Federal Court  Cour fédérale

Date: 20210527

Docket: T-1080-20

Citation: 2021 FC 488

Ottawa, Ontario, May 27, 2021

PRESENT: Chief Justice Paul Crampton

PROPOSED CLASS PROCEEDING

BETWEEN:

KOBE MOHR

Representative Plaintiff

and

NATIONAL HOCKEY LEAGUE, AMERICAN HOCKEY LEAGUE INC, ECHL INC., CANADIAN HOCKEY LEAGUE, QUÉBEC MAJOR JUNIOR HOCKEY LEAGUE INC., ONTARIO HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, HOCKEY CANADA

Defendants

ORDER AND REASONS

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I. Introduction

[1] These reasons concern two Motions in writing in this proposed class proceeding: (i) a Motion to Strike, brought by certain of the defendants, and (ii) a Motion to Amend, brought by the representative plaintiff, Mr. Kobe Mohr. I will deal first with the latter motion.

[2] In his Motion, Mr. Mohr seeks leave to amend a Statement of Claim filed on behalf of all major junior hockey players who signed a standard player agreement **[SPA]** that is at the heart of one or more of the conspiracies alleged to have been entered into between the defendants [the **Class Members**].

[3] In the Statement of Claim, Mr. Mohr alleges that the defendants entered into a single conspiracy contrary to subsection 48(1) of the *Competition Act*, RSC, 1985, c C-34 [the **Act**]. In particular, he claims that the defendants conspired to limit unreasonably the Class Members' opportunity to negotiate and play with teams in the National Hockey League [**NHL**], the American Hockey League Inc. [**AHL**] and the ECHL Inc. (also known as the East Coast Hockey League) [**ECHL**]. He further claims that defendants conspired to impose unreasonable terms and conditions upon the Class Members. These include the imposition of "nominal wages" and "the loss of rights to market their image, sponsorship and endorsement opportunities." Accordingly, Mr. Mohr seeks damages under section 36(1)(a) of the Act for losses suffered as a result of the alleged conspiracy. He estimates such losses to be approximately $825 million.

[4] This Motion was brought after the Canadian defendant leagues, their umbrella organization (the Canadian Hockey League **[CHL]**) and Hockey Canada advised of their intention to bring a Motion to Strike the Statement of Claim. Those defendants explained that their Motion to Strike would maintain that it is plain and obvious that section 48 of the Act cannot apply to them because it applies only to intra-league agreements and arrangements between or among "teams and clubs", including their directors, officers or employees. They added that the Statement of Claim cannot be cured by amending it to claim damages suffered as

a result of an agreement contemplated by the general conspiracy provisions in section 45 of the Act.

[5] In the Amended Statement of Claim, Mr. Mohr proposes to add 148 new defendants, namely, the individual teams of the three Canadian defendant leagues and the three United States-based defendant leagues. He also refers to multiple alleged illegal agreements within the hockey industry, rather than to a single alleged conspiracy. In his Notice of Motion, Mr. Mohr refers to these as being "both intra- and inter-league … [conspiracies that] … may perhaps be governed by one or the other of sections 45 and 48".

[6] The Amended Statement of Claim also provides additional information regarding junior players' remuneration, the restrictions to which they are subject, the benefits obtained by their clubs and leagues, the position of the various leagues in the industry hierarchy, the junior drafts, the NHL entry draft, the more favourable situation that allegedly exists for junior players from Europe and certain parts of the United States hockey system, the relevant product and the relevant markets. In addition, the Amended Statement of Claim briefly addresses some of the impugned agreements.

[7] Finally, the Amended Statement of Claim includes new requests for declaratory and injunctive relief, as well as "remedies justified by" certain non-criminal provisions situated in Part VIII of the Act.

[8] For the reasons set forth in part V of these reasons below, the Motion to Amend will be dismissed. For the reasons provided in part VI below, the Motion to Strike the Statement of Claim will be granted.

II. The Parties

[9] The representative plaintiff, Kobe Mohr, is a hockey player who played for a club in the Western Hockey League between 2015 and 2020.

[10] The CHL is an entity that organizes Canada's three "major junior" hockey leagues, namely, the Québec Major Junior Hockey League [**QMJHL**], the Ontario Hockey League [**OHL**], and the Western Hockey League [**WHL**]. The QMJHL consists of eighteen clubs in Quebec and the Maritime provinces. The OHL consists of twenty clubs in Ontario and the United States. The WHL consists of twenty-two clubs in Western Canada and the United States.

[11] Hockey Canada is the national governing body for ice hockey in Canada. It is also the Canadian member of the International Ice Hockey Federation.

[12] The NHL is the top-tier professional hockey league in North America, consisting of thirty-two teams in the United States and Canada.

[13] The AHL is the second-tier professional hockey league in North America, consisting of thirty-one teams in the United States and Canada.

[14] The ECHL is the third-tier professional hockey league in North America, consisting of twenty-six teams in the United States and Canada.

III. Issues

[15] The plaintiff's Motion to Amend raises a single issue, namely, whether Mr. Mohr has met the test for obtaining leave to amend the Statement of Claim.

[16] The Motion to Strike brought by certain of the defendants also raises a single issue, namely, whether it is plain and obvious that the Statement of Claim discloses no reasonable cause of action or is otherwise an abuse of process.

IV. Relevant Rules

A. *The Motion to Amend*

[17] The Motion to Amend was brought pursuant to Rule 75 of the *Federal Courts Rules*, SOR/98-106 [the **Rules**]. Rule 75(1) contemplates that the Court may, on motion, grant leave to a party to amend a document on such terms as will protect the rights of all parties.

[18] Rule 200 provides an exception to Rule 75 with respect to amendments to pleadings. However, that exception does not apply to a pleading that is subject to a motion to strike: *Verma v Canada*, 2006 FC 1353 at para 14.

[19] The defendants CHL, QMJHL, OHL, WHL and Hockey Canada [collectively, the **Responding Defendants** on the Motion to Amend, and the **Moving Defendants** on the Motion

to Strike] filed their Motion to Strike on December 14, 2020, before Mr. Mohr filed this Motion to Amend. Accordingly, the exception set forth in Rule 200 does not apply, and leave to amend is required.

[20] For the reasons explained immediately below, Rule 221 is relevant to a consideration of a motion to amend a pleading. That provision provides as follows:

> **Motion to strike**
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> 221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it
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> > (a) discloses no reasonable cause of action or defence, as the case may be,
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> > (b) is immaterial or redundant,
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> > (c) is scandalous, frivolous or vexatious,
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> > (d) may prejudice or delay the fair trial of the action,
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> > (e) constitutes a departure from a previous pleading, or
> >
> > (f) is otherwise an abuse of the process of the Court,
>
> and may order the action be dismissed or judgment entered accordingly.

[21] In considering Rule 221, it is important to keep in mind Rule 174, which provides as follows:

> **Material facts**
>
> 174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

[22] Finally, Rule 181 requires every pleading to contain particulars of every allegation contained therein.

B. *The Motion to Strike*

[23] Rule 221 authorizes the Court, on motion, to order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on numerous grounds. These include that the pleading discloses no reasonable cause of action or is otherwise an abuse of the process of the Court.

V. Analysis – Motion to Amend

A. *Applicable legal principles*

[24] The principles to be applied on a Motion to Amend a pleading were recently restated as follows:

> [20] The general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice: *Canderel Ltd. v. Canada*, [1994] 1 F.C. 3, 157 N.R. 380 (C.A.); *Enercorp* at para. 19. However … the proposed amendment must have a reasonable prospect of success: *Teva Canada Limited v. Gilead Sciences Inc.*, 2016 FCA 176, 140 C.P.R. (4th) 309 at paras. 29-32 (*Teva*). Another way to put this is that a proposed amendment will be refused if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 at para. 17 (*Imperial Tobacco*).
>
> [21] In deciding whether an amendment has a reasonable prospect of success, its chances of success must be examined in the context of the law and the litigation process, and a realistic view must be taken: *Teva* at para. 30; *Imperial Tobacco* at para. 25.

McCain Foods Limited v J.R. Simplot Company, 2021 FCA 4 [***McCain***].

[25] In *Teva*, above, the requirement that the proposed amendments have a reasonable prospect of success was described as "a threshold issue", in the sense that it ought to be addressed before going further and investigating other matters: *Teva*, above, at para 31. The Court added that "it makes no sense for a court to allow an amendment that is doomed to fail" and that if the amended pleadings "do not have some reasonable prospect of success, allowing them into the litigation does nothing other than to complicate and protract it needlessly and pointlessly": *Teva*, above, at para 28.

[26] Based on the foregoing, in determining whether to grant leave to amend a pleading, the Court should consider the following:

1. Is it plain and obvious, assuming the facts pleaded to be true, that the amended pleading discloses no reasonable cause of action?

2. Would the proposed amendments assist the Court to determine the real questions in controversy between the parties?

3. Would the proposed amendments serve the interests of justice?

4. Would the proposed amendments result in an injustice to the other party that is not capable of being compensated by an award of costs?

B. *Assessment*

(1) Is it plain and obvious, assuming the facts pleaded to be true, that the Amended Statement of Claim discloses no reasonable cause of action?

[27] The Responding Defendants[1] submit that the Amended Statement of Claim would not survive a motion to strike under Rule 221 for three distinct reasons: (i) it does not disclose any reasonable cause of action, (ii) it constitutes an abuse of the Court's process, and (iii) it is scandalous, frivolous and vexatious. For the reasons set forth below, I agree with the first two of those submissions. Consequently, I consider it unnecessary to address the third.

(a) *Failure to disclose a reasonable cause of action*

(i) Insufficient material facts and particulars

[28] The Responding Defendants assert that the Amended Statement of Claim does not provide sufficient material facts and particulars, as required by Rules 174 and 181. Specifically, they maintain that whereas the Statement of Claim alleged a single conspiracy contrary to section 48 of the Act, the Amended Statement of Claim refers to multiple alleged conspiracies, without providing sufficient material facts and particulars to understand the case to be met by any given defendant. I agree.

[29] The Amended Statement of Claim refers to what appear to be six separate conspiracies, or groups of agreements that each constitute a conspiracy:

[1] The defendants NHL, AHL and ECHL did not make any submissions in respect of this Motion.

1. An agreement between the NHL and the CHL. This agreement, which is addressed at paragraphs 3.1, 47.1 and 47.2, is described as having defined "the modalities of a partnership to their mutual interest, but to the detriment of Canadian CHL players." However, the particulars of those modalities and their impact on Canadian hockey players have not been provided. The Amended Statement of Claim simply makes a vague reference to "various activities including the enforcement of restrictive rules alleged here to be illegal and unreasonable restraints of trade." Likewise, no material facts or explanation are provided to indicate how this agreement is believed to, or could, contravene either section 45 or section 48 of the Act.

2. An unspecified number of agreements between the NHL, NHL clubs and the CHL, which are mentioned at paragraph 47.3. It is alleged that pursuant to these agreements, NHL clubs have agreed not to sign players under the age of 18 playing in the CHL, or to assign a player who has an NHL/AHL contract under the age of 20 to their AHL/ECHL affiliate if that player also has a contract in the CHL. However, once again, no other information is provided regarding those agreements (including whether two or more clubs are parties to any of them) or the basis upon which they are asserted to, or could, contravene sections 45 or 48 of the Act.

3. An unspecified number of alleged agreements between NHL clubs and their AHL/ECHL affiliate clubs, pursuant to which the parties are said to have agreed

not to sign any North American players who play or have played for a CHL club, until the end of his eligibility in the CHL. Apart from this bare assertion, which is made at paragraphs 47.6 and 47.18, no further information has been provided. In the absence of any further material facts or particulars, it is not apparent how these alleged agreements are considered to contravene sections 45 or 48.

4. One or more agreements among the CHL, the WHL, the OHL and the QMJHL, pursuant to which they are alleged to have agreed to standardize player contracts that, among other things "impose very low ceilings for the remuneration of players, and will deprive those players of any opportunity to market [their] time, skills or talents or even their own image or name for the purpose of endorsement or sponsorship". Those agreements are referenced at paragraphs 3.2, 13, 14 and 47.8. As with the alleged agreements discussed above, the Amended Statement of Claim does not describe how these alleged agreement(s) among the CHL and its three member leagues to impose SPAs meet(s) the requirements of sections 45 and 48 of the Act. Instead, the Amended Statement of Claim simply repeats the language of paragraphs 48(1)(a) and (b) by alleging that the SPAs limit players' opportunities to participate in a professional sport, impose unreasonable terms and conditions (including unreasonable compensation and restrictions on players' abilities to market their own image), and limit their opportunity to negotiate with the team of their choice.

5. One or more agreements among the Responding Defendants and between them and "the NHL and its affiliates" which, among other things, prevent Canadian hockey players from playing in other leagues or with other clubs. These agreements, which are mentioned at paragraph 47.8, are alleged to "unreasonably limit the opportunities of Class Members to play professional hockey" and to "offer their services elsewhere, mostly in the AHL/ECHL, for better remuneration", until the end of their CHL eligibility. However, once again, this simply paraphrases the language in paragraphs 48(1)(a) and (b) of the Act, respectively, without providing any other material facts or particulars. In addition, no explanation is provided as to why those limitations are considered to be unreasonable, within the meaning of section 48, and having regard to the matters identified in subsection 48(2) of the Act.

6. An agreement between the CHL, Hockey Canada and one or more unnamed entities in the United States which deprives Class Members of the benefit of competition for their services. This agreement, which is mentioned at paragraph 8.2, is described as being "the amendment to the Hockey Transfer Agreement among the USA, CHL and [Hockey Canada] to ensure that Class Members cannot seek scholarships in exchange for playing within the NCAA." No further information regarding that alleged agreement is provided. Indeed, no allegations are made that the parties to this agreement are "competitors", as contemplated by section 45 of the Act, or that the agreement contravenes section 48 in any particular way.

[30] The absence of the material facts and particulars described above leaves the Amended Statement of Claim without a sufficient foundation to support the amended allegations that have been made. This provides a sufficient basis for concluding that it is plain and obvious that the Amended Statement of Claim discloses no reasonable cause of action: *Pelletier v Canada*, 2020 FC 1019 at paras 46-47.

[31] Notwithstanding this conclusion, I will proceed to address certain of the other submissions made by the Responding Defendants in support of their position that Mr. Mohr should not be granted leave to file the Amended Statement of Claim.

(ii) Failure to plead a reasonable cause of action under section 45 of the Act

[32] The Responding Defendants assert the plaintiff has not pleaded a reasonable cause of action under section 45 of the Act because that provision applies only to certain agreements between "competitors" relating to the "production or supply" of a product. They add that section 45 does not apply to agreements between buyers pertaining to the purchase of a service.

[33] I agree, although I expressly limit my agreement with the latter assertion to the proposition that section 45 does not apply to the types of agreements that are alleged in the Amended Statement of Claim. Among other things, those agreements are not the types of unambiguously harmful "hard core cartel" agreements, also known as "naked" cartel agreements, that are contemplated by section 45. This is because they cover a range of matters that have nothing to do with the matters described in paragraphs 45(1)(a) – (c): see for example, paragraphs 66-67 below.

[34] Subsection 45(1) states as follows:

Conspiracies, agreements or arrangements between competitors	**Complot, accord ou arrangement entre concurrents**
45 (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges	**45 (1)** Commet une infraction quiconque, avec une personne qui est son concurrent à l'égard d'un produit, complote ou conclut un accord ou un arrangement :
(a) to fix, maintain, increase or control the price for the supply of the product;	**a)** soit pour fixer, maintenir, augmenter ou contrôler le prix de la fourniture du produit;
(b) to allocate sales, territories, customers or markets for the production or supply of the product; or	**b)** soit pour attribuer des ventes, des territoires, des clients ou des marchés pour la production ou la fourniture du produit;
(c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.	**c)** soit pour fixer, maintenir, contrôler, empêcher, réduire ou éliminer la production ou la fourniture du produit.

[35] As is apparent from the plain language of subsection 45(1), it applies only to "competitors" who enter into a conspiracy, agreement or arrangement concerning either the "supply" or the "production or supply" of the product in respect of which they compete. These elements of subsection 45(1) pose an insurmountable hurdle for the plaintiff.

The existing defendants and many of the proposed defendants are not "competitors … with respect to a product"

[36] With the exception of the clubs within the AHL and the ECHL (discussed at paragraph 32.1 of the Amended Statement of Claim) and possibly the clubs within the NHL (mentioned at paragraph 31.2), none of the other existing or proposed defendants are alleged to have been a party to any conspiracy, agreement or arrangement with a "competitor … with respect to a product". The only passage in the Amended Statement of Claim that may suggest otherwise is the following sentence, which is difficult to understand: "31.2 Defendant clubs and leagues are competitors in the NHL, for Championships, the best players available and market shares."

[37] It is plain and obvious that the NHL, the CHL and Hockey Canada are not "competitors" of any other party to any of the alleged agreements, "with respect to a product".

[38] Moreover, given that it is common ground between the parties that the NHL, the AHL and the ECHL are the first, second and third-tier professional hockey leagues in North America, those leagues are not "competitors" of each other, at least with respect to the product at issue in these proceedings. I will discuss that product in the next two paragraphs below. Likewise, the clubs within one of those leagues are not "competitors" of any club in the either of the other two leagues. The same is true for the QMJHL, the OHL and the WHL. Those leagues are not "competitors" of each other, and the clubs within any one of those leagues are not "competitors" of the clubs in either of the other two leagues. I will address further below the competition that exists between clubs within each of those three leagues.

The remaining proposed defendants are not parties to an alleged conspiracy, agreement or arrangement with respect to the "production or supply" *of the relevant product.*

[39] The plaintiff alleges that the clubs within the AHL and the ECHL are "competitors in the hockey entertainment business." However, those clubs are not competitors in the "production or supply" of the only relevant product in respect of which one or more agreements described in subsection 45(1) have been alleged.

[40] The "product" at issue in this proceeding consists of the services of the Class Members, namely members of "a class consisting of the Plaintiff and all individuals residing in Canada, who were Canadian resident or Canadian citizens and who have signed a [SPA] with a club in one of the three leagues comprising the CHL (the QMJHL, OHL and WHL)" during the relevant period: Amended Statement of Claim, at paragraph 24.

[41] It is trite law that "the words of a statute must be read 'in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament'": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 117, quoting *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21 [***Rizzo***]; and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, both quoting E. Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87.

[42] On their face, the three offences proscribed in subsection 45(1) of the Act apply solely to either the "supply" or the "production or supply" of the same product in respect of which the

alleged conspirators are competitors. This is readily apparent from the use of the definite article "the" before the word "product" in each of paragraphs 45(1)(a)-(c).

[43] By their express terms, those provisions do not apply to the purchase or other acquisition of a product, although I do not exclude the possibility that paragraph 45(1)(c) may apply to a supplier boycott or other "hard core cartel" agreement among competitors in a downstream market to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product in respect of which they compete. The agreements alleged in the Amended Statement of Claim are plainly not of this type.

[44] Pursuant to subsection 2(1) of the Act, "supply" means, "in relation to a service, sell, rent or otherwise *provide* a service or offer so to *provide* a service" (emphasis added).

[45] As recognized at paragraph 2.7 of the Amended Statement of Claim, hockey players "offer" their services to teams, who then *acquire* those services.

[46] Given that it is the players, rather than the clubs within the AHL and ECHL, who "offer" and then "provide" the services at issue in this proceeding, it is readily apparent from the ordinary meaning of the words in subsection 45(1) that the clubs within those leagues are not competitors in the *production or supply* of those services, as contemplated by the Act. Based on the legislative history and the scheme of the Act discussed below, it is also readily apparent that the agreements to which the clubs in the AHL and the ECHL are alleged to be a party are not

agreements with respect to the production or supply of those services, as contemplated by subsection 45(1).

[47] To the extent that the words in subsection 45(1) might somehow be said to permit a broader interpretation that would bring within its scope the sorts of agreements alleged in the Amended Statement of Claim, the penal nature of that provision would entitle the defendants to the benefit of any ambiguity: *R v McLaughlin*, [1980] 2 SCR 331 at 335; *R v McIntosh*, [1995] 1 SCR 686 at 702 and 705.

[48] I will now turn to address the individual clubs within the QMJHL, the OHL and the WHL. As recognized at the end of paragraph 38 above, clubs within each of those leagues evidently compete – in the sense of being rivals to win hockey games, championships and perhaps even the services of players. However, it has not been alleged that they are "competitors" in the "production or supply" of the services of the Class Members. Indeed, it is plain and obvious that they are not in fact competitors in this capacity. They may well compete to sign young players to SPAs or other contracts. But in this capacity they are competitors in the *acquisition* of the hockey-related services of those players. For the same reasons discussed at paragraphs 39-47 above, those clubs are not competitors in the "production or supply" of the services at issue in this proceeding.

[49] This interpretation is supported by the legislative history of subsection 45(1). That history also supports the Responding Defendants' position that the agreements to which they are alleged

to be parties are not agreements with respect to the production or supply or supply of services, as contemplated by subsection 45(1).

[50] Prior to entry into force of the current wording of that provision in March 2010, paragraph 45(1)(c) applied to any agreement between competitors that prevented or lessened competition unduly "in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property" (emphasis added). (The full text of subsection 45(1), as it existed prior to March 2010, is reproduced in Appendix 1 to these reasons.)

[51] The fact that the word "purchase" was eliminated from the text of subsection 45(1) is a strong indication of Parliament's intention to exclude from the scope of that provision agreements and other arrangements that, in pith and substance, pertain to the purchase or other acquisition of a product. That amendment was made following a long period of consultation and assessment.

[52] In 2002, the House of Commons Standing Committee on Industry, Science and Technology issued a report containing a number of recommendations to amend the Act. Recommendation 12 of that report stated as follows:

> 12. That the Government of Canada amend the *Competition Act* to create a two-track approach for agreements between competitors. The first track would retain the conspiracy provision (section 45) for agreements that are strictly devised to restrict competition directly through raising prices or indirectly through output restrictions or market sharing, such as customer or territorial assignments, as well as both group customer or supplier boycotts. The second track would deal with any other type of agreement

> between competitors in which restrictions on competition are ancillary to the agreement's main or broader purpose.
>
> House of Commons Standing Committee on Industry, Science and Technology, *A Plan to Modernize Canada's Competition Regime*, (tabled April 23, 2002, adopted April 9, 2002), at xvi.

[53] Later in 2002, the Government of Canada broadly endorsed the foregoing recommendation when it stated the following:

> The Government supports the need to amend section 45 and indeed believes that such amendments are essential for effective enforcement of the provision.
>
> The Government further endorses the basic principle of a two-track approach for conspiracies under which hard core cartel behaviour, such as agreements to fix prices, allocate markets or restrict supplies, would be criminal offences without a competition test or an efficiency defence. Other types of agreements between competitors would be subject to a civil review …
>
> Government Response to the Report of the House of Commons Standing Committee on Industry, Science and Technology, "*A Plan to Modernize Canada's Competition Regime*", (October 1, 2002), at 3.

[54] In 2008, a panel appointed by the federal government issued a report on this country's competition policy that included various recommendations to amend the Act. With respect to the criminal provisions of the Act, the panel observed:

> The Panel is of the view that the criminal law, with its attendant sanctions including fines and imprisonment, should be reserved for conduct that is unambiguously harmful to competition and where clear standards can be applied that are understandable to the business community.
>
> […]
>
> At the same time, criminal law is too blunt an instrument to deal with agreements between competitors that do not fall into the "hard core" cartel category, such as restrictions on advertising or strategic alliances, but that may harm competition nonetheless. A

> more sophisticated economic approach to address the latter has been advocated by the Bureau and other experts to deal with this category of agreements between competitors.
>
> Government of Canada, *Compete to Win: Final Report – June 2008*, at 58-59 [*Compete to Win*] (emphasis added).

[55] Having regard to the foregoing, the panel recommended that the government "repeal the existing conspiracy provisions and replace them with (i) a per se criminal offence to address hard core cartels, and (ii) a civil provision to deal with other types of agreements between competitors that have anti-competitive effects": *Compete to Win*, Recommendation 14(d), at 127 (footnote omitted).

[56] The following year, Bill C-10, a budget implementation bill that included amendments to section 45 and several other provisions of the Act, was submitted to Parliament. The wording of the proposed amendments to section 45 and a new civil provision in section 90.1 addressing non-hard core cartel agreements among competitors was enacted without any change and entered into force in March 2010.

[57] This legislative history supports the Responding Defendants' position that section 45 does not apply to the types of purchasing agreements to which they or the other defendants are alleged to be parties: see also *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2018 ABQB 482 at para 1357. In brief, in addition to the elimination of the word "purchase" as part of the amendments in 2010, it is clear that Parliament intended to limit the application of section 45 to hard core cartel agreements, namely, agreements that are unambiguously harmful to competition. These are also known as "naked" cartel agreements. Other agreements between competitors, including those that include ancillary provisions that can adversely impact the

production or supply of a product, were intended to be reviewed under the new non-criminal provision in section 90.1 of the Act, which is reproduced in Appendix 1 to these reasons.

[58] Another aspect of the amended statutory scheme that supports the foregoing interpretation is the new provision in subsection 45(4), which states as follows:

Defence	**Défense**
(4) No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that would otherwise contravene that subsection if	**(4)** Nul ne peut être déclaré coupable d'une infraction prévue au paragraphe (1) à l'égard d'un complot, d'un accord ou d'un arrangement qui aurait par ailleurs contrevenu à ce paragraphe si, à la fois :
(a) that person establishes, on a balance of probabilities, that	**a)** il établit, selon la prépondérance des probabilités :
(i) it is ancillary to a broader or separate agreement or arrangement that includes the same parties, and	**(i)** que le complot, l'accord ou l'arrangement, selon le cas, est accessoire à un accord ou à un arrangement plus large ou distinct qui inclut les mêmes parties,
(ii) it is directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate	**(ii)** qu'il est directement lié à l'objectif de l'accord ou de l'arrangement plus large ou distinct et est raisonnable-

agreement or arrangement; and	ment nécessaire à la réalisation de cet objectif;
(b) the broader or separate agreement or arrangement, considered alone, does not contravene that subsection.	**b)** l'accord ou l'arrangement plus large ou distinct, considéré individuellement, ne contrevient pas au même paragraphe.

[59] In brief, taken together, the statutory scheme contemplated by section 2, subsection 45(1), subsection 45(4) and section 90.1 support the position of the Responding Defendants that the types of agreements to which they and the other defendants are alleged to have been a party do not fall within the purview of subsection 45(1).

[60] I pause to observe that the Competition Bureau shares this interpretation of subsection 45 and the legislative history discussed above: see Competition Bureau, *Competitor Collaboration Guidelines* (May 6, 2021), at section 2.4.1 and Example 9; and Competition Bureau, *Competition Bureau statement on the application of the Competition Act to no-poaching, wage-fixing and other buy-side agreements* (November 27, 2020), available online: https://www.canada.ca/en/competition/bureau/news/2020/11/competition-bureau-statement-on-the-application-of-the-competition-act-to-no-poaching-wage-fixing-and-other-buy-side agreements.html.

[61] I acknowledge that subsection 48(3), discussed below, states that "section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among [the] teams, clubs and persons" described in that provision. However, the language of

subsection 48(3), which predates the amendments to section 45 discussed above, must be read together with those amendments. Pursuant to the plain terms of those amendments, subsection 45(1) now only applies to three narrowly defined types of agreement, whether the agreement is among teams and clubs as members of the same league, or otherwise. For the reasons discussed above, the agreements alleged to have been entered into among the current and proposed defendants are not one of those types of agreement.

[62] In summary, based on the ordinary meaning of the words in subsection 45(1), the legislative history of that provision, and the statutory scheme, it is plain and obvious that the plaintiff has not pleaded a reasonable cause of action in relation to section 45 of the Act. In other words, it is clear that the plaintiff has not pleaded a reasonable cause of action against the existing and proposed defendants under section 45, in relation to the production and supply of the services that are at issue in this proceeding.

(iii) Failure to plead a reasonable cause of action under Section 48 of the Act

[63] In their Motion to Strike, the Responding Defendants alleged that no viable cause of action has been pleaded in the plaintiff's Statement of Claim, because it does not allege any "intra-league" agreement or arrangement described in subsection 48(3). In support of this position, they maintain that the opening words of subsection 48(3) ("This section applies") limits the purview of subsection 48(1) to such intra-league agreements.

[64] Section 48 states as follows:

Conspiracy relating to professional sport

48 (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate, or

(b) to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league

is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

Matters to be considered

(2) In determining whether or not an agreement or arrangement contravenes subsection (1), the court before which the contravention is alleged shall have regard to

(a) whether the sport in relation to which the contravention is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

(b) the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

Complot relatif au sport professionnel

48 (1) Commet un acte criminel et encourt, sur déclaration de culpabilité, une amende à la discrétion du tribunal et un emprisonnement maximal de cinq ans, ou l'une de ces peines, quiconque complote, se coalise ou conclut un accord ou arrangement avec une autre personne :

a) soit pour limiter déraisonnablement les possibilités qu'a une autre personne de participer, en tant que joueur ou concurrent, à un sport professionnel ou pour imposer des conditions déraisonnables à ces participants;

b) soit pour limiter déraisonnablement la possibilité qu'a une autre personne de négocier avec l'équipe ou le club de son choix dans une ligue de professionnels et, si l'accord est conclu, de jouer pour cette équipe ou ce club.

Éléments à considérer

(2) Pour déterminer si un accord ou un arrangement constitue l'une des infractions visées au paragraphe (1), le tribunal saisi doit:

a) d'une part, examiner si le sport qui aurait donné lieu à la violation est organisé sur une base internationale et, dans l'affirmative, si l'une ou plusieurs des restrictions ou conditions alléguées devraient de ce fait être acceptées au Canada;

b) d'autre part, tenir compte du fait qu'il est opportun de maintenir un équilibre raisonnable entre les équipes ou clubs appartenant à la même ligue.

Application	**Application**
(3) This section applies, and section 45 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs where the agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among those teams, clubs and persons.	**(3)** Le présent article s'applique et l'article 45 ne s'applique pas aux accords et arrangements et aux dispositions des accords et arrangements conclus entre des équipes et clubs qui pratiquent le sport professionnel à titre de membres de la même ligue et entre les administrateurs, les dirigeants ou les employés de ces équipes et clubs, lorsque ces accords, arrangements et dispositions se rapportent exclusivement à des sujets visés au paragraphe (1) ou à l'octroi et l'exploitation de franchises dans la ligue; toutefois, c'est l'article 45 et non le présent article qui s'applique à tous les autres accords, arrangements et dispositions d'accords ou d'arrangements conclus entre ces équipes, clubs et personnes.

[65] In response to the Motion to Strike, the plaintiff proposes to add, on this Motion to Amend, 148 specific clubs as defendants, and to allege several additional conspiracies, in his Amended Statement of Claim.[2]

[66] For example, at paragraph 47.19, it is alleged that "NHL, AHL & ECHL clubs have conspired among themselves to establish rules and adhesion contracts not to sign any CHL Canadian players aged 16 to 20 or have them play AHL or ECHL hockey." In addition, it is alleged at paragraph 47.24 that "rules established by CHL clubs, CHL and their respective leagues, violate section 48(1)(b) …" Similarly, at paragraph 47.26, it is alleged that "WHL, OHL & QMJHL Clubs, under the CHL and Hockey Canada umbrella, have established unreasonable

[2] The Statement of Claim refers to a single conspiracy at paragraphs 2, 13, 24 and 50(c). The Amended Statement of Claim now alleges the existence of many different conspiracies.

conditions, mainly to reduce or to erase any reasonable prospect of a CHL player signing a contract elsewhere or even exploring the opportunity of offering his skills and talents elsewhere." To the extent that these passages of the Amended Statement of Claim are alleging agreements among clubs "as members of the same league," those agreements are intra-league agreements that are within the potential scope of section 48.

[67] In their opposition to the plaintiff's Motion to Amend, the Responding Defendants do not squarely address this aspect of the Amended Statement of Claim. Instead, they maintain that "[t]o the extent the plaintiff alleges a series of separate, parallel Section 48 conspiracies between entirely different actors with no unifying 'collusion' (which is not the theory of the Plaintiff's claim), these are not properly brought as a single action, and would otherwise render this action completely unmanageable."

[68] It is unnecessary to address that particular submission by the Responding Defendants, because it has not been alleged, nor is it apparent, that any of the alleged intra-league agreements "relate exclusively to the matters described in subsection (1)," as set forth in subsection 48(3) (emphasis added). Indeed, the Amended Statement of Claim describes range of other matters that are covered by the alleged agreements. These include the following:

- The alleged agreement between the NHL and the CHL apparently provides for several substantial payments by the NHL to the CHL and defendants, in exchange for "various activities including the enforcement of the restrictive rules

alleged here to be illegal and unreasonable restraints of trade" (emphasis added): Amended Statement of Claim, at paragraph 3.1.

- That same agreement is also described as encompassing "the modalities of a partnership": Amended Statement of Claim, at paragraph 47.2

- The SPAs that are required to be signed by players in the QMJHL, the OHL and the WHL provide for benefits that include the provision of hockey equipment, reimbursement for travel and "other expenditures", as well as "scholarship funds", if the player intends to go to a college or university after his major junior league career: Amended Statement of Claim, at paragraph 28.4.

- The alleged agreements among and between NHL, AHL, ECHL and CHL clubs include provisions relating to the provision of financial support and financial compensation from the NHL, the AHL and the ECHL to CHL Clubs, for the "development" of hockey players: Amended Statement of Claim, at paragraph 47.5.

[69] In addition to the foregoing, Class proceedings that have been brought by Mr. Mohr and others in other courts reveal that the challenged SPAs cover a broad range of other matters. These include the following:

- "Special player benefits": *Berg v Canadian Hockey League*, 2017 ONSC 2608 at para 52 [***Berg 1***].

- Numerous obligations of the players and consequences for non-performance of those obligations: *Berg* 1, above, at para 53; *Walter c Quebec Major Junior Hockey League Inc*, 2019 QCCS 2334, at para 13 [***Walter – Quebec I***].

- Various terms pertaining to the trading of players to another team: *Berg* 1, above, at para 54.

[70] Having regard to the foregoing, it is plain and obvious that the Amended Statement of Claim does not identify agreements that "relate exclusively to the matters described in subsection (1)" and that are "between or among teams and clubs engaged in professional sport as members of the same league [or] between or among directors, officers or employees of those teams and clubs." Stated differently, it is plain and obvious that the Amended Statement of Claim does not disclose a reasonable cause of action under section 48 of the Act.

[71] The plaintiff maintains that subsection 48(3) does not limit the purview of subsection 48(1) to intra-league conspiracies, as asserted by the Responding Defendants. Instead, the plaintiff asserts that subsection 48(3) simply removes those types of conspiracies from the application of section 45. The plaintiff adds that what has not been removed from section 45, namely conspiracies that are not confined to teams within a single league, remains within the purview of subsection 48(1). The plaintiff underscores that this is clear from the use of the term "every one" and the remaining language in subsection 48(1), which is not restricted to intra-league agreements. Pursuant to that interpretation, anyone who agrees to do the types of things described therein is guilty of a criminal offence, regardless of whether the agreement is of a type described in subsection 48(3). The plaintiff insists that if Parliament had wanted to limit the application of section 48 to clubs or their "operatives" operating within the same league, it would not have used the words "every one" in subsection 48(1). In the plaintiff's view, interpreting section 48 in the manner advocated by the Responding Defendants would give rise to "an inexplicable exemption" from the Act, for a broad range of conspiracies among professional sports leagues or their operatives.

[72] I acknowledge that the language in subsection 48(3) is capable of being interpreted in the manner advanced by the Responding Defendants as well as in the manner asserted by the plaintiff. However, for the following reasons, I agree with the interpretation advanced by the Responding Defendants.

[73] To begin, the interpretation advanced by the Responding Defendants fits more comfortably with the overall scheme of section 48, because paragraph 48(2)(b) requires a

consideration of “the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league”. In other words, the purview of paragraph 48(2)(b) is co-extensive with the purview of subsection 48(1) as interpreted by the Responding Defendants. By contrast, the interpretation advanced by the plaintiff would result in a situation in which the purview of paragraph 48(2)(b) would be much narrower than the purview of 48(1).

[74] In addition, the interpretation advanced by the plaintiff would result in an absurd and arbitrary outcome. In brief, some agreements and arrangements relating to professional sport would be subject to the much more severe sanctions in section 45, while others, including those with potentially more severe adverse impacts on competition, would be exposed solely to the lesser sanctions in section 48. Specifically, certain agreements between the teams and clubs (namely, those that do not relate exclusively to the matters described in subsection 48(3)) would be subject to section 45. However, pursuant to the principle of statutory construction *generalia specialibus non derogant*, whereby specific provisions prevail over general provisions, inter-league and other conspiracies involving professional sport that the plaintiff asserts are within the purview of subsection 48(1) would not be subject to section 45: *Perron-Malenfant c. Malenfant (Syndic de)*, [1999] 3 SCR 375 at para 42. In my view, this would be absurd and arbitrary.

[75] An interpretation that does not produce this result, that fits more comfortably with the statutory scheme and that is more consistent with the legislative history is to be preferred: *Ontario v Canadian Pacific Ltd*, [1995] 2 SCR 1031 at para 65; *Rizzo*, above, at para 21.

[76] The legislative history supports the narrower interpretation of section 48 advanced by the Responding Defendants. That provision came into force in 1976 as section 32.3 of the *Combines Investigation Act*, in the same form as it exists today: Bill C-2, *An Act to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code*, 1st Sess, 30th Parl, 1974, cl 15 (proclaimed in force, January 1, 1976). It was part of a package of amendments that were passed as part of Bill C-2, when the *Combines Investigation Act* was extended to apply to services.

[77] A document issued by the Department of Consumer and Corporate Affairs described the purpose of section 48 as follows:

> The Bill brings professional and amateur sports within the ambit of the Combines Investigation Act in the same way as other services, with the exception of specified arrangements among member clubs of the same sporting league. The latter arrangements are exempted from section 32 [now Section 45] relating to conspiracy but are subject to special prohibitions [which] take account of particular relationships among the clubs of a league. [Emphasis added]
>
> Department of Consumer and Corporate Affairs, *Proposals for a New Competition Policy for Canada* (November 1973) at 49.

[78] Unfortunately, the "clause-by-clause" analysis provided later in that document does not shed any further light on Parliament's intent in enacting what is now section 48.

[79] However, the record of the Standing Committee Senate Committee on Banking, Trade and Commerce confirms the intra-league focus of section 48. This is apparent from the following passages:

> … The provision in section [45] is against agreements or arrangements to lessen competition or restrict or injure trade or commerce. The provision would apply with full rigor against those

> arrangements which are common in professional sports. This is why we have drafted section [48] as an exempting provision. It recognizes the international nature of professional sports and the need to maintain a reasonable balance among teams. The section, therefore, moderates the rigor with which the conspiracy provisions would otherwise apply in this field…
>
> ...The only thing that this legislation does through section [48] is to make sure that we are not, through the Combines Investigation Act, preventing professional sports taking place in Canada. Everyone would object to it if, because the Combines Investigation Act includes services in Canada it would no longer be possible to assemble a group of players into a team playing in a league and make arrangements and regulations for the playing of hockey, football or other sports. Therefore, section [48] allows for some agreements or arrangements to take place to permit professional leagues to exist, and that is all it does. [Emphasis added.]
>
> *Proceedings of the Standing Senate Committee in Banking, Trade and Commerce,* Issue No. 61 (19 November 1975) at 18-19 (Hon. André Ouellet, Minister of Consumer and Corporate Affairs)

[80] I will observe in passing that if Parliament had intended to extend the above-described benefit of section 48 to inter-league agreements, it would have done so, in much the same way as it did in subsection 6(1) of the Act. That provision states: "This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport." (The Responding Defendants stated that they are not relying on this provision in this Motion, but intend to rely on it "to resist certification" and, if necessary, any subsequent stage of this proceeding.)

[81] Notwithstanding the foregoing, the plaintiff maintains that the limited jurisprudence under section 48 supports his interpretation of that provision. I disagree.

[82] The two cases relied upon in this regard are *Goulet c National Hockey League et autres*, RP 1980, AZ-80122012 (QC Sup Ct) [***Goulet***] and *Reed v Canadian Football League* [1988] AJ No 1236, 62 Alta LR (2d) 347 (AB QB) [***Reed***].

[83] *Goulet* concerned a motion for an interlocutory injunction involving a pending NHL draft. In the course of rejecting the motion, the court simply concluded that it had not been established that the impugned rules had any of the effects described in subsection 48(1). To the contrary, the court was satisfied that "the member clubs of the NHL had only one objective, namely, to maintain a reasonable balance among the teams through the same type of process common in other North American professional sport leagues: a draft": *Goulet*, above, at pp 143-144. [Translation] This case does not support the plaintiff's position that section 48 applies to inter-league and other conspiracies that are not described in subsection 48(3). That specific matter was not addressed by the court.

[84] *Reed* also involved a motion for an injunction, although the remedy sought was to restrain the defendants from enforcing an amendment to the Canadian Football League's by-laws. The court concluded that a serious issue had been raised in respect of whether section 48 had been violated "by limiting unreasonably the opportunity of [the plaintiff] to participate as a player or competitor in a professional sport by imposing unreasonable terms or conditions upon him and limiting his opportunity to negotiate to play for a team or club of his choice in the C.F.L., a professional football league": *Reed*, above, at para 23. The court did not add anything that might support the interpretation of section 48 being advanced by the plaintiff. It simply

noted that the issues raised by the plaintiff did not "appear to be frivolous or vexatious": *Reed*, above, at para 35.

[85] In summary, I am satisfied that it is plain and obvious that a reasonable cause of action has not been pleaded in respect of section 48 in the proposed Amended Statement of Claim. This is because it has not been alleged, nor is it apparent, that any of the alleged intra-league agreements "relate exclusively to the matters described in subsection (1)," as set forth in subsection 48(3). For the reasons that I have provided, I consider that the interpretation of subsections 48(1) and (3) asserted by the plaintiff is not supported by the ordinary meaning of the words in subsection 48(3), the scheme of section 48 as a whole, or the legislative history of that provision. Instead, those words, that scheme and the legislative history are all more consistent with the narrower interpretation advanced by the Responding Defendants, who maintain that the purview of subsection 48(1) is limited to the intra-league agreements described in subsection 48(3). To the extent that there is any ambiguity in section 48, which is a penal provision, the Responding Defendants are entitled to the benefit of their narrower interpretation: see paragraph 47 above.

[86] I will simply add in passing that I do not accept the plaintiff's suggestion that the interpretation of section 48 described immediately above would give necessarily rise to "an inexplicable exemption" from the Act for a broad range of conspiracies among professional sports leagues or their "operatives". To the extent that an impugned agreement was "between persons two or more of whom are competitors", within the meaning of subsection 90.1, it would be potentially subject to that provision. If no competitors were parties to the agreement, then the

agreement would be no different from any other agreement among non-competitors, in the sense that it would not be subject to either section 45 or section 90.1 of the Act.

(iv) Other claims are not within the scope of section 36

[87] The Statement of Claim in this proceeding seeks remedies under paragraph 36(1)(a) of the Act. That provision provides as follows:

Recovery of damages	**Recouvrement de dommages-intérêts**
36 (1) Any person who has suffered loss or damage as a result of	**36 (1)** Toute personne qui a subi une perte ou des dommages par suite :
(a) conduct that is contrary to any provision of Part VI, or	**a)** soit d'un comportement allant à l'encontre d'une disposition de la partie VI;
(b) the failure of any person to comply with an order of the Tribunal or another court under this Act,	**b)** soit du défaut d'une personne d'obtempérer à une ordonnance rendue par le Tribunal ou un autre tribunal en vertu de la présente loi,
may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection	peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures

with the matter and of proceedings under this section.	engagées en vertu du présent article.

[88] As is apparent from the text of this provision, it permits the recovery of *loss or damages* suffered as a result of (a) conduct that is contrary to any of the provisions in Part VI of the Act (which establishes various criminal offences), or (b) the failure of any person to comply with an order of the Competition Tribunal or another court under the Act. The costs associated with investigating the matter and then bringing proceedings under paragraph 36(1)(a) may also be recovered. There is no mention of injunctive remedies or remedies under the common law doctrine of unlawful restraint of trade.

[89] No allegation has been made in either the Statement of Claim or the Amended Statement of Claim in relation to the failure of any person to comply with an order of the Competition Tribunal or another court under the Act. Accordingly, any potential recovery available to the plaintiff is limited to loss or damage suffered as a result of conduct contemplated by Part VI of the Act, as well as costs incurred in connection with the investigation of the matter and of court proceedings. The only such conduct alleged by the plaintiff is with respect to sections 45 and 48 of the Act, discussed above.

[90] Notwithstanding the foregoing, the Amended Statement of Claim "pursues remedies justified by" sections 78, 79 and 90.1 of the Act. Such remedies are not available to the plaintiff under paragraph 36(1)(a). I note in passing that the plaintiff appeared to recognize this in his

reply submissions, when he observed that the "references to section s79 and 90.1 are made in order to convey the seriousness of those alleged offences and their consequences."[3]

[91] Likewise, the allegations made in respect of "illegal and unreasonable" restraints of trade, and the determinations sought from the Court in relation thereto, are beyond the scope of section 36.

(b) *Does the Amended Statement of Claim constitute an abuse of the Court's process?*

[92] The Responding Defendants assert that the Amended Statement of Claim constitutes an abuse of this Court's process because it seeks to add conspiracy claims related to hockey players' wages that are currently being litigated in three class actions before Superior Courts in Ontario, Quebec and Alberta, respectively. I agree.

[93] The plaintiff is a class member in each those three class proceedings: *Berg v Canadian Hockey League*, 2020 ONSC 6389, at para 31 [***Berg 2020***].

[94] Those three proceedings are closely interrelated and make common claims with respect to conspiracy in relation to wages, overtime pay: *Berg 2020*, above, at paras 1 and 17; *Walter* c *Ligue de hockey junior majeur du Québec inc*, 2020 QCCS 3724 at para 4 [***Walter – Quebec II***].

[3] As for section 78, it simply lists factors to be considered in assessing the element of "anticompetitive act", for the purposes of section 79.

(i) The Ontario proceeding

[95] Among other things, the Amended Second Consolidated Fresh Statement of Claim [**ASCFSC**] in the Ontario action seeks a declaration that OHL clubs, the OHL and the CHL "conspired together and with each other to violate applicable employment standards legislation and to compel the Players to enter into the SPA knowing that the SPA constituted an unlawful agreement in violation of Applicable Employment Standards Legislation": ASCFSC, paragraph 2(i).

[96] In support of this request and a related claim for damages, the plaintiffs make numerous allegations, including that representatives of OHL clubs, the OHL and the CHL "jointly decided to change the terms and conditions of the SPA to classify the Players in all three leagues as participants in a development training program and to characterize the remuneration paid to Players in all three leagues as a reimbursement for expenses": ASCFSC, paragraph 98. It is further claimed that the "acts in furtherance of the conspiracy caused injury and loss to the plaintiffs and other Class Members in that the Players' statutory protected right to fair wages were (sic) breached and they did not receive minimum wages, vacation pay, holiday pay or overtime pay that was owed to them …": ASCFSC, paragraph 103.

[97] In addition to claims made in respect of wages, allegations were made with respect to mobility restrictions and the use of players' images for profit: ASCFSC, paragraph 58.

[98] Although the conspiracy claim was not certified at trial, that aspect of the ruling at first instance was reversed, thereby permitting the conspiracy claim to move forward: *Berg v*

Canadian Hockey League, 2017 ONSC 2608 at para 247; rev'd, *Berg v Canadian Hockey League*, 2019 ONSC 2106 (Div Ct) at paras 53-54 and 62.

(ii) The Alberta proceeding

[99] As with the claim in Ontario, the Fresh As Amended Statement of Claim [**FAASC**] filed in the Court of Queen's Bench of Alberta seeks damages for back wages and overtime pay under provincial legislation as well as under the tort of civil conspiracy. It also seeks a related declaration. The acts in furtherance of the alleged conspiracy between each club within the WHL, the WHL and the CHL are claimed to include "setting the Player wages for all Clubs at a uniform, industry-wide fixed rate well below the minimum wage legislation, and, after 2013, by refusing to pay the players any wages; [and] demanding or requiring that all Players sign an SPA which provides for fixed wages well below minimum wage legislation or no wages …": FAASC, paragraph 107.

[100] It is further alleged that, as a result of the alleged conspiracy, class members "did not receive minimum wages, vacation pay, holiday pay or overtime pay that was owed to them …". In addition, it is alleged the defendants used players' images for their own profit: FAASC, paragraph 37(g).

[101] As in the Ontario proceeding, the conspiracy allegation was certified as a common issue and remains live: *Walter v Western Hockey League*, 2017 ABQB 382 at paras 21, 46, 59(16), 93 and 99.

(iii) The Quebec proceeding

[102] In much the same way as in the Ontario and Alberta proceedings discussed above, the claim filed before the Superior Court of Quebec alleges that the defendants, in this case the QMJHL and its constituent clubs, conspired to violate provincial legislation with respect to minimum wages, vacation pay and overtime pay, including by obliging players to sign an SPA : *Walter – Quebec I*, above, at paras 9-10, 42-46, 49, 57, 58, 74 and 75.

[103] In addition, allegations with respect to player mobility and the use of their images are made: *Demande introductive d'instance* dated September 13, 2019 filed before the Superior Court of Quebec in Court File No 500-06-000716-148 (in *Walter Quebec*) at paragraphs 16(e) and 30.

(iv) Analysis

[104] As noted above, the Responding Defendants maintain that it is an abuse of process to seek to add claims related to players' wages that are already being litigated in Ontario, Alberta and Quebec. I agree.

[105] In support of this position, the Responding Defendants assert that the essential nature of the plaintiff's Statement of Claim in the proceeding before this Court is that the CHL, the OHL, the QMJHL, the NHL, the ECHL and Hockey Canada have conspired contrary to section 48 of the Act to limit the opportunities for Canadian major junior hockey players to play in the NHL, the AHL and the ECHL.

[106] This reading of the Statement of Claim is supported by the articulation of the "main questions of fact and law" at paragraph 50 of that document. That paragraph does not mention a conspiracy with respect to wages, but rather focuses on unreasonable limitations on the opportunities of players to negotiate with and participate in the AHL, the ECHL and the NHL, including by playing for the team of their choice. Likewise, the summary statement at paragraph 47 of the Statement of Claim states as follows:

> 47. Overall, Responding players that are playing in Major Junior Leagues have substantially less choices and freedom, if any, than European-based players, who have the opportunity to play in the AHL or ECHL before reaching the age of 20 and be paid a salary negotiated by a Professional Association.

[107] I recognize that paragraph 20 of the Statement of Claim in this proceeding alleges that the defendants agreed to pay nominal wages to Class Members. However, little more is said about this in that document. A fair reading of the Statement of Claim is consistent with the following characterization of the proceeding in this court made by the plaintiff, before the Ontario, Alberta and Quebec courts:

> The [proceeding in the Federal Court] relates to anti-competitive practices and collusion between Canadian Major Junior leagues and the National Hockey League ("NHL"), the American Hockey League ("AHL") and the East Coast Hockey League ("ECHL") under the Competition Act to limit access to these professional leagues for Canadian Major Junior players playing in Canada.
>
> Submissions by group members to the Alberta Court of Queen's Bench, the Ontario Superior Court, and the Quebec Superior Court (October 2, 2020), at paragraph 15 (emphasis added).

[108] I agree with the Responding Defendants that the net effect of many of the proposed amendments would be to significantly expand the focus proceeding to include wage related matters that are already the subject of the aforementioned proceedings in Ontario, Alberta and

Quebec. This is clear from the proposed amendments at paragraphs 3.2, 13.1, 13. 4, 14, 17, 20, 25.1.2, 25.1.3, 28.3, 28.4, 47.8, 47.17, 47.19 and 47.20 of the Amended Statement of Claim.

[109] Likewise, amendments that the plaintiff proposes to make (at paragraphs 48.6, 50(g) and 50(k)) relate to allegations pertaining to the use of players' images that have also been advanced the proceedings in Ontario, Alberta and Quebec.

[110] In my view, it is an abuse of process to attempt to litigate these matters anew in this Court. As noted by the Responding Defendants, this would raise the spectre of a multiplicity of proceedings on these issues.

[111] The plaintiff distinguishes the claims being made with respect to wages before the courts in the proceedings discussed above, by stating that those proceedings are "wage and hour" claims under provincial legislation pertaining to minimum wages. By contrast, in this Court, the plaintiff states that he seeks damages for lost wages well above the minimums that exist in the provinces in question.

[112] That may well be so. However, having alleged a conspiracy with respect to wages, in each of the proceedings described above, it is an abuse of process to attempt to litigate wage-related issues in this Court, when they could easily have been raised in those other proceedings: *The Catalyst Capital Group Inc v VimpelCom Ltd*, 2019 ONCA 354 at para 67; *Winter v Sherman Estate*, 2018 ONCA 703 at para 7; *Erschbamer v Wallster*, 2013 BCCA at paras 29-30. The same is true with respect to the use of players' images. Accordingly, the various proposed

amendments pertaining the alleged conspiracies, as they relate to wages and the use of players' images, constitute an abuse of process.

[113] Indeed, I consider that it would have been far more appropriate to have included in the Ontario, Alberta and Quebec proceedings the various claims that were made in the Statement of Claim this proceeding, than to have instituted a separate action in this Court. Although this Court offers the advantages associated with litigating in a single national forum, and has specific expertise in competition law matters, it is difficult to see how the interests of justice are served by making claims in this Court that could readily have been included in proceedings that had already been launched elsewhere.

[114] My concerns regarding the filing of proceedings in this Court are heightened by the timing of the filing of the plaintiff's Statement of Claim. That occurred on September 14, 2020, the day before a joint hearing of a settlement approval motion in the proceedings before the courts in Ontario, Alberta and Quebec. Less than an hour prior to the start of that hearing the following day, the plaintiff objected to the scope of the release that was part of the settlement, on the grounds that it would permit the defendants to avoid liability in three other proceedings, including the one that he had just filed in this Court: *Berg 2020*, above, at paras 6-7 and 30-35; *Walter v WHL*, 2020 ABQB 631 at para 9; *Walter – Quebec II*, above, at paras 27-28. He did so despite the deadline having passed for objecting to the proposed settlement agreement. Based on the plaintiff's objection, the proposed settlement was not approved. According to the Responding Defendants, the proceedings before those other courts continue to move forward.

[115] Given that the Responding Defendants have not alleged that the filing the Statement of Claim in this Court constituted an abuse of process, I will refrain from further commenting on this issue.

[116] In summary, I agree with the Responding Defendants that the various proposed amendments pertaining to the alleged conspiracies, as they relate to wages, constitute an abuse of process. The same is true with respect to the allegations that have been made regarding the use of players' images.

(c) *Is the Amended Statement of Claim scandalous, frivolous or vexatious?*

[117] The Responding Defendants submit that the proposed amendments are scandalous, frivolous or vexatious because they would transform the single alleged conspiracy under section 48 of the Act into "a multi-tiered action going well beyond the scope of either Section 48 or 45 of the Act." In this regard, they note that the Amended Statement of Claim alleges multiple distinct conspiracies among the existing defendants as well as 148 proposed new defendants. They maintain that this would lead to an "unmanageable" proceeding, with no single cause of action tying all of the propose defendants together. They add that this would "make common issues an insurmountable obstacle if the action ever reached certification."

[118] I am sympathetic with the Responding Defendants' submissions on this issue. However, I prefer to deal with them as part of my assessment below of whether the proposed amendments would assist the Court to determine the real questions in controversy between the parties.

(d) *Conclusion: It is plain and obvious that the Amended Statement of Claim discloses no reasonable cause of action*

[119] For the reasons provided in part V.B.(1)(a) of these reasons above, it is plain and obvious that the proposed Amended Statement of Claim does not disclose a reasonable cause of action. This is so for multiple reasons. In brief, insufficient material facts and particulars have been provided with respect to the various alleged agreements and their links to the Act. In addition, reasonable causes of action have not been pleaded under either sections 45 or 48 of the Act. Moreover, the other claims are not within the scope of section 36 of the Act. Finally, the proposed amendments relating to hockey players' wages and the use of their images constitute an abuse of process, because those matters are already the subject of claims that have been made in ongoing actions before the superior courts in Ontario, Alberta and Quebec. Although the wage-related claims that have been made in this proceeding go beyond the focus of the claims that have been made in those other actions (namely, failure to pay minimum wages and other benefits in accordance with provincial legislation), the claims made in this proceeding could readily have been made in those actions.

[120] These conclusions provide a sufficient basis to refuse the plaintiff's request to make the amendments set forth in the Amended Statement of Claim: *Teva*, above, at paragraphs 28 and 31. Nevertheless, in the interests of completeness, I will briefly address the other factors to be considered in a Motion to Amend.

(2) Would the proposed amendments assist the Court to determine the real questions in controversy between the parties?

[121] Mr. Mohr submits that the proposed amendments provide "much more precis[ion] on the nature of the conspiracies by the Defendants." In this regard, he maintains that his Amended Statement of Claim elucidates with "more precision and clarity" his allegations that the Defendants are parties to conspiracies contemplated by sections 45 and 48 of the Act. He adds that his modifications would assist the Court to better ascertain the roles and obligations that each defendant had in alleged conspiracies. I disagree.

[122] In addition to adding 148 defendants, the Amended Statement of Claim alleges several additional conspiracies, advances additional causes of action, and requests new forms of relief. In response to the Responding Defendants' Motion to Strike, the plaintiff described those conspiracies as being "a labyrinth of preconceived arrangements". He elaborated as follows:

> 13. ...[T]he Statement of Claim, certainly as amended, attacks both intra-league conspiracies under section 48 and inter-league conspiracies under section 45. They are conspiracies among sports clubs, among different leagues, among clubs and leagues operating at different levels and different geographies of the professional hockey world in Canada, and they involved Defendants who are neither clubs nor leagues.
>
> 14. The evidence may show that these conspiracies arose at a team level within a single league or individual leagues at the same time, and that they were put into effect by leagues in concert with each other, and with Hockey Canada, or that the conspiracies arose at a league level and were imposed downwards onto the teams. It may be that section 45 will apply to some or all, or section 48 to some or all. The decision in that regard should not be made at the pre-evidentiary stage of a Motion to Strike.

[123] I agree with the Responding Defendants that the amended allegations fall far short of providing them sufficient information to know the case to be met.

[124] As a result of all of the proposed amendments, the Amended Statement of Claim is approximately double the length of the Statement of Claim. Yet, rather than assisting the Court to determine the real issues in controversy between the parties, it would introduce new complexities and several additional issues. Instead of providing more precision and clarity, it would give rise to multiple new questions that would need to be resolved. This is in part due to the absence of sufficient facts and particulars regarding the various alleged conspiracies and their links to sections 45 and 48 of the Act.

[125] In brief, the amendments proposed in the Amended Statement of Claim would not assist the Court to determine the real questions in controversy between the parties. This weighs against granting the plaintiff's request to make the modifications reflected in that document.

(3) Would the proposed amendments serve the interests of justice?

[126] Mr. Mohr submits that the proposed amendments are in the interests of justice because they would benefit the parties to this proceeding and assist the Court in the pursuit of truth.

[127] I disagree. For the reasons set forth immediately above, the proposed amendments would not assist the Court in the pursuit of truth. For essentially the same reasons, they would not be in the interests of justice. For the additional reasons provided at part V.B.(1)(b)(iv) above, the amendments pertaining to players' wages and the use of their images would constitute an abuse of process, and therefore not be in the interests of justice. Once again, these considerations weigh against granting the plaintiff's request to make the modifications reflected in the Amended Statement of Claim.

(4) Would the proposed amendments result in an injustice to the other party that is not capable of being compensated by an award of costs?

[128] Mr. Mohr submits that the proposed amendments would not result in any injustice to the Defendants. Indeed, he maintains that "[f]ar from causing prejudice, the expansion and detail in the Amended Statement of Claim give far better communication to all Defendants, and facilitate the Court's consideration of the constraints the Defendants are alleged to have organized, in common, against reasonable compensation for class members' services." I disagree.

[129] For the reasons I have given, the "expansion and detail" in the Amended Statement of Claim would not assist the defendants to know the case they have to meet. Quite the contrary, it would make it more difficult for them in this regard. As I have observed, the plaintiff's proposed modifications would introduce new complexities and issues, and give rise to a range of new questions. Collectively, these would likely significantly prolong the proceedings.

[130] Given that awards of costs in this Court typically do not fully compensate parties for the costs incurred in successfully defending a proceeding, I consider that the new complexities, issues and questions presented by the Amended Statement of Claim weigh against granting the plaintiff's request to make the modifications reflected therein.

[131] I will simply add in passing for the record that Class counsel recently brought a Motion to Withdraw as solicitor of record. The Court ruled granted that motion, "but on the condition that they fulfill their obligations pursuant to the scheduling order of February 5, 2021." Those obligations included deadlines to serve and file submissions on this Motion. The Responding

Defendants maintain that it would cause them non-compensable prejudice to permit this proceeding to move forward on the basis reflected in the Amended Statement of Claim, "with no one in the driver's seat." Given the various conclusions that I have reached in respect of the other matters at issue on this Motion, it is not necessary to further address this issue.

C. *Conclusion*

[132] For the reasons set forth above, this Motion will be dismissed. In summary, for the reasons provided at paragraph 119 above, it is plain and obvious that the proposed Amended Statement of Claim does not disclose a reasonable cause of action. This provides a sufficient basis upon which to reject the plaintiff's request to make the modifications reflected in that document.

[133] In any event, the other factors to be considered on a Motion to Amend weigh against the exercise of this Court's discretion to permit the plaintiff to make the requested modifications. In brief, as explained at paragraphs 123-125, the proposed amendments would not assist the Court to determine the real issues in dispute between the parties. Moreover, as explained at paragraph 127, the proposed amendments also would not serve the interests of justice. Finally, for the reasons provided at paragraphs 129-130, the proposed amendments would result in an injustice to the defendants that would not likely be fully compensated through a cost award in their favour.

[134] Given that the Responding Defendants did not request their costs on this Motion, no order will be made as to costs: *Pelletier v Canada (Attorney General)*, 2006 FCA 418 at para 9.

VI. Analysis – Motion to Strike

[135] In their separate Motion, the Moving Defendants seek an order striking out the plaintiff's Statement of Claim in its entirety under Rule 221(1)(a), on the basis that it is plain and obvious that it discloses no reasonable cause of action. For the reasons set forth below, I agree.

[136] It is common ground between the parties that the Motion to Strike can succeed only if it is plain and obvious, assuming the facts pleaded to be true, that the Statement of Claim discloses no reasonable cause of action: *Pelletier*, above, at para 44.

[137] The Statement of Claim was brought under section 36 of the Act. As previously noted, it alleges that the defendants are parties to a single conspiracy contrary to section 48 of the Act. This allegation is explicitly made in paragraph 13 and implicitly in paragraphs 17, 19 and 50, which paraphrase the language in section 48 and refer to "professional hockey" or "professional sport". No mention is made of section 45 or any other provision of the Act, anywhere in the document.

[138] For the reasons summarized at paragraph 85 of these reasons above, and discussed in greater detail at paragraphs 68-84, I am satisfied that it is plain and obvious that the Statement of Claim does not plead a reasonable cause of action in respect of section 48 of the Act. Although that assessment was in the context of the proposed Amended Statement of Claim, the rationale applies equally to the Statement of Claim.

[139] In brief, it has not been alleged, nor is it apparent, that the single conspiracy alleged in the Statement of Claim relates "exclusively to the matters described in subsection (1)," as set forth in subsection 48(3). Moreover, the broad interpretation of subsections 48(1) and (3) asserted by the plaintiff is not supported by the ordinary meaning of the words in subsection 48(3), the scheme of section 48 as a whole or the legislative history of that provision. Instead, those words, that scheme and the legislative history are all more consistent with the narrower interpretation advanced by the Responding Defendants, who maintain that the purview of subsection 48(1) is limited to the intra-league agreements described in subsection 48(3). To the extent that there is any ambiguity in section 48, which is a penal provision, the Responding Defendants are entitled to the benefit of their narrower interpretation: see paragraph 47 above.

[140] Pursuant to that narrower interpretation, the offence proscribed by subsection 48(1) is limited to certain agreements and arrangements "between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs". The specific agreements and arrangements in question are those that relate exclusively to matters described in subsection 48(1) or to the granting and operation of franchises in a league. Since none of the defendants named in the Statement of Claim is a team or a club, or a director, officer or employee of a team or club, it is plain and obvious that the Statement of Claim does not plead a reasonable cause of action in respect of section 48 of the Act.

[141] For the reasons provided in parts V.B.1.(a)(ii) and (iii) above, this fatal flaw in the Statement of Claim could not be potentially cured by granting leave to the plaintiff to amend his

pleading to include teams or clubs in the same league, the additional conspiracies he has alleged, or a violation of section 45 of the Act.

[142] The Statement of Claim also alleges a violation of section 1(e) of the *Canadian Bill of Rights, SC 1960, c 44*. That provision recognizes and declares "freedom of assembly and association" as a human right and fundamental freedom.

[143] More broadly, the *Bill of Rights* "is a federal statute that renders inoperative federal legislation inconsistent with its protections" and is "applicable only to federal law": *Authorson v Canada (Attorney General)*, 2003 SCC 39 at paras 10 and 31.

[144] The plaintiff's allegation in respect of section 1(e) is a bald, single sentence, assertion without any supporting material facts or particulars. Moreover, he has not identified any link whatsoever between section 1(e) and section 36 of the *Competition Act*, and he has not explained how section 1(e) can apply to the defendants as private parties. It is difficult to understand how such links to section 36 and the defendants could exist.

[145] In addition, no federal law is alleged to "abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of" the plaintiff's right under section 1(e), as contemplated by section 2 of the *Bill of Rights*.

[146] Based on the foregoing, I consider it to be plain and obvious that the Statement of Claim does not plead a reasonable cause of action in respect of section 1(e) of the *Bill of Rights*.

[147] In summary, for the reasons set forth above, it is plain and obvious, even considering facts pleaded to be true, that the Statement of Claim discloses no reasonable cause of action under sections 36 or 48 of the Act, or section 1(e) of the *Bill of Rights*. I am also satisfied that the existing deficiencies in the Statement of Claim could not be potentially cured by granting leave to the plaintiff to amend his pleading, for example, to include teams or clubs in the same league, the additional conspiracies he has alleged, or a violation of section 45 of the Act.

[148] Given that the Moving Defendants have been entirely successful on this Motion, their request for costs will be granted. Considering the nature of the issues raised and the complexity of the submissions that were required to be made by the Moving Defendants, I consider it appropriate to fix costs in a lump sum amount of $5,000.

ORDER in T-1080-20

THIS COURT ORDERS that:

1. The plaintiff's Motion to Amend the Statement of Claim in this proceeding is dismissed.

2. The Moving Defendants' Motion to Strike the Statement of Claim is granted.

3. Costs payable by the plaintiff to the Moving Defendants in the Motion to Strike are fixed at the lump sum amount of $5,000.

4. Given that Responding Defendants on the Motion to Amend the Statement of Claim did not request any costs, none shall be ordered.

"Paul S. Crampton"
Chief Justice

APPENDIX 1

Competition Act, RSC 1985, c C-34 (as it appeared on March 9, 2010)

Conspiracy

45 (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(d) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

Complot

45 (1) Commet un acte criminel et encourt un emprisonnement maximal de cinq ans et une amende maximale de dix millions de dollars, ou l'une de ces peines, quiconque complote, se coalise ou conclut un accord ou arrangement avec une autre personne :

a) soit pour limiter, indûment, les facilités de transport, de production, de fabrication, de fourniture, d'emmagasinage ou de négoce d'un produit quelconque;

b) soit pour empêcher, limiter ou réduire, indûment, la fabrication ou production d'un produit ou pour en élever déraisonnablement le prix;

c) soit pour empêcher ou réduire, indûment, la concurrence dans la production, la fabrication, l'achat, le troc, la vente, l'entreposage, la location, le transport ou la fourniture d'un produit, ou dans le prix d'assurances sur les personnes ou les biens;

d) soit, de toute autre façon, pour restreindre, indûment, la concurrence ou lui causer un préjudice indu.

Competition Act, RSC 1985, c C-34

Agreements or Arrangements that Prevent or Lessen Competition Substantially

Order

90.1 (1) If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement — whether existing or proposed — between persons two or more of whom are competitors prevents or lessens, or is likely to prevent or lessen, competition substantially in a market, the Tribunal may make an order

(a) prohibiting any person — whether or not a party to the agreement or arrangement — from doing anything under the agreement or arrangement; or

(b) requiring any person — whether or not a party to the agreement or arrangement — with the consent of that person and the Commissioner, to take any other action.

Accords ou arrangements empêchant ou diminuant sensiblement la concurrence

Ordonnance

90.1 (1) Dans le cas où, à la suite d'une demande du commissaire, il conclut qu'un accord ou un arrangement — conclu ou proposé — entre des personnes dont au moins deux sont des concurrents empêche ou diminue sensiblement la concurrence dans un marché, ou aura vraisemblablement cet effet, le Tribunal peut rendre une ordonnance :

a) interdisant à toute personne — qu'elle soit ou non partie à l'accord ou à l'arrangement — d'accomplir tout acte au titre de l'accord ou de l'arrangement;

b) enjoignant à toute personne — qu'elle soit ou non partie à l'accord ou à l'arrangement — de prendre toute autre mesure, si le commissaire et elle y consentent.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1080-20
STYLE OF CAUSE:	KOBE MOHR v NATIONAL HOCKEY LEAGUE, AMERICAN HOCKEY LEAGUE INC, ECHL INC., CANADIAN HOCKEY LEAGUE, QUÉBEC MAJOR JUNIOR HOCKEY LEAGUE INC., ONTARIO HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, HOCKEY CANADA

MOTIONS IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULES 75 and 221(1)(a) OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	CRAMPTON C.J.
DATED:	MAY 27, 2021

WRITTEN SUBMISSIONS BY:

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