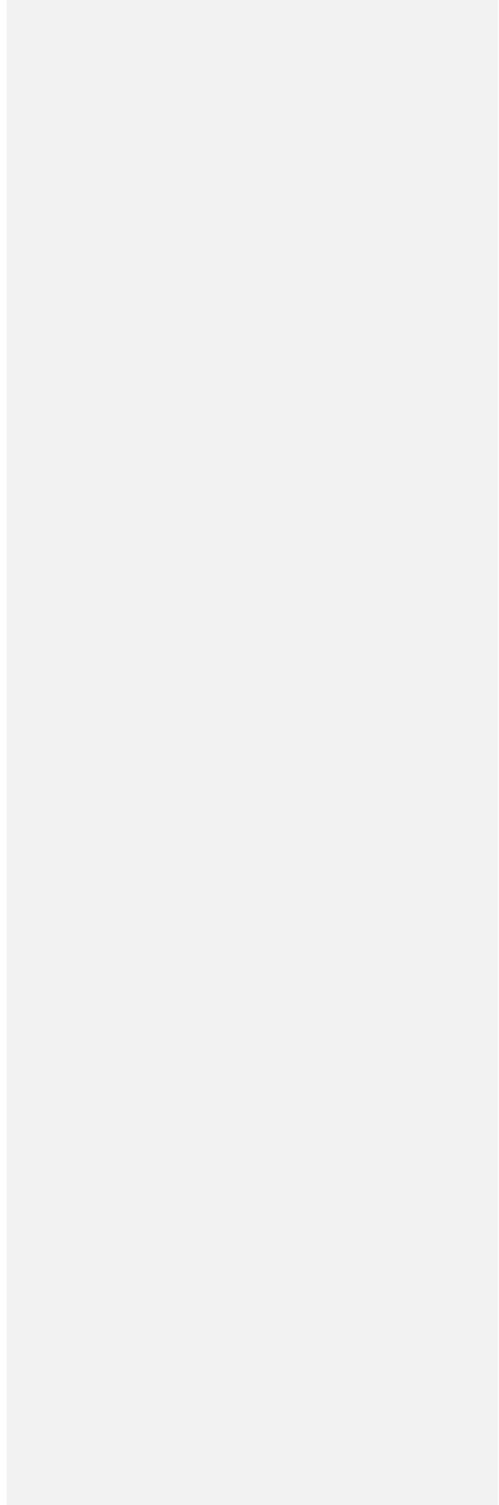


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1	LIST OF EXHIBITS		
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Arbitration Place Virtual

1 --- Upon commencing on Monday, June 13, 2022,

2 at 11:06 a.m.

3 AFFIRMED: RON ROBISON

4 CROSS-EXAMINATION BY MR. SAYCE:

5 1 Q. Good morning,

6 Mr. Robison.

7 A. Good morning.

8 2 Q. So my name is James

9 Sayce. I'm one of the lawyers who represent the

10 plaintiffs in this action, and I'm going to be

11 asking you a few questions about your affidavit

12 that you swore on October 29th, 2021. Do you have

13 that affidavit in front of you?

14 A. Yes, I do.

15 3 Q. Do you have a paper copy

16 of it?

17 A. Yes, paper copy.

18 4 Q. Okay. And you got the

19 exhibits to that document attached to it?

20 A. I do, yes.

21 5 Q. I see you looking around.

22 I'll give a second to make sure you got the right

23 stuff.

24 A. I've got -- yes, just

25

1 give me a moment. I'll grab it. Yes, I have all
2 the exhibits now.

3 6 Q. Thank you. And just so,
4 I guess, we know, are you on a laptop at the WHL
5 office right now?

6 A. I'm on a iPad at the WHL
7 office in Calgary.

8 7 Q. Okay. And do you have
9 anything else in front of you other than the iPad
10 and the affidavit?

11 A. No. Just the -- I have
12 the affidavit and I have the information with
13 regard to this schedule, timelines of our policies
14 and programs in place.

15 8 Q. Is that the document that
16 was placed on the Canadian Hockey League website
17 in January 2022?

18 A. Well, that would be a --
19 I'm not sure about that, whether it was on the
20 website or not, but it was a report prepared for
21 the three leagues which describe the policies or
22 programs and the evolution of the timelines of the
23 introduction of those policies and programs. So
24 it's the only other document I have.

25 MR. AGARWAL: I can assist if

1 you'd like.

2 MR. SAYCE: I mean, I can just
3 ask him what he means. I think that, you know,
4 maybe the best way to do this --

5 9 Q. When you say there was a
6 report prepared, do you mean the independent panel
7 report or do you mean a different report?

8 A. It was an internal report
9 prepared on the -- describing each of the programs
10 and policies introduced to the league and the
11 timelines for each of the three member leagues of
12 the Canadian Hockey League.

13 10 Q. Okay. You know what
14 might be helpful, what we would do if we were in
15 person is I would just look over the table at what
16 you're looking at, but the table is a pretty big
17 table here. I'm in Toronto and you're in Calgary.
18 Would you mind just holding up the front page of
19 the thing that you got? I think I know what you
20 mean.

21 A. It's a two-page -- my
22 portion of it is a two-page document --

23 11 Q. I see.

24 A. -- and it refers to the
25 -- it says, for instance, in early 1990s, the

1 Racial/Derogatory Comments Policies; 1998, the
2 Abuse, Bullying, and Harassment Policies. So it's
3 good. It provides a schedule of when the policies
4 were introduced and the program.

5 12 Q. So I believe that -- so
6 maybe the best way to do it is to ask for a copy
7 of that document. I don't want anything that
8 you've written down that you discussed with your
9 counsel because that would be privileged, but if I
10 could just get an undertaking for a copy of that.
11 I think it's the same as what was put on the
12 website, the CHL website, but I think the easiest
13 way is just to get an undertaking for that.

14 Is that okay, Mr. Agarwal?

15 U/T MR. AGARWAL: Yes, it's -- I
16 will give you that undertaking, just to clear up
17 any confusion here, but my understanding is that
18 it's also what's at page 10 of 11 of the second
19 supplementary motion record.

20 MR. SAYCE: Let's -- you know.

21 I think it's -- yes, it may be, but let's just do
22 it the undertaking way. It's probably easiest.

23 13 Q. And Mr. Robison, you've
24 been sworn in, yes?

25 A. Yes, I have.

1 14 Q. And I'm going to ask you
2 to flip to page 14 of your affidavit.
3 A. Okay.
4 15 Q. And there's a DocuSign
5 signature at the bottom of page 14 there with your
6 name below it. Is that your electronic signature?
7 A. Yes, it is.
8 16 Q. Okay. And then there are
9 exhibits to this document. It goes up to Exhibit
10 G as in Gary, right?
11 A. Yes, I believe so.
12 17 Q. Okay. So I asked your
13 counsel to produce some documents in the notice of
14 examination. Your counsel sent an old version of
15 the Western Hockey League constitution. Do you
16 know what I'm talking about?
17 A. Yes, I do.
18 18 Q. Okay. So I'm going to
19 show you what I believe is an older version of the
20 Western Hockey League constitution, and I'm going
21 to get you to confirm that this is indeed that
22 constitution and it is indeed what was sent over
23 to us. So it should be up on your screen now. Do
24 you see it?
25 A. Yes, I see it. Yeah.

1 19 Q. Okay. And it's a
2 document called "Constitution and Bylaws of
3 Western Hockey League," and there's a Western
4 Hockey League logo on the front page. Do you see
5 that?

6 A. Yes, I do.

7 20 Q. Okay. We're going to
8 scroll through it so you can see the entire
9 document and you can confirm that this is what was
10 sent to us, so you tell us to speed up or slow
11 down on the screen share scrolling here if you'd
12 like.

13 A. That is -- that is the
14 document we provided.

15 MR. SAYCE: Okay. And so, I'm
16 going to mark this document as Exhibit A.

17 EXHIBIT A: Western
18 Hockey League
19 Constitution and Bylaws

20 MR. SAYCE:

21 21 Q. Mr. Robison, I believe
22 there are a few pages missing from this document.
23 If you scroll down, you will see that -- sorry,
24 we're going to keep scrolling so you can get to
25 the section where some pages are missing. So

10

1 page 18 appears to be missing. Do you see that?

2 A. Yes.

3 22 Q. And if you scroll down,
4 page 20 appears to be missing and perhaps some
5 pages after page 21, but we don't know, right?

6 A. Okay.

7 23 Q. So I understand that this
8 is just a version that you had in your filing
9 cabinet?

10 A. That's correct.

11 24 Q. Okay. So I'm going to
12 ask your counsel for an undertaking to make best
13 efforts to ask the other defendants to try to find
14 a full copy of this constitution without any pages
15 missing.

16 MR. AGARWAL: Well, we've
17 already made those efforts, Mr. Sayce.

18 MR. SAYCE: So you've asked
19 the defendants?

20 MR. AGARWAL: We have done as
21 thorough a search as we reasonably can. To put it
22 another way, there's nothing more I can do in
23 response to your request for an undertaking to
24 find a copy of those missing pages. And just to
25 say, I don't believe there's anything missing

1 after 21, and I say that in part because the table
2 of contents on page 2 says the document only goes
3 to page 21, but whether that's right or not, the
4 point is we have made inquiries.

5 MR. SAYCE: Okay. So have you
6 inquired of the other Western Hockey League
7 members who are not the current Western Hockey
8 League Corporation?

9 MR. AGARWAL: I don't know
10 what you mean by that.

11 MR. SAYCE: Okay. Have you
12 asked the Tri-City Americans Hockey LLC if they
13 have a copy of this document?

14 MR. AGARWAL: No.

15 MR. SAYCE: Okay. So I'm
16 asking for an undertaking that you make best
17 efforts or make requests and make best efforts to
18 obtain a full copy of the Western Hockey League
19 constitution from the Western Hockey League
20 members and the Canadian Hockey League defendant.

21 MR. AGARWAL: I don't think
22 I'm going to give you that undertaking. I don't
23 think it's proportional. I don't think the
24 document's relevant necessarily. You haven't
25 demonstrated that the missing pages are material

1 to the outcome of the case, and that sounds like a
2 very big undertaking. People are going to have to
3 go out of their archives to search for a document
4 that is old and not relevant, so I just don't
5 think that's proportional. If you could
6 demonstrate to me why you think the missing pages
7 are relevant or material, I'll take that under
8 advisement, but I haven't heard you demonstrate
9 that yet.

10 MR. SAYCE: Mr. Agarwal, how
11 do you know it's going to be so difficult if you
12 hadn't asked anybody?

13 MR. AGARWAL: I just know the
14 time that's involved in that project.

15 MR. SAYCE: Okay. Well, I'm
16 asking for the undertaking, and you are refusing
17 to ask the other defendants, yes?

18 REF MR. AGARWAL: Yes.

19 MR. SAYCE: Okay.

20 25 Q. So I'm going to ask you,
21 Mr. Robison, about this constitution. Was this
22 constitution in effect at any point while you were
23 the commissioner of the Western Hockey League?

24 A. Yes, I was.

25 26 Q. Okay. So you were the

1 Western Hockey League commissioner starting in the
2 year 2000?

3 A. That's correct.
4 September 2000.

5 27 Q. Okay. And is the version
6 of the constitution that was in effect until the
7 2013 constitution came into effect?

8 A. Yes, I believe so.

9 28 Q. Okay. Now, I'm going to
10 pull up a corporate search, and this is a ordinary
11 federal corporate profile search. This corporate
12 profile search was performed in the year 2020. It
13 was June the 5th at 3:07 p.m. Do you see this
14 document?

15 A. Yes, I do.

16 29 Q. Do you know what a
17 corporate profile search is?

18 A. No, I have not
19 experienced this before.

20 30 Q. Okay. You are the --

21 A. I conducted a search of
22 this nature before.

23 31 Q. Right. But have you seen
24 a document like this before in your role as the
25 commissioner of the Western Hockey League?

1 A. No, I have not.

2 32 Q. Okay. So I'm going to
3 scroll down in this corporate profile search, and
4 on page 2 of this document -- there's two total
5 pages -- you will see that there is a number of
6 directors listed there?

7 A. Yes.

8 33 Q. It says there are 22?

9 A. Yes.

10 34 Q. And do you recognize
11 those names?

12 A. Yes, I do.

13 35 Q. And are those the
14 governors?

15 A. Yes. They're the
16 governors of each of the member clubs of the WHL.

17 36 Q. Okay. And if we scroll
18 down again, you will see the corporate history
19 states corporate name history, 2002 May 31st to
20 the present, and then it says, "Western Hockey
21 League" next to that, right?

22 A. Yes.

23 37 Q. So is it correct that the
24 Western Hockey League Corporation was incorporated
25 on May 31st, 2002?

1 A. I am not certain if that
2 was the actual date of incorporation. That was a
3 date in which we likely registered the
4 organization under Corporations Canada.

5 38 Q. Does that time frame
6 reflect your recollection of when the Western
7 Hockey League was incorporated?

8 A. Can't answer that. I
9 assume we would have taken some steps at that
10 stage to look at our governance and look at the --
11 at the status of registration.

12 MR. SAYCE: Okay. So I'd like
13 to enter this document as an exhibit, Exhibit B.

14 EXHIBIT B: WHL corporate
15 profile search dated June
16 5, 2020

17 MR. AGARWAL: I don't know
18 he's proven the document, but in any event, I'm
19 not going to object, given that it's a public
20 document, it being filed as an exhibit to this
21 examination.

22 MR. SAYCE: I understand. I
23 mean, we don't need to fight over that if we're
24 going to enter it as an exhibit.

25 39 Q. And so, just a little bit

1 more on your last answer there, Mr. Robison. Do
2 you recall in the early 2000s the incorporation of
3 the Western Hockey League Corporation taking
4 place?

5 A. Yes, I do.

6 40 Q. And so, I'm just
7 clarifying your answer and maybe I just didn't
8 understand. Did that happen sometime around 2002?

9 A. To the best of my
10 recollection, I suggest it could have at that
11 stage, but I can't recall specifically whether it
12 was 2002. Our counsel was instructed to review
13 our corporate status and to move forward with the
14 appropriate registration.

15 41 Q. Okay. So the appropriate
16 registration occurred around then. And was the
17 Western Hockey League incorporated before that as
18 a corporation?

19 A. Yes, it was.

20 42 Q. Okay. Do you know under
21 what Act?

22 A. No, I don't.

23 43 Q. Okay. Do you know what
24 it was called?

25 A. The name of the league

1 was the Western Hockey League. To my knowledge,
2 that was the -- that was the thing which would be
3 incorporated.

4 44 Q. And so, this document
5 states that the Western Hockey League was created
6 in 2002. Are you telling me that there was a
7 different Western Hockey League before 2002 as a
8 corporation?

9 A. I can tell you that the
10 Western Hockey League operated as an entity under
11 the name "Western Hockey League" as to its
12 registration status. I am not certain as to what
13 that would be at that stage.

14 45 Q. Okay. So it's possible
15 that it was operating as a non-corporate entity
16 before 2002?

17 A. I certainly would have
18 been registered as a not-for-profit corporation.
19 As to how it was registered and under what
20 department of the federal government, I'm not
21 certain about that.

22 46 Q. Okay. So I'm going to
23 ask for an undertaking that, Mr. Robison, you
24 search in your records for the -- well, I suppose
25 the record of the Western Hockey League

1 Corporation and its sort of constituting document
2 that precedes May 31st, 2002, and provide that to
3 us.

4 MR. AGARWAL: I don't see how
5 that's relevant to the issues in dispute on the
6 motion. Can you assist me with why it's relevant?

7 MR. SAYCE: Well, you know, I
8 think the common issues, the proposed common
9 issues and the pleading, sets out what is
10 relevant, and you know, I don't know if I need to
11 walk through that today. It seems quite obviously
12 relevant, but in any event, are you going to
13 provide that undertaking or no?

14 U/A MR. AGARWAL: I'll take that
15 under advisement.

16 MR. SAYCE: Okay.

17 47 Q. So getting back to your
18 affidavit, I take it when you prepared this
19 affidavit, you had reviewed the statement of claim
20 in this matter, yes?

21 A. Yes, I have.

22 48 Q. And had you reviewed the
23 affidavits filed by the plaintiffs?

24 A. Yes, I have.

25 49 Q. Have you reviewed all of

1 the affidavits?

2 A. The ones that applied to
3 the Western Hockey League but not all of the
4 affidavits.

5 50 Q. So when you say the ones
6 that applied to the Western Hockey League, you
7 mean, for example, the affidavit of Fred Ledlin?

8 A. Correct.

9 51 Q. Or Brad Hammett?

10 A. Correct.

11 52 Q. And the players who
12 played in the Western Hockey League, yes?

13 A. That's right.

14 53 Q. Okay. And you didn't
15 review the Ontario Hockey League affidavits?

16 A. I reviewed the
17 affidavits, but I have not in-depth studied the
18 affidavits of the Western Hockey League.

19 54 Q. Or the Quebec Major
20 Junior Hockey League?

21 A. Yes. Correct. I did not
22 go into depth with that.

23 55 Q. Okay. And so, a
24 significant amount of Inc. in your affidavit is --
25 spends on some of the programs that the WHL has in

1 place, that I think you would describe as being
2 relevant to this action. Is that fair to say?

3 A. Yes.

4 56 Q. So one of those programs
5 is the WHL Player Impact Program, yes?

6 A. Yes.

7 57 Q. And this is referred to
8 in a few different sections in your affidavit.
9 For example, if you pull up paragraph 27, you are
10 talking about the Players First Support Services
11 Program, yes?

12 A. Yes.

13 58 Q. And part of that program
14 is the Player Impact Program, right?

15 A. That's correct.

16 59 Q. And you've got other
17 aspects of the Players First Support Services
18 Program, like the Security Network, the Mental
19 Health Talk Today Program, the Respect in Hockey
20 Program and the Respected Sport Program, right?

21 A. That's correct.

22 60 Q. So is it fair to say that
23 the Players First Support Program is a program
24 that's made of up of other programs?

25 A. That's right. It's a

1 overarching collection of all of the player safety
2 and programs that we have in place in order to
3 respond to any areas of the environment the
4 players play in.

5 61 Q. Okay. And this is
6 different from what you describe as the WHL
7 regulations, right?

8 A. That's correct.

9 62 Q. And the regulations of
10 the Personal Conduct Policy, the Abuse, Bullying,
11 Harassment, and Hazing Policy, the
12 Racial/Derogatory Comments Policy, and the Social
13 Media and Networking Policy, right?

14 A. That's correct.

15 63 Q. Okay. And so, when we
16 look at -- just going back to the Players First
17 Support Services Program and the programs that
18 make up that program, you've got the Security
19 Network and Club Liaison Officer Program, right?

20 A. That's correct.

21 64 Q. And that's one program.
22 It's not two separate programs, right?

23 A. That's correct. One
24 program.

25 65 Q. Okay. You've also got

1 the Player Impact Program, but that overlaps with
2 the Security Network and Club Liaison Officer
3 Program too, right?

4 A. That's correct. The
5 Security Network administers the Player Impact
6 Program.

7 66 Q. Right. So you've got the
8 Player Impact Program, which lives inside the
9 Security Network program, which lives inside the
10 Players First Support Services Program.

11 A. That's correct.

12 67 Q. Okay. And the Player
13 Impact Program, which I understand to be a
14 presentation made by the club liaison officers; is
15 that right?

16 A. That's correct.

17 68 Q. Okay. And this is a
18 program that has been around for about nine years
19 now?

20 A. The program's been around
21 for more than that, more than 20 years actually,
22 based on a relationship we had with the local
23 police services. In the past nine or ten years,
24 we've incorporated that into our Players First
25 Program under the banner of our WHL Security

1 Network.

2 69 Q. Okay. So the WHL
3 Security Network was created in 2015, right?

4 A. Correct.

5 70 Q. Okay. And I understand
6 that you and Mr. Lacasse were the --

7 A. Yes.

8 71 Q. -- were the architects of
9 that program?

10 A. Yes. Mr. Lacasse was our
11 first director of the WHL Security Network.

12 72 Q. Okay. And he was an RCMP
13 superintendent before he joined you, yes?

14 A. That's correct. Retired
15 RCMP superintendent.

16 73 Q. Okay. And so, he and you
17 created this architecture with the Calgary police?

18 A. In part, yes, with the
19 local police service's case assistance as well
20 with Calgary police and other professionals
21 involved in the industry.

22 74 Q. Okay. And what you did
23 was you created this Club Liaison Officer Program,
24 and I'm going to describe the Club Liaison Officer
25 Program to you and ask you to agree with what I'm

1 describing. Each team is assigned a club liaison
2 officer, yes?

3 A. Yes.

4 75 Q. And each club liaison
5 officer is a active or retired police officer from
6 the police service in the town that the team
7 operates in, yes?

8 A. Yes, that's correct.

9 76 Q. And the police officer
10 acts as an independent resource for the players on
11 the team, right?

12 A. Yes, that's correct.

13 77 Q. And they deliver the
14 player impact presentation at the start of the
15 season?

16 A. Yes.

17 78 Q. And they are designed to
18 be a reporting mechanism for the players on the
19 team, yes?

20 A. Yes, that's correct.

21 79 Q. And so, the idea is the
22 player would go to the local police officer,
23 describe something that's abusive or misconduct or
24 what have you, and then the local police officer
25 sends that up the chain to the Security Network

1 officer?

2 A. That's correct. To the
3 head of the Security Network.

4 80 Q. And the head of the
5 Security Network today is Kevan Stuart?

6 A. That's correct.

7 81 Q. And it used to be Mr.
8 Lacasse?

9 A. That's correct.

10 82 Q. Okay. And the Player
11 Impact Program, I think you included that in your
12 affidavit, right?

13 A. I did.

14 83 Q. At Exhibit G, am I right?

15 A. Yes, it's there. Yes.

16 84 Q. And you included the
17 actual document. This is entitled "WHL Player
18 Impact Program 2020-2021 season," and the author
19 is Kerri Firza -- and she's a business
20 strategist -- and Constable Steve R. Kelly, yes?

21 A. That's correct.

22 85 Q. And they're both with the
23 Calgary Police Services?

24 A. Yes.

25 86 Q. Okay. Then behind this

1 is the actual Player Impact Program document, yes?

2 A. Yes.

3 87 Q. Okay. Now, if you flip
4 back to Exhibit E as in -- pardon me, let's flip
5 to Exhibit F.

6 A. Yes, I have that.

7 88 Q. Okay. So this is what is
8 called the "Respect in Sports for Activity Leaders
9 Program." Am I right?

10 A. Yes.

11 89 Q. Okay. And this is a -- I
12 don't mean to make you flip back and forth in your
13 affidavit, but unfortunately, this is how
14 affidavits work. At paragraph 32, you describe
15 what that is, yes?

16 A. Yes.

17 90 Q. And this is a training
18 program, yes?

19 A. That's right. It's a
20 training certification program.

21 91 Q. Okay. And this is
22 administered by the Respect Group?

23 A. That's correct.

24 92 Q. And the Respect Group is
25 an organization which is run by Mr. Sheldon

1 Kennedy?

2 A. Yes. It's co-founded by
3 Sheldon Kennedy and Wayne McNeil.

4 93 Q. I think that you
5 mentioned in your affidavit that a program called
6 "Respect in Hockey" is also administered, and this
7 is -- there's a document in Exhibit E as in Eric
8 which refers to the Respect in Hockey Program.

9 A. Correct.

10 94 Q. Do you see that?

11 A. I'll have to --

12 95 Q. And in your affidavit at
13 paragraph 31, you say that the Respect in Hockey
14 Program is implemented in its earliest form in
15 1998 in a mandatory seminar for all WHL players,
16 was run by the Canadian Red Cross up to 2018 when
17 the Respect Education Program was discontinued.
18 Do you see that?

19 A. What was that exhibit
20 again?

21 96 Q. I'm sorry, could you
22 repeat that, Mr. Robison? There's a bit of
23 feedback on my end.

24 A. What was the exhibit?

25 97 Q. It's Exhibit E and

1 paragraph 31.

2 A. Yes, that's correct.

3 98 Q. And Mr. Kennedy was
4 involved in that Canadian Red Cross mandatory
5 seminar as well, right?

6 A. The -- Mr. Kennedy was
7 involved with Respect in Sports certification as
8 the co-founder of Respect Group. The programming
9 with respect to the Canadian Red Cross was run
10 independently, and up until just recently, 2018,
11 the program was discontinued by the Canadian
12 Red Cross, and so, we consulted with Mr. Kennedy
13 and the Respect Group and the Canadian Red Cross
14 and incorporated a new program called the Respect
15 in Hockey Program.

16 99 Q. Okay. But my
17 understanding was that Mr. Kennedy was involved in
18 that Red Cross program as well.

19 A. He was involved as an
20 advisor to the Canadian Red Cross, yes.

21 100 Q. So he helped generate
22 that program, right?

23 A. That's correct. But for
24 clarification, the program was administered by
25 Canadian Red Cross. Our assistant is certainly

Deleted: Great

1 Sheldon Kennedy, who was instrumental in assisting
2 with the launch of that program.

3 101 Q. So let's go back to
4 Exhibit F. This is the Respect Group
5 presentation. And if you flip forward a couple of
6 pages here, so you've got sort of a -- on the
7 first page, you have a 34 -- well, 34 numbers with
8 descriptions next to that. Do you see that?

9 A. Yes.

10 102 Q. And then if you flip the
11 page, you got the same thing in French, I believe.
12 Am I right?

13 A. Yes.

14 103 Q. And then the next page is
15 where some substantive descriptions of the program
16 begin, correct?

17 A. Correct.

18 104 Q. Okay. And then at the
19 top, it says: "Strategies for dealing with BAHD."
20 Do you see that?

21 A. Yes.

22 105 Q. What is BAHD?

23 A. It's the description used
24 to describe the inappropriate behaviour.

25 106 Q. I assume it's an acronym,

1 right?

2 A. Yes.

3 107 Q. Do you know what it
4 stands for?

5 A. No, not offhand.

6 108 Q. Okay. Is this the entire
7 Activity Leader Program curriculum in this
8 document?

9 A. I believe so, although
10 the document is updated from time to time by the
11 Respect Group.

12 MR. SAYCE: Let's go off the
13 record for a minute.

14 --- Recess at 11:44 a.m.

15 --- Upon resuming at 11:53 a.m.

16 MR. SAYCE:

17 109 Q. And so, Mr. Robison, when
18 you swore this affidavit on October 29, 2021, I
19 don't think you intended to say that these are all
20 of the relevant policies that are employed by the
21 Western Hockey League. Am I right?

22 A. Not all the policies.
23 The policies which relate to this matter.

24 110 Q. Okay. So there's another
25 affidavit, one of the many affidavits sworn by Dan

1 MacKenzie, and I can put it up on the screen.
2 This is an affidavit that he swore which refers to
3 some other Western Hockey League policies. So
4 I'll put it up on the screen, and I'll ask you if
5 you've seen it. So this is an April 20th
6 affidavit.

7 Pardon me, I've got the wrong
8 -- give me one minute. I'll pull up the right
9 affidavit. So we'll share this with you. I'm
10 going to show you the top of the affidavit, the
11 day of the affidavit. So it's the supplementary
12 affidavit of Dan MacKenzie sworn March 4, 2022.
13 I'll scroll down a bit and you can tell me if
14 you've seen this document before.

15 A. Yes, I have.

16 111 Q. Okay. And so, if you
17 scroll down to paragraph 16, Mr. MacKenzie states:

18 "I have been provided by
19 Ron Robison, Commissioner
20 of the WHL, copies of the
21 WHL's Diversity and
22 Inclusion Policy and
23 Player Advisory Council
24 Independent Complaint
25 Mechanism adopted by the

1 WHL in September 2021 and
2 implemented by the WHL
3 teams during the
4 2021-2022 season. I've
5 also been provided by Ron
6 Robison a copy of the
7 WHL's updated Players
8 First Support Program
9 presentation, adopted by
10 the WHL in October 2021
11 and implemented by the
12 WHL teams during the
13 2021-2022 season."

14 And then he attaches as
15 Exhibit E, D, and F copies of those three
16 policies, mechanism, or presentation. Do you see
17 that?

18 A. Yes, I do.

19 112 Q. Okay. And so, do you
20 remember giving those documents to Mr. MacKenzie?

21 A. Yes.

22 113 Q. Okay. And so, you'll
23 agree that those three -- well, let's just break
24 them up. The Diversity and Inclusion Policy was
25 adopted by the WHL in September 2021. Do you

1 agree with that?

2 A. Yes, that's correct.

3 114 Q. And the Inclusion Policy
4 and Player Advisory Council/Independent Complaint
5 Mechanism was adopted by the WHL in September
6 2021?

7 A. Yes. To the best of my
8 recollection, that's correct, yeah.

9 115 Q. And the Players First
10 Support Program presentation was adopted by the
11 WHL in October 2021. Do you agree with that?

12 A. Yes.

13 116 Q. Okay. And you swore your
14 affidavit on October 29, 2021, right?

15 A. Yes.

16 117 Q. But you left those
17 documents out of your affidavit, correct?

18 A. Yes, that's correct.

19 118 Q. At the time you swore
20 your October 29 affidavit, did you think that
21 these additional policies or documents were
22 relevant?

23 A. These are new policies
24 which were being introduced. We were considering
25 the programming that had been in place

1 historically with the league leading up to this
2 matter.

3 119 Q. But you did include the
4 policies in place at the time you swore the
5 affidavit on October 29th, right?

6 A. That's correct.

7 120 Q. Okay. Now, the new
8 policies, I'm going to ask you about them. I
9 think that you would agree with me that these are
10 good policies, right?

11 A. Yes.

12 121 Q. And they are important
13 policies, right?

14 A. Yes.

15 122 Q. And with respect to the
16 Independent Complaint Mechanism Policy, is it safe
17 to say that you beefed up some of the complaint
18 reporting mechanisms in the Western Hockey League?

19 A. We're always looking for
20 ways in which we can improve on our current
21 system, and yes, that would be an accurate way to
22 describe. If we wanted to have an independent
23 challenge, we will for the players in addition to
24 all the other opportunities for the players to
25 come forward.

1 123 Q. And so, is it the --
2 A. But if I might add to --
3 I think to clarify the reason that the -- this
4 information was not included in my affidavit was
5 the fact that these programs were not fully
6 implemented at the time of my affidavit. The
7 programming was only introduced to our teams in
8 October of '21 and subsequently implemented
9 post-October 2021. So they were not implemented
10 fully in effect until after October 2021.
11 124 Q. So they have been adopted
12 but not yet implemented.
13 A. That's correct.
14 125 Q. Okay. Now, can I ask you
15 to pull up your affidavit again. You can look to
16 Exhibit E as in Eric.
17 A. Yes.
18 126 Q. So this is the Respect in
19 Hockey Program 2020-2021, yes?
20 A. Yes.
21 127 Q. And at No. 2 on that
22 page, the Respect in Hockey Workshops, you talk
23 about a Respect champions team that will be
24 created for each WHL club. Do you see that?
25 A. Yes, yes, yes.

1 128 Q. So had that been
2 implemented yet or was that something that was
3 going to be implemented?

4 A. So because that was a --
5 due to COVID, we were unable to fully implement
6 the programs in that year, so it was delayed one
7 year.

8 129 Q. Right. So at the time
9 that you put this document in, the Respect
10 champions team had not yet been implemented.

11 A. That's correct.

12 130 Q. Okay. Now, with getting
13 back to the new policies, I think you said that
14 they're important policies, right?

15 A. Yes.

16 131 Q. And so, the independent
17 complaint mechanism provides for a -- is it a
18 Player Advisory Council mechanism?

19 A. That's correct.

20 132 Q. And I think the acronym
21 that's used is the "PAC"?

22 A. Yes.

23 133 Q. And I think you describe
24 it as being a new vehicle for complaint reporting
25 which involves a WHL alumni, right?

1 A. Correct.

2 134 Q. And so, these are folks
3 who played in the WHL in the past?

4 A. That's correct.

5 135 Q. So the idea is that
6 instead of having to report within your team or
7 two of the police officer inside your team, you
8 can now call a former player to report bullying,
9 hazing, abuse, etc.; is that correct?

10 A. That's correct.

11 136 Q. Okay. And then in terms
12 of the next stage, if somebody reports that to the
13 alumni member, that person reports up the chain if
14 they believe that something inappropriate is
15 happening, right?

16 A. That's correct.

17 137 Q. And they report to the
18 club liaison officer or to the security officer?

19 A. The Independent Complaint
20 Mechanism would report directly to myself.

21 138 Q. So the WHL alumni reports
22 to you.

23 A. Yes.

24 139 Q. And I understand that
25 there is an e-mail requirement, that the complaint

1 should be in writing.

2 A. No. We have the ability
3 for either an e-mail complaint or a voice-recorded
4 complaint through a 1-800 phone line.

5 140 Q. Right. And the 1-800
6 phone line, this is a part of the new independent
7 mechanism, yes?

8 A. Part of the Security
9 Network that has been since the introduction of
10 the Security Network, and the matter is related to
11 the independent -- or the Player Advisory Council
12 and would be referred to that individual, to that
13 group.

14 141 Q. So the e-mail goes to the
15 alumni member. The alumni member will give you a
16 call or send you a note and get the investigation
17 going if they deem it to be a problem.

18 A. That's correct.

19 142 Q. So I guess you would
20 agree that these reporting mechanisms are --
21 they're a key component to addressing a potential
22 abuse or hazing situation on a hockey team in the
23 WHL, correct?

24 A. Yes, that's correct.

25 143 Q. Do you think that

39

1 independent complaint mechanisms act as a
2 deterrent for abuse?

3 A. Yes, I do. I believe
4 that the -- having the ability for players to
5 understand that they're -- have the mechanism
6 available to them, it's confidential and reliable,
7 then I think that's important.

8 144 Q. And it's important to
9 have it be confidential because there are -- well,
10 there's pressures on players to not report, right?

11 A. Yes.

12 145 Q. I mean, a player may not
13 want to be seen as a snitch?

14 A. Yes. I think we always
15 are sensitive to how the players are feeling and how we can
16 improve on the -- on allowing them to report in a
17 confidential manner.

18 146 Q. Right. I mean, there's
19 pressures because they may fear reprisal from
20 teammates or others if it gets out that they were
21 the one reporting?

22 A. Yes, but I believe we've
23 made some significant improvements among areas,
24 and players are more comfortable coming forward
25 now than ever before.

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1 147 Q. Do you think that another
2 potential pressure is that -- well, all these kids
3 are pretty competitive, right?

4 A. Yes.

5 148 Q. I mean, that's why they
6 moved away from home to play in the WHL, correct?

7 A. Yes. In part, yes.

8 149 Q. And I mean, you run,
9 well, the premier development in hockey league in
10 the world, right?

11 A. Yes. We pride ourselves
12 in that.

13 150 Q. And so, people are
14 getting pretty competitive here, right?

15 A. Yes, they are.

16 151 Q. And so, you know, there
17 are some pressures where if you might report a
18 teammate who's engaged in some misconduct, you
19 might not -- well, might have a negative impact on
20 your ability to compete as a team, right? You'll
21 lose the player.

22 A. Yeah, but I believe those
23 are situations now that are being corrected, and
24 players are much more comfortable coming forward,
25 expressing how they feel, and both internally to

1 their team as well as to those resources that
2 they're surrounded with.

3 152 Q. But if you had a large
4 number of kids who would engage in some kind of
5 misconduct, I mean, pursuant to the WHL policies,
6 you might lose a handful of players, maybe more,
7 for a long period of time if their misconduct is
8 serious enough, right?

9 A. That's potentially the
10 outcome, but I believe that our players conduct
11 themselves in such a way that they're very -- very
12 open these days with respect to any concerns they
13 may have.

14 153 Q. I understand. All I'm
15 saying is that that will to succeed and to win
16 will not always accord with the wish to report
17 misconduct because the misconduct will lead to
18 suspensions oftentimes. Do you see where I'm
19 going?

20 A. Yeah, I understand.

21 154 Q. And do you agree?

22 A. I think there are certain
23 circumstances where that might occur, but in most
24 cases today, I believe players are very forthright
25 with their feelings, and the reporting mechanisms

1 are in place to detect that.

2 155 Q. Okay. Now, the -- I
3 think there was an incident last year in Seattle
4 with some players and some misconduct toward an
5 African-Canadian boy. Do you know what I'm
6 talking about?

7 A. Yes, I do.

8 156 Q. And my understanding was
9 that two of the players on the Seattle team were
10 engaging in some discriminatory conduct against an
11 African-Canadian player; is that right?

12 A. Yes. The player is
13 actually a U.S.-born player.

14 157 Q. Sorry, the -- I suppose I
15 would say the victim was an American-born player?

16 A. That's correct.

17 158 Q. Okay. So I can call him
18 African-American. And the -- well, one incident
19 took place in the locker room, correct?

20 A. Yes, that's correct.

21 159 Q. And my understanding is
22 that these two players were using racial slurs and
23 waving a banana at the African boy. Is that your
24 understanding?

25 A. That's correct.

1 160 Q. And that you conducted an
2 investigation?

3 A. Yes, we did.

4 161 Q. And it was determined
5 that that misconduct had been ongoing over the
6 previous year as well; is that right?

7 A. For a considerable amount
8 of time, yes. I don't know if it was the past
9 year, but it was a -- it was a lengthy period.

10 162 Q. And that the incident in
11 question was reported by a staff member on the
12 Seattle team, yes?

13 A. Yes.

14 163 Q. And the two players who
15 are engaging in the racist conduct were suspended
16 for the rest of the -- it was a shortened season,
17 but they were suspended for the rest of the WHL
18 season, yes?

19 A. That's correct.

20 164 Q. And one of those two
21 players is playing in the WHL this season, yes?

22 A. That's correct.

23 165 Q. So is it safe to say a
24 circumstance like that really underscores the
25 importance of independent reporting mechanisms in

1 the WHL?

2 A. Yes.

3 MR. SAYCE: All right. Let's
4 just go off for a minute.

5 --- Recess at 12:13 p.m.

6 --- Upon resuming at 12:18 p.m.

7 MR. SAYCE:

8 166 Q. So I just want to clarify
9 one of your answers. I'm going to take you to
10 that Dan MacKenzie affidavit where he had filed
11 the WHL policies after you gave them to him. I'm
12 going to share the screen with you so you can see
13 these new policies. So this is the independent
14 complaint mechanism that we were discussing.
15 That's the right document, yes?

16 A. Yes.

17 167 Q. Okay. So you see it says
18 that the health and safety of your players is the
19 WHL's number one priority, and there are certain
20 statements here where this document describes the
21 WHL Player Advisory Council. So these are the
22 alumni folks, right?

23 A. Yes.

24 168 Q. And this is the -- I
25 think as you describe -- not you, but the WHL

1 describes it as a third channel. The last
2 sentence on this page says:

3 "All complaints to the
4 PAC must be made in
5 writing and will be
6 delivered directly on a
7 confidential basis by
8 e-mail."

9 That's correct, right?

10 A. Yes, although I believe
11 the Player Advisory Committee would be prepared to
12 receive a complaint directly remember any
13 individual if they choose to prefer not to use
14 e-mail.

15 169 Q. Okay. Well, that's not
16 in the document, right?

17 A. It's not in this
18 particular document, no.

19 170 Q. Just so I get it, the
20 idea is that Player X sees something inappropriate
21 happening. They have an issue or concern, and
22 they would send an e-mail to the alumni, one of
23 the three members of the alumni or all of the
24 three members if they so wish, right?

25 A. Correct.

1 171 Q. Okay. Now, I don't have
2 too much more for you, so maybe --

3 A. As I mentioned earlier, I
4 think it's important to clarify that this program
5 is still in the process of being implemented, and
6 some of the processes we all use to allow the
7 players to have easy access, if you will, to the
8 Player Advisory Council will be communicated in
9 advance of next season. So we're still fully in
10 the process of implementing these programs, and
11 again, that was the reason it wasn't contained in
12 my -- in my affidavit because it wasn't fully
13 implemented at the time.

14 172 Q. So this is not a policy
15 that's currently in place?

16 A. It's in the process of --
17 clubs are aware that the program will be -- that's
18 not fully implemented at this stage.

19 173 Q. Okay. So this is not a
20 policy yet, and you're in the process of setting
21 up the circumstances surrounding the -- I guess,
22 the --

23 A. Yes.

24 174 Q. Okay. The independent
25 complaint mechanism.

1 A. That's right.

2 175 Q. So I'm going to ask my
3 colleague who's with me here, Mr. Calina, to pull
4 up the Western Hockey League website. Okay. Can
5 you see the Western Hockey League website, sir?

6 A. Yes, I can.

7 176 Q. Okay. So I'm just going
8 to describe it, and if I'm misdescribing it,
9 you'll correct me, but do you see a CHL logo in
10 the top left-hand corner there?

11 A. Yes.

12 177 Q. And then at the top
13 right-hand, you see a few drop-down --

14 A. Yes.

15 178 Q. -- menus. One's the WHL;
16 one's the OHL; one's the QMJHL; and the next is
17 the CHL, right?

18 A. Yes.

19 179 Q. And that allows you to
20 gain quick access to one of the other member
21 leagues or the Canadian Hockey League. They're
22 right at your fingertips there, correct?

23 A. Yes.

24 180 Q. Okay. And you've got
25 another number of links or drop-down menus here

1 beneath the banner that says "Official Website of
2 the Western Hockey League." I'm not going to go
3 through all of them, but some of them are stats,
4 results, the WHL. When you drop down that one, it
5 shows rosters, contests, WHL alumni, and then
6 you've got hockey ops, prospect central, media.
7 You're pretty familiar with this website, yes?

8 A. Yes, I am.

9 181 Q. Would you say you're on
10 this website most days?

11 A. Yes, most days.

12 182 Q. I mean, this is a
13 complete guess, but is your home page the WHL
14 page?

15 A. Yes.

16 183 Q. So maybe the guys at the
17 CHL will get mad at you, but -- so I spent some
18 time on this website this morning and yesterday
19 over the weekend -- and I'm sure you did too. I
20 couldn't find any of these policies that you've
21 attached to your affidavit or that you gave to
22 Mr. MacKenzie on the website. Is there a place I
23 can find them on the website?

24 A. No. They're not located
25 on the website. The -- that information is

1 available through our office but not right now and
2 not on our website.

3 184 Q. Okay. Now, there was an
4 independent review panel appointed by the Canadian
5 Hockey League in the summer of 2020, yes?

6 A. Yes, that's correct.

7 185 Q. And I understand that a
8 review process took place in the summer and fall
9 of 2020?

10 A. Yes, with the Canadian
11 Hockey League.

12 186 Q. Yes, and with the --
13 well, I believe you were a part of that process.
14 Is that fair to say?

15 A. Yes.

16 187 Q. Okay. I can take you to
17 the report, but there's -- if you want, so just
18 tell me, but I don't necessarily need to at this
19 stage, but if you'd prefer I take you to the
20 report, I will.

21 A. That's fine.

22 188 Q. There's a line in the
23 report that stands out to me and it may stand out
24 to you because one of the -- well, panellists say
25 that one senior member of the leagues suggested

50

1 that there is a systemic problem with, you know,
2 mistreatment, abuse, harassment, hazing, etc. Do
3 you remember that line of that report or would you
4 prefer I take you to the report?

5 A. We'd be sure -- take me
6 to the report.

7 189 Q. Okay. We can do that.
8 Just give me a moment. I don't want -- this isn't
9 a trick question.

10 A. I'm not sure what you
11 mean by a senior executive.

12 190 Q. Yes, and I was
13 paraphrasing, so -- you know, it's not a trick
14 question. Let's find the exact section of the
15 report.

16 Let's go off the record for
17 one moment, please.

18 --- (Off-record discussion)

19 MR. SAYCE:

20 191 Q. And so, we've got it up
21 on the screen now, and before I ask you the
22 question though, I'll ask you: I believe you were
23 a part of the research for investigating what the
24 panel did, yes?

25 A. Yes.

1 192 Q. And you communicated with
2 the panel?

3 A. Yes, through the Canadian
4 Hockey League executive.

5 193 Q. Sorry, so you
6 communicated with the panel through the Canadian
7 Hockey League executive?

8 A. Correct.

9 194 Q. Do you mean --

10 A. Through the executive
11 council in a meeting forum.

12 195 Q. I understand. Okay. So
13 you were meeting with -- but you individually met
14 with the panel, yes?

15 A. Yes.

16 196 Q. Okay. And were all of
17 the -- I guess, did the panel meet with you one by
18 one or were there bigger meetings?

19 A. I recall just having one
20 meeting with the panel itself, and the other were
21 discussions that took place with the CHL executive
22 group.

23 197 Q. So the CHL executive met
24 with the panel as a group or not as a group?

25 A. I believe as a group in

1 the initial stages and then following the report,
2 once the report was completed.

3 198 Q. So I'm talking about the
4 period before the report was complete. So did you
5 meet with the panel without the other commissioner
6 present?

7 A. I think each of us were
8 interviewed by the panellists.

9 199 Q. Okay. Each of you were
10 interviewed by the panel. Did this take place
11 alone or as a group?

12 A. Alone.

13 200 Q. Okay. So --

14 A. That's my recollection.
15 There was a discussion with the panel.

16 201 Q. Okay. So I'm not --
17 again, I'm not trying to trick anybody. I'm just
18 trying to understand. So you met with all three
19 panellists alone, right, just you and the three
20 panellists?

21 A. Yes. I believe so, yes.

22 202 Q. And you did not meet with
23 the panellists beyond that meeting you had during
24 the investigation period.

25 A. No.

1 203 Q. Okay. And so, this
2 paragraph that starts with:
3 "This data demonstrates
4 the systemic culture that
5 permits the behaviours of
6 maltreatment to exist and
7 persist."
8 Do you see that?
9 A. Yes.

10 204 Q. (Reading)
11 "In discussion with the
12 panel, one senior league
13 leader acknowledged the
14 systemic culture in the
15 CHL. Contrarily, another
16 said there was no
17 problem."
18 Do you see that?
19 A. Yes.

20 205 Q. Did you acknowledge the
21 systemic culture in the CHL?
22 A. No.

23 206 Q. Okay. And you didn't
24 hear anybody else acknowledge that systemic
25 culture? You can't tell me who the senior leader

1 was?

2 A. No.

3 MR. SAYCE: Okay. Let's go
4 off again.

5 --- (Off-record discussion)

6 --- Recess at 12:33 p.m.

7 --- Upon resuming at 12:37 p.m.

8 MR. SAYCE: So subject to
9 questions refused or answers provided by way of
10 undertaking, those are my questions for the day.
11 Thank you very much, Mr. Robison. We appreciate
12 you appearing over Zoom.

13 THE WITNESS: Thank you.

14 --- Whereupon the proceeding concluded at
15 12:38 p.m.

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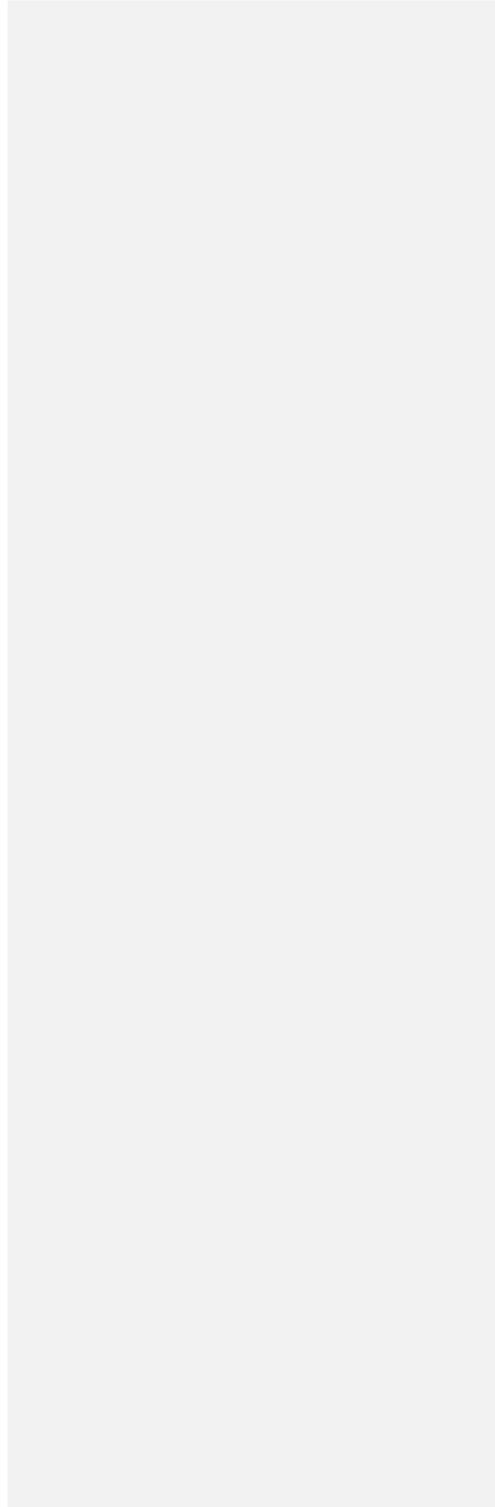
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I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded by
shorthand and transcribed therefrom, the foregoing
proceeding.

Jovelle Domanais, Court Reporter



1

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

2 ONTARIO
3 SUPERIOR COURT OF JUSTICE

4 BETWEEN:

5 DANIEL CARCILLO, GARRETT TAYLOR, and STEPHEN QUIRK
6 Plaintiffs

7 - and -

8 ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN
9 HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR
10 JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY
11 LTD., GUELPH STORM LTD., HAMILTON BULLDOGS
12 FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD.,
13 KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON
14 KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY
15 CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA
16 STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC.,
17 NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA
18 GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED
19 PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE
20 OWEN SOUND ATTACK INC., PETERBOROUGH PETES
21 LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA
22 ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS
23 INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR
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BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS
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7 MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1
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9 CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS &
10 ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW
11 TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW
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14 649643 ONTARIO INC. c.o.b. as SARNIA STING,
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16 RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE
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c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB,
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ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT,
INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY
LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

1 Proceeding under the Class Proceedings Act, 1992

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5 CROSS-EXAMINATION OF ROBERT SMITH
6 on his affidavit sworn October 29, 2021
7 held via Arbitration Place Virtual
8 on Tuesday, June 21, 2022, at 10:03 a.m.

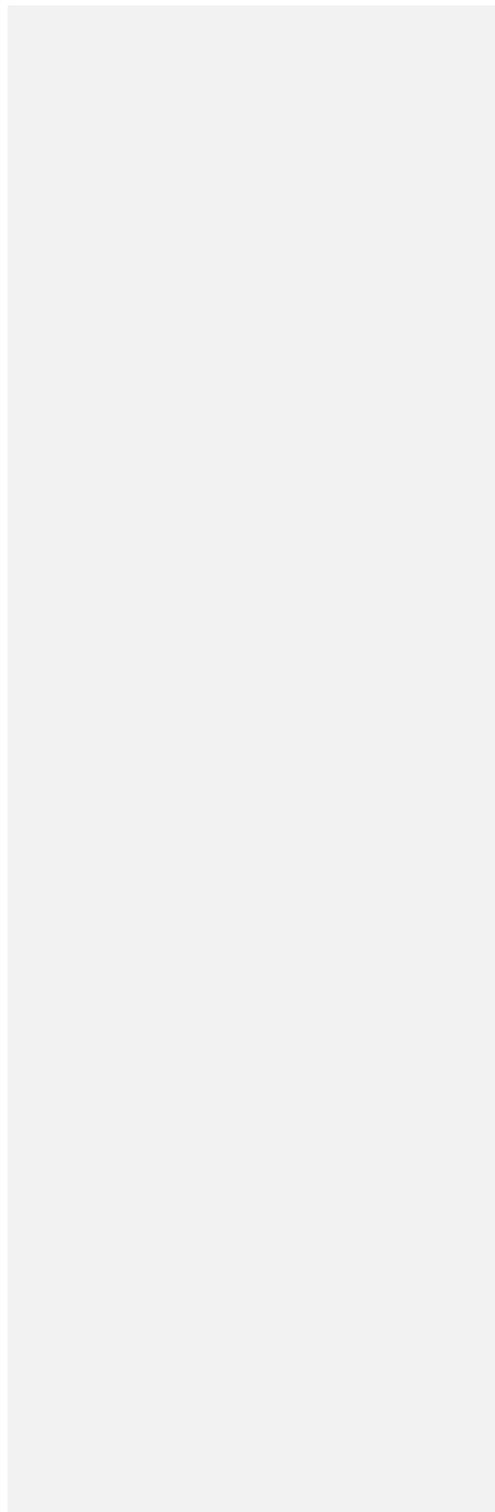
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APPEARANCE:

10 Vlad Calina on behalf of the Plaintiffs
11 James Sayce
12 Caitlin Leach
13 Sue Tan

14 Michael Eizenga on behalf of the Defendants
15 Nina Butz
16 Marshall Torgov

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5 RE-EXAMINATION BY MR. EIZENGA 21

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8 LIST OF REFUSALS & UNDER ADVISEMENTS

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10

11 Refusals (REF) found at pages: 12.

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Under Advisements (U/A) found at pages: 7.

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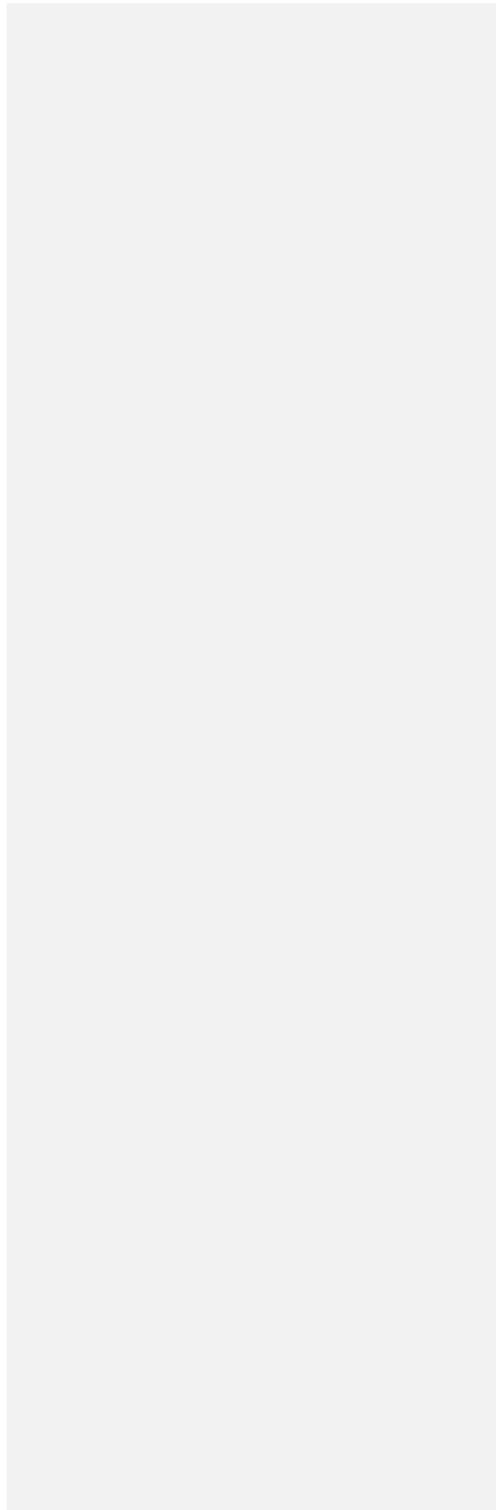
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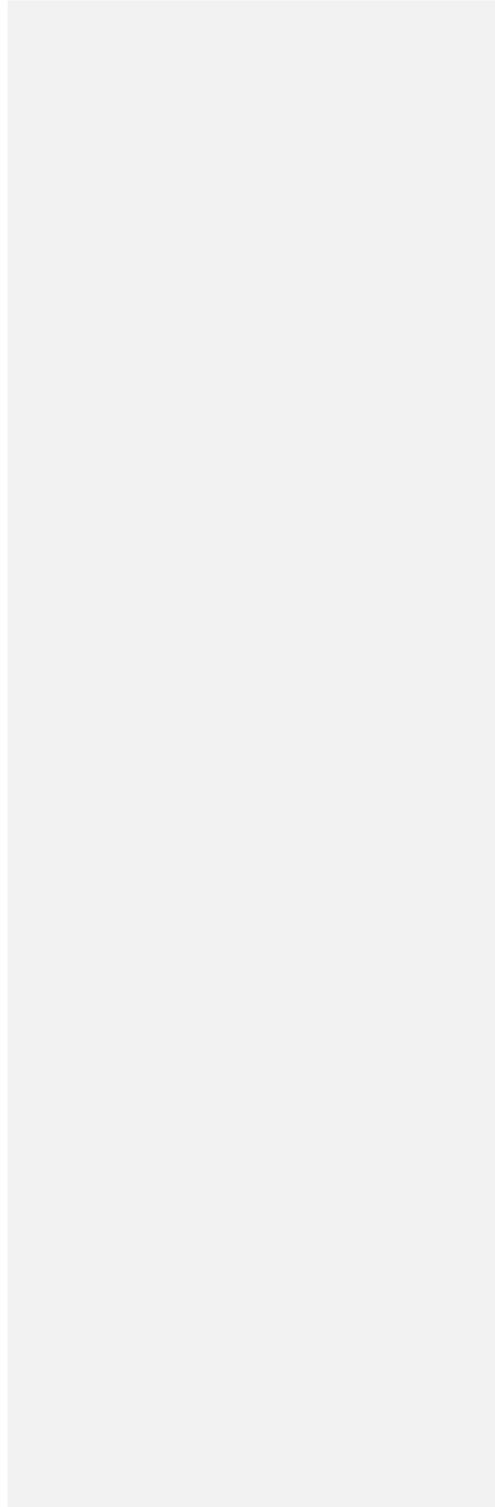
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	LIST OF EXHIBITS		
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2	NO.	DESCRIPTION	PAGE
3	A	Affidavit of Robert	9
4		Smith, sworn October	
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1 Arbitration Place Virtual

2 --- Upon commencing on Tuesday, June 21, 2022

3 at 10:03 a.m.

4 AFFIRMED: ROBERT SMITH

5 CROSS-EXAMINATION BY MR. CALINA:

6 1 Q. Good morning, Mr. Smith.

7 I'm Vlad Calina, one of the Plaintiffs' lawyers.

8 I will cross-examine you today.

9 Where are you right now?

10 A. Nashville, Tennessee.

11 Franklin, Tennessee, actually.

12 2 Q. And I see that you're in

13 a living room or an office?

14 A. Home office of my son.

15 3 Q. I see. Are you alone?

16 A. Yes.

17 4 Q. And you'll let me know if

18 anyone comes in the room with you?

19 A. They are three and five

20 years old. You'll hear them.

21 5 Q. A little older than mine.

22 I've got a one-year-old now. You'll definitely

23 hear her.

24 Do you have any documents in

25 front of you?

1 A. Yes.

2 6 Q. Do you have your
3 affidavit in front of you?

4 A. Yes.

5 7 Q. Do you have any notes in
6 front of you?

7 A. Yes.

8 8 Q. What notes are those?

9 A. Just some notes on
10 questions I might get from our -- after speaking
11 with our lawyers yesterday.

12 MR. CALINA: Counsel, I'm
13 going to ask for a copy of those notes.

14 U/A MR. EIZENGA: We'll take that
15 under advisement.

16 BY MR. CALINA:

17 9 Q. And Mr. Smith, I'm
18 actually going to ask you to put those notes away
19 because this -- while the examination is not a
20 memory test, it's also not an exercise where you
21 can make prepared statements. So can you do that
22 for me, Mr. Smith?

23 A. Sure.

24 10 Q. And what subject areas do
25 those notes cover?

1 A. Oh, just how the Halifax
2 Mooseheads operate.

3 11 Q. You swore an affidavit on
4 October 29th, 2021?

5 A. Yes.

6 12 Q. I'm going to share my
7 screen, Mr. Smith, and I want you to tell me if
8 you can see the document clearly in front of you.

9 A. I can.

10 13 Q. And what device are you
11 using to participate in this examination?

12 A. I'm using a MacBook Pro.

13 14 Q. Do you have anything open
14 on your MacBook besides Zoom?

15 A. No.

16 15 Q. So the document I am
17 showing you is the "Affidavit of Robert Smith."
18 That's you?

19 A. That's right.

20 16 Q. And then if you go
21 through the document slowly, do you recognize this
22 as your affidavit?

23 A. Yes.

24 17 Q. And then on page 9 of the
25 document, there is a signature line where it says

1 "Robert Smith" and above that is an electronic
2 signature. That's your signature?

3 A. Yes.

4 MR. CALINA: And counsel, may
5 we mark Mr. Smith's affidavit as the next exhibit,
6 Exhibit A?

7 MR. EIZENGA: Yes.

8 EXHIBIT NO. A: Affidavit
9 of Robert Smith, sworn
10 October 29, 2021.

11 BY MR. CALINA:

12 18 Q. And you reviewed the
13 affidavit in preparing for today, Mr. Smith?

14 A. Yes.

15 19 Q. You don't have any
16 corrections to it?

17 A. No.

18 20 Q. And you're here today in
19 your personal capacity as someone who played in
20 the Ontario Hockey Association; right?

21 A. Yes, and as someone who
22 is the majority owner of a franchise in the Quebec
23 Major Junior Hockey League today.

24 21 Q. And you're also here as
25 in your official capacity as a board member of the

1 CHL; right?

2 A. I am that. I don't know
3 if that's the reason I am here. I think it's
4 because of my affidavit that I put forth as a
5 player and as an owner.

6 22 Q. And when you gave that
7 evidence, you gave that evidence in part based on
8 your experience with the CHL as a member of the
9 Board; right?

10 A. I don't know if I can say
11 that's true. Most of the questions were about my
12 experience as a player, as an NHL player, and as
13 an owner of the franchise. We didn't really talk
14 too much about the inner workings of the Board of
15 the Canadian Hockey League.

16 23 Q. And when you say you
17 didn't talk too much, you mean you didn't talk to
18 your lawyers about those experiences when they
19 were asking you questions about the --

20 A. No, I don't think we
21 talked about it at all.

22 24 Q. Pardon me. I didn't
23 catch that.

24 A. I don't think we talked
25 about it at all.

1 25 Q. At paragraph eight of
2 your affidavit, you say:

3 "During my rookie year
4 with the 67s, there was
5 some minor hazing by
6 veteran players which I
7 did not consider to be
8 demeaning, humiliating,
9 or abusive." (As read)

10 Do you see that?

11 A. Yes.

12 26 Q. Let's break that down.
13 Can you define "hazing" for me?

14 A. Well, "hazing" seems to
15 be a very broad term. You know, you hear about
16 incidents on college campuses, forced alcohol
17 consumption with some very bad results.

18 When I say "minor hazing,"
19 it's stuff that, you know, with our team in
20 Ottawa, you know, not everyone was subject to
21 those initiation rituals. I was not. Many of my
22 other rookies were not, but they were not -- they
23 were not abusive situations.

24 You know, players had the
25 opportunity to opt out of it. And it was more of

Deleted: incidences

1 an initiation onto the team as opposed to some
2 kind of a nasty or mean hazing.

3 27 Q. Well, let's take that in
4 pieces because that wasn't my question. I wasn't
5 asking you about the 67s or anything else. I was
6 just asking you about what you understood "hazing"
7 to be.

8 So you told me --

9 REF MR. EIZENGA: Well, I think
10 he's answered, Mr. Calina. To be fair to him, he
11 did address that. He talked about the breadth of
12 the term and he gave you a specific example, so I
13 don't think it's fair for you to say he didn't
14 answer the question.

15 You can ask follow-ups.
16 There's lots available there, but I don't think
17 that's fair for you to say he didn't do what you
18 asked him to do.

19 MR. CALINA: I disagree. He
20 gave a speech. I'm going to continue.

21 BY MR. CALINA:

22 28 Q. Mr. Smith, you told me
23 that "hazing" includes initiations on college
24 campuses and forced alcohol consumption. Do you
25 consider any other type of behaviour hazing?

1 A. I think it's a very broad
2 term, and I do -- I would consider something
3 besides forced alcohol consumption as to be
4 hazing.

5 29 Q. What is that?

6 A. As I said, it's a very,
7 very broad term. You could have a humiliating
8 situation where a player had his head shaved.

9 You could have a player step
10 out onto the ice and unbeknownst to him, there was
11 scotch tape on the bottom of his blades and he
12 would fall to the ice and everyone would think --
13 would be thinking it was quite harmless and funny.
14 That would qualify as hazing as well.

15 30 Q. And are there any other
16 behaviours that you consider hazing?

17 A. We could talk all day
18 about, you know, what would qualify as hazing.

19 31 Q. Let's talk for part of
20 the day about what qualifies as hazing. What else
21 qualifies as hazing?

22 A. Oh, I would say
23 good-natured things where rookie players that made
24 them feel more part of the team all the way up to
25 humiliating events that were painful and shameful

1 for them.

2 32 Q. So then sitting here
3 today, you can't describe for me any other type of
4 behaviour, a specific behaviour, other than the
5 ones that you just gave me?

6 A. I mean I could
7 certainly --

8 MR. EIZENGA: Excuse me, Mr.
9 Smith. I just want to make sure that Mr. Calina
10 is asking you a question still about hazing.

11 You're saying he said it's
12 broad, and you're asking him if there are any
13 other specific activities that would be defined as
14 hazing.

15 MR. CALINA: I am asking him
16 to outline for me the behaviours that he considers
17 hazing. He gave me two or three examples.

18 BY MR. CALINA:

19 33 Q. I want to know, Mr.
20 Smith, if you have other examples of behaviour
21 that you consider hazing.

22 A. Well, the five or six
23 examples that I gave would not be the entirety of
24 the universe of hazing. But, you know, we have a
25 ritual with the Mooseheads where on the first road

1 trip we play and when we win a game, we have
2 "rookie idol" afterwards. The players sing their
3 favourite song, and we declare a champion of the
4 four or five or six rookies. I guess that would
5 be considered hazing.

6 You know, I would think that
7 some hazing in other environments, the military as
8 I mentioned, college fraternities, that seem to
9 continue to make the news would be considered
10 hazing as well. It's an extremely broad area.

11 And it's a term, I think,
12 that's, you know, we used to call it
13 "initiations." It's -- to me, it's a term that's
14 surfaced in the last few years. And as I said,
15 it's very broad and covers a lot of things.

16 MR. EIZENGA: You know, Mr.
17 Calina, I've got to put on the record that what
18 seems to be happening is you go on mute, you have
19 a conversation with Mr. Sayce, a long pause, and
20 then you come back. I think we should be hearing
21 what's going on here.

22 You want to take a break and
23 go off the record, that's fine. But when we were
24 off the record before and made a comment about the
25 Serrano business -- but this doesn't seem quite

1 right.

2 MR. CALINA: Mr. Eizenga, that
3 is not a fair comment. It is not a fair
4 description of what is happening here. And to be
5 honest, it feels like a personal attack.

6 If you have an objection to my
7 question, you are entitled to object to my
8 questions.

9 MR. EIZENGA: I'll do that,
10 but I think in fairness to the witness, you know,
11 these long pauses while you have a conversation
12 off the record effectively and then come back seem
13 a bit much.

14 MR. CALINA: I am not having
15 --

16 MR. EIZENGA: Carry on and
17 I'll object to the questions and put my reason for
18 the objection on. I can't -- there's nothing I
19 can stop you. I can't stop you from doing this
20 given the technological arrangements we have here.
21 It certainly wouldn't happen if we were physically
22 present. So go ahead, but I'm just telling you
23 it's obvious what's happening.

24 MR. CALINA: Mr. Eizenga, one,
25 if it were in-person, conversations between

1 counsel are not uncommon and in fact happen quite
2 frequently in examinations. Two, this is
3 interfering with the examination and I will ask
4 you to stop. Three, I am not taking long pauses,
5 but let's continue. You --

6 MR. EIZENGA: Mr. Calina, I'm
7 not interfering when you're already off the record
8 talking, so it's hardly interfering. So you
9 understand my objection, go ahead.

10 BY MR. CALINA:

11 34 Q. Mr. Smith, you refer to
12 "minor hazing" that you didn't consider demeaning,
13 humiliating, or abusive. Do you see that?

14 A. Could you repeat that
15 question, please?

16 35 Q. In the first sentence,
17 you say:

18 "During my rookie year
19 with the 67s, there was
20 some minor hazing by
21 veteran players which I
22 did not consider to be
23 demeaning, humiliating,
24 or abusive." (As read)

25 Do you see that?

1 A. I do.

2 36 Q. And so one instance that
3 you did not consider to be demeaning, humiliating,
4 or abusive was the veteran players shaving the
5 rookies' body hair at the beginning of the season.
6 Do you see that?

7 A. Yes, and I'd like to say
8 when you say "veteran players" --

9 37 Q. Mr. Smith, that was
10 not --

11 A. No, no, I'd like to
12 qualify --

13 38 Q. No, Mr. Smith --

14 MR. EIZENGA: You are allowed
15 to -- don't answer any further.

16 Mr. Calina, you're allowed to
17 ask your questions. You're not allowed to dictate
18 how he questions. He wants to answer your
19 question. He is allowed to give an answer.

20 MR. CALINA: He does not want
21 to answer my question. He wants to give a
22 prepared speech. My question was a "yes" or "no"
23 question. We've already established that --

24 MR. EIZENGA: He's --

25 MR. CALINA: -- Mr. Smith has

1 notes --

2 --- (Overlapping speakers)

3 MR. EIZENGA: Mr. Calina, just
4 a minute. Will you please cite law for me or a
5 rule that says he's obligated to give a "yes" or
6 "no" answer to a question. He's allowed to answer
7 your question in a way that will be helpful to the
8 Court.

9 He's certainly allowed to give
10 you a qualified answer. He's not obligated to
11 answer the question the way you dictate that he
12 answers it.

13 MR. SAYCE: Mr. Eizenga, this
14 is now Mr. Sayce speaking. We need to have a
15 conversation off the record right now because we
16 need to talk about the tone that's being taken in
17 this cross-examination you're treating Mr. Calina
18 et cetera. And I don't think it's appropriate for
19 this to be in a transcript for the Court. Let's
20 go off the record, please.

21 MR. EIZENGA: Well, I disagree
22 with the way he's asking --

23 MR. SAYCE: Let's go off
24 the --

25 MR. EIZENGA: -- but I'm happy

20

1 to have the conversation off the record.

2 MR. SAYCE: Madam Reporter,
3 can you please go off the record because I'm
4 asking --

5 MR. EIZENGA: Sure.

6 --- (Off-record discussion)

7 --- Recess taken at 10:25 a.m.

8 --- Upon resuming at 10:36 a.m.

9 MR. CALINA: Given the last
10 exchange in the entire cross-examination up to
11 this point, we are concerned that this is not a
12 fair cross-examination on the witness' evidence.
13 Mr. Smith admitted to having notes reflecting
14 discussions with counsel and up to this point has
15 provided what appear to be prepared statements
16 paralleling the anticipated submissions by counsel
17 on the certification motion. The
18 cross-examination is not fruitful. And on that
19 basis, we are ending it. Thank you.

20 MR. EIZENGA: Okay. So just a
21 second. You haven't seen the notes; right? And
22 you're making that assertion on the basis of not
23 having seen the notes and on the basis of what he
24 has said to date -- at this point; correct?
25 Nothing else?

1 MR. CALINA: You have our
2 position on the record. We are ending the
3 examination.

4 Mr. Eizenga, if you want to
5 re-examine the witness on what he has said up this
6 point, that is your prerogative.

7 MR. EIZENGA: Well, we didn't
8 go very far, so I will only have one
9 re-examination question. And it had to do with
10 the last exchange where you heard that I objected
11 to stopping him from answering.

12 RE-EXAMINATION BY MR. EIZENGA:

13 39 Q. So there's just one
14 question, Mr. Smith. Mr. Calina asked you about
15 your experience during your rookie season with the
16 67s in which you said there was -- in your
17 affidavit, he referred to the fact that there was
18 shaving of the rookies. You wanted to clarify
19 that.

20 MR. CALINA: Pardon me. That
21 was not my question, and I'd like Madam Reporter
22 to read back my last question on the record.

23 MR. EIZENGA: That's fair. If
24 I got that wrong -- that's fair.
25 --- (Readback provided)

1 MR. CALINA: So I did not ask
2 him about his experience generally on the 67s, Mr.
3 Eizenga, and it is not a fair examination question
4 to have him opine on it generally to prepare the
5 record of certification motion.

6 MR. EIZENGA: You haven't
7 heard my question yet.

8 Could you read it to us again,
9 Madam Reporter?

10 --- (Readback provided)

11 MR. EIZENGA: Yes, I'm not
12 going to re-examine on it. That's fine. Thank
13 you.

14 --- Whereupon the proceeding concluded at
15 10:40 a.m.

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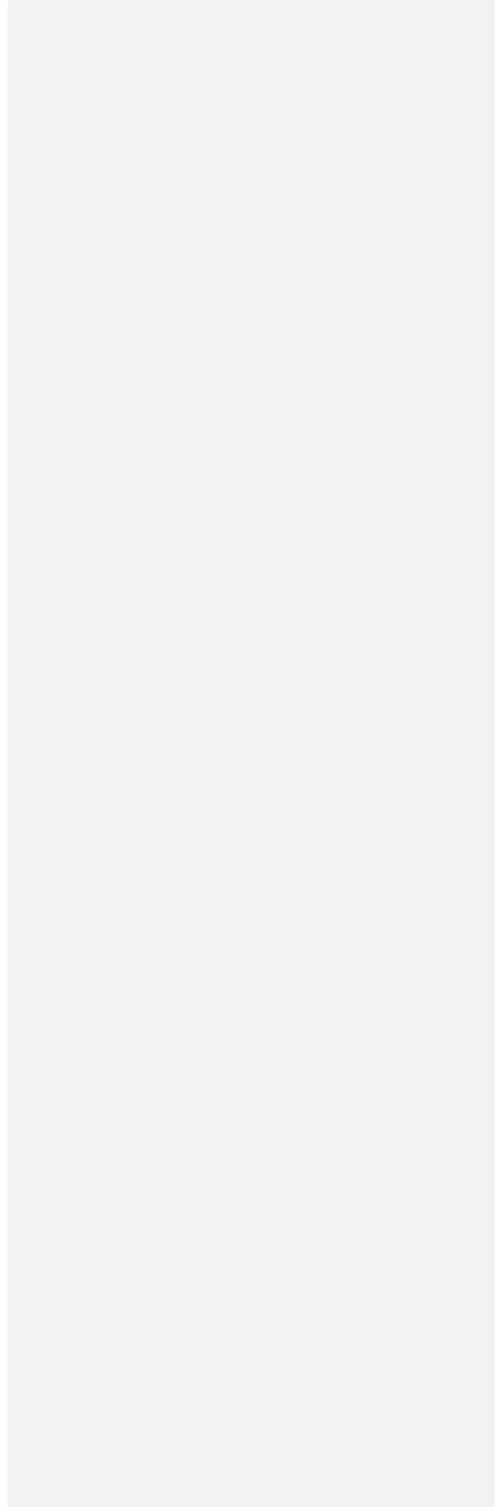
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I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by shorthand, and transcribed therefrom, the
foregoing proceeding using real-time
computer-aided transcription.

Karen Mak, Court Reporter



**Carcillo et al.
Plaintiffs**

and

**Canadian Hockey League et al.
Defendants**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding under the Class Proceedings Act, 1992

**TRANSCRIPT BRIEF
(CERTIFICATION)
VOLUME 9 OF 9**

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