

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

**RESPONDING FACTUM OF THE PLAINTIFF
(Defendants' "Ragoonanan" and Jurisdiction Motion,
returnable November 14-18, 2022)**

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PART I - INTRODUCTION

1. To evade certification, and avoid accountability, the defendants bring an ill-conceived motion: a jurisdiction challenge that fails at every stage of the jurisdiction *simpliciter* analysis, and a *Ragoonanan* argument that attacks an imagined version of the plaintiffs' claim.¹ The defendants' motion rewrites the plaintiffs' claim into something more favourable to them to obscure the core of this action: a systemic claim against the CHL League and its Member Leagues.² The defendants' motion cannot succeed.

2. The plaintiffs' pleaded case is clear. The plaintiffs allege that the Leagues are collectives of the Teams, most likely unincorporated associations, such that the Teams are jointly and severally liable for the Leagues' wrongdoing. This allegation is well supported in law: many sport leagues, including the Canadian Football League, National Hockey League, and Major League Baseball, have been deemed unincorporated associations.³ The defendants' *Ragoonanan* arguments conjure a problem that does not exist by transforming the plaintiffs' systemic claims against the Leagues into individual claims against Teams. When the claim is read as actually pleaded, there is no *Ragoonanan* problem.

3. The defendants' arguments on jurisdiction must also fail. The attornment provision in the CHL constitution, to which all of the defendants are parties, is a complete answer

¹ Despite referring to the "Moving Defendants" in their factum on *Ragoonanan* ["**Defendants' Ragoonanan Factum**"], and the "Foreign Defendants" in their factum on jurisdiction ["**Defendants' Jurisdiction Factum**"], the defendants have brought only one motion, a motion that is – on its face – brought by all of the defendants. This is reflected in the single notice of motion served in relation to these issues.

² The OHL League, the WHL League, and the QMJHL League. Capitalized terms used but not defined herein have the meanings ascribed to them in the Fresh as Amended Statement of Claim and the Plaintiffs' moving factum on the certification motion ["**Plaintiffs' Certification Factum**"].

³ See para. 34, below.

to their jurisdictional challenge.⁴ It is immaterial that the plaintiffs are not parties to the CHL Constitution, a document that the defendants only provided on this Court's direction, months after the plaintiffs requested it, and well over a year after bringing their motion.⁵ It is perplexing, if not inappropriate, that – knowing of this provision – the defendants challenged this Court's jurisdiction at all.

4. Even without the attornment provision, this Court has jurisdiction over this case and all of the defendants named in it. This Court has presence-based jurisdiction by virtue of the claims against the CHL League as a collective of the Teams. Jurisdiction can, in any event, be assumed based on a real and substantial connection with the forum because an Ontario contract (the CHL Constitution) is connected with the dispute and because the defendants conduct business in Ontario, both as the CHL League, and through the CHL League. In particular, the CHL League enters into key business contracts on behalf of all Teams, and receives and holds money in trust as the Teams' agent.

5. The defendants chose to collectively operate a hockey league. All of the individual defendants named in this action are collectively liable, most likely as an unincorporated association. On that basis, the plaintiffs have a cause of action against each and every defendant, defeating any *Ragoonanan* argument. On that same basis, this Court has jurisdiction over all the named defendants.

⁴ Exhibit "A" to the Affidavit of Dan MacKenzie, sworn April 20, 2022, Defendants' Motion Record ["DMR"] Vol IV, Tab 23, and see Defendants' Jurisdiction Factum, at para. 27. For ease of reference, the provisions of the CHL Constitution and other League Constitutions referred to in this factum are reproduced in Appendix "A".

⁵ See the May 3, 2022 File Direction of Perell J.

6. To avoid the consequence of their choice, the defendants now deny their own governance structure and their own constitutions, and deny that they operate a system at all. Their arguments have no basis in the pleadings, the evidence, or the applicable law. The defendants' motion must be dismissed.

PART II - THE FACTS

7. The defendants' description of the "facts" is misleading. It is little more than an attempt to rewrite the Fresh as Amended Statement of Claim, and obscure the plaintiffs' systemic claims against the CHL League and its Member Leagues: the OHL League, WHL League, and QMJHL League. This Court should be wary of the defendants' efforts to respond to a very different case from the one brought by the plaintiffs.

8. The facts underlying the plaintiffs' systemic claims against the Leagues are set out in the Plaintiffs' Certification Factum. This section addresses, and corrects, the defendants' loose treatment of the facts and evidence in their two moving facta on this motion.

A. The Teams Collectively Operate and Govern the Leagues

9. The defendants' aim to obscure one simple fact: that the Leagues are collectives, most likely unincorporated associations, operated and controlled by the Teams. If each League is an unincorporated association comprised of its member Teams, all the Teams in each League are jointly and severally liable for their Leagues' wrongdoing.⁶ The duties each League owes to its players are owed jointly by all the Teams in that League.

⁶ The Member Leagues are comprised of their Teams. The CHL League is comprised of the three Member Leagues and their Teams: see arguments in the Plaintiffs' Certification Factum, at paras. 84-95.

10. This allegation is based firmly in the operational and legal reality of the Leagues. While the defendants' dispute the joint and several liability of the Teams, they agree with the following material facts supporting that allegation:

(a) **The Teams are independent entities and control some aspects of their operations:** Each Team enjoys a separate existence and, at any given time, has a distinct set of players on its roster.⁷

(b) **The Teams are regulated by the Leagues:** The Leagues regulate many aspects of the Teams' operations and require the Teams to implement League-wide policies, regulations and rules in their own operations, on and off the ice.⁸

(c) **The Teams govern the Leagues:** The Leagues are governed by Boards constituted of Governors that represent their respective Teams.⁹ While stressing its limits, the defendants appear to acknowledge the Teams' control.¹⁰

(d) **The Member Leagues are distinct from one another:** Each Member League has its own history, constitution, Teams, and policies, but "the leagues and teams are parties to the CHL's Constitution" and are subject to it.¹¹

11. What these facts show, and what the defendants still try to deny, is that the Teams collectively govern one another through the Member Leagues, just as the Teams and Member Leagues collectively govern one another through the CHL League. Based on admitted facts, and the Leagues' own constitutions, each League is governed by the collective of its Teams. While each is "a single contributor" within this governance structure, they are nonetheless collectively responsible.¹²

12. This governance extends to player safety: the Leagues, and so all of the Teams in their collective governance of the Leagues, are responsible for adopting and implementing

⁷ Defendants' Ragoonanan Factum, at paras. 15-18. Within each League, players move frequently between Teams.

⁸ Defendants' Ragoonanan Factum, at paras. 18, 32, and 43, and fn. 43.

⁹ Defendants' Ragoonanan Factum, at para. 17, and Defendants' Jurisdiction Factum, at para. 36.

¹⁰ Defendants' Ragoonanan Factum, at para. 43.

¹¹ Defendants' Jurisdiction Factum, at paras. 25, 36-43.

¹² Defendants' Ragoonanan Factum, at para. 43.

effective abuse policies.¹³ The defendants cannot circumvent their own governance structures to deny their joint and several liability for the Leagues' failures to do so.¹⁴

B. The Authority of the CHL League to Protect Players from Abuse

13. The CHL League, which is collectively governed by the Teams and Member Leagues, has broad authority over the Teams and Member Leagues, and can overrule Member League decisions.¹⁵ While they admit that the Teams and Member Leagues are all parties to the CHL Constitution, which is a unanimous members' agreement, the defendants claim that this constitution "does not confer on the CHL any relevant authority over... the leagues and their respective teams."¹⁶ This denial, which does not conform with the defendants' own statements or the CHL Constitution, does not survive scrutiny.

14. David Branch, OHL Commissioner since 1979 and CHL President from 1996 to 2019, described the CHL League as "an association of the three leagues" that "always addressed things together."¹⁷ CHL President, Dan MacKenzie told the IRP that the CHL League could consider taking CHL-wide action on player safety.¹⁸ The defendants agree that the CHL League "oversees" the Member Leagues.¹⁹

¹³ See Plaintiffs' Certification Factum, at paras. 65-70 and 84-95.

¹⁴ See Plaintiffs' Certification Factum, at paras. 65-70 and 84-95.

¹⁵ CHL Constitution, Art. 6.3.

¹⁶ Defendants' Jurisdiction Factum, at para. 27.

¹⁷ Cross-Examination of David Branch, August 3, 2022 ["**Branch CXE**"], 15:6-10, Transcript Brief ["**TB**"], Vol. 5, Tab 25, p. 2973. In their pleading and the facts on this motion, the plaintiffs refer to the "CHL League" in order to distinguish the Canadian Hockey League, which they say is an unincorporated association, from the corporation of the same name that administers it.

¹⁸ See Cross-Examination of Sheldon Kennedy, August 25, 2022 ["**Kennedy CXE**"], 90:20-91:24 and Exhibit L (IRP Minutes, August 24, 2020), TB, Vol. 6, Tab 29, pp. 3419-3420 and 3630; Cross Examination of Camille Thériault, September 23, 2022 ["**Thériault CXE**"], 78:11-21, TB, Vol. 8, Tab 31, p. 4188.

¹⁹ Defendants' Jurisdiction Factum, at para 6.

15. Under the CHL Constitution, the CHL League has a binding obligation to protect players. The "CHL Mission" in the CHL Constitution is to provide all CHL players "with highest-quality skills development and training, participation in hockey competition on a regional and national basis, academic and player support services, funding for higher education, and access to professional hockey opportunities."²⁰ To "further the CHL Mission," the CHL League is "organized to," among other things, ensure that CHL players "are provided with a safe and high-quality environment."²¹

16. The CHL Mission binds the CHL League, the Member Leagues, and the Teams. The CHL League can only act in furtherance of this mission.²² Member Leagues must "conduct hockey operations and other business affairs in a manner designed and intended to further the CHL Mission."²³ Each Team is obliged to "[f]oster the promotion of the CHL Mission through its operation of an amateur hockey team" and to ensure that "Players have a safe environment, both on and off the ice."²⁴

17. By adopting the CHL Constitution, the Teams and Member Leagues gave the CHL League extensive and unequivocal authority over them to ensure player safety. Under Article 15, the CHL League "shall implement programs and policies designed to ensure and promote player safety" and shall support the Member Leagues by "promulgating standard guidance." The Member Leagues must "cooperate with the CHL in enforcing and monitoring compliance with these programs and policies."²⁵ The CHL League can

²⁰ CHL Constitution, Art. 3.1.

²¹ CHL Constitution, Art. 3.2(3).

²² CHL Constitution, Art. 3.3: "All actions of the CHL shall be in furtherance of the CHL Mission."

²³ CHL Constitution, Art. 6.2.

²⁴ CHL Constitution, Art. 5.1(2) and (3)(b).

²⁵ CHL Constitution, Art. 15.1.

"conduct surveys" and investigations on player safety issues. Teams must "cooperate with any such investigation."²⁶ Article 15 allows the CHL League to make directions that, "if necessary, supersede" any Member League rule or policy.²⁷

18. Beyond Article 15, the CHL League has broad authority to fulfil and enforce its mission. The CHL League is required to ensure that all actors within the Leagues fulfil their responsibilities to players:

- (a) The CHL League must ensure that the Teams are fulfilling their obligations to players.²⁸ A Team can be expelled from the CHL League for engaging in "conduct significantly detrimental to... the CHL Mission."²⁹
- (b) The CHL League, through a vote of the Teams, must approve CHL Regulations related to player conduct, which are then binding on the Teams.³⁰
- (c) The CHL League can overrule a Member League decision "that is contrary to the CHL Mission."³¹
- (d) The CHL President has "full and complete authority to discipline" players, staff, coaches, and owners who violate the CHL Constitution or Regulations, or engage in any conduct "detrimental to the best interest, reputation or image of the CHL or CHL Hockey."³²

19. These provisions provide authority far beyond "relevant authority... over, or operational rights in respect of, the leagues and their respective teams," and belie the defendants' claim that the CHL League lacks authority over player safety.³³ To support that claim, the defendants twist other evidence:

²⁶ CHL Constitution, Art. 15.2.

²⁷ CHL Constitution, Art. 15.3.

²⁸ CHL Constitution, Art. 14.1.

²⁹ CHL Constitution, Art. 4.6.

³⁰ CHL Constitution, Art. 24, and see the definition of "Majority Vote" in Art 10.4(1). No regulations currently exist: Defendants' counsel informed plaintiffs' counsel, by email on June 1, 2022, that "as stated in Mr. MacKenzie's April 20, 2022 affidavit, the CHL does not have and has never had Regulations."

³¹ CHL Constitution, Art. 6.3.

³² While the President's determinations can be appealed to the Board of Directors, any such appeal is governed by the CHL Regulations, which do not exist: Art 9.4 and see fn. 30, above.

³³ Defendants' Jurisdiction Factum, at para. 27.

(a) **IRP Panellist Danielle Sauvageau does not agree with the defendants:** The defendants state that Sauvageau, "did not dispute" this claim.³⁴ Sauvageau had no access to the CHL Constitution. When asked about MacKenzie's claim that "the CHL constitution prohibits the CHL from implementing policies and procedures,"³⁵ she responded: "Even if you don't have the authority as a league, you could work and get the buy-in of your members to try to be as efficient as possible in order to create the environment that you want."³⁶

(b) **The Turnpenney Report cannot be used as evidence of the CHL League's authority:** The defendants did not produce Rachel Turnpenney as a witness, and refused to produce their instructions to her.³⁷ The unsubstantiated legal conclusion of a party who has not been called as a witness is immaterial. Her statement must be disregarded.

20. The defendants' final appeal is to MacKenzie's testimony. His evidence, which includes inadmissible legal argument, is not reliable.³⁸ It is replete with serious errors:

(a) MacKenzie claimed to have received the IRP Report in December 2020.³⁹ However, IRP documents and testimony from the panellists establish that it was in his possession from November 5, 2020, at the latest.⁴⁰

(b) MacKenzie claimed that Camille Thériault, IRP Chair, told him that current players were "absolutely not" at risk of harm, and that the issue was not

³⁴ Defendants' Jurisdiction Factum, at para. 29.

³⁵ Cross-Examination of Daniele Sauvageau, September 13, 2022 ["**Sauvageau CXE**"], 87:14-17, TB, Vol. 7, Tab 30, p. 4014, and see Defendants Jurisdiction Factum, at fn. 22.

³⁶ Sauvageau CXE, 88:10-22, TB Vol 7, Tab 30, p. 4015.

³⁷ Rachel Turnpenney, "Report on the CHL's Player Wellbeing Programs and Related Recommendations", Second Supplementary Motion Record ["**SSMR**"], Tab 1(A), p. 12ff; Defendants' Jurisdiction Factum at para. 29; Refusals and Undertakings Chart, Dan MacKenzie, Brief of Undertakings and Refusals Charts ["**URC**"], Tab B, p. 66.

³⁸ Affidavit of Dan MacKenzie, sworn December 30, 2020, at paras. 5-6, DMR, Vol. I, Tab 2, pp. 21-22; Affidavit of Dan MacKenzie, sworn April 20, 2022, at paras. 3-6 and 8-11, DMR, Vol. IV, Tab 23, pp. 534-36; and see Rules 4.06(2) and 39.01(4), *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; *Mensour v. The Corporation of the Municipality of Lemington*, [2012 ONSC 3525](#) (Div. Ct.) at para. 29; *Lockridge v. Director, Ministry of the Environment*, [2012 ONSC 2316](#) (Div. Ct.) at para. 123; *Raponi v. Olympia Trust Company*, [2022 ONSC 4480](#), at para. 11.

³⁹ Dan MacKenzie swore in an affidavit on this motion, and the CHL League claimed publicly, that they received the IRP Report in December 2020: Affidavit of Dan MacKenzie, sworn March 4, 2022, at para. 3, DMR, Vol. IV, Tab 22, p. 451; CHL "Update on Player Wellbeing", SSMR, Tab 1(A), p. 5.

⁴⁰ The IRP presented their report to MacKenzie, the Commissioners and some Team owners on November 5, 2020: Kennedy CXE, 50:19-52:15, TB, Vol. 6, Tab 27, pp. 3379-81; Sauvageau CXE, 33:13-34:1, TB, Vol. 7, Tab 30, pp. 3960-61; **Thériault CXE**, 29:5-14, TB, Vol. 8, Tab 31, p. 4139. MacKenzie, in an email to Kennedy on November 5, 2020 said he was "just beginning to dig into the report and digest it": Kennedy CXE, 55:2-57:24, 75:8-76:13 and Exhibit J, TB, Vol. 6, Tab 29, pp. 3384-86, 3404-5 and 3600.

widespread. However, Thériault, when asked about this evidence, said "I certainly didn't make those kinds of statements."⁴¹

(c) MacKenzie denied having heard David Branch tell the IRP that a systemic problem existed in the CHL League. However, IRP minutes and testimony confirm that MacKenzie was present when Branch made these remarks.⁴²

(d) MacKenzie initially claimed that he had reviewed a copy of the Heinen Hutchinson report prepared for Hockey Canada (into the 2018 sexual assault allegations), "through a meeting with Hockey Canada." He later corrected his evidence to "clarify" that he reviewed a copy provided to him by David Branch.⁴³

21. These errors, at best, render MacKenzie's testimony on these motions unreliable. At worst, they suggest a weak relationship between MacKenzie's testimony and the reality of the events and organisations at issue in this action. By contrast with the unequivocal wording of the CHL Constitution, MacKenzie's testimony has little utility on these issues.

22. In any event, MacKenzie's testimony on the CHL League's authority was confused, unclear, and ultimately limited to the capacities of the CHL League's Executive Council. Mackenzie said that the CHL does not "have the authority to create" CHL League-wide "player safety policies," but shortly thereafter said it is "possible under the organizational structure" of the CHL League to have "League-wide standard player safety policies."⁴⁴

23. While the Executive Council, acting alone, cannot pass policies, the CHL League's members, the Teams, must pass regulations on player safety, and the CHL League's Board of Directors must put in place policies and programs on player safety.⁴⁵ The defendants,

⁴¹ Corrected Cross-Examination of Dan MacKenzie ["**MacKenzie Corr. CXE**"], 111:4-22, TB, Vol. 9, Tab 35, p. 4846; Thériault CXE, 24:20-27:1, TB, Vol. 8, Tab 31, pp. 4134-37.

⁴² MacKenzie Corr. CXE, 109:23-111:3, TB, Vol. 9, Tab 35, pp. 4844-46; Kennedy CXE, 84:14-18, and Exhibit L (IRP Meeting Minutes, August 17, 2020), TB, Vol 6, Tab 29, pp. 3413 and 3621.

⁴³ Completed Evidence of Dan MacKenzie, TB Vol 8, Tab 33, p. 4730.

⁴⁴ MacKenzie Corr. CXE, 82:24-83:2, 86:13-17, 87:17-90:6 TB, Vol. 9, Tab 35, p. 4817-18, 4821, 4822-25.

⁴⁵ While the Executive Council is "responsible for overseeing the day-to-day management of the CHL," the "approval of the Board of Directors shall be required in respect of any material change in CHL policy": CHL Constitution, Art. 8.2.

in trying to deny these obligations, make claims that are clearly contradicted by the CHL Constitution, as set out in the chart in Appendix "B".

24. Having chosen, in 1975, to create a governing body through which to govern themselves, and having used that body to govern their operations, the defendants cannot now claim that – when it comes to player safety – they are incapable of telling themselves what to do.

PART III - ISSUES AND THE LAW

25. The defendants' motion raises two issues:

- (i) Whether the *Ragoonanan* principle applies to this action; and
- (ii) Whether this Court has jurisdiction over this action.

26. As set out below, the defendants cannot rely on *Ragoonanan*: the proposed representative plaintiffs' systemic claims against the Leagues are properly made against all of the defendants. Nor can the defendants challenge jurisdiction: they attorned to the jurisdiction of the Ontario courts in the CHL Constitution. The defendants' motion is ill-conceived, and possibly even self-defeating. It must be dismissed.

A. There is No *Ragoonanan* Problem in this Action

27. Under the *Ragoonanan* principle – which the plaintiffs do not dispute on this motion – for each defendant in a class action there must be a representative plaintiff with a cause of action against that defendant. The proposed representative plaintiffs played in each of the Member Leagues. They advance systemic claims against the CHL League and the Member Leagues, and allege that the Teams in each League are jointly and severally

liable for that League's failures. Based on these allegations, in this action, there is, for every defendant, a representative plaintiff with a cause of action against that defendant.

28. The defendants raise *Ragoonanan* on a Rule 21.01(1)(b) motion. The "plain and obvious" test therefore applies. The defendants must show that the plaintiffs' allegations of joint and several liability have no chance of success. They have not done so.

i. The Teams Constitute the Leagues and are Liable for their Failures

29. To raise the spectre of *Ragoonanan*, the defendants advance and attack an illusory theory of the plaintiffs' claim, responding to a case that was not brought. They portray the plaintiffs as attempting to "conflate" different entities and counter this "conflation" with trite arguments that the individual defendant Teams are separate and distinct entities (which is not denied) that, in some respects, operate differently (which is not denied), and that have different players on their rosters at any time (which is also not denied).⁴⁶

30. Distinct entities can be held jointly and severally liable for their collective acts.⁴⁷ That the Teams are distinct and differ from one other does not and cannot show that the Teams do not, collectively, both constitute and govern the Leagues. That the Member Leagues are distinct and differ from one another does not and cannot show that the Member Leagues and Teams do not, collectively, constitute and govern the CHL League.

31. The defendants refer to "pleading artifice" and argue that allegations of joint and several liability "should be ignored in favour of material facts."⁴⁸ In doing so, they make

⁴⁶ See, in particular, the Defendants' *Ragoonanan* Factum, at para. 17.

⁴⁷ See, for example, *Partnerships Act*, R.S.O. 1990, c. P.5, s. 13; *Fallowka v. Pinkerton's of Canada Ltd.*, [2010 SCC 5](#), at para. 154.

⁴⁸ Defendants' *Ragoonanan* Factum, at paras. 7 and 28.

little reference to the actual pleading, preferring to paraphrase short sections. When read, the pleadings are not artificial, immaterial or conclusory: they are firmly grounded in the Leagues' own constitutions which are incorporated by reference into the pleading and form part of the evidentiary record on the motions.⁴⁹

32. In those constitutions, the defendants formed bodies for collective governance. The Teams retain control over some areas of their operations but are, in many areas, regulated by their Member Leagues through decisions made, collectively, by the Teams in the League.⁵⁰ In other (and often overlapping) areas, the Teams and Member Leagues are regulated by the CHL League, a body under the Teams' and Member Leagues' control.⁵¹

33. Given these structures, the Leagues appear to be unincorporated associations.⁵² Each has a constitution that binds its members, the Teams, together for common purposes through a mutual undertaking to fulfil duties and respect rules created by common agreement between the Teams.⁵³

34. The defendants acknowledge that key features of the Leagues "are shared by other sports leagues, in Canada and globally, and reflect the necessity of certain activities... inherent to competitive team sports."⁵⁴ Sports leagues are unincorporated associations:

⁴⁹ The defendants agree that the constitutions are incorporated by reference: Defendants' Ragoonanan Factum, at para. 18, and see *Das v George Weston Limited*, [2017 ONSC 4129](#), at para. 27, aff'd [2018 ONCA 1053](#), leave to appeal refused, [2019] S.C.C.A. No. 69.

⁵⁰ See Defendants' Ragoonanan Factum, at paras. 18, 32, and 43, and fn. 43.

⁵¹ Defendants' Jurisdiction Factum, at para. 27; and see, for example, CHL Constitution, Arts. 6.3, 7.3, 15.

⁵² Plaintiffs' Certification Factum, at paras. 87-93.

⁵³ See the definition of an unincorporated association in the Plaintiffs' Certification Factum at para. 87.

⁵⁴ Defendants' Ragoonanan Factum, at para. 22.

- (a) The Canadian Football League is "an unincorporated association consisting of separately owned and independently-operated professional football teams."⁵⁵
- (b) The National Football League is, according to the Supreme Court of Canada, "an unincorporated association of 32 separately owned member clubs, each of which operates a professional football team."⁵⁶
- (c) Major League Baseball ["MLB"] has recently been dubbed "an unincorporated association consisting of thirty major league baseball clubs."⁵⁷
- (d) The National Basketball Association ["NBA"] is "an unincorporated association consisting of twenty-three professional basketball teams."⁵⁸ On cross-examination, MacKenzie compared the CHL League to the NBA stating, "the business operations are very similar, just on a much, much smaller scale."⁵⁹
- (e) The National Hockey League ["NHL"] is an "unincorporated association... of 21 independently owned member clubs."⁶⁰

35. This form is not only common for sports leagues: it is essential. To facilitate fair competition between them, teams come together in leagues to agree on rules to which they all submit. As John Barnes observes in *The Law of Hockey*, "[p]rofessional leagues are a particularly unusual type of cartel in that they promote rivalry through co-operation."⁶¹ Sports leagues are *sui generis* enterprises that function through mutual agency relationships, facilitated through the form of unincorporated associations.

⁵⁵ *Bruce v. Cohon*, [2016 BCSC 419](#), at para. 18, aff'd [2017 BCCA 186](#), leave to appeal refused, [2017] S.C.C.A. No. 307; and see *Ottawa Football Club v. Canada (Minister of Fitness and Amateur Sports)*, [\[1989\] 2 FC 480](#).

⁵⁶ *Bell Canada v. Canada (A.G.)*, [2019 SCC 66](#), at para. 17, Plaintiffs' Book of Authorities, ["PBOA"], Tab 10.

⁵⁷ *Olson v. Major League Baseball*, 29 F.4th 59 (USCA 2nd Cir. 2022), p. 67, fn. 2, Plaintiffs' Responding Book of Authorities ["PRBOA"], Tab 4.

⁵⁸ *Hall v. National Basketball Association*, (1987), 651 F. Supp. 335 (US District Court), PRBOA, Tab 2; and see *Denver Rockets v. All-Pro Management Inc.* (1971), 325 F. Supp. 1049 (US District Court) at para. 24, PRBOA, Tab 4.

⁵⁹ MacKenzie Corr. CXE, 14:13-15:11, TB, Vol. 9, Tab 35, p. 4749-50.

⁶⁰ The NHL is governed in a very similar manner to the Leagues, with governors representing members: *Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.*, [\[1987\] B.C.J. No. 2074](#) (Sup. Ct.), at para. 2; and see *National Hockey League v. Pepsi Cola Canada Ltd.*, [\[1992\] 70 B.C.L.R. \(2d\) 27](#) (Sup. Ct.), PBOA, Tab 66, aff'd [\[1995\] 2 B.C.L.R. \(3d\) 3 \(C.A.\)](#).

⁶¹ John Barnes, *The Law of Hockey* (Markham, Ont.: LexisNexis, 2010) at p. 21, PRBOA, Tab 6.

36. Without mutually agreed rules, and a method for their enforcement, a league could not function. Fair competition would be impossible if there was nothing to stop a team from changing the rules of play at a whim, altering equipment to disadvantage their opponents, or simply ending the game while they are ahead. At times, League rules go far beyond the basics. For example, OHL League rules extend to the jerseys that players wear, the freezing of pucks in advance of play, and the kinds of action that can be replayed on the arena's video scoreboard during games.⁶²

37. Leagues are mechanisms through which collectives of teams govern themselves in order to compete fairly with one another. As Justice Matlow said of the MLB:

The business of each team is, to a very large extent, controlled by the league to which each team belongs and the league, in turn, is controlled by the owners of the teams in it. It is essential, for obvious reasons, that there be a high level of organization and co-operation between the teams and, for that purpose, they delegate, as a group, a variety of powers to the league.⁶³

The defendants describe this very form of regulation stating "the teams have responsibilities through their agreements to participate in the leagues, and... the teams' engagement is regulated through the leagues."⁶⁴

38. This self-regulation is neither captured nor achieved by the corporate form. While each League is associated with a non-profit corporation, the Leagues' constitutions reveal relationships and power structures unlike corporations. Each League is run by a Board of Governors that is fundamentally unlike the board of directors in a corporate context; any analogy to it breaks down:

⁶² See OHL Operations Manual, Exhibit "C" to the Affidavit of Dan MacKenzie, sworn April 20, 2022, DMR, Vol. IV, Tab 23, pp. 654-664.

⁶³ *Toronto Blue Jays Baseball Club v. Ontario (Minister of Finance)*, [2004] O.J. No. 1751 (Sup. Ct.), at para. 19, rev'd on other grounds, [250 D.L.R. \(4th\) 63](#) (Ont. C.A.).

⁶⁴ Defendants' Ragoonanan Factum, at para. 32, fn. 43, and see paras. 18, 43.

- (a) Governors are appointed by individual Teams, not elected by the Members, or a class of Members.⁶⁵
- (b) Each can be replaced at will by the appointing Team acting in its sole discretion. A member of a non-profit cannot remove a director at will.⁶⁶
- (c) Governors "represent" or vote "for" or "on behalf of" their appointing Team, acting as agents or proxies for that Team. Non-profit Directors are not agents for particular members.⁶⁷

39. The Teams are the source of the governors' authority. The Member League constitutions often use the defined term for governor and Team interchangeably.⁶⁸ It is the Teams, rather than their governors, that – in addition to being the members of the Leagues – are the closest approximation to non-profit directors.⁶⁹ Even so, the two are not analogous. The Leagues' powers over the Teams, including the power to create and enforce detailed rules governing the Teams' operations, go beyond the powers that a non-profit corporation exercises over its members or directors.

40. The Leagues cannot squeeze themselves into the mold of a corporation.⁷⁰ They appear to be unincorporated associations. This is not, as the defendants claim, a bald assertion of liability or an attempt to "artificially lump" the defendants together.⁷¹ The Teams are bound together by the agreements they have made and the governance

⁶⁵ See OHL Constitution, Art. 5.2.1; WHL Constitution, Art. 13.1; QMJHL Constitution, Art. 4.3.1.1; Ontario's *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15, ss. 24 and 48 ["*ONPCA*"]; Canada *Not-for-Profit Corporations Act*, S.C. 2009, c. 23, ss. 7, 128(3), 154 ["*CNPCA*"].

⁶⁶ See OHL Constitution, Art. 5.2.4; WHL Constitution, Arts. 13.2, 13.6; QMJHL Constitution, Art. 4.3.1.3; *ONPCA*, s. 26; *CNPCA*, s. 130.

⁶⁷ See OHL Constitution, Arts. 5.3.4, 5.4; WHL Constitution, Arts. 13.1, 13.5.

⁶⁸ See, for example, OHL Constitution, Art. 6.7.

⁶⁹ CHL Constitution, Art. 4; OHL Constitution, Art. 3; WHL Constitution, Art. 2.1(p); QMJHL Constitution, Art. 2.1.1. The defendants state that the Teams "are not shareholders of the Leagues": Defendants' Ragoonanan Factum, at para. 42. For a non-profit corporation, the equivalent of a shareholder is a member.

⁷⁰ The OHL Constitution distinguishes between the League as an association and the corporation by which it is "operated": see Art. 1.1. The previous WHL Constitution set out the current governance structure of the WHL League, but did not attempt to style the WHL League as a corporation: URC, Tab C-1, p. 72.

⁷¹ Defendants' Ragoonanan Factum, at paras. 36-37. This case can be contrasted with *Martin v. Astrazeneca Pharmaceuticals PLC*, [2012 ONSC 2744](#) (Sup. Ct.); aff'd [2013 ONSC 1169](#) (Div. Ct.).

structures they adopted in those agreements. Based on those agreements, the defendants are jointly and severally liable for the Leagues' failures.

41. Even if the Leagues are, as the defendants suggest, mere non-profit corporations, the Teams are liable for the Leagues' failures under corporate principles. In the Member League corporations, the Teams act as, and are liable as, Directors by directing the Governors who represent them and vote on their behalf.⁷² In the CHL League, the Teams exercise the powers of directors under the CHL Constitution, a unanimous members' agreement. If the Leagues are corporations, the Teams are jointly and severally liable for their failures as the *de facto* and *de jure* directors of the Leagues.⁷³

ii. The Representative Plaintiffs' Have Claims Against Each League

42. The Leagues were required to act effectively to prevent and respond to the abuse of young players.⁷⁴ They failed to do so. The plaintiffs make systemic claims against the CHL League and the three Member Leagues in systemic negligence, for breaches of fiduciary duties, and in vicarious liability. The defendants acknowledge that the plaintiffs can properly sue "the leagues in which their teams played."⁷⁵

⁷² See OHL Constitution, Arts. 5.1, 5.2, 5.4; WHL Constitution, Arts. 2.1(m), 13.1, 13.2, 13.5; QMJHL Constitution, Arts. 4.1, 4.3.1.1, 4.3.2.

⁷³ Plaintiffs' Certification Factum, at para. 94. As argued in the Plaintiffs' Certification Factum, the corporate veil can also be pierced in this case based on the principal-agent relationship between the Teams and the Leagues: see Plaintiffs Certification Factum at para. 95; *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co*, [1996] O.J. No. 1568 (Gen. Div.); *Gower's Principles of Modern Company Law*, 10th ed. (London, UK: Thomson Reuters, 2016), p. 203, section 8-13, PRBOA, Tab 5. Contrary to the defendants' arguments, it is only when a plaintiff argues that a company is a "mere façade" that the court must be satisfied that the corporation was created for a fraudulent or improper purpose: *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472, at para. 66, PBOA, Tab 95, leave to appeal refused, [2018] S.C.C.A. No. 255, and see Defendants' Ragoonanan Factum, at para. 41.

⁷⁴ See Plaintiffs' Certification Factum, at paras. 66-70.

⁷⁵ Defendants' Ragoonanan Factum, at para. 3.

43. Daniel Carcillo played in the OHL League, Garrett Taylor played in the WHL League, and Stephen Quirk played in the QMJHL League. All three played in the CHL League. There are sufficient representative plaintiffs to claim against each League. As the defendants within each League are jointly and severally liable for that League's failures, the representative plaintiffs, by virtue of their claims, have claims against all the defendants, as follows:

- (a) Carcillo's claims against the OHL League are against the OHL Teams, their owners and operators, and the defendant corporation, the OHL.
- (b) Taylor's claims against the WHL League are against the WHL Teams, their owners and operators, and the defendant corporation, the WHL.
- (c) Quirk's claims against the QMJHL League are against the QMJHL Teams, their owners and operators, and the defendant corporation, the QMJHL.
- (d) Carcillo, Taylor and Quirk's claims against the CHL League are against all of the Teams, their owners and operators, and the defendant corporations, the CHL, OHL, WHL, and QMJHL.

44. While the defendants complain that the plaintiffs "do not sue a conceptual 'CHL League'," but instead "sue the defendant teams, the regional leagues, and the CHL not-for-profit corporation," this is precisely the proper way to sue an unincorporated association.⁷⁶ This is not a pleading contrivance, but a reality of well-settled law. The plaintiffs' claims against each League are properly made against all the defendants within that League.

45. *Ragoonanan* applies where causes of action are alleged, separately, against multiple discrete defendants, based on each defendant's own and separate, albeit similar

⁷⁶ See Plaintiffs' Certification Factum, at para. 91, Stephen Aylward, *The Law of Unincorporated Associations in Canada* (Toronto, Ont.: LexisNexis, 2020) at §3.1, §3.4, §3.11, PBOA, Tab 99, and see *Williams v. Local Union No. 1562, United Mine Workers of America*, [1919] 59 S.C.R. 240 at para. 56, PBOA, Tab 94; *Longley v. Canada (Attorney General)*, 2007 ONCA 852, at para. 116, PBOA, Tab 61; *International Association of Science and Technology for Development v. Hamza*, 1995 ABCA 9, at para. 17, PBOA, Tab 51.

or related, actions.⁷⁷ That is not the case here. The plaintiffs' claims concern the operation of one system – Canadian major junior hockey – and are made against the defendants that operate that system. There is a representative plaintiff with a claim against each defendant. No *Ragoonanan* problem arises.

B. The Ontario Court has Jurisdiction Over this Action on Traditional Bases

46. The only question raised by the defendants' jurisdiction motion is whether this Court may assert jurisdiction *simpliciter*. As the defendants have raised no *forum non conveniens* arguments, there is no question of this Court declining to exercise its jurisdiction.⁷⁸ This Court's jurisdiction is not defeated by enforceability issues or the fact that another jurisdiction might also appropriately hear the action.⁷⁹

47. Jurisdiction *simpliciter* exists where: (i) the defendant has a presence in Ontario (presence-based jurisdiction); (ii) the defendant attorns to the jurisdiction of the Ontario court (consent-based jurisdiction); or (iii) there is a real and substantial connection between Ontario and the dispute involving the foreign defendant (assumed jurisdiction).⁸⁰

48. While the defendants refer only to assumed jurisdiction, "[t]he real and substantial connection test does not oust the traditional private international law bases for court

⁷⁷ For example, *Ragoonanan Estate v. Imperial Tobacco Canada Ltd.*, [2000] O.J. No. 4597 (Sup. Ct.) was a design negligence case against a number of tobacco companies concerning allegedly unsafe cigarettes that caused furniture fires. Similarly, *Hughes v. Sunbeam Corp. (Canada) Ltd.*, [2002] O.J. No. 3457 (C.A.), concerned design negligence claims against numerous producers of allegedly faulty smoke alarms.

⁷⁸ *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, at para. 51.

⁷⁹ *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30, at para. 34-35, and see Defendants' Jurisdiction Factum, at para. 63. There is no issue of enforceability so long as the defendants are jointly and severally liable.

⁸⁰ *Yip v. HSBC Holdings plc*, 2017 ONSC 5332, at para. 93, aff'd 2018 ONCA 626, leave to appeal refused, [2018] S.C.C.A. No. 410.

jurisdiction."⁸¹ A court need only consider whether it can assume jurisdiction over an action if it has no jurisdiction, based on presence or consent, in the first place.⁸²

49. Where challenged, a plaintiff must make out a "good arguable case" for the court's jurisdiction, based on any unchallenged pleaded facts, and the evidence adduced by the parties.⁸³ The "good arguable case" threshold, which closely resembles the "some basis in fact" standard, requires a plaintiff to show that there is a serious question to be tried or that the case has some chance of success.⁸⁴

i. The Ontario Court has Presence-Based Jurisdiction Over this Action

50. This Court has jurisdiction over this action, and all of the defendants named in it, by virtue of the claims against the CHL League as an unincorporated association. The defendants do not dispute the Ontario courts' jurisdiction over the CHL League. The CHL League's presence in Ontario is clear from the location of its head office, most of its staff and many of its activities, and the governance provision in its constitution.⁸⁵

51. As pleaded, and based on the CHL Constitution, the CHL League is an unincorporated association comprised of all of the defendants. If so, there is a good arguable case for the proposition that the defendants, as the members of the CHL League,

⁸¹ *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), at para. 79.

⁸² *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, [2016 SCC 30](#), at para. 1.

⁸³ *Yip v. HSBC Holdings plc*, [2017 ONSC 5332](#), at para. 106, aff'd [2018 ONCA 626](#), leave to appeal refused, [2018] S.C.C.A. No. 410.

⁸⁴ *Yip v. HSBC Holdings plc*, [2017 ONSC 5332](#), at para. 109, aff'd [2018 ONCA 626](#), leave to appeal refused, [2018] S.C.C.A. No. 410.; *Shah v. LG Chem, Ltd.*, [2015 ONSC 2628](#), at paras. 66-68.

⁸⁵ CHL Constitution, Art. 25.1.

are all jointly and severally liable for the CHL League's failures and are properly named in the plaintiffs' claims against the CHL League, an Ontario entity.

ii. The Ontario Court has Consent-Based Jurisdiction Over this Action

52. The defendants have also consented to this Court's jurisdiction. All of the defendants, as parties to the CHL Constitution, have attorned to Ontario's jurisdiction:

25.1 This Constitution shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

This renders the defendants' claim that, while they are parties to the CHL Constitution, they "have not attorned to the jurisdiction of Ontario's courts" plainly false.⁸⁶

53. It is immaterial that the plaintiffs are not parties to the CHL Constitution. No contractual privity is required to enforce the attornment clause. While the Court of Appeal for Ontario has observed that there are "good reasons to limit the scope of forum selection clauses to those parties who have bargained for their application," here, the parties resisting jurisdiction are precisely the parties that chose Ontario as a forum.⁸⁷ There is no injustice in holding them to their choice.

54. As stated in Walker's *Canadian Conflict of Laws*, "Where a duty of care in tort, or a fiduciary duty that is alleged to have been breached, has arisen in a contractual relationship that is subject to an agreement containing a jurisdiction clause, the clause

⁸⁶ Defendants' Jurisdiction Factum, at para. 69.

⁸⁷ *Aldo Group Inc. v. Moneris Solutions Corporation*, [2013 ONCA 725](#), at para. 46, leave to appeal refused [2014] S.C.C.A. No. 31.

should be applied unless it clearly does not cover the dispute."⁸⁸ Players are at the heart of the CHL Mission.⁸⁹ The duties that the CHL League and the Member Leagues owe players arise, at least in part, from the CHL Constitution itself. The plaintiffs' systemic claims based on these duties fall within the attornment clause in the CHL Constitution.

55. While no such finding is necessary, given the defendants' attornment in the CHL Constitution, the defendants also attorned to Ontario's jurisdiction by bringing a dual motion that asks this Court to apply the *Ragoonanan* principle to strike certain claims under Rule 21.01(1)(b). Attornment occurs when a party "appears in court and goes beyond challenging the jurisdiction of the court based on jurisdiction *simpliciter* and *forum non conveniens*."⁹⁰ A party that brings a motion to strike claims as disclosing no reasonable cause of action under Rule 21.01(1)(b) attorns to the court's jurisdiction.⁹¹

56. In one motion, the defendants question this Court's jurisdiction over this action, and, simultaneously, ask the Court to exercise its jurisdiction by applying Rule 21.01(1)(b) and the *Ragoonanan* principle, a piece of law only applicable in Ontario.⁹² A defendant is

⁸⁸ Janet Walker, *Castel & Walker: Canadian Conflict of Laws*, 6th Ed. (Markham, Ont.: LexisNexis, 2005), at § 2.04.5, PRBOA, Tab 7.

⁸⁹ The plaintiffs have been unable to identify a Canadian case where a defendant resisted the jurisdiction of a forum to which it had attorned in a relevant contract. However, courts in the United States have found that "a non-signatory party may enforce a forum selection clause in a contract if that party is a third-party beneficiary of the contract or is closely related to the contractual relationship or dispute such that it is foreseeable that the party will be bound": *Nutrimost v. Werfel*, 2016 US Dist. Lexis 192878, at p. 7, PRBOA, Tab 3. CHL players are third-party beneficiaries of the CHL Constitution.

⁹⁰ *Wolfe v. Pickar*, [2011 ONCA 347](#), at para. 44; and see *Fraser v. 4358376 Canada Inc.*, [2014 ONCA 553](#), at para. 14; *M.J. Jones Inc. v. Kingsway General Insurance Company*, [\[2004\] O.J. No. 3286](#) (C.A.), at paras. 19-22.

⁹¹ *Sauer v. Canada (Minister of Agriculture)*, [\[2006\] O.J. No. 26](#), at paras. 87-88, aff'd [2007 ONCA 454](#), leave to appeal refused, [2007] S.C.C.A. No. 454, and see *Web Offset Publications Ltd. v. Vickery*, [\[1998\] O.J. No. 6478](#) (Gen. Div.), aff'd, [\[1999\] O.J. No. 2760 \(C.A.\)](#); *Yaiguaje v. Chevron Corporation*, [2013 ONCA 758](#), at para. 72, aff'd, [2015 SCC 42](#); *Title v. Canadian Asset Based Lending Enterprise (CABLE) Inc.*, [2011 ONCA 715](#), at para. 15; *2106701 Ontario Inc. v. 2288450 Ontario Limited*, [2016 ONSC 2673](#), at paras. 35-36.

⁹² *Vecchio Longo Consulting Services Inc. v. Aphria Inc.*, [2021 ONSC 5405](#), at paras. 168-177.

"precluded from contemporaneously disputing jurisdiction while at the same time engaging jurisdiction by seeking a ruling in its favour on the merits."⁹³

57. This is not a scheduling issue.⁹⁴ The plaintiffs do not suggest that the defendants attorned by defending certification. The defendants could have raised *Ragoonanan* as a defence to certification without attorning. However, there is a clear difference between defending a non-jurisdictional motion, and bringing one. By invoking Rule 21.01(1)(b) and *Ragoonanan* on their motion, the defendants asked this Court to exercise its jurisdiction and deal substantively with the case against them. This problem, which renders the defendants' motion self-defeating, would have existed whenever it was heard.

58. A defendant cannot raise a jurisdictional challenge – going to the heart of a court's competence to hear a case – as but one arrow in their quiver. Defendants must choose between resisting the court's jurisdiction and accepting jurisdiction in order to use "the full panoply of Ontario substantive and procedural law available to them."⁹⁵ The "expected" consequence of challenging jurisdiction is that a foreign defendant becomes "limited to making only a jurisdictional objection in their motions."⁹⁶

59. The Supreme Court of Canada has commented, "[u]ltimately, it is up to each defendant to determine the best way to approach this conundrum, and each must bear the

⁹³ *Sauer v. Canada (Minister of Agriculture)*, [2006] O.J. No. 26, at para. 88, aff'd 2007 ONCA 454, leave to appeal refused, [2007] S.C.C.A. No. 454; citing *M.J. Jones Inc. v. Kingsway General Insurance Company*, [2004] O.J. No. 3286 (C.A.), at paras. 19-22.

⁹⁴ After this court ordered that the parties' motions be heard at the same time, plaintiffs' counsel confirmed to defendants' counsel that they would not "argue that all Defendants have attorned to the jurisdiction of the Ontario Superior Court by following the Court's direction." The defendants chose to bring a Rule 21.01(1)(b) *Ragoonanan* motion before discussing the issue with plaintiffs' counsel or addressing it with the Court.

⁹⁵ *Yaiguaje v. Chevron Corporation*, 2013 ONCA 758, at para. 56, aff'd, 2015 SCC 42.

⁹⁶ *Yaiguaje v. Chevron Corporation*, 2013 ONCA 758, at para. 56 and see para. 72, aff'd, 2015 SCC 42.

consequences of the strategy chosen."⁹⁷ The defendants chose to raise the *Ragoonanan* principle and invoke Rule 21.01(1)(b) on their own motion. They could have raised it on behalf of only the non-foreign defendants, or sought a court order to avoid attorning.⁹⁸ They did not and must now bear the consequences.

C. This Court can Assume Jurisdiction Over this Action

60. This Court has jurisdiction over this action based on the defendants' presence in Ontario, and their consent. No assumption of jurisdiction is necessary. However, were it necessary, this Court could assume jurisdiction over this action. This Court can assume jurisdiction based on a real and substantial connection between this action and Ontario based on two of the four *Van Breda* presumptive connecting factors: a contract connected with the dispute was made in Ontario, and the defendants carry on business in Ontario.⁹⁹

i. An Ontario Contract is Connected with the Dispute

61. The CHL Constitution is a contract connected to the dispute that was made in Ontario. The first step in applying this factor is to "identify the dispute."¹⁰⁰ The plaintiffs' primary claims, in systemic negligence against the CHL League and the Member Leagues, concern duties owed to players by the Leagues under the Leagues' constitutions.

⁹⁷ *Barer v. Knight Brothers LLC*, [2019 SCC 13](#), at para. [2](#).

⁹⁸ For cases where defendants took steps to avoid attorning, see *Wall Estate v. GlaxoSmithKline Inc.*, [2010 SKQB 351](#), at para. [23](#); *MacKinnon v. Instalcoans Financial Solution Centres (Kelowna) Ltd.*, [2004 BCCA 137](#), at para. [37](#); *Marren v. Echo Bay Mines Ltd.*, [2002 BCCA 598](#).

⁹⁹ *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), at paras. [91](#) and [94](#).

¹⁰⁰ *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, [2016 SCC 30](#), at para. [37](#).

62. The CHL Constitution, which is to be "treated in all respects as an Ontario contract,"¹⁰¹ is closely connected to this dispute and the plaintiffs' interests as players in the CHL League. It grounds the duties the Leagues owe on player safety. The CHL Constitution:

- (a) Professes a mission of benefitting players and ensuring player safety;¹⁰²
- (b) Describes who can play in the CHL; the support they are to receive; and how they can be disciplined by the CHL League;¹⁰³
- (c) Provides authority to act in relation to player safety and requires the implementation by the CHL League of player safety regulations and policies (the absence of which, the plaintiffs plead, caused the harms that players suffered).¹⁰⁴
- (d) Governs the relationships between the defendants, binding the Teams together as the CHL League and creating, in the plaintiffs' view, a basis to find the Teams jointly and severally liable for the CHL League's systemic negligence.¹⁰⁵

63. The defendants' attempts to characterize this agreement as governing only "business activities" and "contractual obligations" must fail.¹⁰⁶ This position – the only evidence for which is MacKenzie's (unreliable) testimony – is contradicted by the CHL Constitution itself.¹⁰⁷ The CHL Constitution puts players at the core of the CHL League's mission, and creates obligations to protect them. It is integral to this dispute.

64. It does not matter that players are not parties to this agreement.¹⁰⁸ Justice Abella observed that narrowing this presumptive factor to require that an alleged tortfeasor be a party to the contract would "unduly narrow the scope of *Van Breda*, and undermines the

¹⁰¹ CHL Constitution, Art. 25.1.

¹⁰² CHL Constitution, Art. 3.

¹⁰³ CHL Constitution, Arts. 5.1(3), 9.1(4), 14, and 16.

¹⁰⁴ Fresh as Amended Statement of Claim at para. 124; CHL Constitution, Art. 15.

¹⁰⁵ See Plaintiffs' Certification Factum at paras. 84-95.

¹⁰⁶ Defendants' Jurisdiction Factum, at para. 72.

¹⁰⁷ See paras. 13 to 24, above.

¹⁰⁸ Defendants' Jurisdiction Factum, at para. 72 .

flexibility required in private international law."¹⁰⁹ So, too, would requiring that the plaintiffs be parties to the contract.

65. The Standard Player Agreements ["SPAs"] are not, as the defendants claim, the "only contracts relevant to this action."¹¹⁰ The SPAs do not speak to the full range of the Leagues' obligations to players. The Court need not construe the SPAs to determine this dispute. In any event, raising a second contract does not defeat the first: "nothing in *Van Breda* suggests that the fourth factor is unavailable when more than one contract is involved, or that a different inquiry applies in these circumstances."¹¹¹

66. When the defendants entered the CHL Constitution, an Ontario contract that describes responsibility for player safety, it became reasonable for them to expect that they would be called to answer legal proceedings connected to player safety in Ontario.¹¹² This presumptive factor is sufficient for the Court to assume jurisdiction over this action.

ii. The Defendants Carry on Business in Ontario

67. All of the defendants carry on business in Ontario, both in their own regard as participants in the CHL League, and through the CHL League as their representative. If the CHL League is an unincorporated association, then all of the defendants are present in, and carry on business in, Ontario as the CHL League. Even if it is not, the defendants carry on business in Ontario in their own regard by participating in the operation and

¹⁰⁹ *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, [2016 SCC 30](#), at para. [32](#).

¹¹⁰ Defendants' Jurisdiction Factum, at para. 70.

¹¹¹ *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, [2016 SCC 30](#), at para. [44](#).

¹¹² *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), at para. [92](#); Defendants' Jurisdiction Factum, at para. 66.

governance of the CHL League. This is particularly true of the WHL and QMJHL Leagues, whose Commissioners, as members of the Executive Council, oversee "the day-to-day management" of the CHL League.¹¹³

68. Each defendant also carries on business in Ontario through the CHL League as its representative. Discerning whether a representative carries on a foreign corporation's business requires "an investigation of the functions they have been performing and all aspects of the relationship,"¹¹⁴ considering, among other things:

- (a) The degree of control exercised by the foreign corporation over the running of the business conducted by the representative;
- (b) The business, if any, that the representative transacts as principal exclusively on their own behalf;
- (c) Contracts made by the representative with third parties in the name of the foreign corporation or in a manner such as to bind the foreign corporation, and whether specific authority is required before the representative enters such contracts; and
- (d) Contributions made, by the foreign corporation, to the financing of the business carried on by the representative.¹¹⁵

69. Applying these factors, the CHL League carries on the business of all of the defendants.¹¹⁶ First, the defendants exercise a high degree of control over the CHL League's business. The Member Leagues, through the participation of their Commissioners in the Executive Council, operate the business of the CHL League.¹¹⁷

¹¹³ CHL Constitution, Arts. 8.1, 8.2.

¹¹⁴ *H.M.B. Holdings Ltd. v. Antigua and Barbuda*, [2021 SCC 44](#), at para. 37.

¹¹⁵ *H.M.B. Holdings Ltd. v. Antigua and Barbuda*, [2021 SCC 44](#), at para. 37.

¹¹⁶ Each defendant also carries on business in Ontario through another entity, "CHL Properties", which performs "functions related to the exploitation, with a view to a profit, of intellectual property and other intangible rights of the CHL, the Member Clubs and the Regional Leagues": CHL Constitution, Art. 19.

¹¹⁷ CHL Constitution, Art. 8.

70. Second, the CHL League does not engage in business on its own behalf. The CHL League's mission is entirely intertwined with the operations of the Teams and Leagues. The CHL League can only act in furtherance of that mission.¹¹⁸ It cannot engage in business "as principal exclusively on [its] own behalf." This is further demonstrated by the fact that the CHL League never retains any profits.¹¹⁹

71. Third, the CHL League makes contracts with third parties that bind the defendants. The CHL League contracted with the IRP Panellists on behalf of the Member Leagues.¹²⁰ The CHL League also contracts with the NHL and the International Ice Hockey Federation ["IIHF"] on behalf of the Teams.¹²¹ Article 17 of the CHL Constitution provides the CHL League authority to contract as agent for and on behalf of the defendant Teams, and requires Teams to comply with these contracts. No specific authority is required before the CHL League enters such contracts. The CHL League is not "entitled to any rights fees or other payments made" under these agreements.¹²²

72. Finally, the defendants contribute to financing the CHL League's business. In an intertwined business model, the revenue generated by the CHL League arises from the activities of the Teams, and is returned to the Teams:

- (a) The CHL League receives a global payment from the NHL for "player development" which it distributes to the Teams according to a formula, agreed

¹¹⁸ CHL Constitution, Art. 3.3.

¹¹⁹ As Mackenzie described, "The CHL earns revenue from ad or subscription sales and sponsorships. The CHL pays its CHL-level expenses. At the end of the year, the CHL, given that it is a not-for-profit, makes a distribution to the teams": Affidavit of Dan MacKenzie, sworn April 20, 2022, at para. 8, DMR, Vol. IV, Tab 23, p. 535.

¹²⁰ The Terms of Reference between the CHL League and the IRP panelists were signed by the CHL League, with the Member Leagues included as parties. They include forum selection clauses in favour of Ontario: Exhibit A to the Thériault CXE, TB, Vol. 8, Tab 31, pp. 4221-34.

¹²¹ Branch CXE, 16:21-18:25, TB, Vol. 5, Tab 25, pp. 2974-76; Affidavit of Dan MacKenzie, sworn April 20, 2022, at para. 7, DMR, Vol. IV, Tab 23, p. 535; Defendants' Jurisdiction Factum, at para. 26(c).

¹²² CHL Constitution, Art. 17.4.

with the NHL, that directs more money to those Teams whose players were drafted into the NHL in early rounds of the draft.¹²³

(b) The CHL League receives a global payment from the IIHF for sending players to the "World Juniors".¹²⁴ This is distributed equally among the Teams.¹²⁵

(c) Revenue from "ad subscription, sales and sponsorship" flows from the CHL League to the Member Leagues who distribute these funds to the Teams.¹²⁶

(d) The CHL League holds the revenue it receives on behalf of the Teams in trust.¹²⁷ The CHL League must remit these amounts "as soon as reasonably practicable" to the Member Leagues, who must then transfer them to the Teams.¹²⁸

(e) Where the revenues derived by the CHL League do not cover the CHL League's expenses, the CHL League can "levy an assessment" requiring each Team to pay a certain amount to continue their membership in the CHL League.¹²⁹

73. Each defendant carries on business in Ontario as a constituent part of the CHL League; by independently participating in the operation, governance and activities of the CHL League; and through the CHL League as its representative.

iii. The Presumptive Factors are Not Rebutted

74. Two presumptive connecting factors for establishing a real and substantial connection are present in this case. Once a plaintiff demonstrates the presence of a presumptive connecting factor, the party challenging jurisdiction bears the burden of rebutting the presumptive factor by showing that "the presumptive connecting factor does

¹²³ This contract is the "NHL/CHL Agreement", it is periodically renegotiated by the NHL and CHL League, the last term was 7 years: Branch CXE, 16:21-30:14, TB, Vol. 5, Tab 25, pp. 2974-78.

¹²⁴ Branch CXE, 21:14-22, 23:1-20; 24:17-25:16, TB, Vol. 5, Tab 25, pp. 2979, 2981, 2982-83. The payment is in the range of "one to five or six million", though in an exceptional year it may be closer to "ten million." These funds are a share of the profits paid by the IIHF to Hockey Canada, part of which is then sent to the CHL League: Branch CXE, 28:3-11, TB, Vol. 5, Tab 25, p. 2986-87.

¹²⁵ Branch CXE, 28:12-29:1, TB, Vol. 5, Tab 25, pp. 2986.

¹²⁶ Affidavit of Dan MacKenzie, sworn April 20, 2022, at para. 8, DMR, Vol. IV, Tab 23, p. 535; MacKenzie Corr. CXE, 8:17-9:11, TB, Vol. 9, Tab 35, pp. 4743-44.

¹²⁷ CHL Constitution, Arts. 17.4, 17.8, 20.2.

¹²⁸ CHL Constitution, Art. 20.2.

¹²⁹ CHL Constitution, Art. 20.3.

not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them."¹³⁰ The defendants have not done so.

75. The defendants argue that the "place where the injury occurred" is paramount in determining jurisdiction.¹³¹ They contend that, for all players on non-Ontario Teams, the abuse they experienced did not occur in Ontario.¹³² This contention does not weaken the relationship demonstrated by the connecting factors identified. The physical location where the harm is experienced is not dispositive of where a tort occurred as a legal matter.

76. Given the nature of systemic negligence, the location of harm cannot be paramount in determining jurisdiction. Systemic negligence at the top of a system that transcends jurisdictional lines causes injuries in multiple jurisdictions. Here, while it did not take place entirely in Ontario, it also cannot be said to have taken place "wholly in another province."¹³³ Systemic negligence arises "other than in a province."¹³⁴ It cannot be the case that you cannot litigate systemic negligence anywhere, because it causes harm everywhere. Such a finding would defeat systemic negligence claims entirely.

77. In any event, important elements of the tort of systemic negligence, as alleged against the CHL League, took place in Ontario. In determining the location of a tort, "the court adopts a flexible and pragmatic approach" and considers "all the elements required

¹³⁰ *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), at paras. [81](#), [95](#), [100](#).

¹³¹ Defendants' Jurisdiction Factum, at para. 81.

¹³² Defendants' Jurisdiction Factum, at paras. 51-56, 81-86.

¹³³ *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [\[1994\] 3 S.C.R. 1022](#), at p. 1065, as cited in Defendants' Jurisdiction Factum, at para. 82.

¹³⁴ *Brazeau v. Attorney General (Canada)*, [2019 ONSC 1888](#), at paras. [385-87](#), rev'd in part on other grounds, [2020 ONCA 184](#).

to complete the alleged tort." ¹³⁵ The failures in governance at the CHL League-level should be deemed to have occurred in Ontario, where the CHL League is based. ¹³⁶

78. The defendants fail to rebut the presumption of jurisdiction that arises from the two presumptive connecting factors identified. In the circumstances, "the court must acknowledge that it has jurisdiction and hold that the action is properly before it." ¹³⁷ This is true even if jurisdiction over the defendants is established only with regards to claims against the CHL League. Once jurisdiction over one aspect of a case is established, a court is not limited to hearing only the specific part of the case that can be directly connected with the jurisdiction. If a real and substantial connection exists in respect of a factual and legal situation, the court must assume jurisdiction over all aspects of the case. ¹³⁸

PART IV - ORDER REQUESTED

79. The plaintiffs request that the defendants' *Ragoonanan* and jurisdiction motion be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of October, 2022.



James Sayce/Vlad Calina/Sue Tan/
Caitlin Leach
KOSKIE MINSKY LLP

Lawyer for the Plaintiffs

¹³⁵ *Beijing Hehe Fengye Investment Co. Limited v. Fasken Martineau Dumoulin LLP*, [2020 ONSC 934](#), at para. [59](#).

¹³⁶ Fresh as Amended Statement of Claim, at para. 11. The CHL League is headquartered in Ontario, governed by Ontario law, and has attorned to jurisdiction of Ontario courts.

¹³⁷ *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), at para. [98](#).

¹³⁸ *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#), at para. [99](#).

**SCHEDULE “A”
LIST OF AUTHORITIES**

Jurisprudence

1. *2106701 Ontario Inc. v. 2288450 Ontario Limited*, [2016 ONSC 2673](#).
2. *Aldo Group Inc. v. Moneris Solutions Corporation*, [2013 ONCA 725](#), leave to appeal refused, [2014] S.C.C.A. No. 31.
3. *Barer v. Knight Brothers LLC*, [2019 SCC 13](#).
4. *Beijing Hehe Fengye Investment Co. Limited v. Fasken Martineau Dumoulin LLP*, [2020 ONSC 934](#).
5. *Bell Canada v. Canada (A.G.)*, [2019 SCC 66](#).
6. *Brazeau v. Attorney General (Canada)*, [2019 ONSC 1888](#), rev'd in part, [2020 ONCA 184](#).
7. *Bruce v. Cohon*, [2016 BCSC 419](#), aff'd [2017 BCCA 186](#), leave to appeal refused, [2017] S.C.C.A. No. 307.
8. *Club Resorts Ltd. v. Van Breda*, [2012 SCC 17](#).
9. *Das v George Weston Limited*, [2017 ONSC 4129](#), aff'd [2018 ONCA 1053](#), leave to appeal refused, [2019] S.C.C.A. No. 69.
10. *Denver Rockets v. All-Pro Management Inc.* (1971), 325 F. Supp. 1049 (US District Court).
11. *Fraser v. 4358376 Canada Inc.*, [2014 ONCA 553](#).
12. *Fallowka v. Pinkerton's of Canada Ltd.*, [2010 SCC 5](#).
13. *H.M.B. Holdings Ltd. v. Antigua and Barbuda*, [2021 SCC 44](#).
14. *Hall v. National Basketball Association* (1987), 651 F. Supp. 335 (US District Court).
15. *Hughes v. Sunbeam Corp. (Canada) Ltd.*, [\[2002\] O.J. No. 3457](#) (C.A.).
16. *International Association of Science and Technology for Development v. Hamza*, [1995 ABCA 9](#).
17. *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, [2016 SCC 30](#).
18. *Lockridge v. Director, Ministry of the Environment*, [2012 ONSC 2316](#) (Div. Ct.).

19. *Longley v. Canada (Attorney General)*, [2007 ONCA 852](#).
20. *M.J. Jones Inc. v. Kingsway General Insurance Company*, [\[2004\] O.J. No. 3286](#) (C.A.).
21. *MacKinnon v. Instalogs Financial Solution Centres (Kelowna) Ltd.*, [2004 BCCA 137](#).
22. *Marren v. Echo Bay Mines Ltd.*, [2002 BCCA 598](#).
23. *Martin v. Astrazeneca Pharmaceuticals PLC*, [2012 ONSC 2744](#) (Sup. Ct.); aff'd [2013 ONSC 1169](#) (Div. Ct.).
24. *Mensour v. The Corporation of the Municipality of Lemington*, [2012 ONSC 3525](#) (Div. Ct.).
25. *National Hockey League v. Pepsi Cola Canada Ltd.*, [\[1992\] 70 B.C.L.R. \(2d\) 27](#) (Sup. Ct.), aff'd, [\[1995\] 2 B.C.L.R. \(3d\) 3](#) (C.A.).
26. *Nutrimost v. Werfel*, 2016 US Dist. Lexis 192878.
27. *Olson v. Major League Baseball*, 29 F.4th 59 (USCA 2nd Cir. 2022).
28. *Ottawa Football Club v. Canada (Minister of Fitness and Amateur Sports)*, [\[1989\] 2 FC 480](#).
29. *Ragoonanan Estate v. Imperial Tobacco Canada Ltd.*, [\[2000\] O.J. No. 4597](#) (Sup. Ct.).
30. *Raponi v. Olympia Trust Company*, [2022 ONSC 4480](#).
31. *Sauer v. Canada (Minister of Agriculture)*, [\[2006\] O.J. No. 26](#), aff'd [2007 ONCA 454](#), leave to appeal refused, [2007] S.C.C.A. No. 454.
32. *Shah v LG Chem, Ltd.*, [2015 ONSC 2628](#).
33. *Title v. Canadian Asset Based Lending Enterprise (CABLE) Inc.*, [2011 ONCA 715](#).
34. *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [\[1994\] 3 S.C.R. 1022](#).
35. *Toronto Blue Jays Baseball Club v. Ontario (Minister of Finance)*, [\[2004\] O.J. No. 1751](#) (Sup. Ct.), rev'd, [250 D.L.R. \(4th\) 63](#) (Ont. C.A.).
36. *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*, [\[1996\] O.J. No. 1568](#) (Gen. Div.).
37. *Vancouver Hockey Club Ltd. v. 8 Hockey Ventures Inc.*, [\[1987\] B.C.J. No. 2074](#) (Sup. Ct.).

38. *Vecchio Longo Consulting Services Inc. v. Aphria Inc.*, [2021 ONSC 5405](#).
39. *Wall Estate v. GlaxoSmithKline Inc.*, [2010 SKQB 351](#).
40. *Web Offset Publications Ltd. v. Vickery*, [\[1998\] O.J. No. 6478](#) (Gen. Div.), aff'd, [\[1999\] O.J. No. 2760 \(C.A.\)](#).
41. *Williams v. Local Union No. 1562, United Mine Workers of America*, [\[1919\] 59 S.C.R. 240](#).
42. *Wolfe v. Pickar*, [2011 ONCA 347](#).
43. *Yaiguaje v. Chevron Corporation*, [2013 ONCA 758](#), aff'd, [2015 SCC 42](#).
44. *Yaiguaje v. Chevron Corporation*, [2018 ONCA 472](#), leave to appeal refused, [2018] S.C.C.A. No. 255.
45. *Yip v HSBC Holdings plc*, [2017 ONSC 5332](#), aff'd [2018 ONCA 626](#), leave to appeal refused, [2018] S.C.C.A. No. 410.

Secondary Sources

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2. John Barnes, *The Law of Hockey* (Markham, Ont.: LexisNexis, 2010).
3. *Gower's Principles of Modern Company Law*, 10th ed. (London, UK: Thomson Reuters, 2016).
4. Janet Walker, *Castel & Walker: Canadian Conflict of Laws*, 6th Ed. (Markham, Ont.: LexisNexis, 2005).

**SCHEDULE “B”
RELEVANT STATUTES AND REGULATIONS**

1. *Partnerships Act, R.S.O. 1990, c. P.5.*

Section 13:

Except as provided in subsection 10 (2), every partner is liable jointly with the co-partners and also severally for everything for which the firm, while the person is a partner therein, becomes liable under section 11 or 12.

2. *Not-for-Profit Corporations Act, 2010, S.O. 2010, c. 15.*

Section 24:

(1) At the first meeting of the members and at each succeeding annual meeting at which an election of directors is required, the members shall, by ordinary resolution, elect directors to hold office for a term expiring not later than the close of the fourth annual meeting of the members after the election, as provided in the by-laws. 2010, c. 15, s. 24 (1).

(2) Each first director holds office from the issue of the certificate of incorporation until the close of the first meeting of the members. 2010, c. 15, s. 24 (2).

(3) It is not necessary that all directors elected at a meeting of the members hold office for the same term. 2010, c. 15, s. 24 (3).

(4) A director not elected for an expressly stated term ceases to hold office at the close of the next annual meeting of the members. 2010, c. 15, s. 24 (4).

(5) If directors are not elected at a meeting of the members, the incumbent directors continue in office until their successors are elected. 2010, c. 15, s. 24 (5).

(6) If a meeting of the members fails to elect the number or the minimum number of directors required by the articles, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum. 2010, c. 15, s. 24 (6).

(7) The directors may appoint one or more additional directors who shall hold office for a term expiring not later than the close of the next annual meeting of the members, but the total number of directors so appointed may not exceed one-third of the number of directors elected at the previous annual meeting of the members. 2010, c. 15, s. 24 (7).

(8) An individual who is elected or appointed to hold office as a director is not a director, and is deemed not to have been elected or appointed to hold office as a director, unless the individual consents in writing to hold office as a director before or within 10 days after the election or appointment.

(9) Despite subsection (8), if an individual elected or appointed consents in writing after the period mentioned in that subsection, the election or appointment is valid. 2010, c. 15, s. 24 (9).

(10) Subsection (8) does not apply to a director who is re-elected or reappointed where there is no break in his or her term of office. 2010, c. 15, s. 24 (10).

Section 26:

(1) The members of a corporation may, by ordinary resolution at a special meeting, remove from office any director or directors, except persons who are directors by virtue of their office. 2010, c. 15, s. 26 (1).

(2) A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of members of that class or group. 2010, c. 15, s. 26 (2).

(3) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or under section 28. 2010, c. 15, s. 26 (3).

Section 48:

(1) The by-laws of a corporation must set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member. 2010, c. 15, s. 48 (1).

(2) The by-laws may provide for persons to be members by virtue of their office. 2010, c. 15, s. 48 (2).

(3) If the articles provide for two or more classes or groups of members, the by-laws must provide,

(a) the conditions for membership in each class or group;

(b) the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer; and

(c) the conditions on which membership in a class or group ends. 2010, c. 15, s. 48 (3).

(4) The members of a corporation that has only one class or group of members have the right to vote at any meeting of the members. 2010, c. 15, s. 48 (4).

(5) If the articles provide for two or more classes or groups of members, the articles must provide the members of at least one class or group with the right to vote at meetings of the members. 2010, c. 15, s. 48 (5).

(6) Unless the articles provide otherwise, each member is entitled to one vote at a meeting of the members. 2010, c. 15, s. 48 (6).

(7) The corporation shall recognize any individual authorized by a member corporation or other entity to represent the member at meetings and the individual may exercise all the powers of that corporation or entity on its behalf. 2010, c. 15, s. 48 (7).

(8) Unless the articles or by-laws provide otherwise, a membership may be transferred only to the corporation. 2010, c. 15, s. 48 (8).

3. Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23.

Section 7:

(1) Articles of incorporation shall follow the form that the Director fixes and shall set out, in respect of the proposed corporation,

(a) the name of the corporation;

(b) the province where the registered office is to be situated;

(c) the classes, or regional or other groups, of members that the corporation is authorized to establish and, if there are two or more classes or groups, any voting rights attaching to each of those classes or groups;

(d) the number of directors or the minimum and maximum number of directors;

(e) any restrictions on the activities that the corporation may carry on;

(f) a statement of the purpose of the corporation; and

(g) a statement concerning the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation.

(2) Articles of incorporation shall set out, in respect of the proposed corporation, any provision required by any other Act of Parliament to be set out in the articles.

(3) The articles may set out any provisions that may be set out in the by-laws.

(3.1) Any requirement under this Act to set out a provision in the by-laws is deemed met by setting out the provision in the articles.

(4) Subject to subsection (5), if the articles or a unanimous member agreement requires a greater number of votes of directors or members than that required by this Act to effect any action, the provisions of the articles or of the unanimous member agreement prevail.

(5) The articles may not require a greater number of votes of members to remove a director than the number required by section 130.

Section 128:

(3) Members shall, by ordinary resolution at each annual meeting at which an election of directors is required, elect directors to hold office for a term expiring within the prescribed period.

Section 130:

(1) The members of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

(2) A director elected by a class or group of members that has an exclusive right to elect the director may only be removed by an ordinary resolution of those members.

Section 154:

(1) The by-laws shall set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member.

(2) If the articles provide for two or more classes or groups of members, the by-laws shall provide

(a) the conditions for membership in each class or group;

(b) the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer; and

(c) the conditions on which membership in a class or group ends.

(3) The members of a corporation that has only one class or group of members have the right to vote at any meeting of the members.

(4) If the articles provide for two or more classes or groups of members, the articles shall provide the members of at least one class or group with the right to vote at a meeting of members.

(5) Unless the articles otherwise provide, each member is entitled to one vote at a meeting of members.

(6) The corporation shall recognize any individual authorized by a member corporation or other entity to represent the member at meetings.

(7) The individual may exercise on behalf of the member corporation or other entity all the powers of that corporation or entity.

(8) Unless the by-laws otherwise provide, a membership may be transferred only to the corporation.

4. Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

Rule 4.06(2):

An affidavit shall be confined to the statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except where these rules provide otherwise.

Rule 21.01(1):

A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

Rule 39.01(4):

An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

APPENDIX A: PROVISIONS FROM THE LEAGUES' CONSTITUTIONS

Provisions from Canadian Hockey League (CHL) Constitution¹³⁹

THIS CONSTITUTION, a unanimous member agreement, is made... between all voting members of the Canadian Hockey League (the "CHL") being each original member club listed on Exhibit A (each, an "Original Member Club"), each other individual, corporation, partnership, trust, unincorporated organization or other entity which after the date hereof becomes a member of the CHL pursuant to the terms hereof and executes and delivers a counterpart hereto (the "Future Member Clubs" and, together with the Original Member Clubs, collectively, the "Member Clubs"), and the non-voting members of the CHL, being the Ontario Major Junior Hockey League, doing business as the Ontario Hockey League, the Quebec Major Junior Hockey League Inc. and the Western Hockey League (collectively, the "Regional Leagues", and together with the Member Clubs, the "members") and the CHL.

WHEREAS the CHL is governed by the Act;

AND WHEREAS the members, acting under authority contained in the Act, have agreed to enter into this Constitution so as to restrict, in part, the powers of the Directors to manage, or supervise the management of, the activities, business and affairs of the CHL and to provide that, to the extent that this Constitution restricts the powers of the Directors to manage, or supervise the management of, the activities, business and affairs of the CHL, the members shall assume such powers and thereby relieve such Directors of such rights, powers, duties and liabilities to the fullest extent permitted by the Act;

...

Mission

- 3.1 The mission of the CHL is to provide the best amateur junior age hockey Players with highest-quality skills development and training, participation in hockey competition on a regional and national basis, academic and player support services, funding for higher education, and access to professional hockey opportunities (the "CHL Mission").
- 3.2 To further the CHL Mission, the CHL is organized to:
- (1) Promote and foster the success of high-quality amateur hockey competition among the Member Clubs, including with respect to Member Clubs located in remote or small communities ("CHL Hockey"); and
 - (2) Promote and foster the success and development of the Regional Leagues, of which the Member Clubs are also members;

¹³⁹ Affidavit of Dan MacKenzie, sworn April 20, 2022, Exhibit A, DMR Vol IV pp. 540-590

- (3) Ensure that the hockey players of Member Clubs (collectively, the "Players") are provided with a safe and high-quality environment that ensures that they develop as exceptional students and athletes; and
- (4) Ensure that prospective Players have unsurpassed access to professional hockey opportunities through fair and respectful draft processes.

3.3 All actions of the CHL shall be in furtherance of the CHL Mission.

...

Membership

- 4.1 Membership in the CHL shall include each original Member Club listed in Exhibit A, such Future Member Clubs as may be hereafter duly granted membership and each Regional League.
- 4.2 Each Member Club shall be and remain a member in good standing of a Regional League.
- 4.6 Upon the recommendation of the Board of Directors and a Supermajority Vote, a Member Club may be expelled from the CHL. The Board of Directors may recommend expulsion when, in its judgment, a Member Club has failed to abide by this Constitution or the CHL Regulations, or has engaged in conduct significantly detrimental to CHL Hockey or the CHL Mission.
- 4.9 Each Member Club shall be a voting member of the CHL and shall be entitled to one vote in respect of any Majority Vote or Supermajority Vote. Each Regional League shall be a non-voting member of the CHL and shall not be entitled to vote in respect of any matter, including any Majority Vote or Supermajority Vote, except as required by applicable law.

CHL Members

- 5.1 Each member shall be responsible to:
 - (1) Abide by this Constitution and the CHL Regulations;
 - (2) Foster the promotion of the CHL Mission through its operation of an amateur hockey team under the auspices of the CHL and a Regional League;
 - (3) Protect the integrity of CHL Hockey and the quality of the support to Players by ensuring that:

- (a) Players receive instruction and skills development of the highest quality; quality secondary level education and academic support; a nurturing club; and a billet program which provides a family atmosphere;
 - (b) Players have a safe environment, both on and off the ice;
 - (c) Players have unsurpassed access to professional hockey opportunities and to higher education opportunities, including through the development of scholarships to fund Players' higher education opportunities, including through the development of scholarships to fund Players' higher education costs;
 - (d) Players are provided with every opportunity to develop as exceptional students and athletes; and
 - (e) Prospective Players are afforded a fair and respectful opportunity to participate in CHL Hockey through the annual draft process (as described in Section 14.5 and Section 14.6) and are placed in a Regional League with clubs located in reasonable proximity to their family home;
- (4) Participate fully in all CHL promotional, governance, and operational activities as required by the Board of Directors;
 - (5) In the case of a Member Club, attend through the Principal Owner, the annual CHL Meeting; provided that the Principal Owner may, with the prior approval of the Board of Directors, appoint an alternate with a demonstrated substantial relationship to the Member Club to attend, participate and, to the extent required, vote in his or her place; and
 - (6) In the case of a Member Club, participate in such meetings of Member Clubs and teleconferences as are scheduled by the Board of Directors.
- 5.2 Subject to Section 5.3, the CHL and each member releases, holds harmless, and shall indemnify each current and former Director, President, CHL officer, member of the Executive Council, or another individual who acts or acted at the CHL's request as a director, officer or member of an *ad hoc* member working group or in a similar capacity of another entity; and heirs and legal representatives; against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgement, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of his or her association with the CHL or such other entity at the CHL's request.

Regional Leagues

- 6.1 The Regional Leagues shall be an integral part of the governance and operation of the CHL, each being organized to produce amateur hockey competition consistent with the CHL Mission.
- 6.2 Each Regional League shall be responsible for organizing and operating CHL Hockey games, other than the games described in Article 12 and Article 13 and such other games as the Board of Directors may approve, including establishing the playing rules, approving venues, providing officiating, and regulating game operations and conduct. Each Regional League shall conduct hockey operations and other business affairs in a manner designed and intended to further the CHL Mission.
- 6.3 Without limiting the generality of Section 7.10, the Board of Directors may direct, and if necessary overrule, a decision of a Regional League in any matter relating to the organization or operation of CHL Hockey games that is contrary to the CHL Mission or to maintaining the high quality or reputation of CHL Hockey.

...

Board of Directors

- 7.1 The business and affairs of the CHL shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the CHL except in respect of Major Decisions or as otherwise provided herein. The size of the Board of Directors shall be nine. The following persons shall be elected to the Board of Directors:
- (1) The commissioner of each Regional League;
 - (2) A nominee designated by each Regional League who is either the chairman of the board of governors or a member of the executive council or committee of such Regional League; and
 - (3) A nominee designated by each Regional League who is the direct or indirect owner of not less than a 15% equity interest in a Member Club in such Regional League.

Any vacancies created by the resignation, removal or death of a Director elected pursuant to this Section 7.1 shall be filled in the manner set forth herein.

- 7.2 The Board of Directors shall invite the President to attend all meetings of the Board of Directors in a non-voting capacity.

- 7.3 The Board of Directors shall be responsible for overseeing the Executive Council's and President's management of the CHL, the adherence of the CHL, the Regional Leagues, and the Member Clubs to the CHL Mission, and the production, promotion, and operations of CHL Hockey.

...

- 7.7 At all meetings of the Board of Directors, the presence of a majority of directors then in office and of at least one Director from each Regional League shall be required in order to form a quorum for the transaction of business. In the absence of a quorum due to the absence of a Director from each of the Regional Leagues, the meeting shall be adjourned and automatically reconvened ten calendar days later. The quorum to such reconvened meeting shall be constituted if the majority of Directors then in office are present.

...

Executive Council

- 8.1 The Executive Council shall be a committee of the Board of Directors and shall be composed of each nominee to the Board of Directors who is the commissioner of a Regional League (the "Executive Council"). The Executive Council shall invite the President to attend all meetings of the Executive Council in a non-voting capacity.
- 8.2 The Executive Council shall be responsible for overseeing the day-to-day management of the CHL and the production, promotion, and operations of CHL Hockey, provided that the approval of the Board of Directors shall be required in respect of any material change in CHL policy, the annual budget, annual financial reporting, and the entering into of material agreements.

...

President

- 9.1 The President shall manage the affairs of the CHL and the production, promotion, and operations of CHL Hockey, including:
- (1) Coordinating with the commissioners of the Regional Leagues on all aspects of CHL Hockey operations and production matters;
 - (2) Developing and implementing marketing and other promotional initiatives for CHL Hockey;
 - (3) Planning and executing CHL events, including post-season and other CHL-organized hockey games;
 - (4) Negotiating and implementing agreements with third parties, including broadcast, sponsorship, and equipment supply arrangements;

- (5) Protecting the integrity of CHL Hockey and the CHL Hockey brand, and fostering adherence to the CHL Mission;
- (6) Serving as the public face of the CHL in interactions with the public, the press, media, government officials, other hockey organizations, and CHL business partners;
- (7) Managing the CHL office and hiring and managing CHL staff;
- (8) Engaging and directing all necessary accounting and other professional services on behalf of the CHL;
- (9) Organizing the annual CHL Meeting, the Board of Director meetings, and the Executive Council meetings;
- (10) Developing and managing written resolutions of the Member Clubs;
- (11) Providing regular reporting as determined by the Executive Council, including a report on the state of the CHL at the CHL Meeting;
- (12) Interpreting, and from time to time making recommendations to the Board of Directors regarding, policy and procedure in respect of the provisions of this Constitution; and
- (13) Fulfilling such other responsibilities as are directed by the Executive Council or Board of Directors.

...

9.4 Wherever the President shall determine, based upon such information and reports as he or she may deem sufficient, that:

- (1) any Player has violated any of the Constitution, the CHL Regulations, or any other governing rule or regulation of the CHL, or has engaged in any conduct (whether during or outside the playing season) detrimental to the best interest, reputation or image of the CHL or CHL Hockey, the President shall have full and complete authority to discipline such Player by:
 - (a) suspending the Player for a period of up to one year, in which case such decision by the President shall be final and not subject to any review unless the Board of Directors determines, in its sole discretion, to hear an appeal by the Player in respect of such decision and the procedures set forth in the CHL Regulations shall govern any such appeal, provided that the President's determination may only be reversed by a unanimous vote of the Board of Directors; or
 - (b) expelling the Player, in which case such decision by the President may be appealed by the Player to the Board of Directors and the procedures set forth in the CHL Regulations shall govern any such appeal, provided that the President's determination may only be reversed by a unanimous vote of the Board of Directors.

Each Member Club shall ensure that each Player assigned to it signs a binding agreement to be bound by the provisions of this Section 9.4(1).

(2) any Member Club officer, director, employee, coach, shareholder, member, partner or any person holding an interest in a Member Club, (other than, in each case, a Player), or any CHL officer, director or employee (in each case, a “Named Person”) or a Member Club has violated any of the Constitution, the CHL Regulations, or any other governing rule or regulation of the CHL, or has engaged in any conduct (whether during or outside the playing season) detrimental to the best interest, reputation or image of the CHL or CHL Hockey, the President shall have full and complete authority to discipline such person in any or all of the following respects:

- (a) by suspending the Named Person for a period of up to one year;
- (b) by expelling the Named Person;
- (c) by imposing a fine on the Named Person not exceeding a maximum amount prescribed by CHL Regulation from time to time; or
- (d) if the conduct in question affects the competitive aspects of the game and subject to the approval of the Board of Directors, by awarding or transferring Players or draft choices or depriving an offending Member Club of draft choices.

In each case, the President’s determinations under this Section 9.4(2) shall be final, except that where the infraction would result in (a) expulsion from the CHL, or (b) imposition of a sanction provided for in Section 9.4(2)(d), an aggrieved party may appeal the President’s determination to the Board of Directors and except that the Board of Directors may determine, in its sole discretion, to hear an appeal of any determination under this Section 9.4(2). The procedures set forth in the CHL Regulations shall govern any such appeal, provided that the President’s determination may only be reversed by a unanimous vote of the Board of Directors. The CHL and each Member Club shall ensure that every Named Person that it hires or contracts with signs a binding agreement to be bound by the provisions of this Section 9.4(2).

- 9.5 Any sanction imposed pursuant to Section 9.4 shall be concurrent and not consecutive to any sanction imposed by a Regional League for the same violation or detrimental conduct, save and except for a monetary sanction imposed under Section 9.4(2)(c) which shall be cumulative.
- 9.6 For purposes of Sections 9.2 through 9.4 above, the President shall make whatever investigation he or she deems necessary in his or her discretion, and is authorized to hire experts and advisors, including legal counsel, and may designate an independent entity or an ad hoc Member Club working group to conduct such an investigation, provide a report or issue recommendations.
- 9.7 The President shall be selected by the Executive Council, subject to the approval of the Board of Directors. The President shall not be a commissioner of a Regional

League or a Principal Owner.

Meetings and Votes of the CHL

10.1 A CHL Meeting shall take place at least annually at a time and location designated by the President. The agenda for the annual meeting shall include a report from the President, votes on any Major Decisions, and such other business as presented by the Board of Directors. When a quorum is present at any meeting of the Member Clubs of the CHL, the Majority Vote of the Member Clubs shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of this Constitution a different vote is required, in which case such express provision shall govern and control the decision of such question. A vote of a Member Club shall be made by the Principal Owner or his or her designee approved in accordance with this Constitution, the CHL By-laws or the CHL Regulations.

...

10.3 At any time, one or more Member Clubs may request that the Board of Directors designate a particular matter as a Major Decision and call for a vote on that designated Major Decision, either by written resolution or at the next CHL Meeting, and the Board of Directors may decline to do so. If at any time Member Clubs constituting 20% or more of all Member Clubs request that a particular matter be designated as a Major Decision and call for a vote on that Major Decision by written resolution or at the CHL Meeting, then the Board of Directors shall designate that matter as a Major Decision and arrange the vote as requested. The President shall provide at least 15, but no more than 25, business days' notice to the Member Clubs of any written resolution called for under this Section 10.3. The notice provided by the President shall include the text of the question or resolution to be voted upon, as provided by the requesting Member Clubs, as well as instructions for completing the ballot.

10.4 For purposes of votes by the CHL Member Clubs:

(1) "Majority Vote" means the affirmative vote of Member Clubs constituting greater than 50% of all Member Clubs in attendance at a CHL Meeting or by a resolution in writing signed by at least 90% of the Member Clubs entitled to vote on that resolution.

CHL Hockey Players

14.1 The Board of Directors shall ensure that the Member Clubs, directly and through their respective Regional League, are fulfilling the Member Clubs' obligations to Players as reflected in Section 5.1(3).

14.2 Only hockey players deemed eligible to play amateur hockey by Hockey Canada shall be permitted to compete in CHL Hockey games.

- 14.3 Participation as a Player on a Member Club shall be limited to only those Players who are at least 16 years of age and not older than 20 years of age as of January 1 of such calendar year, except as otherwise approved by the President in consultation with Hockey Canada and, as appropriate, other hockey federations.
- 14.4 The Member Clubs shall cause their Players, and their parents and guardians (for Players considered minors who do not have legal capacity under applicable federal, provincial, or state law), to execute a written agreement that reflects the benefits and duties of participation on the Member Club's roster and in CHL Hockey. The terms of that agreement must provide for the lodging, care, education, and training of the Player during the term of the contract, as well as the Player's commitment to the CHL Mission and agreement to abide by such playing and other rules as required by the Member Club, the Regional League, and the CHL, including rules regarding gambling and uses of performance-enhancing and other drugs and an agreement to abide by the provisions of Section 9.4(1).

Player Safety

- 15.1 The CHL shall implement programs and policies designed to ensure and promote player safety and to prevent the use of performance-enhancing or other drugs by players of Members Clubs, such as the CHL Drug Education and Anti-Doping Program, and shall provide support to the Regional Leagues in their activities to promote and ensure player safety, including by promulgating standard guidance for the Regional Leagues and Member Clubs. The Regional Leagues shall cooperate with the CHL in enforcing and monitoring compliance with these programs and policies.
- 15.2 The CHL shall coordinate, as the Board of Directors deems appropriate, with Hockey Canada, U.S.A. Hockey, the National Hockey League, and other hockey organizations in furtherance of player safety. The CHL may conduct surveys, engage experts, and undertake other investigations to gather data needed to evaluate player safety issues, and each Member Club shall cooperate, with any such investigation.
- 15.3 To ensure and promote player safety, the Board of Directors may, subject to requirements of Section 7.10, direct Member Clubs and Regional Leagues to make changes in the rules of play, equipment, or other standards. Such direction shall, if necessary, supersede any Regional League or Member Club rule or policy.

Player Scholarship Programs

- 16.1 The Board of Directors shall ensure that each Member Club, directly or through its Regional League, maintains quality higher education scholarship programs for Players whose tenure in the CHL is complete and who do not enter the National Hockey League or any other professional hockey league.

- 16.2 All Member Clubs are obligated to fulfill their financial obligation to fund such higher education scholarship programs.
- 16.3 The CHL is authorized to establish and administer a higher education scholarship program for Players whose tenure in the CHL is complete, and to use any proceeds of the CHL in furtherance of that scholarship program, including such proceeds as otherwise would be remitted to the Regional Leagues and Member Clubs.

Recording, Broadcasting, and Marketing of CHL Hockey games

- 17.1 All broadcast rights, including the right to broadcast live and in-progress CHL games, belong to the Member Clubs.
- 17.2 Each Member Club on its own behalf hereby irrevocably grants the CHL the right to contract as agent for and on behalf of such Member Club with one or more third-party broadcaster for the exclusive produce and broadcast live and previously recorded exhibition, regular season, post-season, and other CHL Hockey games via television, live streaming, video on demand or any other media platform, except for local media rights which shall be retained by the Member Clubs as determined by the Board of Directors from time to time. The CHL shall disclose to third party broadcasters that, in respect of the grant of any broadcast rights, it is acting solely as agent for and on behalf of such Member Clubs.
- 17.4 The CHL shall not itself be entitled to any rights fees or other payments made under any broadcast agreement entered into by the CHL as agent for the Member Clubs (including without limitation the Rogers Agreement), but instead shall hold any amounts received thereunder solely as agent for and on behalf of the Member Clubs, and shall deposit such amounts in a segregated account designated as a “funds under administration” or similar account (the “FUA Account”).
- 17.5 The CHL shall hold any and all footage of CHL hockey games and related content solely as agent for and on behalf of the Member Clubs, and any revenues derived from such footage or content shall be deposited into the FUA Account. Notwithstanding the above, each Member Club retains such broadcasting rights in respect of any of its respective exhibition, regular season, post-season or other CHL Hockey games to the extent that the broadcasting of such games is not subject to, and not precluded by, any contract between the CHL and a third-party broadcaster.
- 17.6 The CHL shall coordinate with the Regional Leagues, acting through their representatives on the Board of Directors, to permit the Regional Leagues to enter into contracts providing for the grant of broadcasting and other media rights (as agent for and on behalf of its Member Clubs) in a manner that is complementary to, but not in conflict with, the CHL’s broadcasting and other media agreements. Each Member Club and Regional League shall cooperate with the CHL in the

broadcasting agreements entered into by CHL and in the exploitation of such Regional League's and Member Club's local media opportunities to enhance the financial and strategic value of collective broadcasting opportunities.

17.7 The Member Clubs and the Regional Leagues shall comply with all contracts entered into by (i) the CHL on their behalf or (ii) CHL Properties, including national broadcasting, sponsorship, and other media rights contracts.

17.8 All revenues derived from contracts executed by the CHL as agent for and on behalf of the Member Clubs shall be owned equally by the Member Clubs. Such revenues shall be deposited into the FUA Account, and handled in accordance with Section 20.2.

CHL Properties

19.1 An entity shall be established to perform certain functions related to the exploitation, with a view to a profit, of intellectual property and other intangible rights of the CHL, the Member Clubs and the Regional Leagues. The entity shall be established as either (i) a limited partnership formed under the laws of a province of Canada, with the name "CHL Properties LP/ Société en commandite LCH Propriétés" or a similar name, or (ii) a corporation formed under the laws of Canada or a province of Canada, with the name "CHL Properties Ltd./ Propriétés LCH Limitée" or a similar name. Such entity is referred to herein as "CHL Properties".

19.2 In connection with the formation of CHL Properties, the CHL may transfer, assign, sell or otherwise convey any tangible or intangible assets currently held by the CHL to CHL Properties, and may transfer the employment of such personnel as may be necessary in order for CHL Properties to be able to perform its functions.

19.3 CHL Properties shall be owned, directly or indirectly, by each Member Club in equal shares; provided that if CHL Properties is established as a limited partnership, its ownership shall be structured with the intent that it qualifies at all times as a "Canadian partnership" for purposes of the Income Tax Act (Canada).

19.4 CHL Properties shall be established with a view to profiting from the following activities, among others:

- (1) Promotion of CHL Hockey through marketing, licensing, sponsorship, and other activities;
- (2) Exploitation of League and team symbols, including team marks, logos, and colours;
- (3) Exploitation of player promotional rights;
- (4) Developing and fostering the CHL Hockey brand; and
- (5) Deriving revenues from, enhancing the value of, and protecting the intellectual property and other intangible assets of the CHL, the Regional Leagues and the Member Clubs.

- 19.5 In order to enable CHL Properties to perform its functions, each of (i) the CHL, (ii) the Regional Leagues, and (iii) the Member Clubs shall grant CHL Properties a license to use their respective intellectual property and other intangible assets, including their marks, logos, and colours (the “CHL Properties License”), and shall execute such license agreements and related supporting documents as the Board of Directors reasonably determines are necessary or desirable in this regard.

Revenues and Expenses of the CHL and CHL Properties

- 20.2 All amounts received by the CHL from contracts entered into by the CHL as agent for its Member Clubs shall be deposited into the FUA Account. Such amounts shall not under any circumstances constitute property of the CHL, and shall be remitted as soon as reasonably practicable upon receipt to or at the direction of the Regional Leagues as agent for and on behalf of the Member Clubs, and the Regional Leagues shall, as soon as reasonably practicable after receipt, remit such amounts to the Member Clubs, unless otherwise determined by the Member Clubs through a Major Decision; provided that, if the CHL reasonably determines that it would otherwise be necessary in the near future to levy an assessment on Member Clubs to fund necessary expenses of the CHL, it may instead transfer funds in the FUA Account to the CHL’s own account for the sole purpose of funding such expenses, and the Member Clubs and Regional Leagues hereby direct the CHL to utilize the funds in the FUA Account in that manner in such circumstances.
- 20.3 To the extent the revenues derived by the CHL are insufficient to cover its expenses in any fiscal year, such that the CHL would otherwise be in a deficit position for that year, the Board of Directors may levy an assessment on the Member Clubs, and thereby require each Member Club (or each Regional League on behalf of its respective Member Clubs), as a condition of its continued membership in the CHL, to contribute a pro rata share of the funds necessary to make up the deficit for that year.

CHL Regulations

- 24.1 The Member Clubs agree to conform to and be bound by CHL Regulations, which shall be approved in accordance with the provisions of this Constitution by a Majority Vote.
- 24.2 Any of the CHL Regulations may be added to, amended, repealed or replaced by a Majority Vote.
- 24.3 The CHL Regulations shall set out regulations related to player conduct and conduct of any Named Person, including prohibitions against conduct which would be detrimental to the best interest, reputation or image of the CHL or CHL Hockey.

General

- 25.1 This Constitution shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.
- 25.2 This Constitution shall be deemed to be a unanimous member agreement pursuant to Section 170 of the Act. This Constitution shall continue to be effective notwithstanding a transfer of membership and this Constitution shall be binding upon the remaining Member Clubs so long as there is at least one Member Club.
- 25.3 This Constitution, together with any Exhibits attached to this Constitution and any agreements and documents to be delivered pursuant to the terms of this Constitution, constitutes the entire agreement between the CHL and the Member Clubs pertaining to the subject matter of this Constitution and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties or other agreements between the CHL and any of the Member Clubs in connection with the subject matter of this Constitution, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Constitution.
- 25.4 Nothing in this Constitution shall be deemed in any way or for any purpose to constitute any party a partner of, or a member of a joint venture or joint enterprise with, any other party to this Constitution in the conduct of any business or otherwise.
- ...
- 25.6 A waiver of any default, breach or noncompliance under this Constitution is not effective unless in writing and signed by the party hereto to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party hereto in respect of any default, breach, non-observance or by anything done or omitted to be done by another party. The waiver by a party hereto of any default, breach or non-compliance under this Constitution shall not operate as a waiver of that party's rights under this Constitution in respect of any continuing or subsequent default, breach or non-compliance (whether of the same or any other nature).
- 25.7 Any provision of this Constitution which is prohibited or unenforceable by the laws of any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Constitution, all without affecting the remaining provisions of this Constitution or affecting the validity or enforceability of such provision in any other jurisdiction.
- 25.8 The Member Clubs agree to sign all such documents and do all such things as may

be necessary or desirable, including the casting of any votes from time to time and at all times, in whatever manner as shall be necessary to more completely and effectively carry out the terms and intentions of this Constitution and to cause the CHL and Regional Leagues to act in the manner contemplated by this Constitution. To the extent under its control, each Member Club shall ensure that nominees to the Board of Directors of the CHL act in such a manner as to give effect to the provisions of this Constitution. If a nominee fails to act in such manner as to give effect to the provisions of this Constitution, the applicable Member Club(s) shall cooperate in taking all such actions as may be necessary from time to time to remove any such nominee from the Board of Directors.

- 25.9 This Constitution shall enure to the benefit of and be binding upon the parties and their personal representatives, successors and permitted assigns and any reference to a right or an obligation of a party shall be deemed to include a reference to such personal representatives, successors and permitted assigns to the extent that the context requires.

Provisions from the Ontario Hockey League (OHL) Constitution¹⁴⁰

Name

- 1.1 The name of the association shall be Ontario Hockey League, hereinafter called "League", operated by Ontario Major Hockey League, a corporation. The word "League: hereinafter shall refer to the "Ontario Hockey League", unless otherwise specified.

Members

- 3.1 Membership in the League shall be limited to members as herein designated, and such new members as may be hereafter duly elected. (The current members and such new members are hereinafter called "Members".) The Members of the League, each of whom holds a membership for the operation of a hockey team (the "Team) in the city and under the Team name set opposite its respective name, are as follows.....

Duty of Member

- 3.2.1 Each Member shall maintain and operate a Team of the highest possible calibre based in the city for which the membership has been issued, for the purpose of engaging annually in a schedule of Regular Season and Playoff games with the Teams of other Members.
- 3.2.2 Each Member assumes and agrees to be bound by the following obligations of membership in the League and shall ensure that all owners, officers, stockholders,

¹⁴⁰ Affidavit of Dan MacKenzie, sworn April 20, 2022, Exhibit C, DMR Vol IV pp. 614-649.

directors, or partners therein, as well as any other person owning any interest in such Member, comply therewith:

- (a) To be bound and observe all decisions of the Commissioner in all matters within his jurisdiction;
- (a) To be bound by and observe all decision, rulings, and action of the Board of Governors and Executive Committee of the League in every matter within the jurisdiction of such Board or Committee, as the case may be;
- (b) To be bound by and observe all the terms and provisions of the Constitution, By-Laws, Regulations and agreements of the League as now or hereinafter in effect;
- (c) To ensure that every contract entered into by the Member with a third party complies, is consistent with or subordinate to, the Constitution, By-Laws, Regulations and agreements of the League; and
- (d) To accept appropriate sanctions, including, but not limited to, expulsion, suspension or monetary fines, for violation of the terms and provisions of such Constitution, By-Laws and Regulations.

Transfer of Membership or Interests Therein

3.7.1 In the event that a Member wishes to sell their franchise and / or change the de facto or de jure control of their franchise, prior to taking any action, the Member must firstly advise the League of their intention.

3.7.2 Except as provided in Section 3.11.2, no membership or interest therein (whether direct or indirect) which has the effect of changing the de facto or de jure control of the Member may be sold, assigned, or otherwise transferred in whole or in part during the first three years following the date on which the membership held by the Member was first granted by the League. In all other cases, no membership or interest therein (whether direct or indirect) may be sold, assigned, or otherwise transferred except with:

- (a) The consent of at least $\frac{3}{4}$ of the Members; and
- (b) The condition that the transferee will agree in writing that it will at all times be bound by and comply with all the terms, provisions and conditions of this Constitution, the Rules of the League, its Regulations and all agreements entered into by the League then or thereafter in effect; and
- (c) The condition that the transferee shall agree in writing to assume or guarantee to pay all debts, liabilities and obligations of the transferor existing at the date of the transfer; and

- (d) Compliance with the provisions of Article 3.7.2;

Provided that this Article shall not apply to a transfer which does not result in any person directly or indirectly having either (i) more than a five percent (5%) interest in the Member in total or (ii) de jure or de facto control of the Member.

...

Involuntary Termination

- 3.12.2 A membership may be suspended or terminated with the consent of at least $\frac{3}{4}$ of all Members if a Member shall do or suffer any of the following:

...

- (b) Fail to pay any dues or other indebtedness owing to the League within thirty (30) days after written notice from the Commissioner of default in such payment;

Governors

Board of Governors

- 5.1 The Board of Governors shall be the governing body of the League. It shall establish the policies of the League, and uphold the Constitution, By-Laws, and Regulations, and agreements entered into by the League, as provided herein.

Appointment of Governor

- 5.2.1 Each Member shall appoint a Governor and an Alternate Governor who shall have the same authority in such Governor's absence, subject to the Provisions set forth in Article 5.3.

...

- 5.3.4 Some matters to come before a meeting of the Board of Governors may be designated by the Commissioner in consultation with the Executive Council as being matters that must be voted on only by the Governor of each team, and not by the Alternate Governor or any other person (the "Designated Matters"). With respect to Designated Matters, only Governors (and not Alternate Governors or guests of the Members) may be present for the discussion or vote. Provided however that an Alternate Governor who complies with the restrictions set forth in Article 5.3.1 above, shall be entitled to be present and vote on behalf of its member team in the place such team's Governor who is absent, including on Designated Matters.

Meetings of Board of Governors

- 5.4.1 Subject to Article 5.3, at any meeting of the Board of Governors each Member shall be entitled to have present two representatives.
- 5.4.2 One representative so present is entitled to speak and vote on behalf of a Member at such meetings.
- 5.4.3 At all meetings of the League, each Member shall be represented by its Governor or Alternate Governor who shall, by reason of such appointment, be vested with full power and authority to represent the Member and to bind it by vote.
- 5.4.4 At all meetings of the League, representation of each Member by its Governor or Alternate Governor shall be compulsory. Failure to have representation shall result in the Member being subject to a fine of One Thousand Dollars (\$1,000.00), unless the Board is satisfied that the absence is to be beyond the reasonable control of the Member.

League Meetings

Annual Meeting

- 6.1 The Annual Meeting of the League shall be held prior to the commencement of the next succeeding season, at a date and place to be fixed by the Governors, or in default thereof, by the Commissioner.

Semi-Annual Meeting

- 6.2 The Semi-Annual Meeting of the League shall be held at a date and place to be fixed by the Governors, or in default thereof, by the Commissioner.

Special Meetings

- 6.3 Special Meetings of the League may be called by the Commissioner or the Chair of the Board of Governors at any time and shall be called by either of them at their own discretion or whenever requested by five (5) Members in good standing.

Notice of Meetings

- 6.4.1 In the case of Special Meetings the notice shall state the purpose thereof. In the case of an Annual Meeting, the notice shall set forth any proposed amendments to this Constitution, any applications for membership and any other material matters that are to be presented at the meeting.
- 6.4.2 Notice of meetings shall be given to each Member by personal delivery or mail at least ten (10) days before a meeting, or by email, telegram, facsimile or any other generally accepted electronic means at least seven (7) days before a meeting.

Quorum

- 6.5.1 A representation of a majority of Members shall constitute a quorum for the opening of any meeting of the League.
- 6.5.2 When such a meeting is validly opened by the attendance of a quorum, business may be transacted thereat by the representation of any number of Members, including less than a quorum, until such meeting is officially adjourned, subject to any requirements herein as to requisite votes.
- 6.5.3 Where the affirmative vote of a $\frac{3}{4}$ majority is required by this Constitution, a representation at the Meeting of at least $\frac{3}{4}$ of all Members is required to conduct such vote.
- 6.5.4 Where the affirmative vote of a $\frac{2}{3}$ majority is required by this Constitution, a representation at the Meeting of at least $\frac{2}{3}$ of Members is required to conduct such vote.

Governor, Ex Officio

- 6.6 The Commissioner shall be a member of the Board of Governors, but shall have no vote.

Conduct of the Meeting and Voting

- 6.7.1 The Chair shall preside at all meetings of the Governors of the League. In the absence of the Chair, the Vice Chair or another Executive Council member shall preside. The Chair or Vice Chair or other presiding Executive Council member, as the case may be, shall not have a second or casting vote in the event of a tie.
- 6.7.1 Subject to the other provisions of this Constitution, except where two-thirds ($\frac{2}{3}$), three-fourths ($\frac{3}{4}$) or all of the Members are required to take affirmative action on any matter, questions arising at meetings of the League shall be decided by a majority vote of the Members present and in the event of a tie vote the decision of the Commissioner shall govern. Such vote shall be binding upon all Members whether represented during the vote or not.
- 6.7.3 The vote required by any provision of this Constitution shall be applied to the vote of those present and voting at a meeting at which a quorum is present, when it was convened. Any Member which does not vote shall not be counted in determining the requisite number required to carry any proposition properly brought before the Board. Such vote shall be binding upon all Members whether represented by the vote or not.
- 6.7.4 Any action or resolution which may be taken or adopted in a meeting may be taken or adopted by an instrument in writing signed by that number of Members which would have been required to pass such resolution or take such action had there been a Meeting at which all Members were present.

No Internal Proxies

- 6.7.5 No Member shall name another Member, the representative of another Member, or any official of the League to represent it as Governor or alternate or act as its proxy at a meeting.

Executive Session

- 6.7.6 If so announced by the Commissioner or the Chair of the Board of Governors in the notice, or upon a majority vote of the Members there present, the meeting shall be convened in executive session, whereby only the Governors or their alternates and the Commissioner and such other League officers as are designated by the Commissioner, together with such other persons as Chair of the Board of Governors or the Commissioner may invite, shall be present.

Rules of Order

- 6.7.7 Parliamentary procedure to be followed at the meeting shall be described in “Robert’s Rules of Order – Newly Revised”, as published by Scott, Foresman & Company, or its successor, except as otherwise provide in this Constitution.

Business

- 6.7.8.1 All motions shall be decided by majority of votes, unless otherwise provided for by the Constitution, and the presiding officer shall have the casting vote in the event of a tie.
- 6.7.8.2 No Member representative shall speak twice on the same subject without the permission of the Chair, unless in explanation or the mover in reply.
- 6.7.8.3 A Member representative desiring to speak or submit a motion shall respectfully address the Chair and shall confine his remarks to the issue and shall not be interrupted unless upon a point of order.
- 6.7.8.8 No Member representative, except one who has voted with the majority, shall be allowed to move for a reconsideration, and in this connection the word majority shall apply to the vote by which the issue was first decided.
- ...
- 6.7.8.9 After the motion has been stated by the presiding officer, it becomes the property of the League and open for discussion.
- 6.7.8.10 There shall be no debate upon any issue after it has been put by the presiding officer.
- 6.7.8.11 When a vote is called it shall be taken by the delegate of each Member holding up his right hand, or by a standing vote or by a closed ballot as may be requested by any delegate.

6.7.8.12 No committee report will be adopted unless it has been previously circulated in writing with the agenda.

Provisions from Quebec Major Junior Hockey League Inc. (QMJHL) Constitution¹⁴¹

Members

Qualification

2.1.1 The League shall have only one category of members. Any person, association, partnership, trust or corporation that owns a franchise to operate a hockey team (a “Club”) in the League in accordance with the conditions established by the Board of Governors is a Member of the League. If several persons jointly own a franchise to operate a hockey team in the League, all such persons together shall constitute one and the same Member.

2.2 Member's Obligations

Each Member, each owner or shareholder of the Member, each employee salaried or volunteer of a Member, each representative or governor of the Member, agrees to respect and to be bound by the following obligations:

...

12) to indemnify and hold harmless any Governor, Officer or employee of the League for any claim, action, suit or proceedings (collectively, the “**Proceedings**”) whether civil or criminal, related to the services rendered to the League by such Officer or employee. The right to indemnification shall include the right to reimbursement of all reasonable expenses incurred (including reasonable extra-judicial lawyers’ fees), and payment of the amount of any judgment, fine or settlement pay-able, in connection with the Proceedings. Such Governor, Officer or employee shall not be entitled to indemnification if the Proceedings arise as a result of any fraudulent or bad-faith act or omission on the part of such Governor, Officer or employee, as determined by a final judgment not susceptible of appeal, or a decision or order of a competent Court or for the amount of any out-of-court settlement not approved by the Board of Governors;

3 Alienation of Property Rights

A Member's property rights can be alienated:

- by abandoning the franchise,
- by revocation, suspension or punitive measure imposed by the League,
- by the sale or transfer of property rights,
- by the relocation of the franchise.

¹⁴¹ Affidavit of Dan MacKenzie, sworn April 20, 2022, Exhibit J, DMR Vol IV pp. 898-933.

3.3 Sale or Transfer of Property Rights

3.3.4 Approval of the Sale or Transfer

No rights in a franchise may be sold or transferred unless

- i. at least two thirds (2/3) of the Members present at a meeting called for that purpose, vote in favour thereof;
- ii. the transferee agrees to be bound at all times by the Constitution and other regulations, resolutions, conventions and playing rules adopted by the League and any amendments thereto, and
- iii. the transferee assumes and guarantees payment and performance of, in solidarity with the transferor, any debt, liability or obligation of the latter existing at the time of the transfer.

Decision-Making Powers

Division of Powers

- 4.1 The League's decision-making powers are shared between the Assembly of Members, the Board of Governors and the Commissioner.

The Assembly of Members is composed of one representative from each club « Member Representative », and acts as a general assembly. The Assembly of Members' mandate is to monitor the evolution of the League and to adopt broad guidelines which will impact the League's development.

The Board of Governors is composed of one representative from each club « Governor ». The Board of Governors acts as the League's board of directors; it upholds the Constitution, as well as the League's other regulations, policies, conventions and game regulations.

The Commissioner is the chief executive officer of the League: he is responsible for the general direction and supervision of the affairs of the League, including activities that are not in the normal course of the League's operations, particularly protecting the integrity of major junior hockey and maintaining public confidence in the League. The Commissioner is invested with all powers necessary in order to fulfill such responsibilities.

The Executive Committee is composed of the Commissioner and five Governors who are elected to sit on the committee by the Board of Governors. The Executive Committee does not have specific decision-making powers, except for the powers which are awarded to the committee by the Board of Governors, as provided for

in article 4.3.2. The Executive Committee's main responsibility is to advise the Commissioner on various League affairs.

4.2 Assembly of Members

4.2.1. Nomination of Members

4.2.1.1 *Annual Nomination* – At meetings of the Assembly of Members, each member shall be represented by a single holder of a power of attorney from such Member (a “**Member’s Representative**”). Before each annual meeting of the Assembly of Members, each Member shall send to the Commissioner a written Notice of Motion adopted by the appropriate instance, which identifies the person authorized to represent the Member Representative during meetings, to vote on behalf of the Member at the annual meeting and at any other meeting until the next annual meeting and to bind the Member to any agreement by his signature. The filing of a written proxy sent to the Commissioner prior to the commencement of the meeting, conferring such a power on a Representative, shall also constitute a valid means of representation of a Member at a meeting, this without infringement to the status of the duly elected Member Representative by means of a Notice of Motion as described herein.

4.2.1.2 *Exclusions* – No Member may appoint any person who is directly involved in the hockey operations of a League club.

4.2.2. Powers and Responsibilities of Members

The Assembly of Members has the following powers and responsibilities:

- 1) Reviewing the League's financial statements;
- 2) Nomination of the independent auditor to review the League's accounting books;
- 3) Accepting the Governors who are designated by the Members;
- 4) Accepting the modifications to the Constitution which are adopted by the Board of Governors;
- 5) Final decision-making power on the enrollment of new Members and regarding any alienation of property rights, in compliance with the provisions in article 3 of this Constitution, and subject to the powers explicitly and exclusively held by the Commissioner;
- 6) Any other matter concerning the League and its Members.

4.2.3. Meetings

4.2.1.2 *Annual Meetings* – The annual meeting of the Assembly of Members of the League shall be held before the expiry of a four-month (4) period following the end of the most recent financial year of the League, on the date and at the location designated by the Commissioner.

4.2.1.2 *Special Meetings* – A special meeting of the Assembly of Members may be called at any time by the Commissioner, by resolution of the Board of Governors or upon the written request to the Commissioner of at least four (4) Members in good standing. The Board of Governors’ resolution or the Members’ request shall indicate the matters to be submitted to the special meeting.

4.3 Board of Governors

4.3.1. Nomination of Governor

4.3.1.1 *Annual Appointment* – At the annual meeting of the Assembly of Members, each Member shall appoint a Governor and one substitute governor.

At a meeting of the Board of Governors, the Substitute Governor may replace the Governor who is unable to attend, with all the rights and privileges afforded to the Governor.

Term of Office

4.3.1.3 The term of office of a Governor shall last from his election to the Board of Governors until the close of the next annual meeting of the Assembly of Members, unless such Governor dies, is dis-charged or his office is revoked, or he resigns during his term of office.

4.3.2. Powers and Responsibilities of the Board of Governors

In accordance with the powers specifically awarded by this Constitution to the Assembly of Members and to the Commissioner, the Board of Governors exercises the powers and performs the acts specified in the Constitution, in any League regulation, and in any other League regulatory document. Specifically, the Board of Governors:

1. names the Commissioner, determines the duration of the Commissioner’s mandate and working conditions;
2. elects, among the governors, the president of the Board of Governors and of the Executive Committee, as well as the four members of the Executive Committee;
3. adopts the League’s action plans and related budgets;

4. adopts, by a majority of two thirds, the League's regulations, and amendments thereto;
5. adopts the League's different policies and amendments thereto;
6. establishes the League's various funds, their operating rules, and the amounts that the clubs must contribute to each fund;
7. determines the amount that each team must maintain as their share in the League's Reserve Fund;
8. determines the financial institution where the League deposits its funds;
9. finalises or authorizes all banking transactions which are necessary for the administration of the League, in accordance with the provisions in schedule B of this Constitution;
10. appoints the governors and/or the officers who will sign cheques and other official banking documents;
11. names the persons who are authorized to sign the contracts and the commitments entered into by the League;
12. May affiliate the League with any organization that may help it to pursue common or similar interests.
13. May delegate certain powers to the Executive Committee, for a specific time, under pre-determined conditions

5. Appeal of Official Decisions

5.1 Decisions which can be Appealed

For the purposes of the Constitution, the expression “**official decision of the League**” means any decision, whether or not in respect of a disciplinary matter, made by the Commissioner, the Board of Governors, the Assembly of Members or any other Person or body so authorized by the Constitution or other regulation of the League.

5.1.1 Cases of Appeal Submitted to an Independent Arbitrator _____

Any official decision made by the League may be appealed before an independent arbitrator in the following cases:

- a fine greater than fifty thousand dollars (50 000\$),

- a suspension of fifteen (15) or more games or forty-five (45) days or more,
- the grant or transfer of players and/or choices,
- revocation or suspension of a membership status.

The appeal of any decision shall not have the effect of suspending the execution thereof.

5.1.1 Appeal in the Courts

An official decision made by the League cannot be challenged in court, unless the appeal relates to a question of law. Any Person, physical or moral, partnership, association or union that contravenes this rule shall automatically become indebted to the League for an amount of one hundred thousand dollars (\$100,000) as a penalty. Such sum shall be payable within forty-five (45) days of the contravention, unless the Board of Governors decides otherwise.

Provisions from the Western Hockey League (WHL) Constitution¹⁴²

2.1 Definitions

(m) "Governors" means the appointed governors of the Members of the League;

(p) "Member" means the entity that operates the hockey club or member franchise in the Designated Municipality and under the Club name referred to in Schedule I, herein, and shall be limited to those Members listed in Schedule I and such new Members as may be, from time to time, admitted to the League in accordance with these Bylaws.

Transfer of Franchise Ownership

Conditions

6.1 No Franchise may be sold, assigned, or otherwise have its ownership transferred (a "Transfer") except under the following conditions:

...

(c) that the transferee shall assume or guarantee to pay all debts, liabilities and obligations of the applicant Member, including without limitation the obligations under the League's education and scholarship program, existing at the date of Transfer; provided, however, that the applicant Member shall remain responsible for all such debts, liabilities and obligations;

...

¹⁴² Affidavit of Dan MacKenzie, sworn April 20, 2022, Exhibit I, DMR Vol IV pp. 823-896.

Obligations of the Member Franchises

Member Liability

- 10.1 The Member shall be liable for all claims, liabilities, damages, losses and expenses, which have accrued, directly or indirectly, to the Franchise as a result of the acts of the Member.

Indemnity

- 10.2 The Member shall indemnify and hold harmless the League and its officers, Governors, employees and other Members and their respective officers, directors, employees and shareholders, from and against any and all claims, liabilities, damages, costs, losses and expenses whatsoever which may be brought against the Member, or its directors, officers, employees or shareholders except to the extent arising from the actions or omissions of the League or any Member or their respective officers, directors, employees, and shareholders.

Insurance

- 10.2 The Member shall obtain and maintain in full force and effect, such insurance coverage and in such amounts as the League may, acting reasonably, from time to time reasonably require, fully protecting as named insureds, the League and the Member, against loss or damage occurring in connection with the Operation of the Franchise. All costs in connection with the placing and maintaining of such insurance shall be borne solely by the Member. All policies of insurance shall:

- (a) be placed with insurers reasonably acceptable to the League;
- (b) be in such form and amounts as are acceptable to the League;
- (c) contain a clause that the insurer will not cancel or change or refuse to renew the insurance without first giving the League 30 days prior written notice;
- (d) name the League as an additional named insured, as its interest appears; and
- (e) contain a waiver of subrogation and rights of recovery against the League, its officers, directors employees and the League's Member Clubs, and their respective officers, directors, shareholders and employees.

Copies of all policies or certificates of insurance and any renewals thereof shall be delivered promptly to the League by the Member from time to time, upon request of the League. Should the Member not place and maintain the insurance required by this Section 10.3, the League has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Member, and

all outlays by the League shall be immediately paid by the Member to the League without prejudice to any other rights and remedies of the League under these Bylaws.

Compliance with Bylaws

10.4 The Member shall comply with these Bylaws as may be amended, supplemented or replaced from time to time, following notice of any such amendments, supplements or replacements, by receipt of copy thereof, and the expiration of a reasonable period in which to implement changes in the Member's practices and procedures made necessary by any such amendments, supplements or replacements.

Abide by League Instructions

10.5 The Member shall, subject to Section 10.13 and Part 11 herein, abide by all League rules, regulations, Policies, bulletins, notices and directives.

Executing Documentation Requiring Consent

10.6 The Member shall co-operate with the League by executing all approved documentation requiring the Member's consent, such consent being reasonably required by the League.

Support League Initiatives

10.7 The Member shall support League-wide hockey and business initiatives, including League sponsorship and supplier agreements, developed by the League from time to time. In this regard, the Member agrees to respect League-wide funding partners and shall not engage in any business activity, which would adversely impact on the League.

...

Good Faith Conduct

10.9 The Member shall adhere, in all its dealings with its employees, players, customers, suppliers, the public and the League, to the highest standards of honesty, integrity, fair dealings and ethical conduct.

Conform to League Image and Standards

10.10 The Member shall do or cause to be done all such things the League may require to ensure that the Franchise satisfies the current image and standards established by the League.

...

Board of Governors

Number of Governors, Quorum and Qualifications

13.1 The property and business affairs of the League shall be managed by a Board of Governors comprised of two Governors appointed by each Member. Two-thirds (2/3) of the Members represented by one or two Governors at any meeting shall constitute a quorum. Governors must be individuals who are at least eighteen (18) years of age, with power under law to contract. Governors need not be Members.

Appointment and Term of Governor

13.2 Subject to Section 13.3, each Member shall, at the Annual General Meeting of the League, appoint two (2) Governors to the Board of Governors for a term not less than one (1) year. Each Member shall determine, using its sole discretion, the term of its Governors. Such appointments shall be in writing, signed by the Member, and a true copy thereof shall be filed with the Commissioner at the Annual General Meeting.

Community and Privately Owned Clubs

13.3 In the case of a community-owned Member, its Governors shall be appointed for at least a three (3) year term and such appointment is subject to the approval of the Board of Governors. In the case of a privately owned Member, its Governors shall be shareholders or properly appointed designates of the privately owned Member, and such appointment is subject to the approval of the Board of Governors.

Present at Meeting

13.4 Each Member of the League shall be entitled to have its duly appointed Governors present at all Board of Governors meetings.

Entitled to Vote

13.5 On any vote of the Board of Governors at a properly constituted meeting, only one of the duly appointed Governors of a Member shall be entitled to vote for the Member, as determined in the Member's sole discretion.

Vacancies

13.6 The office of a Governor shall be automatically vacated:

(a) if a Governor resigns his office by delivering a written resignation to the Commissioner of the League;

(b) if a Governor becomes bankrupt or suspends payment or compounds with his creditors;

(c) if a Member withdraws in writing a nomination for a Governor nominated by the Member;

(d) if the Governor is found by a court to be of unsound mind; or

(e) on death of the Governor;

provided that if any vacancy shall occur for any reason contained in this Section 13.6, a Member whose Governor has vacated office shall be entitled to appoint a qualified person as a replacement Governor in writing, a true copy of which shall be filed with the Commissioner forthwith upon such appointment being made. Such appointment shall be subject to the right of each Member to nominate two (2) Governors.

Retiring Governor

13.7 Subject to Section 13.6, a retiring Governor shall remain in office until the dissolution or adjournment of the meeting at which such retirement is accepted and a successor Governor is appointed by the Member which previously appointed the retiring Governor.

First Governors

13.8 The applicants for incorporation shall become the first governors of the League whose terms of office on the Board of Governors shall continue until the first Annual General Meeting, at which time the Governors of the Members shall become the Board of Governors in the manner provided for herein.

Powers of Governors

Powers

14.1 The Governors shall administer the affairs of the League in all things and make or cause to be made for the League, in its name, any description of contract that the League may lawfully enter into and, save as hereinafter provided, generally, may exercise all such other powers and do all such other acts and things as the League is by its charter, or otherwise, authorized to exercise and do.

APPENDIX B: DEFENDANTS' CLAIMS COMPARED TO PROVISIONS OF THE CHL CONSTITUTION

<p align="center">Defendants Claims in Jurisdiction Factum</p>	<p align="center">Relevant Provisions in the CHL Constitution</p>
<p>The foreign defendants "are not parties to any contract made in Ontario": para. 1.</p> <p>The US Teams "are not party to contracts made in Ontario, governed by Ontario law, or subject to the Ontario courts": para. 18.</p> <p>The foreign defendants "have not attorned to the jurisdiction of Ontario's courts": para. 69.</p>	<p>THIS CONSTITUTION, a unanimous member agreement, is made... <u>between all voting members of the Canadian Hockey League (the "CHL")</u> being each original member club listed on Exhibit A* and the non-voting members of the CHL, being the Ontario Major Junior Hockey League, doing business as the Ontario Hockey League, the Quebec Major Junior Hockey League Inc. and the Western Hockey League....</p> <p>25.1 This Constitution shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract. Each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.</p> <p>* Exhibit A lists all the Teams, including the US Teams.</p>
<p>"The CHL's powers over the leagues are limited, and the Constitution does not confer on the CHL any relevant authority over, or operational rights in respect of, the leagues and their respective teams": para. 27.</p> <p>"Power resides with the leagues and their respective teams": para. 28.</p> <p>"The 'CHL's constitution limits its authority to exercise certain controls' over the leagues, which results in</p>	<p>6.3 Without limiting the generality of Section 7.10, the Board of Directors may direct, and <u>if necessary overrule, a decision of a Regional League</u> in any matter relating to the organization or operation of CHL Hockey games that is contrary to the CHL Mission or to maintaining the high quality or reputation of CHL Hockey.</p> <p>6.4 The governing documents of each Regional League shall provide for the full participation of that Regional League and its Member Clubs in the CHL, and the Regional League shall amend its governing documents</p>

<p>"decentralized" policies, practices and programs": para. 28(a).</p> <p>"The CHL is 'not a top-down' organization": para. 28(b).</p> <p>"The CHL currently has no authority over the Member Leagues": para. 29(a).</p> <p>"None of the leagues or the teams are required to adopt or impose any policies or other initiatives discussed by the council or encouraged by the CHL. A league's decision to adopt uniform policies is voluntary, not mandatory": para. 30.</p>	<p>as needed from time to time to confirm that its Member Clubs are bound to perform the obligations, and have the rights, set forth in this Constitution and the CHL Regulations.</p> <p>7.3 The Board of Directors shall be responsible for overseeing the Executive Council's and President's management of the CHL, the adherence of the CHL, <u>the Regional Leagues</u> and the Member Clubs to the CHL Mission and the production, promotion, and operations of CHL Hockey.</p>
<p>"The leagues, and not the CHL, are each independently responsible for... establishing playing rules... regulating game operations and conducts... and managing officiating and disciplinary action including instituting and receiving all dues, fines, assessments and penalties": para. 37.</p>	<p>9.4 Wherever the President shall determine, based upon such information and reports as he or she may deem sufficient that:</p> <p>(1) any Player has violated any of the Constitution, the CHL Regulations, or any other governing rule or regulation of the CHL, or has engaged in any conduct (whether during or outside the playing season) detrimental to the best interest, reputation or image of the CHL or CHL Hockey, <u>the President shall have full and complete authority to discipline such Player....</u></p> <p>(2) any Member Club officer, director, employee, coach, shareholder, member, partner or any person holding an interest in a Member Club (other than, in each case, a Player), or any CHL officer, director or employee.... has violated any of the Constitution, the CHL Regulations, or any other governing rule or regulation of the CHL, or has engaged in conduct... detrimental to the best interest, reputation or image of the CHL or CHL Hockey, <u>the</u></p>

	<p><u>President shall have full and complete authority to discipline such person...</u></p>
<p>The CHL is "simply an umbrella organization that oversees the three autonomous Leagues": para. 6.</p> <p>"Responsibility for off-ice protection policies also rests with and differs among the [Member] leagues": para. 39.</p> <p>"A completely uniform policy is impossible given the legal structure of the leagues": para. 41.</p> <p>"The only contracts relevant to this action are the standard player agreements": para. 70.</p> <p>"The dispute between the parties pertains to abuse suffered... The Leagues engagements with the CHL fall under the scope of their business activities": para. 72.</p>	<p>15.1 The CHL shall implement programs and policies designed to ensure and promote player safety and to prevent the use of performance-enhancing or other drugs by players of Members Clubs, such as the CHL Drug Education and Anti-Doping Program, and shall provide support to the Regional Leagues in their activities to promote and ensure player safety, including by promulgating standard guidance for the Regional Leagues and Member Clubs. The Regional Leagues shall cooperate with the CHL in enforcing and monitoring compliance with these programs and policies.</p> <p>15.2 The CHL shall coordinate, as the Board of Directors deems appropriate, with Hockey Canada, U.S.A. Hockey, the National Hockey League, and other hockey organizations in furtherance of player safety. The CHL may conduct surveys, engage experts, and undertake other investigations to gather data needed to evaluate player safety issues, and each Member Club shall cooperate, with any such investigation.</p> <p>15.3 To ensure and promote player safety, the Board of Directors may, subject to requirements of Section 7.10, direct Member Clubs and Regional Leagues to make changes in the rules of play, equipment, or other standards. Such direction shall, if necessary, supersede any Regional League or Member Club rule or policy.</p>
<p>Unlike in <i>Martin</i>, the Moving Defendants share no parent (or subsidiary) corporation, nor are they shareholders of other defendants: Defendants' Ragoonanan Factum, para. 39.</p>	<p>4.1 Membership in the CHL shall include each original Member Club listed in Exhibit A, such Future Member clubs as may be hereafter duly granted membership and each Regional League.</p>

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

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