

Court File No. CV-14-514423

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SAMUEL BERG

Plaintiff

- and -

CANADIAN HOCKEY LEAGUE, ONTARIO MAJOR JUNIOR HOCKEY LEAGUE,
ONTARIO HOCKEY LEAGUE, WINDSOR SPITFIRES INC., LONDON KNIGHTS
HOCKEY INC., BARRIE COLTS JUNIOR HOCKEY LTD., BELLEVILLE SPORTS
AND ENTERTAINMENT CORP., ERIE HOCKEY CLUB LIMITED, GUELPH STORM
LIMITED, KINGSTON FRONTENAC HOCKEY LTD., 2325224 ONTARIO INC.,
NIAGARA ICEDOGS HOCKEY CLUB INC., NORTH BAY BATTALION HOCKEY
CLUB LTD., GENERALS HOCKEY INC., OTTAWA 67'S LIMITED PARTNERSHIP,
THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED.,
COMPUWARE SPORTS CORPORATION, SAGINAW HOCKEY CLUB, L.L.C., 649643
ONTARIO INC c.o.b. as SARNIA STING, SOO GREYHOUNDS INC., 1056648 ONTARIO INC.,
KITCHENER RANGER JR A HOCKEY CLUB, and SUDBURY WOLVES HOCKEY CLUB
LTD.

Defendants

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, C.6

Clerk's Stamp

COURT FILE NO.	1401-11912
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	LUKAS WALTER as REPRESENTATIVE PLAINTIFF
DEFENDANTS	WESTERN HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, et al.
DOCUMENT	AFFIDAVIT OF PAUL MYERS
PARTY FILING THIS DOCUMENT	DEFENDANT

Brought under the *Class Proceedings Act, 1992*

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416.865.7380 Trisha Jackson (LSUC #:18466S) Tel: 416.865.7323 Crawford Smith (LSUC #: 42131S) Tel: 416.865.8209 Sarah Whitmore (LSUC #: 61104E) Tel: 416.865.7315 Lawyers for the Defendants
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Lawyers for the Plaintiff

I, Paul Myers, of the City of DeWinton, in the Province of Alberta, MAKE OATH AND SAY:

1. My son, Tyler Myers, played in the WHL on the Kelowna Rockets for one partial season and then three full seasons between 2006 and 2009.
2. I have always taken an active interest in my son's hockey development as well as his education and personal growth. While he was playing for the Rockets in Kelowna, I maintained a close supervisory relationship over Tyler but also had to rely on his billets, the coaches, and management of the Rockets in this regard.
3. I am also familiar with the amateur hockey system in the United States. I played amateur hockey growing up in Pennsylvania. I also played Division II Hockey at Lehigh University in Bethlehem, Pennsylvania.
4. I have knowledge of the matters to which I depose in this affidavit, except where I state below that I have relied upon information from another source, in which case I indicate the source of my information and I believe the information to be true.

My Background

5. I am the President and Chief Executive Officer of Canbriam Energy Inc. I have worked in the oil and gas industry for 27 years. I hold a Bachelor of Science degree in Geophysics from Lehigh University, a Masters of Science degree in Geology with an emphasis in Geophysics from the University of Kansas, and a Masters of Business Administration degree from the University of Calgary.

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6. I grew up in Hellertown, Pennsylvania. I played amateur hockey from the age of 11 to 15 years old on various minor hockey teams in Allentown, Pennsylvania. I also played one year of Midget AAA when I was 15 years old in Nepean, Ontario and two years of junior hockey when I was 16 and 17 years old in Allentown and in Valley Forge, Pennsylvania. When I was 18 years old, I enrolled at Lehigh University in Bethlehem, Pennsylvania where I played four years of NCAA Division II Men's Ice Hockey while completing a Bachelor of Science degree in Geophysics.

7. Tyler was born in Katy, Texas. At that time, I was working with Amoco Production Company in Houston, Texas. In 1997, I left Amoco and joined Statoil Exploration US, a subsidiary of the Norwegian National Oil Company. In 1999, I assumed the position of Vice-President of Exploration for Statoil Exploration US. In 2000, I left Statoil and accepted a position with PanCanadian Energy which led to our family moving to Calgary. PanCanadian and Alberta Energy Corporation merged in 2002 to form EnCana where I held the position of Vice President of Gulf of Mexico and Alaska. In 2005, EnCana sold these businesses, and I left to become Chief Operating Officer and eventually President and CEO of Esprit Energy Trust. Following the sale of Esprit to Pengrowth Energy in October of 2006 and a short transition of the assets into early 2007, I started working on a start-up entrepreneurial venture. In January 2008, Canbriam Energy Inc. was formed. I have been President and CEO of Canbriam since then.

8. Tyler, my wife Susan, and I became Canadian citizens in March of 2012.

Tyler's Amateur Hockey Experiences prior to the WHL

9. Tyler played amateur hockey in Houston, Texas from the age of six until our move to Calgary when he was 10 years old. After the move, Tyler played amateur hockey in the Calgary minor hockey system with the Bow Valley Minor Hockey Association until the end of Pee wee. He then played with the Calgary Buffalos in his first year Bantam season when he played in the Calgary Bantam AAA League. His last season in the Calgary minor hockey league was 2003-2004. Tyler's birthday is February 1, 1990, so he was 13 and 14 years old during the 2003-2004 season.

10. The Calgary Bantam AA and AAA teams have historically played in a rural Alberta league. However, in and around 2004, the Calgary minor hockey league decided to form its own

Bantam AA and AAA league that would have multiple AA and AAA teams with local Calgary players. The teams in this new league would only compete against each other and would not compete against teams outside of Calgary. In our view, the result of this change was a watering down in player skill and competitiveness in the league. Tyler was focused on playing the most competitive amateur hockey that he could, so we were both disappointed with this shift.

11. As a result, Tyler played his second year of Bantam hockey at the Edge School for Athletes in Calgary. The Edge School is a private school in Calgary that is designed to permit high performing athletes to balance their athletic commitments with academics. The Edge School had a Bantam AAA hockey team at that time, and we decided that it would be better for Tyler's development for him to play on the Edge Bantam AAA team.

12. From my perspective, I was focused both on Tyler's hockey and academic developments. Tyler had just finished Grade 8 and was about to begin high school. I was attracted to the Edge School's premier curriculum, small class sizes, and excellent teachers as well as its competitive hockey team. Tyler's coaches at the Edge School were also teachers who set up study sessions on the road trips the team was required to take. In some cases, classes were also held on team road trips during weekends.

13. Unfortunately, the Edge School was not associated with any league in Alberta at that time and therefore played an exhibition schedule of games that could be scheduled ad-hoc. While the Bantam year was a very fulfilling season of hockey and academics, the uncertainty of the Edge School's schedule prompted us to consider other opportunities for Tyler that would offer more certainty while continuing to facilitate his hockey development.

14. At 15 years old (Grade 10), Tyler attended the Athol Murray College of Notre Dame, which is a private Catholic high school in Wilcox, Saskatchewan. While our preference at the time would have been for him to have played Midget AAA hockey in Calgary, this was not an option. Because Tyler had played his second year of Bantam AAA hockey on the Edge School team, the Calgary Buffalos Minor Hockey Association barred him from trying out for their Midget AAA team and insisted that the Midget A League (a 15 year old league) was his only option. We viewed this as a step backward in his hockey development, so we looked into other options for Tyler. Notre Dame plays in the Saskatchewan Midget AAA Hockey League. The

school not only offered some of the highest quality hockey development for Tyler's age, but also provided an opportunity for Tyler to transition to some level of independence should he eventually ever leave home to go to the WHL.

Tyler's Amateur Hockey Experience in the WHL

15. It was Tyler's goal to culminate his amateur hockey years by playing in the WHL. His prime hockey development years were spent in Canada, and as a result he was driven from a very young age to attain this goal. Although, as I discuss below, there were US colleges and universities that we were aware of that were interested in recruiting Tyler, he was not particularly interested in playing hockey in the NCAA.

16. Given my background, as his amateur hockey career progressed, I remained equally focused on Tyler's education. My goal for Tyler was to ensure that he received an excellent education at the highest level that he could attain no matter which direction he would choose.

17. Education is particularly important to me. I have benefited from my educational opportunities and have personally experienced the rewards of investing in education. My father was a professor of Geology at the Lehigh University in Bethlehem, Pennsylvania.

18. Based in part on my American background and, in part, on my focus on education, I always envisioned Tyler finishing his amateur hockey career by playing in the NCAA rather than in the WHL. It wasn't until moving to Canada and my eventual research into the WHL that I would begin to change this view. From my perspective, before I had an opportunity to have a closer look at the WHL through various connections and then to eventually meet with the Kelowna coaches and management and to learn about the team and the league's focus on educational development, I viewed the NCAA as the better option for a hockey player who was equally committed to developing his hockey skills and his education.

Introduction to the Kelowna Rockets

19. Tyler was selected by the Kelowna Rockets in the 2005 WHL Bantam draft. He was 15 years old and had just finished his second year of Bantam hockey. Prior to the WHL draft, I had never met or talked to anyone from the Kelowna Rockets.

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20. Once Tyler was drafted, Bruce Hamilton, the owner and General Manager of the Kelowna Rockets, along with Lorne Frye, the Assistant General Manager and Head scout contacted us to talk about the Rockets and to discuss Tyler's interest in playing with the Club.

21. At no point during any of my conversations with Bruce or with anyone else from the Rockets was there any pressure for me to agree to send Tyler to Kelowna. Instead, our conversations were focused on providing me with an opportunity to learn more about the Club, the WHL and how they specifically assisted the players with their academic commitments.

22. The Rockets impose somewhat strict rules on the players to ensure they do not become distracted. These rules were important to me, because I wanted to be able to rely on the team to assist me in fulfilling what I considered to be my primary parental responsibility of ensuring that Tyler maintained his educational opportunities. Knowing that I would not be able to supervise Tyler on a day to day basis, I needed to become comfortable that the team would assist me in this regard.

23. In addition to my conversations with Bruce and other members of the Rockets, Tyler was invited to, and did attend, both the Rockets' Rookie training camp and the main training camp in the late summer of 2005. At this time, he had still not signed an agreement with the Rockets. I went to Kelowna with Tyler to further investigate the team and to meet with the team's Education Advisor. I learned about the structures the team had in place to ensure that players did not lose focus on their academics.

24. When I was in Kelowna, I had a first-hand opportunity to become comfortable with the team's discipline and structure as well as their desire for their players to maintain certain levels of academic standards. I was impressed that the team had an extremely close relationship with the local high school that Tyler would attend if we decided to send him to Kelowna. Bruce was in constant communication with the Vice-Principal and the team's Education Advisor.

25. The Rockets Education Advisor was a teacher at the school. It was very evident that the Rockets organization and Kelowna Secondary School were in communication and that it wasn't just for show. I saw the team impose discipline on players who missed school or were not

performing academically. This satisfied me that the organization was aligned with my interests and that Tyler's education would be made a top priority.

26. Bruce held a meeting for all prospective players' parents at that summer camp which also left a positive impression with me. At this meeting, he emphasized the discipline and structure that the team imposed on the players to ensure they were well-equipped to succeed. It was clear to me from this meeting that Bruce and the coaches were aware of the challenges of dealing with teenagers, and this gave me the confidence that I could trust the team to ensure Tyler's educational goals.

27. In addition to my meetings and conversations with Bruce and others in the Rockets organization along with the time I spent in Kelowna, I also studied the WHL education requirements and spoke to multiple parents of current and former players. I asked the parents about the educational support their sons received from the teams they played for and whether and how their teams were able to assist with their sons' education.

28. Through these conversations, as well as my discussions with the Rockets and my own observations in Kelowna, I became comfortable that Tyler's education would be made a top priority. I also became comfortable that the Rockets would be committed to impose the necessary level of discipline and structure on Tyler to ensure that he had the support to continue to succeed with his academics while developing his hockey skills.

Decision to Play with the Kelowna Rockets

29. As set out above, I was highly involved in Tyler's decision to play with the Kelowna Rockets. Tyler was 15 years old when he signed a Standard Player Agreement with the team. I felt it was my responsibility as a parent to be involved in the decision. I would not have permitted him to sign a contract with Kelowna had I not been satisfied that doing so was in his best interests.

30. Tyler did not sign an SPA with the Rockets immediately after he was drafted nor was he ever pressured to do so. I perceived this, in hindsight, to be a result of the fact that the Rockets organization knew the opportunity to play and develop as a hockey player and a young man through the Rockets would sell itself. I came to the same conclusion through my own due

diligence process and had determined that signing an SPA with the Rockets was in Tyler's best interests when the matter was raised.

31. Tyler was a highly skilled player, who had options at that time he was drafted, and I wanted to ensure that playing in Kelowna was the right decision. At the time Tyler was drafted by the Rockets, several US colleges had casually expressed interest in following Tyler's development through his coaches at the Edge School, so while never certain, I felt that playing in the NCAA was a real option for Tyler. When Tyler was a student at the Edge School, he also went on a few different road trips to visit US colleges. The schools Tyler visited with the Edge School included Harvard, Boston College, Northeastern and Providence College.

32. I never felt pressured by Kelowna to make that decision on anyone's timeline but my own. As outlined above, the most important factor for me in this regard was Tyler's ability to maintain his education if he played in Kelowna. Before I would permit Tyler to sign the SPA, I needed to determine that the team was sufficiently committed to ensuring the players' education and that they had the safeguards in place to recognize when and if he should ever drift. I left Tyler in Kelowna with comfort that, together with the Rockets organization, we could make sure our academic objectives were met while enjoying what I've always considered as the top development for hockey players of Jr. age in the world.

33. As I outlined above, prior to my meetings with the Rockets and the other investigations that I undertook after Tyler was drafted to learn about the WHL's education standards, my preference was for Tyler to play in the NCAA. Having played in the NCAA myself, I was already familiar with and comfortable with the education system that would have accompanied Tyler's time in that league.

34. After our visit to Kelowna for the Rookie training camp in the summer of 2005 along with the follow up due diligence with the Rockets organization, parents of players and friends with league experience, I determined that playing in the WHL was the better option for Tyler than playing in the NCAA. In my view, playing in the WHL afforded him the opportunity to play at the highest level of amateur hockey while safeguarding his educational opportunities. The fact that the WHL Scholarship package was guaranteed for Tyler was particularly important to me but in isolation not enough. In addition, in order for me to agree to let him go to the WHL, I also

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needed to be comfortable that he would complete his high school diploma with grades sufficient enough to be accepted to university so he could, in fact, utilize the WHL scholarship. I gained that comfort through my due diligence process and I am happy to say had he not signed an NHL contract, he had the grades to continue his education and would have likely finished a university degree by now provided to him from his time playing in the WHL.

35. When Tyler and I signed his SPA with the Rockets, I read and understood the agreement. I did not think that by signing the SPA Tyler was entering into an employment relationship with the Rockets. In fact, at no time, did we think Tyler was an employee of the Rockets while he played with the team.

Tyler's Experiences Playing with Kelowna

36. Tyler moved to Kelowna in February 2006 shortly after his 16th birthday. He was part-way through Grade 10 at Notre Dame when we decided that the time was right for him to begin playing with the Rockets. I would not have permitted him to move to Kelowna to begin playing with the Rockets if I did not think he was physically and emotionally ready; however, I was confident that he was ready for the change and the added responsibilities. I was also comfortable that his hockey development was at the right stage for him to join the Rockets.

37. Tyler joined the Rockets that season as an affiliate player after he had turned 16. That season, he played 9 regular season and 7 playoff games. He also finished grade 10 at Kelowna Secondary School. He moved in with a billet family that also housed Luke Schenn, one of his teammates who now plays for the Philadelphia Flyers, to finish the shortened remainder of that season.

38. In his first full season with the Rockets in 2006-2007 and from that point forward through three full seasons, Tyler lived with the same billet family for his entire time in Kelowna. His billets became like his parents away from home and provided him with a safe and comfortable home. His billets did not have any of their own children, but they cared for Tyler as if he were their son. They remain our family friends to this day.

39. When the hockey season finished in April 2006, Tyler stayed in Kelowna to finish Grade 10. The Rockets require their players to continue to live with their billets after the hockey season

ends to finish their school year in Kelowna to maintain continuity in their education. Tyler finished the year with good grades.

40. In his second year in Kelowna, there was a period where Tyler had some difficulty balancing his role as an important member of the Rockets with the academic pressures of his Grade 11 courses. He was experiencing success in his hockey development and had been listed by Central Scouting as a prospect for NHL scouts. His focus on his schooling had drifted for a while and it became evident through declining grades. Despite this success with his hockey career, I continued to remind him of the importance of his education regardless of his professional hockey prospects.

41. I was in constant communication at this time with his billets, coaches, and the team's Education Advisor to receive updates on Tyler's progress at school. I was also able to view his marks online. His billets did a good job throughout this period of monitoring his progress and attendance at school, so they were able to alert me to some concerns they had with Tyler's performance at school. Tyler's billets and the team also did a good job of imposing structure on Tyler to attempt to assist him with balancing his school work with his hockey development.

42. After working with the team's Education Advisor to address the billets' concerns and my own concerns, I decided that if Tyler could not turn around his performance at school he would have to leave Kelowna and end his time in the WHL. I therefore went to Kelowna to talk to Tyler about my decision. I decided to give Tyler an opportunity to better his academic performance, but as a consequence for his earlier inattention I took away the used truck that my wife and I had purchased for him to use in Kelowna. I drove Tyler's truck back to Calgary, and I told him that if he did not focus on his school work and improve his grades, the next thing I would take back to Calgary with me was him. The team was entirely supportive of my decision and continued to offer support to Tyler to assist his development.

43. Tyler finished Grade 11 in Kelowna and ended the year with good grades. He worked hard to continue to be focused on his schooling after the truck incident, and his hard work paid off. He also continued to excel with his hockey development. He returned to Calgary that summer and worked at a full-time job.

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Tyler's Professional Hockey Career since Graduating from the WHL

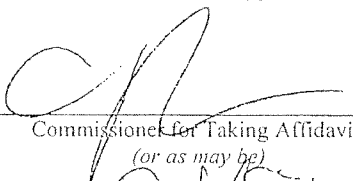
44. Tyler signed a contract with the Buffalo Sabres in 2008 when he was 18. After signing with the Sabres and attending the Sabres training camp, Tyler played another season with the Kelowna Rockets and continued to develop his hockey skills.

45. Tyler played with the Buffalo Sabres for six seasons. In 2015, he was traded to the Winnipeg Jets where he continues to play today.

46. Tyler has had both incredible successes in the NHL and some very challenging times as well. In his rookie season, he won the Calder Memorial Trophy, which is awarded each year to the most proficient rookie player in the NHL. He has also experienced some very difficult times in Buffalo as the team went through a transition, and he and the team were not performing to expectations. I credit his success and his ability to work through difficult circumstances in part to the character development and development as a hockey player that he gained through his time in the WHL.

47. Looking back on Tyler's time with the Rockets, I am also confident that it was the structure and discipline imposed by the team that contributed to Tyler's positive character development as well as his hockey development. By playing in Kelowna with the Rockets, he learned independence and an ability to manage a competing schedule of school and hockey while succeeding in both.

SWORN BEFORE ME at Calgary
in the Province of Alberta
on November 12, 2015.



Commissioner for Taking Affidavits
(or as may be)
Grant St. John



(Signature of deponent)