

Clerk's Stamp

COURT FILE NO.

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 SCOTT ABBOTT
SWORN NOVEMBER 12, 2015PARTY FILING THIS
DOCUMENT

DEFENDANT

*Brought under the Class Proceedings Act, 1992*ADDRESS FOR SERVICE
AND CONTACT
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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

AFFIDAVIT OF SCOTT ABBOTT
(SWORN NOVEMBER 12, 2015)

I, Scott Abbott, of the Town of Caledon, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the owner of the North Bay Battalion, and, as such, have knowledge of the matters contained in this affidavit.
2. Where my knowledge is based on information obtained from others, I have so indicated and believe that information to be true.

OVERVIEW

3. In this affidavit, I provide evidence on the following matters:
- (a) **Background:** I briefly outline my background and how I became involved with the Battalion.
 - (b) **Owning the Battalion:** I discuss the team's financial difficulties over my years as owner, both in Brampton and North Bay.
 - (c) **Consequences of this Class Action:** I outline the consequences for the team if the team were required to treat players as employees.

BACKGROUND

4. I am the sole owner of the Battalion. I have independently owned the franchise since its inception in December 1996 when I was awarded the team by the Ontario Hockey League ("OHL") after paying a substantial franchise fee. Before being awarded the OHL franchise, I owned the Caledon Hockey Club, a Tier 2 Junior A minor league hockey team, for six years. Once I was awarded the Battalion, I sold the Caledon team and registered the Brampton Battalion as the Brampton Battalion Hockey Club Ltd.
5. The Battalion played in Brampton for 15 years, from 1998 to 2013. In 2013, I moved the Battalion to North Bay where we have now completed two full seasons, entering the third. The Battalion are currently operated as a privately owned corporation, the North Bay Battalion Hockey Club Ltd, with myself as the exclusive shareholder.
6. I have thoroughly enjoyed my time as owner of the Battalion, both in Brampton and now North Bay. I have always been interested in the sports and the sporting world. I worked as a sports journalist at the *Sherbrooke Record* and the Montréal bureau of the *Canadian Press* in the 1970s and 1980s.
7. I have also been involved in several other business ventures. I am a co-inventor of the popular board game *Trivial Pursuit*. I am also owner of the C. Scott Abbott Racing Stable Ltd. My horses have raced competitively at events such as the Queen's Plate.

OWNING THE BATTALION

Ownership Motivation

8. When I first decided to become involved in the OHL, I had no interest in operating the team with a view to profit or become wealthy. The reality is that I had already accumulated enough wealth to happily continue my life without taking on a new responsibility or the added stress of owning and operating a minor league hockey team.

9. I became involved with the OHL because of my love for the game of hockey. As a former sports journalist and hockey enthusiast, I have always been, and continue to be, a hockey fan. I believed the ownership of an OHL team would be the best method for me to channel my love of the game in a way that could also help the game develop and succeed in Canada.

10. Because of my fortunate financial position, I have been able to substantially invest into the Battalion over the last 17 years. Because of the wealth I've accumulated through my various other business interests, I have been fortunate and able to continue investing my money into the Battalion without ever turning a significant profit. I would not have been able to own the Battalion, or likely the majority of other OHL franchises, if I had not participated in other financially successful business ventures. Owning an OHL team could not be my primary means of financial survival.

11. The Battalion did not have a single profitable year during our 15 year stay in Brampton. We ran a deficit of at least \$100,000 per year, with our losses often being as high as \$400,000 per year. In our last year in Brampton, the team lost approximately \$800,000. Only after our move to North Bay in 2013, the team began to break even or turn a nominal profit of less than \$100,000.

12. Despite these large financial losses over the past 17 years, my motivation in owning the team today is the same as it was in 1998 when the Battalion were born. I am not in the business of earning profits through the Battalion. My motivation continues to be for the love of hockey and to help ensure that the OHL continues to be one of the premier development leagues in the hockey world.

Moving from Brampton to North Bay

13. My goal from day one of owning the Battalion was to keep the team successful and popular in Brampton. Unfortunately, it became unfeasible from a financial and hockey perspective to continue making attempts at a failed operation.

14. For 15 years, we tried to build a strong community presence in Brampton while also having a competitive hockey team. We won four division titles (2003, 2006, 2008 and 2009) and one conference championship (2009). Several players for the Brampton Battalion were drafted into the NHL (36 in total, 6 in the first round). Despite our success, our attendance numbers were never high on a regular basis and began to steadily decline over the past few years. In our final year in Brampton, our average attendance at the Powerade Centre (our home rink) was 2090 in a building that had the capacity to hold 5000 fans.

15. The low attendance numbers, along with an extremely unfavourable arena lease, resulted in large financial losses every year. As I discussed above, we never once turned a profit during our time in Brampton.

16. Despite these constant losses, I continued to invest my time and money into the team because I wanted to make every effort to keep the team in Brampton. I made several failed efforts to improve business in Brampton through cooperate support tied to the team. We continuously tried to work with the city's mayor and other influential people of Brampton to somehow increase the support for the team, increase attendance numbers and increase general excitement about the team. Despite our efforts, nothing seemed to work.

17. After accumulating large financial losses every year for 15 years, I decided I could no longer justify the operation of the Battalion in Brampton. I was always willing to lose money owning an OHL franchise – as I've mentioned, my motivation has never been to earn a profit. However, unfortunately, there are still limits to how much money I could lose before it became wholly unreasonable to continue.

18. Once our arena lease expired, we endeavoured to find another community that would accept the Battalion with a larger fan base and stronger community connection. We decided upon North Bay, a community that had lost an OHL team in 2002 (the now Saginaw Spirit). The move

was contingent on a season ticket drive and a \$12 million renovation project to the city's aging arena. We received fantastic interest and support from the fans and community in North Bay and moved the Battalion to the city in 2013.

19. I had never imagined moving the Battalion out of Brampton. I was proud and excited to bring the City of Brampton an OHL franchise in 1998. I became well integrated into the community, being inducted into the Brampton Sports Hall of Fame in 2005, for bringing the team to town. However, there came a point where I could no longer sustain the enormous financial losses I was suffering every year and was required to make the very difficult decision to move the team.

CONSEQUENCES OF THIS CLASS ACTION

20. If the Battalion were required to pay its players minimum wage, the consequences of this additional expense item would likely result in the team shutting down. As the owner of the Battalion, I have been willing and able to lose money every year. However, there are still limits that I must place on my financial sustainability, and if the losses were to become unreasonably high due to an extra minimum wage payment, I do not believe I would be able to continue owning an OHL team. If this team were to shut down, the community in North Bay would also suffer, similar to how the Brampton community suffered when it lost the Battalion a few years ago.

21. The only way that the team could possibly continue to operate would be for the team to re-allocate funds spent on other player benefits (education package, equipment, social events, training, facilities) to minimum wage payments.

22. The reduction in these other educational, hockey development and character development benefits would be significantly harmful to the players. The players would be receiving minimum wage, but they would no longer benefit from having the best hockey developmental experience in the world with top of the line coaching, facilities and equipment. Players would potentially lose out on fully paid education packages. The atmosphere, personality and purpose of the OHL would be significantly altered, after being a staple in the hockey world for so many decades.

23. Creating an employment relationship between the teams and players would worsen both the player experience and the experience of coaches and hockey staff. Players would no longer be receiving the best hockey playing experience because of the loss of the important benefits outlined above. Coaches and owners would be unable to train and mentor players to their fullest abilities because of a reduction in resources that would be necessary to support a minimum wage payment.

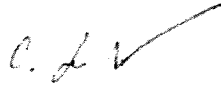
24. I do not believe minimum wage payments or employment benefits would put players in a better position than what they currently experience. The creation of an employment relationship would ensure that OHL players were no longer playing in the world's premier developmental hockey league.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario
on November 12, 2015



Commissioner for Taking Affidavits

IRFAN KARA



SCOTT ABBOTT

Proceeding commenced at TORONTO

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