SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JAN 09 2019

S=190264

NO.:
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAMES JOHNATHON MCEWAN, as REPRESENTATIVE PLAINTIFF

PLAINTIFF

AND:

**CANADIAN HOCKEY LEAGUE/ LIGUE CANADIENNE DE HOCKEY,
WESTERN HOCKEY LEAGUE and,
CANADIAN HOCKEY ASSOCIATION/ ASSOCIATION CANADIENNE DE HOCKEY
d.b.a. HOCKEY CANADA**

DEFENDANTS

NOTICE OF CIVIL CLAIM

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

(a) File a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below; and,

(b) Serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must:

(a) File a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below; and,

(b) Serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

09JAN19 1930622 RISS 200.00
21422 S190264

#1 DC

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the Plaintiff:

(a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you;

(b) If you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you;

(c) If you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you; or,

(d) If the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

The Plaintiff

1. The proposed Representative Plaintiff, JAMES JOHNATHON MCEWAN ("Mr. McEwan") has an address for delivery in these proceedings at #1010 – 570 Granville Street, Vancouver, British Columbia.

The Defendants

2. The Defendant, CANADIAN HOCKEY LEAGUE/ LIGUE CANADIENNE DE HOCKEY ("CHL"), is a federal corporation incorporated in Canada under the *Canada Not-for-profit Corporations Act,* SC 2009, c 23. It is the umbrella organization that, through its constitution, by-laws and regulations, oversees, controls and administers the operations of North America's three major junior hockey leagues for players 16 to 20 years of age: The Western Hockey League ("WHL"), the Ontario Hockey League ("OHL") and the Quebec Major Junior Hockey League ("QMJHL"). The CHL's registered office address is 305 Milner Avenue, Suite 201, Toronto ON, M1B 3V4.

3. The Defendant, WESTERN HOCKEY LEAGUE ("WHL"), is a corporation incorporated under the laws of Canada. It operates a major junior hockey league from its offices in Calgary, Alberta under the supervision of the CHL, with member franchises called Clubs located in the Provinces of Alberta, Manitoba, Saskatchewan, and British Columbia. The WHL also has Clubs located in the States of Washington and Oregon, USA.

4. The Defendant, CANADIAN HOCKEY ASSOCIATION/ ASSOCIATION CANADIENNE DE HOCKEY doing business as HOCKEY CANADA ("HOCKEY CANADA"), is a federal corporation incorporated in Canada under the *Canada Not-for-profit Corporations Act,* SC 2009, c 23. Hockey Canada has offices in Calgary, Ottawa and Toronto, and operates regional centres in Ontario and Quebec.

Class

5. Mr. McEwan brings this action on his own behalf and on behalf of a proposed class of individuals (together, the "**Player Class**") consisting of:

   Any and all former and current players in the CHL who did not play in the National Hockey League ("NHL") and suffered injury as a result of concussive and sub concussive impacts to the head during a 'hockey activity' which is defined as any on-ice or off-ice function involving physical activity (as defined in 5.11.7.1 of the *Hockey Canada Policy and Procedures Manual* amended January 2010).

6. Mr. McEwan brings this action on behalf of a proposed class of individuals (the "**Health Care Costs Class**") consisting of:

   Any and all former and current players in the CHL who did not play in the National Hockey League ("NHL") and suffered injury as a result of concussive and sub concussive impacts to the head during a 'hockey activity' which is defined as any on-ice or off-ice function involving physical activity, and who are beneficiaries who have received *health care services*, as those italicized terms are defined in the *HCCRA.*

7. All persons who, by reason of his or her relationship to a member of the Class, are entitled to make claims under any of the Dependents Statutes in British Columbia or elsewhere in Canada as a result of the personal injury of such member of the Class (the "**Family Class**").

8. The members of the Player Class, the Health Care Costs Class and the Family Class will be referred to hereinafter, collectively, as the "**Class Members**".

History of Concussion and CTE

9. It has been known for decades that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and Chronic Traumatic Encephalopathy ("CTE") and its related symptoms.

10. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities consistent with long-term brain injuries. He found these symptoms in almost 50 percent of fighters (boxers) if they "kept at the game long enough" ("The Martland Study").

10. The Martland Study was published in the Journal of the American Medical Association.

11. The Martland Study was the first of many linking sub-concussive blows and mild concussions to degenerative brain disease (also known as being "Punch Drunk").

12. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize these health risks to boxers.

13. After a three-year study, the Medical Advisory Board recommended that:

    a) An accident survey committee be formed to study ongoing accidents and deaths in boxing rings;

    b) At least two physicians be at ring-side for every bout;

    c) Mandatory post-bout medical follow-up exams be implemented;

    d) Boxers have a 30-day period of no activity after being knocked out and a medical follow-up. These measures were designed to avoid the development of Traumatic Encephalopathy, also known as Punch Drunk syndrome;

    e) It should be a physician's prerogative to recommend that a boxer temporarily surrender their boxing license if the physician notes that the boxer suffers significant injury or knockout; and

    f) A medical investigation be conducted for boxers who suffer numerous knockouts.

14. The recommendations were codified into the rules of the New York State Athletic Commission.

15. In 1952, the Journal of the American Medical Association published a study of encephalopathic changes in professional boxers. That same year, an article published in the New England Journal of Medicine recommended a "three-strike" rule for concussions n American football (i.e., recommending that players cease to play football after receiving their third concussion).

16. In 1962, Drs. Serel & Jaros studied the heightened incidence of chronic encephalopathy in boxers and characterized the disease as "Parkinsonian", describing a pattern of progressive decline.

17. In 1963, a study by Drs. Mawdsley & Ferguson found that subject boxers sustained chronic neurological damage as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function. See "Neurological Disease in Boxers", published in the Lancet 2, pages 795-81.

18. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics of "Dementia Pugilistica" (TDP) including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

19. In 1973, a potentially fatal condition known as "Second Impact Syndrome", where re-injury to an already-concussed brain can trigger swelling that the skull cannot accommodate, was discovered. It would not receive this name until 1984.

20. In 1975, a study by Drs. Gronwall & Wrightson studied the cumulative effects of concussive injuries in non-athletes. The study found that those who suffered multiple concussions took longer to recover than those who suffered from a single concussion. The authors noted that these results could be extrapolated to athletes given the common occurrence of concussions in sports.

21. Between 1952 and 1994, numerous additional studies were published in medical journals, including the Journal of American Medical Association, Neurology, the New England Journal of Medicine, and the Lancet warning of the dangers of single concussions, multiple concussions, and head trauma from multiple concussions. These studies collectively established that:

    a) Repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;

    b) Encephalopathy (Dementia Pugilistica) is caused in boxers by repeated sub concussive and concussive impacts to the head;

c) Acceleration and rapid deceleration of the cranium resulting in loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;

d) There is a correlation between neurologic pathology and length of the athlete's career, even in athletes who experience only mild concussions;

e) Immediate retrograde memory issues occur following concussions;

f) Even mild head injuries require recovery time free of the risk of further injury;

g) Head trauma is linked to dementia;

h) American football players who suffer concussions require significant rest before they can return to contact; and

i) Even minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

22. In the 1980's, the Department of Neurosurgery at the University of Virginia published studies on patients who sustained Mild Traumatic Brain Injuries ("MTBI"). They observed long-term damage in the form of unexpected cognitive impairment. These studies were published in neurological journals and treatises within Canada and the United States.

23. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered from MTBI suffered from pathological short-term and long-term damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second one, particularly if that person was not properly treated and removed from activity sufficient to allow all concussion symptoms to resolve.

24. The same studies showed that multiple concussions sustained within a short time could have serious short-term and long-term consequences in both football players and other victims of brain trauma.

25. In 1986, Dr. Robert Cantu of the American College of Sports Medicine published "Concussion Grading Guidelines", which he later updated in 2001.

26. By 1991, three distinct medical professionals/entities, all independent from structured sports, developed a "return-to-play" criteria for athletes suspected of sustaining head injuries. These medical professionals and entities included Dr. Robert Cantu of the American College of

Sports Medicine, the American Academy of Neurology, and the Colorado Medical Society.

27. The top North American hockey prospects that play in the National Hockey League are filtered through the Major Junior Ice Hockey Programs such as the CHL.

28. In 1997, the NHL and the NHL Players Association ("NHLPA") jointly began the NHL-NHLPA Concussion Program with the purpose of studying the effects of concussions and educating their players on concussion prevention and response.

29. A 2001 study on concussions in junior hockey players titled, "Concussions in Hockey: There is cause for Concern", reports that between 1998 and 2000, British Columbia Junior Hockey League ("BCJHL") players experienced roughly 5 concussions per 1000 games played.

30. The same study reports that BCJHL players suffered from their first concussion at the average age of 15.

31. A 2003 study titled "National Hockey League Reported Concussions 1986-87 to 2001-02", by Charles H. Tator, Director of the Canadian Sports Concussion Project, reported that between the 1997-1998 and 2001-2002 seasons, NHL players suffered from an average of 80 concussions per season. Instances of concussion rose from 4 reported concussions in the 1986-1987 season to a high of 30 reported concussions in 2000-2001. Dr. Tator attributes the rise to increased incidence and league awareness.

32. The NHL implemented rule changes in 2004 for the 2005-2006 season designed to reduce concussions and head injuries.

Hockey Canada

32. Hockey Canada, which merged with the Canadian Amateur Hockey Association in 1998, is the national governing body of ice hockey and ice sledge hockey in Canada and is a member of the International Ice Hockey Federation.

33. Hockey Canada is the national governing body for grassroots hockey in Canada. The organization works in conjunction with the 13-member branches, the CHL and U Sports.

34. Hockey Canada oversees the management of programs in Canada from entry-level to high performance teams and competitions, including teams participating in the world championships and the Olympic Winter Games. Hockey Canada is also Canada's voice within the International Ice Hockey Federation.

The Canadian Hockey League

35. The CHL is the governing body for major junior hockey, the top level of junior hockey in Canada.

36. The CHL is generally considered the world's top junior hockey league for developing professional players and is a key supplier of new players and officials for the many North American professional hockey leagues, such as the NHL, AHL, and the ECHL.

37. At all material times, the CHL oversees, controls, and administers the operations of North America's three major junior hockey leagues: the WHL, the OHL and the QMJHL. Sixty Clubs across Canada and in the United States participate in the three leagues.

38. At the conclusion of each of the league's playoffs, the CHL hosts the MasterCard Memorial Cup, a National Championship tournament involving each of the three League's Champions and the tournament host.

39. The CHL depends heavily on billet families to provide support and guidance to minors who play in the CHL. A billet family offers room and board to players who leave home to join elite teams in other provinces and states between the age of 16 and 20 years of age.

40. The object of a billet family is to provide a "home away from home" for young players during the hockey season, which includes guidance and supervision for the player.

41. Billet families are paid a monthly expense cheque by CHL teams to assist with the costs of food and housing.

The Western Hockey League

39. The WHL is a major junior ice hockey league based in Western Canada and the Northwestern United States of America. It is one of the three leagues that constitute the CHL as the highest level of junior hockey in Canada.

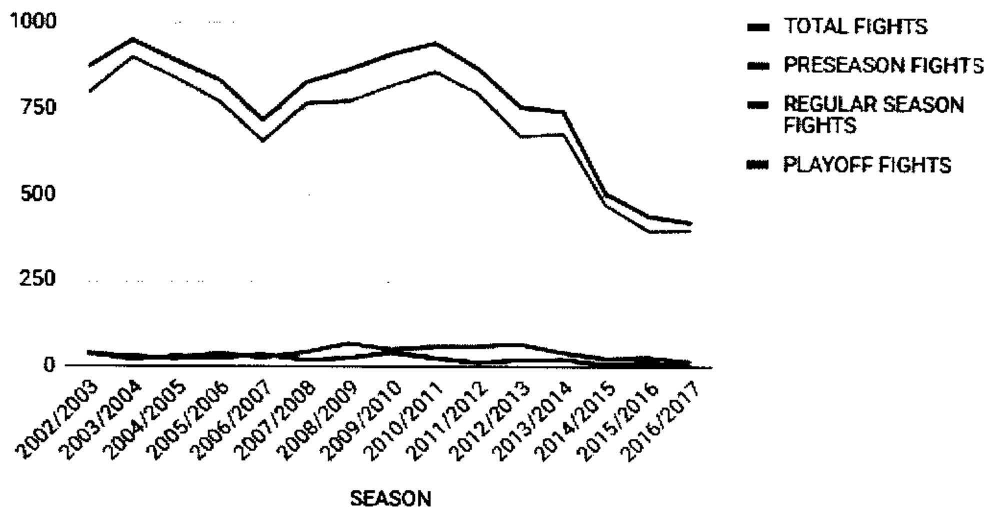
40. The WHL's Clubs are located in the Provinces of Alberta, Manitoba, Saskatchewan, and British Columbia. The WHL also has Clubs located in the States of Washington and Oregon, USA. The teams playing in the WHL consist of the teams owned by the Clubs.

41. The players in the WHL 16 to 20 years of age.

42. The WHL fight statistics for a 15-year time period as per "*The WHL Fight Card Database*" states the following:

SEASON	TOTAL FIGHTS	PRESEASON FIGHTS	REGULAR SEASON FIGHTS	PLAYOFF FIGHTS
2002/2003	875	37	798	40
2003/2004	954	31	902	21
2004/2005	893	22	841	30
2005/2006	837	39	773	25
2006/2007	719	27	657	35
2007/2008	831	42	769	20
2008/2009	869	68	776	25
2009/2010	915	51	822	42
2010/2011	947	59	862	26
2011/2012	873	61	799	13
2012/2013	761	67	674	20
2013/2014	747	43	682	22
2014/2015	507	26	474	7
2015/2016	441	29	400	12
2016/2017	422	17	401	4

-OR-



43. In 2011, the WHL concluded their Annual General Meeting implementing a 'Seven Point Plan' to reduce blows to the head and concussions to their players. The 'Seven Point Plan' includes:

    i. The adoption of new playing rules;

    ii. More severe suspensions for repeat offenders who cause injury to other players;

    iii. Production of educational videos on the risks of concussions and head injuries;

    iv. Education and seminars for players;

    v. A mandate on coaches and managers to be more aware and responsible for the health and safety of their players during gameplay; and

    vi. An expansive review of WHL arena safety standards.

44. In 2012, it was reported that there was a "slight increase" in concussions since the last Annual General Meeting, even with the implementation of the 'Seven Point Plan'.

45. In 2013, the WHL reported that concussion rates had decreased 20% since the last Annual General Meeting in 2012, and they felt confident that the 'Seven Point Plan" was a success. However, instances of fighting were still high across the league.

46. Since the 2013 WHL Annual General Meeting, there appears to be no mention of the 'Seven Point Plan' or the severities of concussions. Rather, the highlights of the meetings have been refocused on new systems to impress fan bases and the WHL's 50th season.

47. Beginning in 2013, media outlets and various news sources began to take notice of the severity of concussion rates in hockey, mostly at the junior level. An article published from the 'Globe and Mail' on March 8, 2013, and later updated on March 26, 2017, stated that fighting in hockey has long been seen as the cartoon "entertainment" part of professional hockey, apart from the main attraction. However, this positive view of fighting in hockey has begun to shift. Based on an *Angus Reid Public Opinion Survey*, which surveyed the population at large, nearly 78% of Canadians wanted to see fighting banned completely from junior hockey, and a minuscule 7% stated that engaging in on-ice fights was important.

48. Based on the table above, there is reason to believe that the decrease in fights from the 2014/2015 season forward did not come from internal education provided for by the WHL and CHL in their 'Seven Point Plan'. Rather, it came from the general public's increasing concern regarding concussions in junior hockey.

49. As the sport shifts away from fighting, the players who fight are no longer being glorified as they once were. It would be reasonable to assert that a players' decision not to fight is borne of their own choices, and not from the actions of either the WHL or CHL.

Particulars of the Plaintiff

50. Mr. McEwan is a former CHL hockey player. He played for four years in the CHL from the 2004/2005 season to the 2007/2008 season.

51. At 17 years old, Mr. McEwan entered his first season in the WHL playing for the Seattle Thunderbird in the 2004/2005 season. Mr. McEwan was involved in 18 fights throughout the season, which resulted in trauma to his head leading to swelling, black eyes, loss of consciousness and temporary confusion. After each fight, Mr. McEwan would continue to play. He was not given medical attention.

52. At 18 years old, Mr. McEwan entered the regular season in the WHL playing for the Seattle Thunderbirds for the 2005/2006 season. Mr. McEwan was involved in 19 fights throughout the season and was 'glorified' on numerous social media outlets for landing 15 punches in one fight. These fights resulted in trauma to his head leading to swelling and pressure, stitches, loss of consciousness, confusion, a persistent ringing in his ears, and loss of and/or distortion to his vision. After each fight, Mr. McEwan would continue to play. He was not given medical attention.

53. At 19 years old, Mr. McEwan entered the regular season in the WHL playing for the Kelowna Rockets as Assistant Captain for the 2006/2007 season. Mr. McEwan was involved in 25 fights throughout the season and was 'glorified' on numerous social media outlets as holding the best fight with the most punches landed, and was voted the 3rd most entertaining player. The results of these fights included trauma to his head leading to swelling and pressure, cloudiness, and distorted vision. The side effects of his continuous head trauma began to have a noticeable impact in his day-to-day life. He was beginning to experience severe anxiety, mood swings, personality changes and angry outbursts. Mr. McEwan began to consume copious amounts of alcohol in an effort to cope with the physical pain and mental distress he was regularly experiencing.

54. At 20 years old, Mr. McEwan entered the regular season in the WHL playing for the Kelowna Rockets as Team Captain for the 2007/2008 season. Mr. McEwan was involved in 11 fights throughout the season and was given the title by fans for holding "the best fight" when he landed 27 punches in one bout. Mr. McEwan was also given the title of 6th most entertaining fighter with his longest fight lasting 0:47 seconds. These fights resulted in trauma to his head leading to swelling and pressure, as well as a documented concussion after receiving an elbow to the head. The documented concussion led to a 2-week medical leave for recovery. Mr. McEwan also suffered from severed tendons in his wrist due to a direct impact from a skate, and received surgery to repair the severed tendons, which led to a 3-month medical leave. Mr. McEwan began experiencing severe depression, anxiety, mood swings, memory loss, confusion, angry outbursts, and suicidal thoughts. He was prescribed pain medication. This was his last season playing in the WHL.

55. During his time in the CHL, Mr. McEwan was involved in 72 fights. Notably, he was involved in 25 fights in the 2006/2007 season alone when he played for the Kelowna Rockets of the WHL.

56. At all material times, Mr. McEwan relied on the Defendants to ensure his safety, health and well-being.

57. Had Mr. McEwan been made aware by the Defendants of the long-term side effects and health implications of concussive and sub-concussive impacts to the head, he would not have involved himself in so many on ice fights.

58. During his time in the CHL, Mr. McEwan was involved in 72 fights. Notably, he was involved in 25 fights in the 2006/2007 season when he played for the Kelowna Rockets of the WHL. These fights lead to numerous surgeries and broken bones, as well as severe and escalating trauma to his head. His anxiety, depression, mood swings, confusion and suicidal thoughts escalated, leading to what he describes as "manic behaviour" and symptoms of Chronic Traumatic Encephalopathy ("CTE").

59. On several occasions, Mr. McEwan lost consciousness on the ice during or after a fight.

60. In 2016, Mr. McEwan began to notice the long-term effects of the numerous impacts to his head. His symptoms of CTE began to increase including symptoms of anxiety, stress, severe mood swings, depression, anger, fatigue and suicidal thoughts. These symptoms are still active presently.

61. At all material times the Defendants should have known, or ought to have known that multiple sub concussive and concussive blows to the head would lead to long term brain injury including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

62. Mr. McEwan has stated that fighting was not just condoned and tolerated by the CHL, coaches, and managers of the teams he had played for, but was encouraged, praised and rewarded.

Chronic Traumatic Encephalopathy and Concussions

63. CTE is defined as:

    "A neurodegenerative disease found in people who have had multiple head injuries. Symptoms may include behavioral problems, mood problems, and problems with thinking. This typically does not begin until years after the injuries. It often gets worse over time and can result in dementia."

64. CTE, a catastrophic disease long associated with boxers, results when a toxic protein, Tau, accumulates in the brain. Tau kills brain cells, and leads to symptoms such as cognitive dysfunction, memory loss, sleeplessness, depression, diminished impulse control, episodes of anger, dementia, among other symptoms. Until recently, CTE could only be confirmed through autopsy. Tau proteins are released whenever concussions occurs.

65. CTE is found in individuals with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional hockey players who have a history of brain injury.

66. Concussion is defined as:

    "Concussion - also known as mild traumatic brain injury (TBI) - is defined as 'A complex pathophysiological process affecting the brain, induced by traumatic biomechanical forces. 'Typically, concussion results in rapid-onset neurophysiologic and neurologic dysfunction that resolves in a spontaneous manner over a relatively short period."

67. It has been known for decades that multiple blows to the head can lead to long-term brain injury, and can lead to memory loss, dementia, depression, CTE, and its related symptoms.

68. A quote from the Complete Concussion Management Inc. (CCMI), a research-based concussion care network that provides education and training to multidisciplinary healthcare practitioners as well as comprehensive assessments, treatments and rehabilitation for athletes and concussion patients states that:

    "Concussions are difficult to diagnose because symptoms may not be present immediately following an impact, and the symptoms are like those of other common injuries such as whiplash. Healthcare practitioners and all those involved in concussion care should err on the side of caution. If there is a significant impact and at least one concussion symptom, an athlete should be removed from play and assessed by a licensed healthcare practitioner with training in concussion management. When in doubt, sit them out!"

69. Every impact to the brain is dangerous. Both concussive and sub concussive events cause permanent brain damage. During practice and games, a CHL player can sustain close to one thousand or more hits to the head in one season without any documented incapacitating concussion. Such repeated blows result in permanently impaired brain function.

70. Unbeknownst to the Plaintiffs, scientific evidence has for decades linked brain trauma to long-term neurological problems.

71. The Defendants knew, or ought to have known of the growing scientific evidence and its compelling conclusion that persons who sustain repetitive concussive events, sub concussive events, or other brain injuries are at a significantly greater risk for chronic neurodegenerative illness and disabilities both during their hockey career and, especially, later in life.

72. Scientists and doctors in Canada, the United States, and across the world have published numerous articles in well-established medical and scientific journals conclusively establishing the link between brain injuries and sub concussive and concussive impacts suffered by, among others, hockey players.

73. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

74. According to neurologists, once concussed, a person is up to four times more likely to sustain a second one and each successive concussion increases the seriousness of health risks and the likelihood of future concussions. Additionally, after suffering even a single concussion, a lesser blow may cause additional injury, requiring more time for recovery.

75. Post-concussion syndrome, which may last days to years after someone suffers a concussion, generally causes depression, irritation, poor concentration, memory loss, mood swings, headaches, impaired speech, impaired balance, dizziness, seizures, blurred vision, and general malaise.

76. Second-impact syndrome occurs when an athlete still recovering from a prior concussion experiences a second, force-related event to the brain. Second-impact syndrome can lead to coma, permanent brain-function loss, or death.

77. Neuropathologist Dr. Ann McKee, a Professor of Neurology and Pathology at the Boston University School of Medicine, diagnosed CTE in the brains of four former junior hockey players who never advanced to the NHL. All four-committed suicide before they reached the age of 30. She stated that it is "willful ignorance" to not take the symptoms of degenerative brain diseases, such as CTE, seriously.

Negligence

78. The Plaintiff's injuries were caused or contributed to by the negligence and/or breach of statutory duty of the CHL, their employees, servants and agents, singularly or in combination, the particulars of which include:

    a) Failing to warn CHL teams across Canada and the United States of the long term medical risks associated with repetitive head trauma during CHL games and practices;

    b) Failing to follow and or launch any sufficient concussion awareness campaign when they knew or ought to have known of the risks of latent neurological damage arising from repetitive head trauma;

    c) Failing to enforce any sufficient concussion protocol when they knew or ought to have known of the heightened risks of latent neurological damage arising from repetitive head trauma;

    d) Failing to warn the Plaintiff of the long term medical risks associated with repetitive brain trauma;

    e) Ignoring or being willfully blind to the risks of neurological damage arising from repetitive head trauma during CHL games and practices;

    f) Promoting and or glorifying increased violence between players including but not limited to fighting;

    g) Allowing players to play while they knew or ought to have known that the players were suffering from the symptoms of concussion and or repetitive brain trauma;

    h) Failing to require CHL teams to report to parents and/or billet families when a player sustained a head injury in a game or practice; and,

    i) Such further particulars of negligence and breach of statutory duty as counsel may provide.

79. The Plaintiff's injuries were caused or contributed to by the negligence and/or breach of statutory duty of the WHL; their employees, servants and agents, singularly or in combination, the particulars of which include:

    a) Failing to warn the Plaintiff of the long term medical risks associated with repetitive head trauma during games and practices;

    b) Failing to warn the Plaintiff of the connection between CTE and sustaining multiple sub-concussive and concussive head trauma;

c) Ignoring or being willfully blind to the risks of latent neurological damage arising from repetitive head trauma during games and practices;

d) Allowing players to play while they knew or ought to have known that the players were suffering from the symptoms of concussion and/or repetitive brain trauma;

e) Failing to provide any or any adequate medical attention or assistance when they knew or ought to have known that the players were suffering from symptoms of concussion and/or repetitive brain trauma;

f) Failing to warn players, parents, and billet families of the signs and symptoms of concussion and repetitive brain trauma;

g) Failing to advise parents and/or billet families when a player sustained a head injury in a CHL game or practice;

h) Ignoring and or being willfully blind to the risk of latent neurological damage arising from repetitive head trauma during CHL games and practices;

i) Promoting or glorifying violence by and between players; and,

j) Such further particulars of negligence and breach of statutory duty as counsel may provide.

80. The Plaintiff's injuries were caused or contributed to by the negligence or breach of statutory duty of Hockey Canada; their employees, servants and agents, singularly or in combination, the particulars of which include:

a) Failing to launch any sufficient concussion awareness campaign when they knew or ought to have known of the risks of neurological damage arising from repetitive head trauma;

b) Failing to implement and or enforce any sufficient concussion protocol when they knew or ought to have known of the heightened risk of latent neurological damage arising from repetitive head trauma;

c) Failing to warn the WHL, CHL, parents, billet families and/or the Plaintiff of the long term medical risks associated with repetitive head trauma;

d) Failing to ensure the enforcement of ice hockey rules of play thereby increasing the risk of head trauma;

e) Failing to change ice hockey rules of play when Hockey Canada knew or ought to have known of the damages arising from repetitive head trauma;

f) Ignoring or being willfully blind to the risks of latent neurological damage arising

from repetitive head impacts during CHL games and practices;

g) Promoting and or glorifying violence between players including but not limited to fighting; and,

h) Such further particulars of negligence and breach of statutory duty as counsel may provide.

Particulars of Negligence

79. CHL players agree to provide their services under the supervision and control of the league and the club. The players receive benefits from the league and the club such as a salary, education, medical and professional support services.

80. The CHL has the discretion or power over the provision of education, medical, and professional support services and the manner in which they provide or deliver those services has a potential to significantly affect the careers and health of the players.

81. The coaching and medical staff of each club, within the CHL, failed to treat individuals or follow appropriate procedures to address concussive or sub concussive impacts.

Breach of Fiduciary Duty

82. The CHL has a fiduciary relationship to the players within its leagues.

83. The CHL breached its fiduciary obligation to the players in regard to the provision of proper educational, medical and professional support services, the particulars of which include (*inter alia*):

a) Failing to provide proper education to the players about the risks associated with concussions and sub concussive impacts, or the effects and importance of treatment and concussion protocols;

b) Failing to provide proper education to the parents and billet families of the risks associated with concussions and sub concussive impacts, or the effects and importance of treatment and concussion protocols;

c) Failing to provide proper education to the coaches, referees, trainers, medical professionals, professional support services, and the public, about the risks associated with concussions and sub concussive impacts, or the effects and importance of treatment and concussion protocols;

d) Failing to establish rules, controls, guidelines, and standards for players, coaches, referees, trainers, medical professionals and other professional support services to follow with respect to the diagnosis and treatment of concussions and sub concussive impacts;

e) Glorifying and encouraging conduct and culture which perpetuated and exacerbated the incidence, concealment, negative stigma, and lack of treatment related to concussive and sub concussive injuries, reduced the likelihood of diagnosis or treatment; and,

f) Such other particulars of breach of fiduciary duty as counsel may provide.

Vicarious Liability

82. The Plaintiff pleads that the Defendants can only act through its employees, directors, officers and agents and is vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the Defendant was authorized, ordered or done by the Defendant's employees, directors, officers and agents while engaging in the management, direction, control and transaction of the Defendant's business and are therefore acts and omissions for which the Defendant is vicariously liable.

Damages

83. As a result of the negligence of the Defendants, the Plaintiff and other Class Members have suffered the following damages:

a) Personal and physical injury, including short-term and long-term effects of sub concussive and/or concussive impacts to the head;

b) Psychological injuries as a consequence of their physical injuries;

c) Special damages for out-of-pocket expenses including costs associated with rehabilitation treatment and medical expenses;

d) Cost of future care and services to treat resulting physical and psychological injuries resulting from head trauma;

e) Loss of income both past and future;

f) Loss of past and future housekeeping capacity;

g) As a result of injuries and effects, the Health Care Costs Class received healthcare services, health services, insured services, treatment or other services and became beneficiaries of such services pursuant to the healthcare legislation of the Province or Territory in which each Class Member resided or received treatment. A claim is hereby advanced for the cost of such services under the applicable Provincial and Territorial Legislation including the *Health Care Costs Recovery Act*, S.B.C. 2008, *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, *Heath Insurance Act*, R.S.O. 1990 c. H-6, *Health Care Insurance Plan Act*, R.S.Y. 2002 c-107, *Hospital Insurance and Social Services Administration Act*, R.S. N.W.T., 1988 c. T-3, and the regulations thereunder and amendments thereto; and

h) Such further and other damages the particulars of which will be provided prior to trial.

84. In accordance with the *Class Proceedings Act,* R.S.B.C. 1996, c. 50 the Plaintiff and other class members are also entitled to recover, as damages or costs, the cost of administering the plan to distribute the recovery of this action.

85. The Plaintiff relies on the following in support of his claim for punitive and aggravated damages against the Defendants:

a) The Defendants knew, or ought to have known of the long term harmful effects of multiple concussion and sub-concussion trauma; and

b) The Defendants failed to adequately disseminate to the Plaintiff the relevant health information they possessed regarding multiple concussions leading to a long-term brain injury including, but not limited to, memory loss, dementia, depression and CTE related symptoms, showing contempt for the Plaintiff's rights by unnecessarily endangering the Plaintiff's life.

PART 2: RELIEF SOUGHT

86. The Plaintiff seeks an order certifying this proceeding as a class proceeding pursuant to the *Class Proceeding Act*, R.S.B.C. 1996, c.50 (the "***Class Proceeding Act***").

87. The Plaintiff claims on his own behalf and on behalf of all class members against the Defendants for:

    a) General, aggravated, exemplary, and/or punitive damages, assessed:

        I. In the aggregated pursuant to section 29(1) of the *Class Proceeding Act*; or

        II. As the court may otherwise direct;

    b) Special damages;

    c) Interest pursuant to the *Court Order Interest Act* R.S.B.C. 1996 c. 79;

    d) Costs of this action; and,

    e) Such further and other relief as this Honourable Court may deem just and meet.

88. In respect to the injuries the Plaintiff and Health Care Costs Class members sustained as a result of the negligence of the Defendants, the Plaintiff claim as against the Defendants, jointly and severally, damages pursuant to the *HCCRA* in the amount equal to:

    a) The past cost of health care services; and

    b) The future cost of health care services.

    c) Such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

1. The Plaintiff pleads and will rely on the *Class Proceeding Act*, R.S.B.C. 1996, c. 50, as amended, The *Negligence Act*, R.S.B.C. 1996, c. 333., as amended, the *Family Law Act*, S.B.C. 2011, c. 25 as amended and other similarly applicable legislation, and the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 as amended.

2. Pursuant to ss. 2 and 17 of the *HCCRA*, members of the Health Care Costs Class claim as damages from the Defendants, jointly and severally, the past cost of health care services and the future cost of health care services.

Plaintiff's address for service:	Wishart Law Corporation #1010 – 570 Granville Street Vancouver, BC V6C 3P1
Fax number for service (if any):	Service by fax is not accepted
E-mail address for service:	Service by e-mail is not accepted
Place of trial:	Vancouver, British Columbia
The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1

Dated: December 14, 2018

Signature of the Plaintiff's Lawyer
For Robyn Wishart

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

   (a) prepare a list of documents in Form 22 that lists

      (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and,

      (ii) all other documents to which the party intends to refer at trial, and

   (b) serve the list on all parties of record.

Form 11 (Rule 4-5 (2))

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

The Plaintiff claim(s) the right to serve this pleading on the Defendants outside British Columbia on the ground that this action concerns a tort committed in British Columbia, *enumerated in section 10 of the Court Jurisdiction and Proceedings Transfer Act, on which the plaintiff/petitioner intend to rely.*

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM

The Plaintiff and the Class Members claim against the Defendants for pain and suffering, general damages, special damages, costs and interest arising out of a sport injury. The Plaintiff and the Class Members have suffered and continues to suffer damage, loss and expense due to the Defendants' negligence.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING

A personal injury arising out of:

[ ] A motor vehicle accident
[ ] A medical malpractice
[X] Another cause

A dispute concerning:

[ ] Contaminated sites
[ ] Construction defects
[ ] Real property (real estate)
[ ] Personal property
[ ] The provision of goods or services or other general commercial matters
[ ] Investment losses
[ ] The lending of money
[ ] An employment relationship
[ ] A will or other issues concerning the probate of an estate
[ ] A matter not listed here

PART 3: THIS CLAIM INVOLVES

[ ] A class action
[ ] Maritime law
[ ] Aboriginal law
[ ] Constitutional law
[ ] Conflict of laws
[X] None of the above
[ ] Do not know

PART 4: ENACTMENTS RELIED ON

1. *Class Proceeding Act*, R.S.B.C. 1996, c. 50
2. *Negligence Act*, R.S.B.C. 1996 c. 333
3. *Court Order Interest Act*, R.S.B.C. 1996 c. 79