

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No : 500-06-000719-142

**SUPERIOR COURT  
(Class Action)**

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**LUKAS WALTER**

and

**THOMAS GOBEIL**, person residing at 1882, De Chambly Street, City of Saint-Bruno-De-Montarville, province of Quebec, Canada, J3V 5W2

*Petitioners*

V.

(...)

and

**9264-8849 QUEBEC INC.** operating as **GROUPE SAGS 7-96** and **LES SAGUENÉENS**

*Respondent*

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**RE-RE-RE-RE-AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO OBTAIN THE STATUS OF REPRESENTATIVES  
(Art. 574 N.C.C.P. and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONERS STATE AS  
FOLLOWS:**

**GENERAL PRESENTATION**

1. The Petitioners wish to institute a class action on behalf of the following groups, of which they are members (collectively, the "**Classes**" or "**Class Members**"):
  - (a) All players who are or were members of a team owned and/or operated by one or more of the Respondents in the Province of Quebec (a "**team**") or at some point commencing November 5, 2011 and thereafter (...) ("**Quebec Class**"); and
  - (b) (...)

or such other class definition as may be approved by the Court.

## DEFINED TERMS

1. The following definitions apply for the purpose of this motion to authorize the bringing of a class action:
  - a. "**20 Year Old Contract**" means the current standard player agreement used by the **QMJHL** and the **Clubs** for all **Players** who are 20 years old or over at the time they signed;
  - b. "**Applicable Employment Standards Legislation**" means the legislation governing wages in the jurisdiction where a **Club** is domiciled including: the **ARLS** and Me. Rev. Stat. tit. 26, §664, as amended; and their respective regulations;
  - c. "**ARLS**" means *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1;
  - d. "**Class**" or "**Class Member(s)**" means the **Quebec Class**; and the **US Class**, as defined above;
  - e. "**Clubs**" means the teams participating, or who have participated, in the **QMJHL** who are or were owned and/or operated by the Respondents;
  - f. "**Contract**" or "**Contracts**" means the standard player agreement approved by the **QMJHL** to be used as the agreement for the provision of employment services by the **Players** for the **Clubs** and includes the **Former Contract**, the **Current Contract**, and the **20 Year Old Contract**;
  - g. "**Current Contract**" means the standard player agreement which is in effect as of September 2013 and includes the **QMJHL's** regulation known as R-11, "Rights and Obligations of Players"; Schedule "A" to regulation R-11 known as "Commitment Form for 16-to-19-Year-Old Players"; and the **QMJHL's** policy known as P-1, "Education Policy";
  - h. "**employee**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**;
  - i. "**employer**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**;
  - j. "**employment contract**" means the **Contract** or **Contracts** which are contracts of employment within the meaning of **Applicable Employment Standards Legislation**;
  - k. "**Former Contract**" means the standard player agreement which was in effect until September 2013;
  - l. "**Player(s)**" means all persons who play or have played hockey for one or more of the **Clubs** and are **Class Members**;
  - m. "**QMJHL**" means the Quebec Major Junior Hockey League; and

- n. "wages" or "minimum wages" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**.

## **THE PARTIES**

### **The Petitioner**

2. The Petitioner, Lukas Walter ("**Luke**") resides in Langley, British Columbia, Canada. In the 2013-2014 season, Lukas played hockey for the Saint John Sea Dogs, a team playing in the QMJHL owned and operated by the Saint John Major Junior Hockey Club Limited (the "**Sea Dogs**").
- 2.1 The petitioner Thomas Gobeil resides in Saint-Bruno-De-Montarville, Quebec. In the 2010-2011 season and in the 2011-2012 season, Thomas Gobeil played hockey for the Baie-Comeau Drakkar, a team owned and operated by the Respondent Club de Hockey Junior Majeur de Baie-Comeau inc. In the 2012-2013 season, Thomas Gobeil played hockey for the Baie-Comeau Drakkar and for the Chicoutimi Saguenéens, a team owned and operated by the Respondent 9264-8849 Québec inc. doing business under the name Groupe Sags 7-96 and Les Saguenéens. In the 2013-2014 season, Thomas Gobeil played hockey for the Chicoutimi Saguenéens and for the Val d'Or Foreurs, a team owned and operated by the Respondent Club de Hockey Junior Majeur Val d'Or inc.

### **The Respondents**

3. The Clubs are various corporations, partnerships, and limited liability companies formed in various jurisdictions. The Clubs all own or owned teams in the Leagues under various trade names. Through these trade names, the Clubs entered into the Contracts with the Players.
4. The Petitioners have been initially unable to identify the legal entity that owns the trade name for the Club known as the Saguenéens. Therefore, the owner of that Club has initially been named in this lawsuit as John Doe Corporation "A".
5. (...)
6. (...)
7. (...)

## **THE FACTS**

### **Overview**

8. The QMJHL oversees and is the governing body of eighteen hockey teams in Canada participating in the hockey league known as the QMJHL. The Players vary in age from 16-20 years of age and have all signed the Contracts.
9. The form and content of the Contracts are mandated, controlled, and/or regulated by the QMJHL who requires all of the teams to use the standard form Contracts when hiring

Players, regardless of that Player's level or skill or experience or the team with which he signs. Once executed by the Player and team hiring the Player, the Contracts provide that they must then be approved by the commissioner of the QMJHL.

10. Under some of the Contracts, the teams, owned and operated by the Respondent Clubs, retain the rights of their Players for the life of the contract which generally covers all ages of eligibility in the QMJHL which is 16-20 years of age. Therefore, a Player who signs at the age of 16, signs a three year contract with an option for another year with the team.
11. The Former Contract was the standard player agreement until the season commencing September 2013 when all players were required to sign a Current Contract which is now the standard player agreement. The Current Contract purports to supersede and replace the Former Contract.
12. The Petitioners hereby communicate the following two Former Contracts: a redacted player agreement of 2008 and a redacted player agreement of 2010, copies of which are respectively communicated in support hereof as Exhibit R-2 and Exhibit R-3.
13. The Former Contract and the Current Contract include an "education package" which provides for payment by the team towards a Player's post-secondary education fees for each complete season that the Player played for that team. To be eligible for this education package under the Former Contract, the Player must enrol in a post-secondary education program within 18 months after completing his last season and must not sign a professional contract or participate in a tryout contract with a professional hockey team in the National Hockey League, American Hockey League, or with a European team, the whole as it appears amongst others from a copy of the 2009 QMJHL Education Policy communicated in support hereof as Exhibit R-4.
14. (...)
15. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the Former Contracts and the Current Contracts, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.
- 15.1 However, during their time in the QMJHL, Players received payslips and were entitled to claim and some of them did claim for unemployment benefit during summers.
16. Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the Players to meet the requirements of the education package, including maintaining a grade point average and enrolment in high school or online courses.
17. While the Contracts purport to be academically based, many of the Players while playing for a team have already graduated from high school or have already signed contracts with NHL teams.
18. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a team in the Western Hockey League ("WHL"), a league that is also operated under the supervision of

the CHL, and a Player is one of employer/employee, stating, "[t]he players are employees who receive remuneration - defined as cash - pursuant to the appropriate regulations governing insurable earnings. It would require an amendment to subsection 5(2) of the Employment Insurance Act in order to exclude players in the WHL - and other junior hockey players within the CHL - from the category of insurable employment."

19. In that case, the Court was asked to consider the relationship between the Player and the team based on the language of the Former Contract. The Court rejected the WHL team's argument that the remuneration was nothing more than an allowance paid to a student participating in a hockey program that offered scholarships subject to the pre-condition of possessing the ability to play hockey at a level permitting one to be a member of a WHL team. The Court found that the team operated a commercial organization carrying on business for profit and that the Players were employees. The requirement to play hockey was not found to be inextricably bound to a condition of scholarship since attendance at a post-secondary institution was not mandatory to stay on the roster.
20. Despite the Tax Court of Canada ruling made some fourteen years ago, the Respondents and the QMJHL failed to rewrite the Former Contract until September 2013 or pay wages in accordance with Applicable Employment Standards Legislation.
21. (...)
22. In 2013, the Respondents and the QMJHL redrafted the Contract to remove all references to the term "salary" (regarding the 16 to 19 year old players). The Respondents' and the QMJHL's Current Contract redefines the status of 16 to 19 year old players as:

Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as hockey players whose goal it is to pursue the practice of hockey at the professional level.

23. While the Respondents and the QMJHL have demanded that all Players ages 16 to 19 sign the Current Contract, in substance nothing changed in September 2013 with respect to the manner in which the teams operate or the degree of control exercised by the teams over the Players.
24. The predominant purpose of the Respondents and the QMJHL in redrafting the Contract and in requiring Players to sign the Current Contract, was to avoid the application of Applicable Employment Standards Legislation.

***The Former Contracts and the Applicable Employment Standards Legislation***

25. The Former Contract is a standard form contract where the clauses relevant to wages and the terms of employment are identical or materially the same. The QMJHL required the use of the Former Contracts, and that contract only, which must be approved by the commissioner of the QMJHL before a Player is allowed to play hockey.
26. (...)

27. The Applicable Employment Standards Legislation for each jurisdiction in which the teams owned by the Clubs are domiciled is also materially the same in that it is mandatory that employers pay their employees minimum wage set by the legislation as follows:
- (a) Section 40 of the *ARLS* states that "[a]n employee is entitled to be paid a wage that is at least equivalent to the minimum wage"; and
  - (b) (...)
28. In addition to legislating a minimum wage, the Applicable Employment Standards Legislation in each jurisdiction also contains materially the same provisions which prevents employers from contracting out of their obligations under the Applicable Employment Standards Legislation:
- (a) Section 93 of the *ARLS* states, "[i]n an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null"; and
  - (b) (...)
29. The Petitioners plead on their own behalf, and on behalf of the Class, that the Former Contract is a contract of employment and therefore the pay received by each Class Member under the Former Contract was below the minimum wages prescribed by the Applicable Employment Standards Legislation and insofar as the Former Contract avoided the minimum wage obligations imposed by the Applicable Employment Standards Legislation, it is void and not a defence to this action.

#### ***The QMJHL Revises the Contracts***

30. On July 1 2013, a new regulation for the QMJHL, referred to as the "Rights and Obligations of Players" or "R-11", came into force (the "**Regulation**"). The Regulation was subsequently amended September 6, 2013, as it appears from a copy of a document entitled "September 2013 – Rights and Obligations of Players" communicated in support hereof as Exhibit R-5. Its objectives are stated as:

To clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.

31. In addition to the Regulation, and included in Exhibit R-5, there is a Schedule "A": the "Commitment Form for 16-to-19-Year Old Players" and a Schedule "B": "Standard Contract – 20-Years-Old Player". The Regulation, Schedule "A", Schedule "B" and the QMJHL policy P-1 known as the "Education Policy" (which the Petitioners do not have a copy) are referred to herein as the Current Contract. The Respondents and the QMJHL required all 16 to 19 year old Players to sign the Commitment Form whereby the Player agrees to abide by the constitution, the regulations (including the Regulation), the policies, and the directives of the QMJHL. The Current Contract provides, *inter alia*, that:

- (a) The player acknowledges that this present agreement terminates, cancels and replaces any existing standard contract, if any, between the player and the club;
  - (b) Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as hockey players whose goal it is to pursue the practice of hockey at the professional level;
  - (c) The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their major junior career.
  - (d) The Player grants to the Club and to the League the right to authorize any person, firm, or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. Therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires [sic].
  - (e) During the regular schedule and the eliminatory schedule, the club will cover or reimburse the following expenses:...For expenses related to hockey practice and being away from home that is not otherwise reimbursed to the player, the club pays a fixed weekly allowance of \$60.
32. Under the terms of all of the Current Contracts, the teams, owned and operated by the Respondent Clubs, retain the rights of their Players for the life of the contract which generally covers all ages of eligibility in the QMJHL which is 16-19 years of age. Therefore, a Player who signs at the age of 16, signs a three year contract with an option for another year with the team.
33. The Current Contract sets a fixed fee for the Players' services which are \$60 a week. Teams make applicable employee payroll deductions at source and remit them to applicable government authorities.
34. The Current Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees pursuant to the QMJHL's "Education Policy", referred to as document P-1. The Petitioners do not have a copy of this document.
35. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the Current Contracts, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.
36. Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the Players to meet the requirements of the education

package, including maintaining a grade point average and enrolment in high school or online courses.

37. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a team in the Western Hockey League ("WHL"), a league that is also operated under the supervision of the CHL, and a Player is one of employer/employee, stating, "[t]he players are employees who receive remuneration - defined as cash - pursuant to the appropriate regulations governing insurable earnings. It would require an amendment to subsection 5(2) of the Employment Insurance Act in order to exclude players in the WHL - and other junior hockey players within the CHL - from the category of insurable employment."
38. In that case, the Court was asked to consider the relationship between the Player and the team based on the language of the Former Contract. The Court rejected the WHL team's argument that the remuneration was nothing more than an allowance paid to a student participating in a hockey program that offered scholarships subject to the pre-condition of possessing the ability to play hockey at a level permitting one to be a member of a WHL team. The Court found that the team operated a commercial organization carrying on business for profit and that the Players were employees. The requirement to play hockey was not found to be inextricably bound to a condition of scholarship since attendance at a post-secondary institution was not mandatory to stay on the roster.
39. Despite the Tax Court of Canada ruling made some fourteen years ago, the Respondents and the QMJHL under the Current Contract fail to pay wages in accordance with Applicable Employment Standards Legislation.
40. Instead, the Respondents and the QMJHL have reworded the Former Contract to describe the salary as an allowance and to recast the status between the Players and Clubs as one of "student athletes" in an attempt avoid the application of the Applicable Employment Standards Legislation and the ruling in *McCrimmon*.
41. The Petitioners repeat paragraphs 27 and 28 above and plead on behalf of the Class that the Current Contract is a contract of employment and therefore the pay received by the 16-19 year old Players during the 2013 season and the current season is below the minimum wages prescribed by the Applicable Employment Standards Legislation. Insofar as the Current Contract avoided the minimum wage obligations imposed by the Applicable Employment Standards Legislation, it is void and not a defence to this action.

### ***The 20 Year Old Contracts***

42. On July 1 2013, the Regulation came into force and was subsequently amended September 6, 2013. Its objectives are stated as:

To clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.



43. In addition to the Regulation, there is a Schedule "B": the "Standard Contract – 20-Year-Old Player". The Regulation, the Schedule "B", and the QMJHL policy P-1, the "Education Policy" (which the Petitioners do not have a copy), are referred to herein as the 20 Year Old Contract. The Respondents and the QMJHL required all 20 year old Players to sign the 20 year Old Contract whereby those Players agree to abide by the constitution, the regulations (including the Regulation), the policies, and the directives of the QMJHL. The 20 Year Old Contract provides, *inter alia*, that:
- (a) The player acknowledges that this present contract terminates, cancels and replaces any existing standard contract, if any, between the player and the club;
  - (b) Players who are 20 years old and who are retained by a team are young adults who are called upon to exercise their leadership abilities and to act as mentors towards their teammates. They are considered to be salaried employees of the club and will be paid accordingly;
  - (c) The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their major junior career;
  - (d) The Player grants to the Club and to the League the right to authorize any person, firm, or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires [*sic*].
  - (e) All 20-year-old players must sign a standard contract supplied by the league and this contract must be registered with the league; he cannot sign any other contract that is not registered with the league;
  - (f) During the regular and playoff schedules, the club will cover or reimburse...the player's salary.
  - (g) This agreement is the sole understanding relating to the rights of the Player for his services as a 20-year-old player, and it supersedes or replaces any other prior verbal or written agreement or statement of intent.
44. The 20 Year Old Contract sets a fixed weekly fee for the Players' services which vary, but are capped by the QMJHL at \$1,000 a week. Teams make applicable employee payroll deductions at source and remit them to applicable government authorities.
45. The 20 Year Old Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees pursuant to the QMJHL's "Education Policy", referred to as document P-1.

46. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the 20 Year Old Contract, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.
47. The Petitioners repeat paragraphs 27 and 28 above and plead on behalf of (...) the Class that the 20 Year Old Contract is a contract of employment and therefore the pay received by (...) the Class Members who signed the 20 Year Old Contract was below the minimum wages prescribed by the Applicable Employment Standards Legislation. Insofar as the 20 Year Old Contract avoids the minimum wage obligations pertaining to overtime pay, holiday pay, and vacation pay imposed by the Applicable Employment Standards Legislation, and to the extent the weekly fee or salary equates to less than 44 hours a week at minimum wage, it is void and not a defence to this action.

## **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

### ***Lukas Walter***

48. Luke signed a 20 Year Old Contract on or about September 10, 2013, as did the general manager of the team, as it appears from a copy of the Agreement between Lukas Walter and the Saint John Sea Dogs communicated in support hereof as Exhibit R-6. Luke's contract provided *inter alia* that in exchange for providing the services under the agreement, Luke would receive a fee of \$476 weekly for one season commencing September 13, 2013. He would also receive reimbursement of \$90 weekly for accommodation expenses. Luke's Contract was approved by the commissioner of the QMJHL on October 6, 2013.
49. Between September 13, 2013 and March 14, 2014, Luke played a total of 53 games as a left wing for the Sea Dogs. As an "enforcer" for the team, Luke was encouraged by his coach to play physically tough hockey and to drop the gloves and fight opponents. During that season, he spent a total of 141 minutes in the penalty box for his physically tough play.
50. On average, Luke devoted about 5-6 hours per day, 6-7 days a week to providing services under the terms of the Contract including practicing, playing games, promoting, and travelling with the team. When the team was required to travel, he would devote longer hours, sometimes up to over 12 hours a day. Although Luke was classified in his Contract as an employee, he did not spend any additional hours or provide any substantively different employment services to the team compared to his teammates, including those Players who were 16-19 years old.
51. Luke's hours varied but on average he supplied about 40 hours of services weekly and in some weeks over 44 hours, up to 65 hours per week.
52. Luke was issued an employment T4 slip prepared by the Sea Dogs for the 2013 tax year, as it appears from a copy of Lukas Walter's 2013 T4 communicated in support hereof as Exhibit R-7. The Sea Dogs made payroll deductions from Luke's wages, including income tax at source, Canada Pension Plan contributions and Employment Insurance premiums. The Sea Dogs also made employer contributions to Employment Insurance and the

Canada Pension Plan. According to Luke's T4 Exhibit R-7, Luke earned \$8,314.29 in employment income in 2013.

53. Luke was also issued an employment T4 slip prepared by the Sea Dogs for the 2014 tax year, as it appears from a copy of Lukas Walter's 2014 T4 communicated in support hereof as Exhibit R-8. According to this T4, Luke earned \$7,028.70 in employment income in 2014.
54. On March 17, 2014, the Sea Dogs prepared a Record of Employment ("ROE") for Luke, using the standard form issued by Human Resources and Skills Development Canada, as it appears from a copy of Lukas Walter's ROE communicated in support hereof as Exhibit R-9. The ROE was provided to Luke and submitted by the Sea Dogs to the Government of Canada. According to the ROE, the employer is listed as the Sea Dogs, the employee is listed as Luke and his occupation is described as hockey player. Luke's total insurable hours was calculated by the Sea Dogs and inserted into the ROE as 1048 hours worked. The Respondent also completed box 6 on the ROE entitled PAY PERIOD TYPE (inserting bi-weekly), box 10 FIRST DAY WORKED (inserting September 13, 2013) and box 11 LAST DAY WORKED (inserting March 14, 2014).
55. The ROE hours worked of 1048 hours amounts to forty hours a week during the six month employment period. Luke pleads his actual hours worked was much higher and varied each week depending on a number of factors, including traveling.
56. Luke's bi-weekly pay was always the same, no matter how many hours each week he worked for the team. In some weeks, he did not receive a fee equivalent to minimum wage, nor did he receive any vacation pay, holiday pay or overtime pay as required under the Applicable Employment Standards Legislation, even when he worked on holidays or for in excess of 44 hours a week.
- 56.1 Thomas Gobeil remembers signing a contract, probably the Former Contract, in 2010 when he joined the Baie-Comeau Drakkar, but to his recollection, a copy of the contract was never given to him. At that time, Thomas Gobeil was 16 years old.
- 56.2 During the first year of Thomas Gobeil in the QMJHL, he played a total of 8 games for the Baie-Comeau Drakkar, during his second year, he played a total of 51 games for the Baie-Comeau Drakkar, during his third year, he played a total of 41 games for the Baie-Comeau Drakkar and 23 games for the Chicoutimi Saguenéens, and, during his fourth year, he played 27 games for the Chicoutimi Saguenéens and 5 games for the Val d'Or Foreurs;
- 56.3 Although Thomas Gobeil was registered in school during his time in the QMJHL, school was not the priority and he was told by coaches and by people in the administration that his "job" was to perform on the ice. In order to do so, Thomas Gobeil devoted about 5-6 hours per day, 6-7 days a week providing services under the terms of the contract he signed, including practicing, playing games, promoting, and travelling with the team. When the team was required to travel, he would devote longer hours, sometimes up to over 12 hours a day.
- 56.4 Thomas Gobeil's hours varied but on average he supplied about 40 hours of services weekly and in some weeks over 44 hours, up to 65 hours per week.

- 56.5 During his time in the QMJHL, Thomas Gobeil received bi-weekly paychecks and, each year, he was issued employment T4 slips prepared by the Respondents Club de Hockey Junior Majeur de Baie-Comeau inc., 9264-8849 Québec inc. and Club de Hockey Junior Majeur Val d'Or inc.;
- 56.6 Also, during his first and second year in the QMJHL, Thomas Gobeil claimed unemployment benefit during summers;
- 56.7 Thomas Gobeil did not receive a fee equivalent to minimum wage, nor did he receive any vacation pay, holiday pay or overtime pay as required under the Applicable Employment Standards Legislation, even when he worked on holidays or for in excess of 44 hours a week.

***Relationship of the Petitioners with the teams***

57. Luke's relationship with the Saint John Sea Dogs and Thomas Gobeil's relationship with each of the teams he played for and the contracts they signed were contracts of employment. They were employees of the teams. The facts in support of them being employees and in support of the Class Members being employees are as follows:
- (a) Under the Contract and in all dealings with the team, Luke and Thomas Gobeil were subject to the control of the team as to when, where, and how he played hockey;
  - (b) The QMJHL and the teams determine and control the method and amount of payment;
  - (c) Luke and Thomas Gobeil were required to adhere to the teams' schedules of practices and games;
  - (d) The overall work environment between the teams and Luke and Thomas Gobeil was one of subordination;
  - (e) The teams provided tools, supplied room and board and a benefit package;
  - (f) The teams made payroll deductions at source;
  - (g) The teams issued him T4 slips at the end of the playing season;
  - (h) Luke and Thomas Gobeil were not responsible for operating expenses and did not share in the profits;
  - (i) Luke and Thomas Gobeil were not financially liable if they did not fulfill the obligations of the Contracts;
  - (j) The business of hockey belonged to the team - not to Luke or Thomas Gobeil;
  - (k) The defendants used images of Luke and Thomas Gobeil for their own profit, including, but not limited to selling the use of Luke's image and name to video

game companies for use in a video game which Luke purchased at full price with his own money;

- (l) The team imposed restrictions on Luke's and Thomas Gobeil's social lives including a curfew that was monitored;
  - (m) The team directed every aspect of their role as a Players, and the business of the teams was to earn profits;
  - (n) The T4 slips and ROE establish that the team considered Luke and Thomas Gobeil to be employees and considered the teams to be their employer; and
  - (o) The 20 Year Old Contract describes the relationship as one of employment.
  - (p) Thomas Gobeil was able to claim for unemployment benefit during his time in the QMJHL;
58. Luke pleads that the team violated the *Employment Standards Act*, S.N.B. 1982, c.E-7.2, by failing to pay him minimum wages, holiday pay, vacation pay and overtime pay.
- 54.1 Thomas Gobeil pleads that the teams he played for violated the *Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1., by failing to pay him minimum wages, holiday pay, vacation pay and overtime pay.
59. Luke and Thomas Gobeil claim damages against the Respondents, Saint John Major Junior Hockey Club Limited, Club de Hockey Junior Majeur de Baie-Comeau inc., 9264-8849 Québec inc. and Club de Hockey Junior Majeur Val d'Or inc. for back wages, overtime pay, vacation pay and holiday pay in accordance with the *Employment Standards Act*, S.N.B. 1982, c.E-7.2 and the *Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1. and against all of the Respondents who are jointly and severally liable with the teams for those same damages as a result of the civil conspiracy described below.

#### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS**

60. Each Class Member signed the same or substantially similar Contracts with one of the Respondent Clubs which was approved by the QMJHL.
- 60.1 In 2014, a website was launched inviting all potential members of all class actions against Canadian hockey leagues, for which authorization or certification have been requested in several provinces, to register in the website database, the whole as it appears from screenshots taken from the website at the address [www.chlclassaction.com](http://www.chlclassaction.com) communicated in support hereof as Exhibit R-10;
- 60.2 Between 2014 and the present proceeding, more than 546 have registered on the website including 149 potential members of the proposed class action against the QMJHL and its teams;
- 60.3 The foregoing demonstrates that the interest of Lukas Walter and Thomas Gobeil in the class action which the present motion seeks authorization for is shared by other potential Class Members;

### **Breach of Statute/Statutory Cause of Action**

61. The Clubs entered into Contracts with the Class Members. Under the Contracts, the Class Members agreed to provide employment services to the Clubs in exchange for some remuneration.
62. The Clubs entered into an employer/employee relationship with the Class Members.
63. All Class Members devote an average of 35-40 hours weekly and in some instances up to 65 hours weekly to employment related services without being compensated on an hourly basis at prescribed minimum wage rates. Therefore, the Contracts violate the rights of the Players under the Applicable Employment Standards Legislation with respect to minimum wages, vacation pay, holiday pay, and overtime pay.
64. All Applicable Employment Standards Legislation also provides that any term of an employment contract that violates statutorily prescribed minimum wages, vacation pay, holiday pay, and overtime pay is void and unenforceable. By way of example, in Quebec, section 93 of the *ARLS* provides that "[i]n an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null".
65. Therefore, the terms of the Contracts requiring Players to perform all employment related services for a fixed weekly sum are null. The Players are entitled to be compensated at statutory minimum hourly wage rates in the Province or State where the Player was employed for back wages, and back overtime pay, and back holiday pay, and back vacation pay.
66. The Clubs are therefore liable to the Petitioners and Class Members for back wages at minimum wage levels, overtime pay, holiday pay, and vacation pay, in accordance with the Applicable Employment Standards Legislation.

### **Conspiracy**

67. The Petitioners claim that the Respondents and the QMJHL unduly, unlawfully, maliciously, and lacking *bona fides*, conspired and agreed together, the one with the other, to act in concert to demand or require that all players sign a Contract which the Respondents and the QMJHL knew was unlawful. The Respondents and the QMJHL knew or recklessly disregarded the fact that the relationship between the Club and Class Members was one of employer/employee, and as such the Contracts contravened employment standards legislation, yet required the Contracts be signed so as to avoid paying the Petitioners and Class Members minimum wages, vacation pay, holiday pay or overtime pay.
68. The Clubs and the QMJHL have access to legal opinions, judicial decisions, employment tribunal directives and decisions, and Canada Revenue Agency bulletins on the criteria for determining whether the Player/Team relationship is one of independent contractor, student athlete, or employment. The Respondents and the QMJHL are well aware that the fees paid to the Players under the Contracts probably violate employments standards legislation and are well aware of the jurisprudence where Courts have construed the relationship between the Players and the Clubs as an employer/employee relationship.

The Respondents and the QMJHL make or direct that the Clubs make employee payroll deductions and remit them in their capacity as employer to government agencies.

69. The QMJHL controls the terms of the Contracts by requiring that the Clubs use only the standard form contract and by making each and every Contract conditional on approval by the QMJHL. The amount of fees received by the Players is set by the QMJHL and pursuant to QMJHL's bylaws and the Regulation; hence the QMJHL has unlawfully set the wages below the minimum legislated standards. The QMJHL directs that the Clubs must insist that Players sign the Contract as a condition of playing in the QMJHL.
70. The Clubs know, or ought to know, that the Contracts are unlawful pursuant to the Applicable Employment Standards Legislation, including the ARLS, but have agreed and conspired with the QMJHL to use the Contracts and the Contracts only. The conspiracy between the QMJHL and the Clubs occurred in Quebec and continues to occur in Quebec where the head office of the QMJHL is located.
71. The Respondents and the QMJHL were motivated to conspire, and their predominant purposes and concerns were to continue operating the QMJHL without incurring costs that were to be lawfully paid by the Clubs to the Petitioners and the Class Members in the form of minimum wages, overtime pay, holiday pay and vacation pay.
72. The conspiracy was unlawful because the Respondents and the QMJHL knowingly caused the Petitioners and Class Members to enter into an unlawful contract and agree to receive wages in contravention of the Applicable Employment Standards Legislation and because the Respondents and the QMJHL deliberately attempted to circumvent the Legislation by inaccurately characterising the status of the Players as student athletes in 2013 and, also in 2013, by inaccurately characterizing the fees payable to the players as an allowance. The Respondents and the QMJHL knew that such conduct would more likely than not cause harm to the Petitioners and the Class Members.
73. The acts in furtherance of the conspiracy caused injury and loss to the Petitioners and other Class Members in that the Players' statutory protected right to fair wages were breached and they did not receive minimum wages, vacation pay, holiday pay or overtime pay that was owed to them as lawfully required under the Applicable Employment Standards Legislation.
74. As a result of the conspiracy, which was committed by all Respondents and the QMJHL together, all of the Respondents and the QMJHL are jointly and severally liable for all monies owing to the Petitioners and the Class Members under the Applicable Employment Standards Legislation regardless of which team employed the Class Member.

### **Remedies**

75. The Petitioners and each Class Member has suffered damages and loss as a result of the Clubs' breach of statute and the Respondents' and the QMJHL's conspiracy, as particularized above.
76. The Petitioners plead that them and the Class are entitled to recover back wages, holiday pay, vacation pay, and overtime pay pursuant to the Applicable Employment Standards Legislation, together with interest.

77. The Petitioners seek on their own behalf, and on behalf of the Class, an order that all Respondents must disgorge all profits that the Respondents generated as a result of benefitting from breaches of Applicable Employment Standards Legislation and the conspiracy.

***Punitive Damages***

78. The Petitioners seek on their own behalf, and on behalf of members of the Class, punitive damages for the Respondents' conduct in violating the Applicable Employment Standards Legislation while they were aware that certain terms of the Contracts were probably void. The Respondents were lax, passive, ignorant with respect to the Petitioner and Class Members' rights and to their own obligations; displayed ignorance, carelessness, and serious negligence; and such conduct was high-handed, outrageous, reckless, wanton, deliberate, callous, disgraceful, willful and in complete disregard for the rights of the Petitioners and Class Members.
79. The Petitioners plead that only a punitive damages award will prevent the Respondents from continuing their unlawful conduct as particularized herein.

**CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

80. The composition of the Classes makes the application of the dispositions on the mandate of representation and on the consolidation of proceedings in the N.C.C.P. impractical for the following reasons:
- (a) Class Members are numerous and are scattered across several provinces and are estimated to be in the hundreds;
  - (b) The names and addresses of the Class Members are not known to the Petitioners (but are likely known to the Respondents);
  - (c) Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded;
  - (d) Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the Court system;
  - (e) A multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;
  - (f) These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action; and



- (g) In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.
81. The claims of the Class Members raise identical, similar or related questions of fact or law namely:
- (a) Are, or were, the Class Members employees within the meaning of the Applicable Employment Standards Legislation?
  - (b) Did any or all of the Respondents conspire to require the Class Members to agree to the Contracts, and the Contracts only, which they knew were unlawful? If so, when, where, and how?
  - (c) Is this an appropriate case for the Respondents to disgorge profits?
  - (d) Are the Respondents liable for punitive damages?
82. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

83. The action that the Petitioners wish to institute for the benefit of the Class Members is an action in damages;
84. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

**GRANT** the Petitioners' action against the Respondents;

**DECLARE** that the Respondents are liable to the Class Members for the following:

- (i) breach of the Applicable Employment Standards Legislation; and
- (ii) conspiracy.

**CONDEMN** the Respondents to pay the Class Members damages in the amount pleaded in the Superior Court of Quebec with Court File No. 500-06-000716-148, or such other sum as this Honourable Court finds appropriate;

**GRANT** an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

**GRANT** the class action of the Petitioners on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 595 to 598 N.C.C.P.;

**ORDER** the treatment of individual claims of each Class Member in accordance with articles 599 to 601 N.C.C.P.; and

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

85. The Petitioners suggest that this class action be exercised before the Superior Court in the District of Montreal because the Class Members and Respondents reside everywhere in the Province of Quebec and in other Provinces;
86. The Petitioners, who are requesting to obtain the status of representatives will fairly and adequately protect and represent the interest of the Members of the Group for the following reasons:
- (a) He understands the nature of the action;
  - (b) He is available to dedicate the time necessary for an action to collaborate with Class Members; and
  - (c) His interests are not antagonistic to those of other Class Members.
87. The present motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the Petitioners' action against the Respondents;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioners the status of representatives of the persons included in the group herein described as:

- (a) All players who are or were members of a team owned and/or operated by one or more of the Respondents in the Province of Quebec (a "team") or at some point commencing November 5, 2011 and thereafter (...) ("**Quebec Class**"); (...)
- (b) (...)

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- (b) Are, or were, the Class Members employees within the meaning of the Applicable Employment Standards Legislation?
- (c) Did any or all of the Respondents conspire to require the Class Members to agree to the Contracts, and the Contracts only, which they knew were unlawful? If so, when, where, and how?
- (d) Is this an appropriate case for the Respondents to disgorge profits?
- (e) Are the Respondents liable for punitive damages?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**DECLARE** that the Respondents are liable to the Class Members for the following:

- (i) breach of the Applicable Employment Standards Legislation; and
- (ii) conspiracy.

**CONDEMN** the Respondents to pay the Class Members damages in the amount pleaded in the Superior Court of Quebec with Court File No. 500-06-000716-148, or such other sum as this Honourable Court finds appropriate;

**GRANT** an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

**GRANT** the class action of the Petitioners on behalf of all the Class Members;

**ORDER** collective recovery in accordance with articles 595 to 598 N.C.C.P.;

**ORDER** the treatment of individual claims of each Class Member in accordance with articles 599 to 601 N.C.C.P.; and

**THE WHOLE** with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

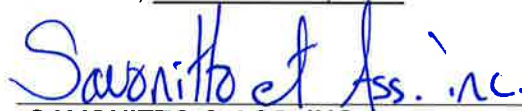
**DECLARE** that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

**ORDER** the publication of a notice to the Class Members in accordance with Article 579 N.C.C.P., pursuant to a further Order of the Court, and **ORDER** Respondents to pay for said publication costs;

**THE WHOLE** with costs, including the costs of all publications of notices.

Montreal, November 19, 2018



**SAVONITTO & ASS. INC.**

*Attorneys for Petitioners*