

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re NATIONAL HOCKEY LEAGUE)	MDL No. 14-2551 (SRN/JSM)
PLAYERS' CONCUSSION INJURY)	
LITIGATION)	DECLARATION OF D'ARCY JENISH
_____)	
)	
This Document Relates To:)	
)	
ALL ACTIONS.)	
_____)	

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I. QUALIFICATIONS

1. I am a Canadian journalist with 40 years of experience. I have covered hockey and written about the sport extensively throughout my career.

2. I earned a Bachelor of Arts Degree in English Literature from the University of Western Ontario in 1974.

3. After graduating from the University of Western Ontario in 1974, I began my career in Southwestern Ontario, where I worked as a reporter for numerous local newspapers.

4. In 1979, I accepted a position as a senior editor with the *Alberta Report*, a weekly magazine published in Edmonton, Alberta, where I worked for seven years.

5. From 1986 to 2001, I worked at *Maclean's* – Canada's national newsmagazine – as a senior writer. During this time, I was based in Toronto, Ontario.

6. Since 2001, I have worked as a freelance writer. My work has appeared in major national newspapers such as the *Globe and Mail*, the *National Post*, and the *Toronto Star*. My work has also been published in numerous general circulation and trade magazines.

7. During my career, I have interviewed and written profiles on numerous prolific NHL stars including Mario Lemieux, Brett Hull, Mark Messier, and others. I also managed the coverage of the Edmonton Oilers for the *Alberta Report* during Wayne Gretzky's tenure with the team.

8. I have authored 10 books, including 3 directly related to the sport of hockey: *The Stanley Cup: 100 Years of Hockey At Its Best*, *The Montreal Canadians: 100 Years of Glory*, and *The NHL: A Centennial History*.

9. I have also edited a book about hockey entitled: *Canada On Ice: Fifty Years of Great Hockey; From the Archives of Maclean's*.

10. From a personal standpoint, I played the game of hockey from the age of 6 until 19, and in my last 3 seasons, I was a member of three elite teams in Peterborough, Ontario. In fact, several of my former teammates and opponents went on to play professionally in the NHL.

11. I also have been a member in good standing of the Society for International Hockey Research (“SIHR”) for the past 10 years. This membership provides me with access to a wide range of detailed historical research about the game of hockey generally and the NHL specifically. Additionally, it provides me with informal “off-the-record” interviews and presentations from former NHL players.

12. Attached as **Exhibit 1** is my most recent Curriculum Vitae, which includes a comprehensive list of my publications in the last ten years. I have never testified as an expert at a deposition or trial in any civil or criminal case.

13. I am being paid \$250 per hour for my services, except for research and non-working travel time, which is being billed at \$125 per hour. I have billed \$39,055.52, to date.

14. My opinions are based upon the research I conducted while writing three comprehensive hockey histories, including one specifically about the NHL. My opinions are also based upon my knowledge and understanding of the sport acquired by covering the NHL as a journalist, playing the game of hockey, and closely observing NHL hockey games and professional reporting about the NHL. Finally, my opinions are based upon reading and interpreting various internal NHL documents provided to me by Plaintiffs’ counsel.

II. SCOPE OF OPINIONS

15. Plaintiffs have requested that I opine upon the history and role of violence in the game and product of NHL hockey, including fighting, hits to the head, and other types of violence.

III. SUMMARY OF OPINIONS

16. The sport of hockey, as it is played in the NHL, is violent and has been that way since the formation of the NHL.

17. The NHL permits and, in fact, promotes violence in its sport.

18. Certain types of bareknuckle fighting have always been an integral part of the NHL, but the purpose for, and practice of, fighting has changed over time.

19. Despite multiple opportunities to eliminate bareknuckle fighting and reduce violence in the NHL, the League has refused, and continues to refuse, to do so. The reason for the NHL's refusal appears to be a fear of changing the sport in a way that might make it less profitable.

20. The NHL benefits monetarily by allowing bareknuckle fighting and hits to the head, which is a primary reason for why both remain legal to this day.

21. The NHL has on numerous occasions considered, but ultimately rejected, proposals to make all player-on-player hits to the head illegal. The reason for the NHL's refusal, once again, appears to be a fear of changing the sport in a way that might make it less profitable.

22. The NHL has, time and again, been reactive instead of proactive when dealing with issues of violence, fighting, hits to the head, and overall player safety in its sport.

23. The NHL prioritizes its profits over its players' safety by tolerating and promoting violence in its sport, and it has been doing so since the League's inception.

24. The documents I considered in forming my opinions, including those produced by the parties and third parties in this case, are listed in **Exhibit 2**, which is attached.

IV. SUPPORT FOR OPINIONS

25. Hockey, as it is played in the NHL, has been a violent sport since the formation of the League in 1917. Prior to the NHL, violence had become embedded in the genetic code of the game in the Canadian senior and professional leagues.¹ Thus, the men who formed the NHL simply accepted it as part and parcel of the sport. Furthermore, the vast majority of the men who have coached or managed NHL teams over the past century have been former NHL players.² As former players familiar with the violence of the game, these men filled their rosters with players who they presumed,

¹ See *infra* ¶¶69-80.

² See *infra* ¶154.

like them, could withstand violence and injury and were willing to respond to violence with violence.³ Put simply, there was and is no place in the NHL for players who shrink in the face of intimidation and violence and both those who ran – and continue to run – the game, and also those who played the game, know and accept that as a prerequisite for participation in the NHL.

26. The NHL has, at different times, both promoted and permitted violence in its sport. Most notably, the NHL has, since its inception, allowed and promoted certain types of bareknuckle fighting.⁴ The NHL stands alone as the only major professional sport to still allow the practice by not mandating immediate expulsion of participants in fisticuffs.⁵ Despite numerous instances of public outcry, the NHL has remained ardent in its support for fighting and, oddly, its position that fighting actually promotes, rather than prevents, player safety.⁶ The primary reason the NHL continues to support fighting is monetary. Put frankly, fighting makes the NHL money. This is evident from numerous internal NHL discussions regarding the issue of fighting and whether it should be eliminated. During these discussions, the League’s “bottom line” is always addressed and used as a fear tactic to prevent the elimination of fighting in the NHL.⁷ Lastly, the NHL has permitted fighting to transform in a way that puts players’ safety at risk. Specifically, the NHL has allowed fighting to become specialized, with teams employing a single player, often with very few tangible hockey skills, to do almost all of the fighting for the team. These players, termed “enforcers,” are usually very large in size, most standing more than 6 feet tall and weighing over 200 pounds. This is a far cry from how

³ See *infra* ¶¶68, 89-91, 188.

⁴ See *infra* ¶¶68, 95-98, 119-21, 133, 135, 140-43, 156.

⁵ NHL0128065.

⁶ See *infra* ¶¶103, 121, 126, 135, 141, 155.

⁷ See *infra* ¶¶87, 98, 120, 134, 143, 200.

fighting occurred in the NHL's early years, where all players, not just enforcers, fought occasionally, and no team employed players solely to fight.⁸

27. Additionally, the purpose for fighting in the NHL has also changed over time. Historically, fighting was done for what the NHL ostensibly believed was a "good reason," for example, to address unfair or dangerous play by an opponent.⁹ This has since transformed to where fighting today has almost nothing to do with the game, or even personal animosity between the two players engaged in the fight. Instead, fighting is mostly about entertainment, which translates into profits for the teams and the NHL.¹⁰ In sum, fighting, in its current form and the form that has existed in recent decades, benefits the play of the game of hockey very little, but remains in the sport largely because it generates revenue.

28. The NHL has also allowed other types of violence in its sport, including player-on-player hits to the head. Player-on-player hits to the head are hits in which one player uses his body to strike the head of the other player. These hits are violent and dangerous because they often cause the recipient to suffer an injury, frequently in the form of a concussion.¹¹ Despite this, the NHL has taken a consistent position not to completely ban hits to the head.¹² This is despite numerous groundswells of public outcry, similar bans by nearly all other semiprofessional and professional hockey leagues, and even occasional support for a partial ban by the NHLPA, the union representing NHL players.¹³

⁸ See *infra* ¶¶92, 102, 104-06, 109-10, 130-31, 147.

⁹ See *infra* ¶¶104-05, 107, 109, 150.

¹⁰ See *infra* ¶¶149-51.

¹¹ See *infra* ¶¶160-61.

¹² See *infra* ¶¶172, 175, 177, 180, 182.

¹³ See *infra* ¶¶164, 167, 171, 173-74, 176-77, 179, 185.

29. The reason for the NHL's obstinateness is its obsession with, and adherence to, its mantra that the "fabric of the game" must be protected.¹⁴ When the NHL uses the term "fabric of the game," it is referring to the violent, tough-guy nature of the sport. Such protection is misguided, however, because it comes at a cost – namely, player safety. Numerous decisions by the NHL exemplify its misguided approach. First, after endeavoring to study hits to the head, it took the NHL 10 years to take any concrete steps whatsoever to address the subject.¹⁵ In 1998, the NHL established a Concussion Working Group, but it was not until 2010 that the NHL finally did something meaningful to address its epidemic of hits to the head with the passage of Rule 48.¹⁶ Rule 48, however, is a "Band Aid" solution, not a real solution, to the problem of hits to the head. This is because Rule 48 bans some, but not all, hits to the head and many of the hits still legal under Rule 48 continue to put players at risk. In fact, sentiment that Rule 48 does not go far enough has been echoed by former and current NHL players, referees, executives, and even owners.¹⁷ Finally, the fact that the NHL generally deflects criticism regarding hits to the head, and Rule 48 specifically, exemplifies its disinterest in truly putting players' safety first.

30. The NHL has a documented history of being reactive, rather than proactive, in addressing issues of violence, fighting, hits to the head, and player safety. Since its early days, the NHL has rejected calls to remove violence and fighting from the game, despite impassioned external and internal criticism. To this day, in fact, the NHL continues to refuse to be proactive and remove fighting from the game.¹⁸ The NHL has also failed to capitalize on various opportunities to remove hits to the head, and their

¹⁴ See, e.g., Deposition of Gary Bettman ("Bettman Dep.") at 316:24-319:18; Deposition of Brian Burke ("Burke Dep.") at 296:2-309:7; Deposition of Colin Campbell ("Campbell Dep.") at 234:4-236:1.

¹⁵ See *infra* ¶162.

¹⁶ See *infra* ¶189.

¹⁷ See *infra* ¶¶197-205.

¹⁸ See *infra* ¶156.

attendant violence, from the game.¹⁹ Instead, the NHL has taken a reactive approach and offered only piecemeal solutions that do not solve the problem. The NHL has thus established a historical blueprint for dealing with violence, fighting, and hits to the head: (1) do little to nothing to address or solve the issue; (2) experience a major event related to the issue that causes public outcry; and (3) “address” the issue by offering a quasi-solution that does not fully solve the issue. And until the NHL changes this blueprint, players’ safety will continue to be at risk.

31. Based on its reactivity, and its decision to keep numerous violent parts of the game intact despite public and player outcry, it is my opinion, based on all of the evidence I have reviewed, that the NHL employs a policy of prioritizing its profits over its players’ safety. The NHL’s internal research indicates that fighting and all hits to the head put players’ safety at risk. Internal documents also indicate that many NHL executives and owners know this to be true.²⁰ Despite this knowledge, however, the NHL will not remove fighting or all hits to the head from the game. The reason most often given by the NHL is that such removal would alter the “fabric of the game.” This term means the historical way in which hockey has been played in the NHL, namely roughly and violently. The reason the NHL is so committed to preserving this type of play is because the League believes it is successful economically – that is, it has made them money. Therefore, the NHL prioritizes its profits over its players because it refuses to make changes to address player safety out of fear that such changes will alter the “fabric of the game” in a way that will make the NHL less popular and, consequently, less profitable.

V. HOCKEY’S FORMATIVE YEARS

A. Hockey Before the NHL

32. Prior to the formation of the NHL in 1917, the sport of hockey went through a rather lengthy period of growth and development. The origins of hockey are a

¹⁹ See *infra* ¶¶163-65, 170-72, 178-85.

²⁰ See *infra* ¶¶170-71, 185, 205.

matter of considerable debate among historians of the sport, with many places claiming to be the birthplace of hockey. Because professional historians have paid scant attention to the issue, however, the bulk of the work has been left to outside researchers, most of them members of SIHR, such as myself, who have come up with several competing accounts of where and when people began playing the game of hockey.

33. The most widely accepted narrative is that the birth of hockey occurred on March 3, 1875, when the first indoor game was played at the Victoria Skating Rink in Montreal, Quebec. At the time, the Victoria Skating Rink was Canada's only indoor rink. There were nine men per side, the game was played according to modified rugby rules, and, instead of a ball, the teams used a rudimentary wooden puck.²¹

34. The next major turning point in the evolution of the sport occurred on March 18, 1892 in Ottawa, Ontario. At an end-of-season banquet for the city's leading hockey clubs, Canada's Governor-General (the Queen of England's representative in Canada), a British aristocrat named Lord Frederick Arthur Stanley, announced that he would commission and donate a "challenge cup" that would be given annually to the "leading hockey club in Canada."²²

35. Canada's premier clubs from Montreal, Ottawa, and Winnipeg accepted the offer and Lord Stanley commissioned a silver bowl that stood nearly 8 inches high, measured approximately 12 inches across, and was affixed to a round, silver base. Lord Stanley named the trophy the Dominion Hockey Challenge Cup and had the name inscribed on the bowl. From its inception, however, the trophy was (and still is) uniformly regarded as the Stanley Cup.²³

36. Between 1893 and 1927, a total of 57 teams competed for the Stanley Cup. All but two – the Portland Rosebuds and the Seattle Metropolitans – were based in

²¹ D'Arcy Jenish, *Hockey's Forgotten Pioneer*, LEGION MAGAZINE: OTTAWA, Jan./Feb. 2008, at 54.

²² D'ARCY JENISH, *THE STANLEY CUP: A HUNDRED YEARS OF HOCKEY AT ITS BEST* 12 (1992).

²³ *Id.* at 10-12.

Canada and teams from every corner of the country competed to win the coveted trophy.²⁴

37. For the first 15 years following the creation of the Stanley Cup, the teams that won the trophy all competed in senior leagues and the players were unpaid amateurs. In many cases, the leading business and professional men in the community would form a hockey club and assemble a team to compete in a senior league. The Ottawa Senators, Quebec Bulldogs, Kenora Thistles, and Winnipeg Victorias were representative of this type of team.²⁵

38. Many senior teams, and even the leagues in which they competed, were short-lived. In fact, it was not uncommon for teams and leagues to be formed and disbanded within a single season. However, the Montreal teams, as well as the Senators, Bulldogs, Thistles, and Victorias, were more durable. These teams acquired loyal fans, developed rivalries, and drew big crowds – especially for playoff and Stanley Cup games.²⁶

39. Big crowds meant big gates, and big gates meant big money. Naturally, the players began demanding a share of the revenue since they were the attraction, not the owners, and amateur hockey gradually gave way to professionalism. Some teams paid their star players publicly, while others paid them surreptitiously, often because professionalism was frowned upon in some leagues and outright banned in others.²⁷

40. Everything changed in 1904, however, with the formation of the International Hockey League (“IHL”). The IHL operated for three seasons and its five member clubs were based in Pittsburgh, the Michigan mining towns of Houghton, Calumet, and Sault Ste. Marie, and Sault Ste. Marie, Ontario. Many of the best players from Ontario and Quebec could not resist the prospect of being paid to play hockey and,

²⁴ *Id.* at 15.

²⁵ *Id.* at 9-62.

²⁶ *Id.*

²⁷ CHARLES L. COLEMAN, TRAIL OF THE STANLEY CUP: VOLUME 1; 1893-1926 131-36 and 151-52 (1966).

consequently, quit their respective teams and headed west. The exodus included such future Hockey Hall of Fame players as Fred “Cyclone” Taylor, Edouard “Newsy” Lalonde, and “Bad” Joe Hall.²⁸

41. To keep pace with the IHL, Canadian team owners began paying their players, too. This led to the formation of Canada’s first openly professional league, the Ontario Professional Hockey League in 1908, and one year later the National Hockey Association (“NHA”), the forerunner of the NHL.²⁹

42. In the NHA’s early years, there were two other competing Canadian professional hockey leagues: the Maritime Professional Hockey League (“MPHL”) and the Pacific Coast Hockey Association (“PCHA”). The PCHA was the NHA’s most formidable rival, and starting in 1913, the PCHA champion played the champion of the NHA annually for the Stanley Cup. This tradition was so storied that it actually continued for a number of years after the formation of the NHL.³⁰

B. Formation of the NHL

43. The NHL was formed on November 26, 1917 in Montreal, Quebec. There were five original member clubs: the Montreal Canadiens, Montreal Wanderers, Ottawa Senators, Toronto Arenas and Quebec Bulldogs, although the Bulldogs sat out the inaugural season, but entered a team in season two. The new league was formed for one reason – to get rid of Eddie Livingstone, the owner of the Toronto Blueshirts, whose team was part of the NHA along with the Canadiens, Wanderers, Senators, and Bulldogs.³¹

44. While the exact reason for the dispute with Livingstone is unknown, it occurred during the NHA’s 1916 season. Midway through the season, all of the NHA member club owners except for Livingstone met in Montreal. Without Livingstone

²⁸ Daniel S. Mason, *The International Hockey League and the Professionalization of Ice Hockey*, 25 JOURNAL OF SPORTS HISTORY 1, 1-17 (1998).

²⁹ COLEMAN, *supra* note 27, at 138, 178-79.

³⁰ *Id.* at 227, 330, 507.

³¹ D’ARCY JENISH, *THE NHL: A CENTENNIAL HISTORY* 16 (2013).

present, the owners voted to suspend and disband the Blueshirts franchise. A dispersal draft was held and the teams helped themselves to Livingstone's players.³²

45. Livingstone sued the owners and litigation was pending in the fall of 1917. Despite the litigation, the owners of the NHA member clubs resolved to continue on without Livingstone. To do so, they came up with a clever idea – they pulled their teams out of the NHA and formed a new league which they called the “National Hockey League.” The new league did not allow Livingstone's Blueshirts to join, but it did award a franchise to the Toronto Arenas.³³

46. The NHL barely survived its first season. First, the Quebec Bulldogs did not participate due to lack of talent. Next, a fire gutted and destroyed the Westmount Arena in downtown Montreal, where the Canadiens and Wanderers both played, just three weeks into the season. With no place to play, the Wanderers folded, leaving just the Canadiens, Senators and Arenas to fight it out for the League championship.³⁴

47. Although it was a chaotic start, the formation of the NHL was entirely typical of the formative years of the sport of professional hockey.

C. The NHL's First Decade

48. After its first tumultuous season, the NHL continued with just four member clubs: the Montreal Canadiens, Ottawa Senators, Toronto Arenas, and Quebec Bulldogs. The Arenas and Bulldogs did not last long, however. In 1920, Quebec was sold to a businessman in Hamilton, Ontario and the Bulldogs became the Hamilton Tigers. There was also a change of ownership in Toronto and the Arenas became the St. Pat's.³⁵

³² *Id.* at 11-12.

³³ *Id.* at 13-15.

³⁴ *Id.* at 21-23.

³⁵ *Id.* at 23-29.

49. The NHL carried on with these four members clubs – the Montreal Canadiens, Ottawa Senators, Hamilton Tigers, and Toronto St. Pat’s – until launching an ambitious expansion in 1924. In just 3 seasons, the NHL grew from 4 to 10 teams.³⁶

50. First, the Montreal Maroons and the Boston Bruins joined the NHL in 1924. The following season, the Pittsburgh Pirates and the New York Americans made their NHL debuts, while the Hamilton Tigers franchise disbanded. In 1926, three more U.S.-based teams joined the NHL: the New York Rangers, Chicago Blackhawks, and Detroit Cougars (later renamed the Red Wings).³⁷

51. With this bold expansion, the NHL established itself as the superior professional hockey league and vanquished most other competing Canadian leagues. During the NHL’s first decade, the League’s closest rival was the Pacific Coast Hockey Association, which merged with the Western Canada Hockey League in 1924. The champions of the NHL competed against the western champions for the Stanley Cup, a tradition that came to an end in 1926, however, when the WHL disbanded and most of its players were sold to NHL teams.³⁸

52. With the folding of the WHL, the NHL became (and still is) the premier professional hockey league in North America.

D. Depression and War

53. The Great Depression and World War II had a devastating impact on the newly expanded NHL. From 1929 to 1942, all but six member clubs disbanded.³⁹

54. First, the Pittsburgh Pirates relocated to Philadelphia for the 1930 NHL season and then folded after winning only 4 of 44 games. The Ottawa Senators were next to go. The Senators, winners of 11 Stanley Cups and one of the NHL’s premier franchises, were undone by declining attendance and increased travel costs. Ottawa’s

³⁶ *Id.* at 29.

³⁷ *Id.* at 31-51.

³⁸ *Id.* at 45-47.

³⁹ *Id.* at 59-94.

owners tried to salvage the team by moving them to St. Louis in 1934, but the team folded after just one season. The Montreal Maroons then bowed out of the NHL after the 1937 season, leaving just seven remaining NHL franchises. The league was compelled to take over the New York Americans in the late 1930s and subsidized the money-losing franchise for several seasons before the governors of the other six franchises voted to disband the Americans prior to the 1942-43 season.⁴⁰

55. With the loss of these franchises, the era of the six-team NHL began.

E. The “Original Six” Era

56. The surviving six NHL member clubs were the New York Rangers, the Montreal Canadiens, Boston Bruins, Detroit Red Wings, Chicago Blackhawks, and the Toronto Maple Leafs (formerly the Arenas and St. Pat’s). The six-team league lasted from 1942 to 1967.⁴¹

57. The “Original Six” era was the most stable period in the history of the NHL to date. No new franchises were awarded, no member clubs folded, and no teams were relocated. The era was also defined by its red-hot rivalries and the often deep personal enmity between players. This was due in large part to the small number of teams in the NHL, which made rival teams and players play one another many times a year.⁴²

58. While the League flourished during this period, by the early 1960s the owners realized that the NHL needed to expand in order to keep pace with the other major North American professional sports leagues, which were all adding new franchises or relocating existing ones to expand their geographical footprint. The NHL also needed to expand in order to become a larger, more geographically dispersed organization, which was a prerequisite to landing a lucrative, national U.S. network television contract.⁴³

⁴⁰ *Id.*

⁴¹ STAN FISCHLER, THE HOCKEY ENCYCLOPEDIA: THE COMPLETE RECORD OF PROFESSIONAL ICE HOCKEY 508-38 (1983).

⁴² JENISH, *supra* note 31, at 121-22.

⁴³ *Id.* at 170.

F. The Expansion Era

59. The NHL expanded rapidly beginning in 1967, doubling in size with the addition of the Philadelphia Flyers, Pittsburgh Penguins, St. Louis Blues, Minnesota North Stars, Los Angeles Kings, and Oakland Seals. The NHL continued to expand in the 1970s, adding another six franchises: the Vancouver Canucks, Buffalo Sabres, New York Islanders, Atlanta Flames, Washington Capitals, and Kansas City Scouts.⁴⁴

60. Such rapid expansion netted mixed results. Pittsburgh went through numerous ownership changes and at least one bankruptcy. Kansas City was a total flop; the team quickly moved to Denver and became the Colorado Rockies. Oakland changed ownership several times and eventually landed in Cleveland before merging with the then-struggling Minnesota North Stars. When the dust finally settled, the NHL dropped to just 17 teams after the 1977 season.⁴⁵

61. The NHL's expansion attempt was hampered by two things. First was a lack of talent. The demand for talent increased with each expansion but there was no corresponding increase in the player pool. This was because most NHL member clubs recruited players almost exclusively from Canada, shying away from the U.S. college system or the European elite leagues. Next was the rise of the World Hockey Association ("WHA"). The WHA was created in 1972 to rival the NHL. The WHA started with 12 teams, paid big salaries, and successfully poached many of the NHL's marquee stars including, most notably, Bobby Hull, who signed a \$1 million dollar contract with the Winnipeg Jets.⁴⁶

62. The WHL disbanded in 1979 and the bitter rivalry between the two leagues ended. Thereafter, the NHL happily welcomed four member clubs from the defunct WHL: the Hartford Whalers, Quebec Nordiques, Winnipeg Jets, and Edmonton Oilers.⁴⁷

⁴⁴ FISCHLER, *supra* note 41, at 539-66.

⁴⁵ JENISH, *supra* note 31, at 236-42, 254-57.

⁴⁶ *Id.* at 209-11, 215-16.

⁴⁷ *Id.* at 264-68.

63. The NHL stuck with these 21 member clubs throughout the 1980s, although two franchises were relocated. The Atlanta Flames became the Calgary Flames in 1980 and the Colorado Rockies became the New Jersey Devils in 1982.⁴⁸

64. The NHL then launched a third wave of expansion, adding one new franchise in 1991, two new franchises in 1992, and six more by 2000, thereby becoming a 30-team league. The net result was a bigger league with a much expanded geographical footprint. Specifically, the NHL invaded the U.S. Sunbelt, putting teams in Dallas, Phoenix, North Carolina, San Jose, Anaheim, Tampa Bay, Miami, Atlanta, and Nashville. Old, storied franchises were also resurrected in Ottawa, Minneapolis, and Winnipeg.⁴⁹

65. The NHL had realized its goal of becoming a continental organization in order to appeal to national advertisers and to land a national, U.S. network television contract.⁵⁰ Doing so, however, required the NHL to sell a winter sport in warm weather markets and create new fans in cities where the sport of hockey had rarely been played and had no deep roots.

VI. A VIOLENT SPORT

66. Professional hockey, from its earliest days and by its very nature, is a tough, and often violent, sport. The game is played within an enclosed ice surface by young men operating at high speeds and at the edge of their emotions.

67. Hockey violence arises primarily from two sources: physical contact between opponents and the use of the hockey stick by a player. Physical contact is an inherent part of the game and serves two purposes. First, it is the most effective way to stop attacking opponents, and second, it is a useful method of intimidating smaller opponents or punishing hated ones. The hockey stick is both a tool and a weapon and the wide variety of stick-related penalties is evidence of the latter. These offenses include

⁴⁸ *Id.* at 273-74.

⁴⁹ *Id.* at 293-96, 342-45, 349-56.

⁵⁰ *Id.* at 373-77.

hooking, tripping, slashing, high-sticking, cross-checking, butt-ending, and spearing, among others.⁵¹

68. Fighting is another form of violence in hockey. Fighting has long been seen as an inevitable outcome of the combustible mix of speed, emotional intensity, and physical contact in the game of hockey. Indeed, coaches, general managers, and team executives have tolerated, and often encouraged, fighting from the sport's earliest days.⁵² Furthermore, the men at upper echelons of the game – specifically, those who managed teams and recruited talent – have almost always looked for players who possessed what was often called a “mean streak,” which meant players who were willing, when necessary, to hurt an opponent and somebody who would never shy away from a physical altercation.⁵³ These players embodied what has become known as “old time hockey.”

A. Pre-NHL Violence

69. Violence was prevalent in the game of hockey long before the creation of the NHL. In fact, I came across numerous such examples while researching my books on the histories of the Stanley Cup and the Montreal Canadiens.

70. In 1903, the then-Stanley Cup champions, the Ottawa Silver Seven, played a Stanley Cup series against the Winnipeg Rowing Club. During the game, Silver Seven player, Alf Smith, cracked Winnipeg player, Joe Hall, over the head with his stick, knocking Hall out and cutting him for five stitches. Hall later returned the favor with his stick by clubbing Smith and cutting him for four stitches.⁵⁴ Notably, fighting was not outlawed at this time, and yet its presence still failed to prevent this dangerous “stick work.”

⁵¹ NHL0122271, at NHL0122272; *see also* NHL0127348.

⁵² NHL0122271, at NHL0122272; *see also* ‘Don’t Turn Cheek Too Often’ — Smythe, MONTREAL GAZETTE, Mar. 29, 1956, at 20.

⁵³ *Id.*

⁵⁴ JENISH, *supra* note 22, at 44.

71. In 1904, the Ottawa Silver Seven were again defending their Stanley Cup title, this time against the Toronto Marlboros. According to the *Toronto Telegram*, a leading city newspaper, the Silver Seven were a tough team: “They are adept body checkers and, though not particularly heavy, know how to use every ounce they have to the best advantage. It is the man who is the object of the check. Absolutely no attention is paid to the puck.”⁵⁵

72. In 1910, a newspaper summary of a game between the Renfrew Millionaires and the Montreal Canadiens highlighted a long-running, violent rivalry between Renfrew player, Lester Patrick, and Montreal player, Newsy Lalonde. The article stated: “Patrick cut Lalonde’s head open with a swing of his stick and as soon as the Renfrew leader got back in the play Lalonde got him with a wicked cross-check that sent the famous rover into the air as though shot from a cannon.”⁵⁶

73. While the men who ran the various professional leagues levied fines and imposed suspensions for egregiously violent acts, the worst offenders were always allowed to return to play. The career of Joe Hall is illustrative. Hall’s career spanned 17 seasons of senior and professional hockey. Hall played for multiple teams in various leagues. He acquired the nickname “Bad” Joe Hall and it followed him from league to league. The following is a non-exhaustive list of “Bad” Joe Hall incidents compiled during the course of my research on my book about the Montreal Canadiens:

- A fight with Frank Patrick in 1910 in which Hall tried to punch the referee, resulting in a \$100 fine;
- An assault on a referee in 1913 that led to a \$50 fine from the league, a 2 week suspension, and a \$100 fine imposed by his own team;
- A retaliatory cross-check on opponent, Newsy Lalonde, in 1914 that sent the Montreal Canadiens star player into the boards and cut him for ten stitches;
- An attack on opponent, Harry Hyland, in 1914 that went unpunished;

⁵⁵ *Id.* at 46-47.

⁵⁶ D’ARCY JENISH, *THE MONTREAL CANADIENS: 100 YEARS OF GLORY* 23 (2008).

- A post-game hit on opponent, Amos Arbour, in 1916 that led to a brawl involving players and spectators; and
- An attack on opponent, Corbett Denney, in 1917 with little time left in the game. A fight ensued and spectators threw chairs and bottles onto the ice. Police escorted the players to their dressing rooms and terminated the game.⁵⁷

74. Then, as now, critics denounced violence in hockey. After one particularly rough season in 1904, Phillip D. Ross, one of two Stanley Cup trustees and editor of the *Ottawa Evening Journal*, wrote: “The finest game in this world to watch, hockey as our leading Canadian teams play it, is being made a byword and a disgrace by the manner in which the matches are conducted and foul play tolerated. Unless a radical change occurs at once in the conduct of hockey matches, the noble winter sport of Canada must, at least in this part of the country, sink in the public estimation to the level of pugilism.”⁵⁸

75. Such criticism fell on deaf ears. The men running the various leagues never responded to Ross’ or any other criticism of the game of hockey. Nor did they offer an explanation why such violence was necessary or desirable. Those, like me, who study the game of hockey, are thus left to hypothesize why violence was tolerated. To that end, three likely explanations exist.

76. First, in the pre-NHL years, all the way up through the NHL’s first decade of existence, there were several competing professional leagues. Thus, if one league handed out a long suspension or banished a player for life, the player could (and often did) easily sign with another league.⁵⁹

77. Next, the leagues were poorly run organizations with no real power to regulate their teams or players. Lacking sophistication, owners and managers ran the leagues without the help of any type of paid employees. Instead, they made and enforced rules as they saw fit, often without predictability or uniformity.⁶⁰

⁵⁷ *Id.* at 45.

⁵⁸ JENISH, *supra* note 22, at 50.

⁵⁹ COLEMAN, *supra* note 27, at 138, 178-79, 227, 230, 507.

⁶⁰ *Id.* at 185-86, 188, 236-37, 250.

78. Finally, hockey became an organized sport in Canada at the turn of the 19th and 20th centuries and the sport was, in many respects, a reflection of the country itself. Canada was primarily a nation of small towns and villages. The “Prairie Provinces” of Manitoba, Saskatchewan, and Alberta were still being settled and more than half of the country’s population lived on farms. Forestry, mining, and manufacturing were mainstays of the economy and most people engaged in hard, physical labor. Work was unregulated and workplaces were often unsafe and sometimes dangerous.

79. Against this background, the game of hockey mirrored life in Canada. Physical prowess mattered a great deal. Courage, strength of character, and a willingness to stand up for yourself were greatly admired. These attributes were lifted from daily life and transferred to, and nurtured by, the game of hockey.

80. Thus, by the time the NHL was established in 1917, violence in hockey was already the accepted cultural norm.

B. Violence in the NHL

81. A wealth of anecdotal evidence exists that suggests that violence was an integral part of NHL’s early days. The careers of two players, Sprague Cleghorn and Eddie Shore, suffice to illustrate this point.

82. Sprague Cleghorn began his career in the NHA and through 10 NHL seasons played for Ottawa, Toronto, Montreal and Boston. He was a defenseman who stood 6 foot 1 inches and weighed 185 pounds – making him big for his day. In his book, *Trail of the Stanley Cup*, Charles L. Coleman had this to say about Cleghorn: “To get by him, opponents had to face up to body checks, charging, cross-checks, elbows, butt ends [hitting an opponent with the butt end of one’s stick], and fists.”⁶¹

83. Cleghorn once told an interviewer: “You’d need a battery of adding machines to tabulate all the minor cuts, bruises, torn ligaments, and pulled tendons my quarter century of hockey gave me.” When a reporter asked Cleghorn how many fights he had participated in during his hockey career, he replied: “Do you mean stretcher-case

⁶¹ COLEMAN, *supra* note 27, at 791.

fighters [a fight where the loser has to be taken away on a stretcher]? I guess I've been in 50 of those kinds.”⁶²

84. The *Ottawa Citizen*, a leading local newspaper, described Cleghorn's play this way in a 1922 article: “He jabbed goaltender Clint Benedict in the face with the butt end of his stick and it is miraculous that the victim was not maimed for life. Cleghorn openly slashed George Boucher across the face, causing a deep gash on that player's nose, and he disabled Frank Nighbor's left arm with a wicked slash which landed above the elbow.”⁶³

85. Eddie Shore was a defenseman who played for the Boston Bruins of the NHL for 13 seasons. Shore was one of the most feared body checkers of his day. He sustained a remarkable array of injuries, including a broken hip, broken collarbone, and a cracked and displaced vertebra. Shore also fractured his jaw five times, his nose ten times, and lost nearly all his teeth. By his own estimation, Shore received hundreds of stitches and once held up a mirror and watched a doctor reattach his nearly severed ear.⁶⁴

86. Shore was more notorious for the injuries he inflicted, however, not the ones he sustained. And his most famous infliction came in 1933 on Toronto Maple Leafs forward, Irwin “Ace” Bailey. Bailey was a smaller, more gentlemanly player and a former NHL scoring champion. During a game in Boston, Shore hit Bailey from behind, lifting Bailey up into the air. Bailey came down hard, hit his head on the ice, and was carried off unconscious. Bailey suffered a fractured skull, nearly died, and never played another NHL game.⁶⁵

87. Shore was suspended only 16 games for his career-ending injury on Bailey. Leafs fans, as well as Toronto sportswriters, were enraged by Shore's light suspension and accused it of being financially motivated. As one writer put it: “To us, the leniency

⁶² JENISH, *supra* note 56, at 55.

⁶³ *Id.* at 56.

⁶⁴ JENISH, *supra* note 31, at 76.

⁶⁵ *Id.* at 74-76.

of the suspension can be attributed to dollars and cents. The Bruins are not drawing without Shore, either at home or abroad, and the result is poorer gates than usual.”⁶⁶

88. Shore continued in the NHL for six more seasons after the Bailey incident. Cleghorn, likewise, continued to play in the NHL, despite the pain and injury he regularly inflicted on opponents, until age overtook him and he was forced to retire.

89. To understand why the NHL tolerated such players, and their violent styles of play, one must consider the overwhelming influence of four longstanding NHL executives: (1) Conn Smythe of the Toronto Maple Leafs; (2) Art Ross of the Boston Bruins; (3) Lester Patrick of the New York Rangers; and (4) Jack Adams of the Detroit Red Wings. These four men were the dominant figures as either NHL coaches, managers, or both and their influence was felt over a span of four decades. Patrick ran the New York Rangers until the late 1940s, Ross ran the Bruins until the early 1950s, and both Adams and Smythe remained influential in their respective organizations until their retirement in the early 1960s.⁶⁷

90. Patrick, Ross, and Adams all began their careers as players in the pre-NHL senior and professional leagues of Canada. They were top-notch players, but the longevity of their careers was attributed to them being as tough or tougher than their opponents. Thus, when they later became NHL executives, they naturally looked for players who possessed the same blend of skill and toughness and who played the game the same way as they had during their careers.⁶⁸

91. As for Conn Smythe, while he never played professional hockey, he excelled as a coach and a manager. Smythe had a chippy, abrasive personality, and was by nature a fighter. Smythe served in the Canadian armed forces in both World Wars and

⁶⁶ *Id.* at 77.

⁶⁷ *Legends of Hockey*, THE HOCKEY HALL OF FAME (Aug. 23, 2016, 10:52 AM), <http://www.hhof.com/LegendsOfHockey/jsp/LegendsMembersByName.jsp?type=Builder>.

⁶⁸ COLEMAN, *supra* note 27, at 185, 208, 271; *see also* JENISH, *supra* note 31, at 68-69, 312; NHL0230672; Bettman Dep. at 65:20-67:4.

valued toughness every bit as much as Patrick, Ross, and Adams. In fact, it was Smythe who coined one of the hockey's most famous sayings: "If you can't beat 'em in the alley, you can't beat 'em on the ice." This meant that if a young man could not beat another young man in a back alley fight, then there was no room for him in the NHL.⁶⁹

92. Smythe was also the first manager to employ a team "policeman" – a big, strong player whose job it was to protect smaller players when necessary. Defenseman Red Horner, who stood 6 feet tall and weighed 190 pounds, filled the role from 1929 to 1939. As Horner once explained his job: "Conn Smythe called me the 'policeman' because I was so much bigger than most of the players and had to look out for smaller ones. I fought sometimes, but was more of a body checker."

93. The Eddie Shore/Ace Bailey (*see supra* ¶¶76-77) incident serves to illustrate this point. According to an Associated Press ("AP") report of the incident: "Eddie Shore started the rumpus by tripping Ace Bailey with such force that Bailey was rendered unconscious. Red Horner, Toronto defenseman, then rushed at Shore and knocked him down with a heavy right hook to the jaw. Shore's head struck the ice with such terrific force that he suffered a three-inch gash that required seven stitches."⁷⁰

94. The same AP report went on to say: "Fiery Conn Smythe, manager of the Leafs, became involved with several spectators when he tried to hasten on the side of his injured player. During a scuffle outside the Toronto dressing room, Leonard Kenworthy of Everett, suffered a blow over the eye that shattered his spectacles. Three stitches were needed to close the cut . . . Kenworthy told Boston Garden officials that he would apply for a warrant charging Smythe with assault."⁷¹

95. As the Smythe incident illustrates, the NHL has tolerated on-ice fights since the formation of the league. In fact, for the NHL's first two decades of existence, fighting was treated like any other minor infraction in which each player received just a 2

⁶⁹ *'Don't Turn Cheek Too Often' — Smythe*, MONTREAL GAZETTE, Mar. 29, 1956, at 20.

⁷⁰ JENISH, *supra* note 31, at 74.

⁷¹ *Id.* at 74.

minute penalty.⁷² In 1937, the rule was finally amended and the instigator received a 5 minute penalty and the respondent a 2 minute penalty.⁷³ In 1947, the rule was amended again and both players received 5 minute penalties for fighting.⁷⁴ This is an example of the NHL changing its rules to selectively address violence in the game, rather than address it head-on to protect player safety.

96. It was not just Smythe, Patrick, Ross and Adams who thought this way, however, as evidenced by the prevailing attitude among NHL executives at a 1942 Board of Governors meeting in Toronto, Ontario. At one point in the meeting, NHL President, Frank Calder, mentioned past proposals to curb fighting – and the unpopularity of such a proposal: “Prior to a couple of years ago, we had an epidemic of brawls on the ice . . . A couple of players high stick each other and we know what happens as a rule; from high sticks they get to punching and immediately players from the bench jump on the ice and get into an argument. An automatic fine of \$25 for every player doing so stopped it. I have asked more than once that the Board of Governors adopt a rule that an automatic fine of \$25 be attached to fighting, but I have never been able to get anywhere with it. If we had it we could stop fighting.”⁷⁵

97. Later in the meeting, the following exchange occurred between Frank Calder and Bill Tobin, an executive with the Chicago Blackhawks:

Tobin: We have to get some definite plan to curb fights.

Calder: You are always going to get fights if you have body contact. You get hit and your first instinct is to turn around and hit somebody else.⁷⁶

98. At the end of the meeting, Lester Patrick suggested a financial motive for keeping fighting in the NHL: “Who has ever been hurt in a fight in a hockey game? You are throwing gold out of the window.”⁷⁷

⁷² NHL0230643.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Plaintiffs-NHL00000001, at 023.

⁷⁶ *Id.* at Plaintiffs-NHL000000027.

99. Despite the clear violence present in the early-NHL, fighting was actually not all that common until the Original Six era.

C. Fighting and Violence in the Original Six Era

100. Violence in the form of fighting erupted during the Original Six era. From 1917–1949, there was an average of 1 fight every 10 games. By contrast, from 1950–1967, there was an average of 1 fight every 4 games.⁷⁸ Such a staggering increase in fighting was undoubtedly a byproduct of the compact size of the NHL at the time (made up of just 6 teams), the competitive intensity of the NHL, and the players’ heightened sense of loyalty to their team and teammates.

101. In 1949, the NHL extended its season from 60 to 70 games. This only intensified already intense rivalries. Teams now played each opponent 14 times per season, 7 times at home and 7 times away. Furthermore, the NHL often scheduled home-and-home weekends in which opposing teams would meet twice in the span of 24 hours. Players faced off against one another far more often than they do in the current NHL, which allowed for personal animosity and enmity to develop.

102. Players during this time period also moved between teams far less frequently than they do in the current NHL, which further contributed to the heightened sense of loyalty to teammates and the concomitant willingness to fight on their behalf. Interestingly, the concept of “free agency” did not exist during the Original Six era. Prior to the introduction of the expansion-era’s annual Entry Draft, the NHL teams sponsored minor pro and junior teams and controlled the movement of players – some as young as 14 – through a complex system that included “sponsorship agreements, A, B and C forms, reserve, protected and negotiation lists, waivers and four different drafts.”⁷⁹

⁷⁷ *Id.* at Plaintiffs-NHL00000029.

⁷⁸ NHL0230644.

⁷⁹ DONALD R. ELLIS, YEARS OF GLORY: 1942-1967; THE NATIONAL HOCKEY LEAGUE’S OFFICIAL BOOK OF THE SIX-TEAM ERA 88-97 (1994).

103. While fighting in hockey had been seen as an inevitable result of physical contact between players, with the increase in fighting during the Original Six era, a new rationale to justify the practice emerged: the “thermostat” or “safety valve” theory.⁸⁰ According to this line of thinking, found numerously in documents produced by the NHL as part of this litigation, NHL executives deemed it “better to settle a score by dropping the gloves than swinging sticks.” In other words, the NHL saw fighting not only as inevitable, but as both necessary and useful.⁸¹

104. Up until the late 1950s, every player on an NHL roster was expected to fend for himself on the ice. While players sometimes fought on behalf of their teammates out of a sense of loyalty, no team employed a single player to fight on behalf of all other players in all situations. For example, Toronto Maple Leafs player, George Armstrong, a skilled centerman who spent several seasons as team captain, led the NHL with 6 fights during the 1953 season. Similarly, in 1958, former scoring champion, Ted Lindsay, led the League with 4 fights.⁸²

105. Even Joseph Henri Maurice “Rocket” Richard, widely regarded as one of the greatest players in NHL history, fought often – usually after being goaded by less skilled opponents. Red Storey, a NHL referee during the Original Six era, had this to say about Richard: “Rocket never started many fights but he finished just about all of them. In the 1950s, the stars did their own fighting. There were no policeman.”⁸³

106. NHL stars fought because they were expected to and because rosters were smaller than they are in the current NHL. Today, NHL rules allow teams to dress 18 skaters – 4 lines of forwards and 3 defensive pairs. In the Original Six era, teams could only dress 15 skaters – 3 lines of forwards, 2 defensive pairs, and 1 spare for both the

⁸⁰ *But see* Deposition of Willem Meeuwisse (“Meeuwisse Dep.”) at 364:18-366:15 (admitting no formal studies exist regarding the NHL’s purported rationale for fighting).

⁸¹ NHL0230645.

⁸² *Id.*

⁸³ *Id.*

offense and the defense. A leaner lineup meant there was no room for an unskilled player whose only asset was his willingness and ability to fight.

107. By the early 1960s, however, a shift in thinking had occurred at the NHL management level. Specifically, the notion of team toughness took hold. Teams “got tough” by adding players throughout the lineup who were good athletes, hard punchers, and who were expected to stick up for and protect the team’s star players. Using this formula, the Chicago Blackhawks won the Stanley Cup in 1961. The Toronto Maple Leafs did the same and won the Stanley Cup in 1962, 1963, and 1964.⁸⁴

108. The Montreal Canadiens, who before this new era of lineup toughness were the best team in the NHL, responded by adding tough, capable players who could protect the team’s star players and give them more space on the ice. Hall of Fame coach, Scotty Bowman, who spent many years in the Montreal organization, recalled this retooling: “Chicago was a pretty big, tough team in the early 1960s. Montreal felt it got pushed around so it went out and got John Ferguson, Ted Harris, and Terry Harper. Ferguson was brought in to look after [Jean] Beliveau.”⁸⁵

109. Ferguson was widely regarded as the most skilled “tough guy” of the Original Six era; he was not simply there to intimidate. Then Canadiens coach, Toe Blake, put it this way: “As far as muscles and hitting power are concerned, we’re glad to have them, but they’re of secondary importance. We don’t bring men to this team just because they’re bashers.”⁸⁶ Thus, in Ferguson’s day, unlike other periods in NHL history, “tough guys” were both skilled fighters and skilled players.

110. The Original Six era was one in which fighting greatly increased in the NHL, but it came from all types of players for all types of reasons. Further, no NHL teams wasted roster spots on unskilled “tough guys.” The notion of giving a roster spot to an unskilled tough guy was not yet born. That era, the era of the pure “enforcer” – the

⁸⁴ JENISH, *supra* note 56, at 165-66.

⁸⁵ NHL0230645.

⁸⁶ JENISH, *supra* note 56, at 173.

player who earned his keep strictly by fighting and without regard to being skilled at the game of hockey – would not make its appearance in the NHL until the second wave of expansion in the 1970s.⁸⁷

D. Expansion Era Violence in the NHL

111. The NHL’s second wave of expansion lasted from 1967 until 1979. The NHL grew from 6 to 21 teams, 500 new positions were created, and players from Canada filled the vast majority of these positions, with a few U.S. and European players occasionally rounding out a roster. The NHL’s rapid growth, without a commensurate increase in the talent pool, led to an erosion of the overall quality of play, a significant increase in the amount of fighting, and a change in the way of hockey fights were actually conducted.⁸⁸

112. According to internal NHL documents, fighting increased 500% during this era in comparison to the last season of the Original Six era; there was now an average of one fight in every other game.⁸⁹ Additionally, NHL “tough guys” did a lot more fighting than the tough guys of yesteryear. For example, California Golden Seals player, Dennis Hextall, led the NHL in 1970 with 21 fights,⁹⁰ a steep increase from when 4 or 6 fights led the League (*see supra* ¶94).⁹¹

113. The same internal NHL documents go on to comment on a change in the purpose of fighting during this era: “The safety valve theory of the Original Six era was replaced with fighting as a form of intimidation. The one-on-one fight was replaced with two-on-ones and bench-clearing brawls as stars were targeted.”⁹²

⁸⁷ NHL0230645; *see also* NHL0129063; NHL0090632.

⁸⁸ NHL0230645.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ This is true despite the fact that there were six more games in 1970 – 76 instead of 70 – than in 1953 and 1958.

⁹² NHL0230645.

114. Tiger Williams, one of the era's leading fighters and agitators, explained his role this way: "Very seldom would a tough guy start out by fighting another tough guy. If I was playing the Los Angeles Kings, I'd be going after and abusing stars like Marcel Dionne and Dave Taylor and their tough guys would be going after Darryl Sittler and Lanny McDonald. The last guy I was interested in fighting was their tough guy because it didn't serve any purpose."⁹³

115. The Philadelphia Flyers came to epitomize the fighting and abject violence of the expansion era. The team won back-to-back Stanley Cups in 1974 and 1975 by embodying a style of rough, intimidating play that earned them the apt nickname, the "Broad Street Bullies." The team embraced the nickname, with captain Bobby Clarke once saying: "You don't have to be a genius to figure out what we do on the ice. We take the shortest route to the puck and arrive in ill humor."⁹⁴

116. The Flyers led the NHL with 58 fights in 1974, their first Stanley Cup winning season. Flyers player, Dave Schultz, set an NHL single season record for penalty minutes with 348 and teammate, Bob "The Hound" Kelly, had a record of 14-1 in the fighting department.⁹⁵ This led a fellow teammate to describe Kelly as "the most dangerous 11-goal scorer in the game." Schultz, for his part, went on to outdo himself in 1974, amassing 472 penalty minutes and setting a new NHL single season record.⁹⁶

117. This era also became notorious for bench-clearing brawls and the Flyers, unsurprisingly, were leading practitioners. In a 1973 game against the California Seals, two such brawls took place. The first went on for approximately 20 minutes and the second for some 25 minutes. In all, 6 players were thrown out and many more reprimanded.⁹⁷ Later in the same season, the Flyers again cleared the benches in a fight

⁹³ *Id.*

⁹⁴ JENISH, *supra* note 22, at 242.

⁹⁵ *Id.*; *see also* NHL0230645.

⁹⁶ JENISH, *supra* note 22, at 242.

⁹⁷ JENISH, *supra* note 31, at 225.

against the Vancouver Canucks. This time, 90 minutes of penalties were doled out as well as 4 ejections.⁹⁸ The Flyers were involved in a third bench-clearing brawl in 1973, this time against the Montreal Canadiens. Newspaper reports from the time called this fight the “wildest of the season.”⁹⁹

118. The havoc and mayhem inflicted upon NHL teams by the Flyers tarnished the image of the NHL and the game of hockey. In fact, the comedian Rodney Dangerfield came up with his famous one-liner, “I went to a fight the other night and a hockey game broke out” during this era.¹⁰⁰ During this time period, *Sports Illustrated* ran a cover story with an image of two players wrestling on the ice and a cover line that read: “A Violent Sport Turns VICIOUS.” The sub-head over the story read: “Pro hockey’s encouragement of brawling has led to severely injured players, court cases and the demeaning of an entire sport.”¹⁰¹

119. Despite this drastic increase in fighting and violence, then-NHL President, Clarence Campbell, repeatedly defended the role of fighting in the NHL and rejected any and all criticism related to hockey violence. For example, in a 1974 letter from a fan concerned about hockey violence, Campbell wrote: “It has become fashionable for pacifist-minded do-gooders to slander the NHL as merchandising violence with complete disregard for the skills of the game. Nothing could be further from the truth. The NHL has never been as nonviolent as in the last few years.”¹⁰² In January 2016, over 40 years later, current NHL commissioner Gary Bettman took an almost eerily similar position regarding violence in the game, stating: “The amount of fighting involved in the course of the game . . . may be at a record low now . . . the game has gotten so competitive that

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *They Said It*, SPORTS ILLUSTRATED, Sept. 4, 1978, at 16.

¹⁰¹ *A Violent Sport Turns Vicious*, SPORTS ILLUSTRATED, Nov. 17, 1975, at 16.

¹⁰² NHL0127373.

teams are more focused on skilled players, and that has de-emphasized the role of fighting.”¹⁰³

120. In 1975, Campbell again defended fighting and violence in hockey: “If violence ceases to exist, it will not be the same game. In so far as fighting is a part of the show, certainly we sell it. We don’t promote it. We tolerate it and we bring it under disciplinary control which we believe satisfies the public. You don’t change a successful formula. We have a highly successful formula.”¹⁰⁴

121. Two years later, Campbell again defended the violent hockey of the era: “In the last few years, largely as a result of the sudden influx of a large number of non-knowledgeable writers and commentators, there has been a great deal of exaggerated descriptions of the alleged violence in hockey. We do not believe fighting is such a heinous offense. We know that it is the best ‘safety valve’ against the misuse of other available weapons – the stick and the skates which are capable of causing lethal injury.”¹⁰⁵

122. Campbell’s dismissive attitude toward violence and fighting in hockey extended to senior-level government officials and respected legal professionals. In 1974, the province of Ontario appointed a one-man commission of inquiry to examine the prevalence and causes of violence in amateur hockey. The appointee was a Toronto lawyer named Bill McMurtry, the brother of Roy McMurtry, then the Provincial Attorney General. In his damning report, McMurtry concluded: “The evidence was clear and overwhelming that the conduct and standards applied in the NHL were having a profound effect on virtually every boy playing amateur hockey in every league regardless of age or standard of competition.” Campbell disregarded the McMurtry Report, calling it “a product of the commissioner’s imagination.”¹⁰⁶

¹⁰³ NHL1009526.

¹⁰⁴ NHL0127348.

¹⁰⁵ NHL0128066.

¹⁰⁶ NHL2040413, at NHL204413-414; *see also* Roy MacGregor, *Roy McMurtry still pushing for change in hockey’s culture*, GLOBE AND MAIL, Jan. 24, 2012,

123. As a result of the McMurtry Report, Ontario police began to monitor NHL games played in the province for inappropriate violence and, when warranted, brought criminal charges. Such criminal charges were brought on two occasions.

124. First, on November 5, 1975, during a game in Toronto, Detroit Red Wing player, Dan Maloney, attacked Leafs player, Brian Glennie, from behind with his stick and fists and knocked Glennie to the ice. Maloney then jumped on Glennie, grabbed him by the scruff of his neck, and began banging Glennie's head on the ice. Glennie was not wearing a helmet (helmets were optional at the time) and was soon rendered unconscious. Maloney kept ramming Glennie's head on the ice, however, until officials restrained him. Maloney was arrested, charged with assault causing bodily harm, and eventually pleaded no contest. He was sentenced to community service and was banned from playing hockey in Ontario for two years.¹⁰⁷

125. Next, in 1976, Toronto police again filed criminal charges against NHL players, this time four members of the Philadelphia Flyers, after a particularly violent playoff game between the Flyers and the Maple Leafs. The trouble started when Flyers player, Don Saleski, was sent to the penalty box and a Leafs fan threw something at him – reportedly a chunk of ice. Saleski did not take kindly to the offense and stood up, turned around in the penalty box, and scanned the crowd for the assailant. A police officer standing nearby grabbed Saleski's stick. Saleski's teammate, Joe Watson, then swung his stick over the protective glass and struck the police officer on the shoulder. Flyers players, Bob Kelly and Mel Bridgman, also got involved in the fracas, allegedly swinging their sticks at police officers and fans. All four players were charged with assault and Saleski, Watson, and Kelly were convicted.¹⁰⁸

<http://www.theglobeandmail.com/opinion/roy-mcmurtry-still-pushing-for-change-in-hockeys-culture/article4171041/>.

¹⁰⁷ *Id.*

¹⁰⁸ ADAM KIMELMAN, THE GOOD, THE BAD AND THE UGLY PHILADELPHIA FLYERS: HEART-RENDERING, JAW-DROPPING AND GUT-WRENCHING MOMENTS IN PHILADELPHIA FLYERS HISTORY 109-15 (2008).

126. Amidst the growing on-ice mayhem in the NHL, players stepped forward and attempted to clean up the sport. One idea was to drastically increase the penalty for fighting in an attempt to stamp it out of the game. The NHL team owners, however, soundly rejected the proposal. According to a document prepared by the NHL Players' Association ("NHLPA"): "In 1975, the NHLPA representatives suggested to the NHL owners that the International Hockey rules on fighting should apply to the NHL. Any player who fights would be automatically suspended for the balance of that game and for at least one more game. The owners at the time felt that fighting was part of the game and should stay."¹⁰⁹

127. The 1970s set a new high watermark for fighting and violence in the NHL. Despite this, nothing was done by the NHL to change the sport's brutish culture; in fact, just the opposite was true. The NHL's President staunchly defended violence and fighting in the NHL and the owners rejected a proposal by the NHLPA to get rid of fighting altogether.

E. Fighting and Violence in the 1980s

128. Fighting and violence in the NHL increased in each successive decade since its inception and the 1980s were no exception. In fact, according to NHL internal documents produced as part of this litigation, NHL staff refers to the 1980s as "The Golden Era of Fighting," saying: "The 1980s were the most fight-filled period in [L]eague history, averaging about one for every game played."¹¹⁰

129. The same NHL internal document hypothesized the reasons for this sharp increase in fighting. First, the NHL in 1981 doubled the number of games between divisional opponents, thereby intensifying existing rivalries. Next, closer geographic proximities among divisional opponents also intensified existing rivalries. Finally, and most importantly, the NHL in 1982 increased team roster sizes from 17 to 18 skaters.

¹⁰⁹ NHL0122620.

¹¹⁰ NHL0230647.

Teams often filled this additional roster spot with less skilled players, many of whom were added largely due to their toughness and willingness to fight on command.¹¹¹

130. With this additional roster spot, many teams began dressing two enforcers instead of just one (as was done in the past). The Detroit Red Wings, for example, dressed heavyweights, Joey Kocur and Bob Probert, both formidable and fearless punchers. The Chicago Blackhawks had tough guys Al Secord and Jerome Dupont. Likewise, the Edmonton Oilers and Calgary Flames, who had arguably the fiercest rivalry in the NHL, both stocked their rosters with two enforcers: Marty McSorley and Kevin McClelland in Edmonton and Tim Hunter and Neil Sheehy in Calgary.¹¹²

131. NHL fight leaders also fought much more than their counterparts from eras past. Montreal Canadiens enforcer, Chris Nilan, led the NHL in 1983 with 30 fights, Detroit Red Wings enforcer, Joey Kocur, led the NHL in 1985 with 36 fights, and Boston Bruins enforcer, Jay Miller, led the NHL in 1987 with 34 fights.¹¹³ These numbers dwarfed the NHL leaders from the 1960s and 1970s.

132. In an ostensible attempt to address the fighting epidemic in the League, the NHL introduced three rule changes during the latter half of the 1980s. The rules were the first to address fighting since 1971. First, in 1986, the NHL added a 2 minute minor penalty, in addition to the 5 minute major penalty, if the referee determined one player clearly “instigated” the fight. Next, in 1987, to stop the prevalence of bench-clearing brawls, the NHL made a rule which stated that players would be suspended 10 games if they left the bench to participate in a fight and the team’s coach would also be suspended 5 games. Finally, in 1988, a player who instigated a fight while wearing a visor (plastic face protector) would be given an additional 2 minute minor penalty.¹¹⁴

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ NHL0230656.

133. There rules, however, were merely tinkering with the mechanics of fighting in the NHL; they were not meant whatsoever to ban the practice. In fact, as with decades past, the NHL was adamant about keeping fighting in the game, as evidenced by numerous NHL internal documents produced as part of this litigation.¹¹⁵

134. First, the NHL's unwillingness to curb fighting is evidenced in the minutes of a General Managers meeting held on January 19, 1986. Responding to a proposal to ban fighting, Calgary Flames General Manager, Cliff Fletcher, expressed concern. The minutes read: "The General Managers' Committee must not consider changing this rule [allowing fighting] without an in-depth market survey being conducted. Mr. Fletcher pointed out that a change in Rule 54 'to abolish fighting in hockey' is a drastic change, a great business decision that could affect our entire game. Mr. Fletcher requested that this matter be tabled to a future meeting of the General Managers."¹¹⁶

135. Additionally, the NHL's support of fighting is shown in a white paper on fighting in the game. The paper stated: "It has been the league's position that the nature of hockey—intensive, emotional, provocative, and frustrating for players at various moments in the game—produces an atmosphere that can lead to player aggression." The paper continued: "If this aggression must be released, which it sometimes must, it is preferable for this to happen one-on-one, the gloves off and without the stick being used, in venting this aggression. Injuries to players by reason of deliberate and unacceptable aggressive acts against one another have thus been kept to a minimum."¹¹⁷

136. The 1980s again saw fighting and violence increase in the NHL to levels never seen before. New rules were implemented to eliminate fighting to a certain extent,

¹¹⁵ See, e.g., Plaintiffs-NHL00000001, at 023, NHL0211768, NHL0121716, NHL0120496, NHL0513877, NHL1624155, NHL1975879, NHL1659442, NHL0022969, NHL0143088, NHL0274651, NHL2174852, NHL0274664, NHL0208530, NHL0581018, NHL0200272, NHL0276330, NHL0091198, NHL0582686, NHL2251956, NHL0035446, NHL2472258, NHL0035827, NHL-BOG-0007399.

¹¹⁶ NHL0121721.

¹¹⁷ NHL0122272, at NHL012272-273.

but none were aimed at ending the practice entirely. Instead, the NHL continued to selectively create and enforce rules to address player safety while simultaneously ignoring others—namely banning fighting—out of fear of the economic consequences of such a decision. In other words, the NHL continued to prioritize profits over its players' safety.

F. Fighting and Violence in the 1990s and 2000s

137. The NHL experienced numerous personnel transitions in the early 1990s. John Ziegler resigned as NHL President in 1992 and Gil Stein was appointed Interim President. Additionally, Gary Bettman became the NHL's first Commissioner in February 1993, a position he holds to this day.¹¹⁸

138. Amidst these changes, the debate over whether to ban fighting reignited. In 1991, the NHL commissioned a public opinion survey of 1,800 individuals in the U.S. and Canada. The 1,800 individuals were comprised as follows: 300 NHL season ticket holders, 1,200 fans and non-fans in NHL markets, and 300 fans and non-fans in potential NHL markets. Nearly 70% of season ticket holders and 50% of self-identified fans said that spontaneous fights in the NHL were acceptable. However, 90% of all respondents said that bench-clearing brawls and premeditated fights were not.¹¹⁹

139. In light of this information, Gil Stein embarked on a mission to end fighting in the NHL. Stein's mission led to great debate and division among NHL owners, general managers, and League executives. The controversy generated more than 60 newspaper stories between August and October of 1992.¹²⁰ In a memo written several years later, NHL executive Gary Meagher noted: "This issue clearly polarized the Board of Governors as the pro-fighters and abolitionists conducted a very public debate."¹²¹

¹¹⁸ JENISH, *supra* note 31, at 320-40.

¹¹⁹ NHL2040408.

¹²⁰ NHL2040414.

¹²¹ *Id.*

140. In August 1992, Stein solicited the opinion of Pat Quinn, then President, General Manager, and Head Coach of the Vancouver Canucks. Quinn was a titan, having played 9 seasons in the NHL and then continuing on as a coach and manager. Quinn's playing reputation was that of a rugged, hard-hitting, stay-at-home defenseman, and likely based on this background, he was in the pro-fighting camp. Quinn offered numerous reasons to Stein why fighting should remain in the NHL.

141. First, illegal tactics such as slashing, interference, spearing, and cross-checking were the real problem, according to Quinn. Such fouls led to frustration, confrontation, and fights. Reduce those fouls, Quinn argued, and fighting would decrease. Conversely, if fighting were eliminated, "stick work" and stick fouls would increase. Thus, by this logic, fighting actually made the game safer by keeping "stick work" under control.¹²²

142. Next, Quinn believed that fighting on the playing field (the ice) was in keeping with broader societal values. Quinn opined: "The North American psychology in sports favors the man who stands up for himself. He is applauded if he confronts wrong. The issue comes down to what kind of confrontation is desirable. Hockey players carry weapons. Is the player who is frustrated by illegal tactics to respond with an accepted and natural release of emotions through fisticuffs or is he to resort to stick work?"¹²³

143. Third, Quinn argued that there was a business case for fighting. NHL games were playing to 92% capacity at the time. If fighting were eliminated, Quinn believed the NHL would resemble European hockey and, as he put it, "Europeans cannot sell their game live or on TV." Quinn continued: "This is a business. With player salaries and costs escalating exponentially, some member clubs are riding a tenuous line between failure and success. This is not the time to experiment. Elimination of fisticuffs may be a disaster for the NHL and, once removed, will be impossible to reinstate without

¹²² NHL0015999, at NHL0015999-602.

¹²³ *Id.*

a media backlash.” Quinn concluded: “The basic product must not be changed. There is too much risk to our business.”¹²⁴

144. Ultimately, the issue was never put to a formal vote by Stein. However, according to an NHL internal report, the Board of Governors discussed the pros and cons of a game misconduct (one game suspension) for fighting, but only 7 of 24 Governors supported such a rule. As a compromise, the Board implemented a stronger “instigator rule” under which a player who started an unprovoked fight would receive a game misconduct penalty.¹²⁵

145. The instigator rule had a dramatic effect on fighting in the NHL. In 1992 – the first season after its passage—fighting was down 33 percent. However, the teeth of the instigator rule – the one game suspension – was diluted just 4 years later in 1996 when the penalty was changed to a 10 minute penalty instead of a 1 game suspension. Following this change, fighting promptly jumped 13% in 1997.¹²⁶

146. In 2005, the NHL added another dimension to the instigator rule in which a player who started a fight in the last 5 minutes of the 3rd period or in overtime would be suspended for 1 game and his coach would be fined \$10,000.¹²⁷ Many believed the change was long overdue. Late in NHL games, scrums, scuffles, and fights were commonplace and were almost always initiated by the losing team. It was a means of exacting a measure of revenge for having been beaten by the opposing team. It was also a way of sending a message that the losing team would not be pushed around the next time the two teams faced off.

147. Another feature of the NHL in the 1990s and 2000s was the transformation of players and, specifically, fighters. With the passage of time, NHL players have become, on average, bigger, stronger, and faster athletes – and fighters were no

¹²⁴ *Id.*

¹²⁵ NHL0230648.

¹²⁶ *Id.*

¹²⁷ NHL0230657.

exception. In 1978, New York Islanders player, Garry Howatt, led the NHL in fights. Howatt stood 5 foot 9 inches tall and weighed 175 pounds. Ten years later, then-New York Rangers player, Chris Nilan, the NHL leader in fights, stood 6 feet tall and weighed 200 pounds. By contrast, in 2003, Calgary Flames player, Krzysztof Oliwa, led the NHL in fights and stood 6 foot 5 inches tall and weighed 245 pounds.¹²⁸

148. While fighting was never banned in the NHL, it did decrease in the 1990s and 2000s from its peak in the 1980s. In the 2000s, 70% of players in the NHL did not fight and the number of fight-free games peaked at 71% in 2005.¹²⁹ Nonetheless, most NHL teams continued to keep at least one enforcer on the roster. In most cases, the enforcer played on the team's fourth line (least talented) and his ice time was limited to less than 10 minutes per game.¹³⁰

149. Data compiled by the NHL revealed that more than half of fights in the 2000s did not result from a spontaneous release of aggression, but instead were staged by the two participants.¹³¹ In 2000, for example, 35% of fights occurred when one player said to another: "Want to go?" Most of these "fights" involved the NHL's most experienced and feared fighters. Additionally, another 16.5% of fights were "face-off fights" that occurred while the players were lined up for a face-off or immediately after the puck had been dropped.¹³²

150. Such "staged fighting" is a far cry from the fighting that occurred in the NHL in the 1970s. As mentioned previously, fighting and agitation was meant to harass and distract the opposing team's top players. The idea, according to famed enforcer, Tiger Williams, was "to take them off their game." In order for this to be an effective

¹²⁸ NHL0230654.

¹²⁹ NHL0230651.

¹³⁰ NHL0230654.

¹³¹ NHL0230661.

¹³² *Id.*

tactic, the 1970s enforcer had to be at least good enough to skate with the opposing team's top players.

151. This was not the case in 1990s and 2000s. During this era, most fights pitted enforcer-on-enforcer. Many of these players were inferior NHL athletes who could not keep up with the opposing team's top players. In fact, enforcers would rarely, if ever, be on the ice at the same time as the top players. Finally, the vast majority of fights between enforcers were "staged," undercutting the NHL's longstanding "safety valve" justification for allowing fighting.¹³³

152. From a statistical perspective, fighting in the 1990s and 2000s was also losing its purported utility. Between 1990 and 2008, teams that led the NHL in fighting missed the playoffs 10 times and won only 1 Stanley Cup. By contrast, teams with the least number of fights in the NHL missed the playoffs only 1 time and won 4 Stanley Cups.¹³⁴

153. Fighting proponents' argument that hockey fights make the game safer is questionable at best. That is because hockey fights themselves often cause serious, sometimes career ending, injuries to players. During the 2000 NHL season, for example, 792 fights occurred. Twenty players suffered injuries serious enough to keep them out of action and they missed a total of 148 games. Most notably, Florida Panthers player, Todd Simpson, missed 40 games due to a concussion and Ottawa Senators player, Richard Persson, missed 20 games with a broken ankle.¹³⁵

154. Support for fighting in the NHL is also deeply embedded because so many former players go on to become coaches, general managers, and executives after they retire. Many of them fought frequently as players, thus, they see no reason to change the

¹³³ NHL0230663.

¹³⁴ NHL0230657.

¹³⁵ NHL0230662.

game.¹³⁶ Some notable examples of former players who had leadership positions in the NHL as of 2009:

- Paul Holmgren, GM, Philadelphia Flyers, 82 fights in 10 NHL seasons;
- Doug Risebrough, GM, Minnesota Wild, 68 fights in 13 NHL seasons;
- Don Maloney, GM, Arizona Coyotes, 34 fights in 14 NHL seasons;
- Colin Campbell, Senior Executive VP, NHL, 72 fights in 11 NHL seasons;
- Kris King, VP of Hockey Operations, NHL, 169 fights in 15 NHL seasons.¹³⁷

155. The NHL again confronted the issue of fighting in 2009 in response to the media and public uproar over the death of player, Don Sanderson, who was killed while playing in an Ontario senior hockey league game after striking his head on the ice during a fight.¹³⁸ Despite the public outcry related to the incident, the NHL's position supporting fighting remained firm.¹³⁹

156. To this day, the NHL supports fighting in hockey and resists a ban, enforced through game suspensions. This mentality can be best summed up by an email exchange between NHL executives made public as part of this litigation. Responding to a *New York Times* article advocating for the elimination of fighting in hockey, NHL executive and former player, Brendan Shanahan, stated: "I believe fighting as a tool or strategy is leaving the game of hockey and we can either lead or follow." Fellow NHL executive and former player, Colin Campbell, responded: "Not so sure how drastic we take that lead if that is what your [sic] suggesting."¹⁴⁰ Campbell's response embodies the

¹³⁶ Bettman Dep. at 58:3-25, 59:1-9; 66:12-25; 67:1-4; 84:11-25; 85:1-24; 106:13-25; 107:1-22; *see also* NHL2183826

¹³⁷ NHL0230672.

¹³⁸ NHL0230673.

¹³⁹ NHL0230630.

¹⁴⁰ NHL0035658, at NHL0035658-660.

NHL's longstanding, and unwavering, policy of allowing and supporting fighting in the game of hockey.

157. A review of the NHL's internal documents, however, indicates that Colin Campbell's private position regarding the role of fighting strongly contradicted his outward position. In one private email, Campbell states, "I am thinking of coming out and saying it's time... to get rid of fighting... or at least take major steps to reduce it. I will needed my bosse's [sic] ok but thinking strongly of it. I hated fighting... had to do it though... particularly in the 70's but it is stupid. I don't remember one fight on pond hockey or ball hockey."¹⁴¹

VII. HITS TO THE HEAD

158. Facial and head injuries are part of the game of hockey. Contact with an opponent's face or head can occur with the shoulder, elbow, gloved fist, or stick. Contact can be incidental or intentional but regardless, it is inevitable in such a high-speed, hard-hitting, emotionally charged sport. Anyone who has spent time in NHL dressing rooms or around NHL players will see the signs of such facial and head injuries: missing teeth, swollen lips, black eyes, warped noses, stitched-up lacerations, and scar tissue from old cuts and gashes.¹⁴²

159. When contact with the face or head occurs, referees can penalize the offending player for infractions such as elbowing, high-sticking, roughing, slashing, or cross-checking. In most cases, the player will receive a 2 minute minor penalty, but referees may impose more stringent punishments, such as a 5 minute major penalty or a game misconduct penalty, if the opponent is injured or the offending player intended to injure the opponent. The NHL also reserves the right to impose supplemental discipline for hits to the head which, in most cases, is a suspension for a certain number of games without pay. The NHL has also tried to regulate the careless use of the stick by players

¹⁴¹ NHL0031371.

¹⁴² See, e.g., NHL0224686, NHL2184991, NHL2322208, NHL2289658, NHL00220851, NHL0220764, NHL2040612, NHL0217544, NHL2090181, NHL2040627, NHL0538026.

[REDACTED]

163. Violence involving hits to the head came to the forefront for the NHL in 2000 when Boston Bruins player, Marty McSorley, hit Vancouver Canucks player, Donald Brashear, in the head with a stick and knocked Brashear unconscious. With little time left in the game, McSorley swung his stick with both hands and struck Brashear on the side of the head with enough force to knock Brashear from his feet. Brashear fell to the ice and lied motionless before being taken off on a stretcher.¹⁴⁹

164. The incident was replayed countless times on television. It also ignited an uproar in Canada about violence in hockey.¹⁵⁰ McSorley was suspended for the remainder of the season and the Vancouver police charged him with assault.¹⁵¹ After the incident, a public opinion poll of 1,409 adults was taken in Canada. Some 68% supported the police's decision to charge McSorley with assault, 71% thought hockey was too violent, and 75% said unnecessary violence had increased.¹⁵²

165. The NHL attempted to address the McSorley incident. The NHL sent out talking points to its member clubs on how to answer media inquiries. [REDACTED]

[REDACTED]

[REDACTED] Finally, the NHL in 2000

¹⁴⁸ *Id.*

¹⁴⁹ *Marty McSorley Slashes Donald Brashear Full Incident NHL Classic*, YOUTUBE, <https://www.youtube.com/watch?v=eTOfsoJAij4> (last visited Aug. 23, 2016).

¹⁵⁰ NHL2184987.

¹⁵¹ *Id.*

¹⁵² NHL2184026.

¹⁵³ NHL2184988, at NHL2184988-990.

¹⁵⁴ *Id.*

created an Injury Analysis Panel to address player safety.¹⁵⁵ Again, however, there was no mention by the NHL of creating a specific rule against all hits to the head.

166. With these half measures in place, concussions sharply increased during the 2000 NHL season, arguably due to the League's heightened sensitivity to the issue. There were 109 reported concussions, as opposed to 66 in 1999.¹⁵⁶ Despite this increase, little was done by the NHL to remedy the issue. It was not until after the 2004-05 lockout that the NHL once again was forced to take a look at the issue of hits to the head and concussions in the game.

167. The reason the issue of hits to the head resurfaced after the lockout was because sportswriters, sportscasters, and even former players began looking closely at the issue. The consensus was that hits to the head were becoming too common and that some players were deliberately targeting the heads of opponents when they delivered body checks. Some commentators attributed the trend to a "lack of respect among the players." Others suggested that hard-shell elbow and shoulder pads emboldened players and led to more punishing hits that inflicted greater injuries.¹⁵⁷

168. Post-lockout rule changes also increased concussions; most notably, the two-line pass. Prior to the lockout, two-line passes were deemed offside and a referee blew his whistle to stop the play. After the lockout, two-line passes became legal. This meant that forwards could leave their defensive zone sooner, could advance further up the ice, and could attain higher speeds before taking possession of the puck. At the same time, other post-lock out rules prohibited opponents from clutching, grabbing, hooking, or otherwise interfering with oncoming attackers. The net result of these rules was more high-speed, high-impact, open-ice hits that led to serious injuries, including concussions.¹⁵⁸

¹⁵⁵ NHL0120348, at NHL0120348-349.

¹⁵⁶ NHL0120335.

¹⁵⁷ NHL0120326, at NHL0120326-331.

¹⁵⁸ NHL0120354.

169. When the post-lockout rules came into effect, hits to the head once again became a frequent and contentious topic of discussion in the hockey world. Public interest led the NHL to address the matter both formally and informally. Formal discussions took place at meetings of the Board of Governors,¹⁵⁹ the General Managers,¹⁶⁰ and the NHL’s Competition Committee¹⁶¹ and informal discussions took place in private email exchanges. Both types of communication are present in the documents produced by the NHL as part of this litigation. Moreover, these discussions took place as far back as 2007, some three years before the NHL finally, and partially, agreed to address hits to the head with the implementation of Rule 48.

170. On February 24, 2007, then Buffalo Sabres Owner, Tom Golisano, wrote NHL Commissioner, Gary Bettman, about the NHL’s policy of allowing hits to the head. In a game two nights earlier, Ottawa Senators player, Chris Neil, had knocked Sabres captain, Chris Drury, unconscious with a blindside hit to the head. Golisano stated: “An opposing player skated half the width of the ice surface, approached Chris Drury from the blind side, and delivered a blow to the head, which dislodged his helmet, severely lacerating the area around his eye, causing a concussion. Chris Drury did not have the puck, he was not able to see the player coming from behind, and relaxed his guard.” Golisano continued: “There is nothing good to come of a policy that allows exciting, skilled players to be the targets for what I believe to be predatory play. I strongly urge you to convene the appropriate forum immediately to review this policy.”¹⁶²

171. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁵⁹ NHL0141261-262.

¹⁶⁰ NHL0232747, at NHL0232753-757.

¹⁶¹ NHL0545541, at NHL0545541-542.

¹⁶² NHL0442079.

[REDACTED]

173. At the same time, the NHLPA realized the problem of hits to the head and worked to ban targeted head hits from the game. Their efforts, however, proved unsuccessful. The NHLPA twice proposed rules against certain types of hits to the head but could not convince the NHL to move on the issue either time.¹⁶⁵

174. The NHLPA's first attempt came in 2008 when then-Executive Director, Paul Kelly, circulated a draft of the proposed rule at a NHL Competition Committee meeting. According to the meeting's minutes: "Mr. Kelly observed that the proposed wording focused on the intent of the hitter and on the vulnerability of the person being hit. [NHLPA player representatives] Ryan Miller and Brian Campbell agreed that the intention to hit someone in the head should be enough to warrant a suspension."¹⁶⁶

175. The NHL, however, pushed back. The minutes stated: "Bob Gainey [General Manager of the Montreal Canadiens] stated that the fear with a rule outlawing

¹⁶³ NHL0232747, at NHL0232755.

¹⁶⁴ *Id.*

¹⁶⁵ NHL0545527; *see also* NHL2174852.

¹⁶⁶ NHL0545542.

any contact with the head would be that it would eliminate too many good hits where accidental contact was made with the head.” Additionally: “[NHL executive] Colin Campbell proposed that the NHLPA have a bigger group of players consider the 52 hits on the DVD produced by the Hockey Operations department after the [20]06/07 season and come back to the Competition Committee with a more concrete standard for the types of hits that should be penalized.”¹⁶⁷ The issue was left unresolved.

[REDACTED]

[REDACTED] Minutes from a 2009 General Managers meeting stated: “Request for Hockey Operations to continue to work with the GMs to refine the supplemental discipline standard for illegal late hits and head hits and to work with the players to educate them on this standard, but the General Managers were not in favor of the targeted head hit rule proposed by the NHLPA or a zero tolerance rule like that enforced in the OHL.”¹⁶⁹ With this inaction, the NHL missed yet another opportunity to address and solve the problem of hits to the head.

¹⁶⁷ *Id.*

¹⁶⁸ NHL2174855, at NHL2174855-856.

¹⁶⁹ NHL0215078.

178. Having avoided dealing with it in 2009, the issue of hits to the head resurfaced early in the 2010 NHL season pursuant to an ugly incident involving Philadelphia Flyers player Mike Richards and David Booth of the Florida Panthers. When the incident occurred, Booth had passed the puck to a teammate and was looking to the left when Richards, coming from the right (Booth's blindside), hit Booth in the head with his shoulder. Booth, not seeing Richards, fell violently to the ice, lied there for several minutes, and was eventually taken off on a stretcher. The hit to the head by Richards had knocked Booth unconscious. Despite this, Richards was neither penalized in the game nor subject to supplemental discipline by the NHL.¹⁷⁰

179. The next morning, journalists across North America weighed in on the hit by Richards. Notably, TSN anchor, Darren Dreger, emailed then-NHL Director of Hockey Operations, Colin Campbell, to discuss the incident. At the time, Campbell oversaw all supplementary discipline in the NHL, including discipline for hits to the head. Dreger asked to discuss with Campbell "any criteria that is used in the fight against hits to the head" and noted that "a ton of Monday morning quarterbacks are about to surface over the League's decision not to spank Richards."¹⁷¹

180. Campbell's response to Dreger was revealing of the NHL's position on hits to the head. First, Campbell stated that the NHL had produced and distributed a video of various legal and illegal hits to the head and that Richards' hit fell within the agreed-upon legal sphere. Next, Campbell stated that the type of hit levied by Richards on Booth was specifically discussed and approved by the NHL's General Managers: "[W]e went around the entire room with input from each GM and their comments on 'Do they want to eliminate what is now legal shoulder hits to the head?' The answer was a resounding NO." Finally, Campbell stated that eliminating hits like Richards' would hurt the game of hockey: "Hey . . . the GMs have played and they have changed seats. 82 since I got

¹⁷⁰ *Mike Richards Destroys/Hits David Booth*, YOUTUBE, <https://www.youtube.com/watch?v=cIXcGOr4-04> (last visited Aug. 23, 2016).

¹⁷¹ NHL0031912.

this job and they don't want to take this type of hit out of the game. In my humble opinion it would change the fabric of the game totally.”¹⁷²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷² *Id.*

¹⁷³ NHL0143164.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

184. The hit involved Pittsburgh Penguins player Matt Cooke and Boston Bruins player Marc Savard, and was nearly identical to the Richards/Booth incident. In this case, Cooke laid a hit to the head of Savard from Savard's blindside, moments after Savard had released the puck. Savard, Boston's leading scorer at the time, was knocked unconscious, lied on the ice for several minutes, and was eventually carried off on a stretcher. Once again, no penalty was called on the play and the NHL refused to impose supplementary discipline on the grounds that Cooke had not violated any rules that would justify supplemental discipline. Cooke had a reputation for such hits, however, having been suspended twice in 2009 for the same type of hit to the head.¹⁷⁶

185. Reaction to the Cooke/Savard incident was even more intense, and negative, than the Richards/Booth incident. Below is a sample of what was said in the days after Cooke's hit on Savard:

Steve Begin, Boston Bruins player: Are they going to wait until someone dies? Is that what they're waiting for?

Vincent Lecavalier, Philadelphia Flyers player: Matt Cooke knew exactly what he was doing. I can't believe they're doing nothing about this. He's been doing this his whole career, hurting people . . . and for the NHL to protect a guy like Matt Cooke, that's incredible.

¹⁷⁴ *Id.* at NHL0143181-83.

¹⁷⁵ *Id.*

¹⁷⁶ *Matt Cooke Knocks Marc Savard Out*, YOUTUBE, <https://www.youtube.com/watch?v=0Z1vJrIAG-0> (last visited Aug. 23, 2016); *see also* NHL0120377.

Bobby Clarke, Philadelphia Flyers executive: That hit on Savard by Cooke was an absolute deliberate attempt to hit the man's head. Maybe Savard will play in a couple of weeks, let's hope so. But let's hope he doesn't wake up at 55 and have to have his wife and children looking after him because his brain is scrambled. That will be the result of all the concussions that hockey players are getting now.¹⁷⁷

186. The career of Matt Cooke reveals much about the NHL's attitude toward player safety. Cooke's career spanned 16 NHL seasons and 1,046 regular season games. Cooke was drafted by the Vancouver Canucks and he also played for the Washington Capitals, Pittsburgh Penguins, and Minnesota Wild.¹⁷⁸

187. Cooke's career statistics reveal that he was not an overly gifted offensive player – he scored 167 goals, or approximately, 10 per season, and added 231 assists. Cooke did, however, rack up 1,135 penalty minutes.¹⁷⁹ Such numbers should have made Cooke a third-line forward with a short career, yet four different NHL General Managers signed Cooke and he enjoyed a very long career.

188. It is clear from this evidence that NHL executives value players like Cooke because they play with a reckless abandon that makes opposing players nervous, especially the most talented offensive opponents. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷⁷ NHL0298230, at NHL0298230-232.

¹⁷⁸ NHL Player Statistics: Matt Cooke, NHL.COM, www.nhl.com/player/matt-cooke-8465951 (last visited Aug. 23, 2016).

¹⁷⁹ *Id.*

¹⁸⁰ Tampa_Bay_Lightning0003383.

¹⁸¹ NHL0143222, at NHL0143222-225.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These conclusions are clear from [REDACTED] [REDACTED] [REDACTED] and the June 18, 2010 Competition Committee meeting.¹⁸³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

191. The General Managers were persuaded into passing Rule 48 in large part because of a presentation by Dr. Paul Comper and Dr. Mike Hutchinson from the NHL Concussion Working Group. The two doctors had conducted a video analysis of 199 of the 260 reported concussions from 2006 to 2010. The study revealed that a significant number of concussions were caused by contact to the head.¹⁸⁵

192. The June 18, 2010 minutes also show that neither NHL officials nor the General Managers came prepared to pass Rule 48; in fact, no working draft of a proposed rule was created in advance. The minutes stated: “Commissioner Bettman noted that the General Managers had agreed in November that they had to discuss the Mike Richards hit on David Booth at their winter meetings but had not put pen to paper on a new rule until these winter meetings.”¹⁸⁶ It thus seems clear that the Cooke/Savard incident was the true catalyst for Rule 48.

¹⁸² *Id.*

¹⁸³ NHL0234845, at NHL0234845-846.

¹⁸⁴ NHL0143222.

¹⁸⁵ NHL0143209.

¹⁸⁶ NHL0234845.

193. In fact, the Cooke/Savard incident was explicitly discussed at both meetings. The minutes first noted: “Commissioner Bettman added that if another hit like Matt Cooke’s had occurred following the General Managers’ meeting the League would have been crucified.” The minutes continued: “While it had taken time for people to wrap their heads around the idea of an illegal shoulder check to the head, the perfect storm of a dangerous hit on Matt Cooke on Marc Savard on the eve of the meeting and a speech by Bobby Clarke imploring them to make a change . . . had caused discussions regarding the specifics of the head hit rule to unfold quickly.”¹⁸⁷

[REDACTED]

195. The new rule went into effect immediately, but the penalty for violating the rule was later increased to a 5 minute major penalty, an automatic game misconduct, and a review for possible suspension. Furthermore, a player who violated Rule 48 twice within one NHL season, including playoffs, would be automatically suspended for the team’s next game. For each additional Rule 48 violation, the suspension would be increased by one game.¹⁸⁹

[REDACTED]

¹⁸⁷ NHL0234844, at NHL0234844-846; *see also* Deposition of William Daly (“Daly Dep.”) at 94:9-97:1.

¹⁸⁸ NHL0143222.

¹⁸⁹ NHL0074758.

¹⁹⁰ NHL0143222.

A. Rule 48: Impact and Reaction

197. The passage of Rule 48 elicited mixed reviews from the hockey world. Many continued to believe that its passage was not enough and that a blanket ban on hits to the head was appropriate.¹⁹¹ [REDACTED]

198. The NHL was criticized by former referee, Kerry Fraser, who worked for the NHL from 1973 to 2010. First, Fraser noted that, while the NHL was rougher in the 1970s, the players avoided deliberately targeting the head of an opponent who was in a vulnerable position: “Checks were made to separate the player from the puck. Today the goal is to separate the head from the body.”¹⁹³

199. Next, Fraser criticized the purpose and utility of hits to the head generally: “There is no justification for a player intentionally hitting another player in the head, regardless of positioning. Refs should have the option of penalizing a player who deliberately hits an opponent in the head or elsewhere with the intention of hurting him, even if he had his head down.”¹⁹⁴

200. Finally, Fraser called into question the NHL’s motives for keeping hits to the head in the game of hockey: “I don’t know if its pressure from television or they simply want to keep these big spectacular hits in the sport, but these new rules will only fuel debate . . . If the League really wanted to eliminate the problem, it would unilaterally ban all hits to the head and be more firm and more consistent.”¹⁹⁵

201. The NHL, instead of engaging in a dialogue with Fraser, dismissed his comments wholesale. In an email discussing Fraser, NHL executive, Colin Campbell,

¹⁹¹ NHL0032918, at NHL0032918-920; *see also* NHL0090727, at NHL0090727-730.

¹⁹² NHL2328582; *see also* NHL2328586.

¹⁹³ NHL0032918, at NHL0032918-920.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

wrote: “What an idiot. Maybe we should drag out his bad calls . . . there are lots of them. Head hits he let go. Could have made the most bad calls of all time.”¹⁹⁶

202. The NHL was also criticized by Brad Richards, an NHL superstar and Stanley Cup winner, in a September 2011 interview with the *New York Times*. The interview came just after Richards signed as a free agent with the New York Rangers, which made him the highest paid player in the NHL at the time. Richards stated that NHL should ban fighting and hits to the head altogether, or at the very least, punish both more severely in the interest of protecting the health of the players: “If that’s what it’s going to take, I’d rather that than have more people suffering on the sidelines. It’s not about the game when it gets to the point of having a guy out for a year, guys retiring early. It’s about your everyday health and life. If that’s all it takes and we can get help, I think the players would adapt pretty quickly. If that’s what we have to do then we’ll do it.”¹⁹⁷

203. For the NHL, Richards’ proposal was a nonstarter, as evidenced by multiple internal documents.¹⁹⁸ However, internal debate did take place regarding Rule 48 and its efficacy, and two notable instances merit mentioning.

204. First was a discussion between notable hockey commentator, Pierre McGuire, and NHL executive, Mike Murphy:

McGuire: On another issue, anything in terms of headshots and potential rule changes going forward?

Murphy: Lots of internal talk to get tougher rules on head shots . . . everyone is tired of losing our best players for long segments of time . . . but there is real concern about eliminating hitting in the game and altering NHL hockey drastically. Need smart, sensible people to round table this topic and devise some better rules than we have, need to look at all equipment, all arenas, all hits¹⁹⁹

¹⁹⁶ *Id.*

¹⁹⁷ NHL0090726.

¹⁹⁸ NHL0141262.

¹⁹⁹ NHL0075191; *see also* NHL0080094.

205. Next was a discussion between Nashville Predators Owner Tom Cigarran and NHL Commissioner Gary Bettman pursuant to a concussion-causing hit to the head suffered by Predators player Mike Fisher:

Cigarran: As I have tried to get across, ANY hit to the head MUST be a Major penalty and result in a suspension. We would be the last league to take this position so this is not a RADICAL concept. The cost of our delay is huge in financial terms and in terms of damage to players' careers as well.

Last night's hit on Mike Fisher according to our latest rules might have been legal. This just demonstrates the need to Change the rules. The 'it will change the game' or 'we will have our players wearing figure skates' stories show the thinking of the old-timers.

Our incremental approach to change to mollify them has gone on too long. I intend to bring this up at every owners meeting until the changes are made. Enough is enough.

Bettman: We have a rule against 'hits' to the head but not head 'contact' in conjunction with a 'full body check'. Let's discuss tomorrow.²⁰⁰

206. The NHL also resisted public pleas from the Canadian Medical Association ("CMA") to crack down on violence in the game, and particularly, head hits. On November 12, 2013, the CMA issued an open letter to NHL Commissioner, Gary Bettman, stating that it had passed a resolution condemning owners and NHL executives for not doing enough to address the problem. The letter stated: "Unfortunately, since the regular season began in October, the gruesome spectacle of players suffering vicious assaults from opponents has continued unabated. Canada's doctors have an obligation to speak out on the issue of targeted violence in the game and to urge all and any steps necessary to eliminate it. With increasing awareness globally about the tragic, long-term effects of concussions and head injury should come greater understanding and effort on the part of the NHL and team owners to eliminate such injuries."²⁰¹ In preparing the NHL's response, a League executive stated that he would take time over the weekend

²⁰⁰ NHL0092172.

²⁰¹ *Id.*

“for the creation of deep thoughts about imbecilic rants by dumbass doctors who have no idea what they’re talking about.”²⁰²

VIII. CONCLUSION

207. The men who founded the NHL in 1917 did not break with hockey’s past or its traditions. Rather, they preserved existing practices, values and rules.

208. The practices included outbursts of violent conduct, including bare-knuckled fistfights on skates, which are amply documented in Volume One of Charles L. Coleman’s book, *Trail of the Stanley Cup*, which was, incidentally, an official publication of the NHL.

209. The willingness to respond to violence with violence was a core value that was embedded in pre-NHL hockey, preserved by the League’s founders, and accepted and cultivated by succeeding generations of coaches and general managers – most of who were former players.

210. The rules included a penalty – but not expulsion – for fighting and succeeding generations of NHL executives have staunchly defended fighting and refused to ban fighting despite public criticism from many corners, including from fans, politicians, and even some of the League’s most gifted players. The NHL has defended fighting even as its players became bigger and stronger, even as teams stocked their rosters with enforcers, and even as enforcers fought often, mostly fought other enforcers, and were capable of inflicting serious injury.

211. The game of hockey, as it is played in the NHL, has changed and evolved as the players became bigger, stronger, and faster, and the nature of hockey violence has changed accordingly. In recent years, specifically since the 2004 NHL lockout, shoulder hits to the head of opponents emerged as an increased and dangerous practice that often led to serious, sometimes career-ending injuries.

212. NHL owners, executives, and general managers knew that hits to the head and concussions posed a long-term threat to the health and safety of the players, and they

²⁰² NHL1846757.

thus established a Concussion Working Group in 1998 to study the issue. Yet, for no good reason whatsoever, they waited for more than a decade, until March 2010, before finally adopting Rule 48 – a partial ban on hits to the head – and then only because they risked being raked over the coals by the media and the public if they failed to act in the wake of the savage Cooke/Savard incident.

213. The NHL’s motives for tolerating violence, including fighting and injury-inducing hits to the head, are clear. Internal league documents reveal that NHL managers, executives, and many – though not all – owners are determined to preserve head hits as part of “the fabric of the game.”.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: Dec 6 2016

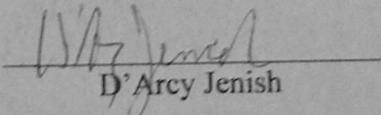

D'Arcy Jenish

EXHIBIT “1”

D'ARCY JENISH
WRITER

15 Dagwell Cres., Ajax, ON, L1T 3M8--(905) 683-2800—darcyjenish@rogers.com

PROFILE

- Freelance writer serving corporate clients, government agencies and major newsgathering organizations
- A personable and engaging interviewer who can establish a rapport with a chief executive or a front-line worker
- A light, conversational writing style that makes the most complex stories accessible
- Extensive network of associates in the media, business, arts and medical communities
- Effective working with teams that include editors, photographers and designers
- Consistently produces clean, accurate copy
- Projects completed on time, written to length and ready to publish

EXPERIENCE

Jenish and Associates - Freelance Writing Services, Ajax, June 2001 to present

Principal

Have written for:

- St. Lawrence Seaway Management Corp., Trent University and the National Research Council
- The Globe and Mail, National Post, Toronto Star, Maclean's, Report on Business magazine and The Walrus magazine
- Canadian Generic Pharmaceutical Association, the University of Ontario Institute of Technology and the Federation of Canadian Municipalities

Maclean's - Canada's National Newsmagazine, Toronto, 1986-2001

Senior Writer

Wrote about:

- Prominent personalities and issues in the worlds of politics, business, medicine, science, sports and the arts
- Royal tours, federal elections and major trials
- Travelled from coast to coast on assignments in Canada and reported from many American cities, including New York, Boston, Los Angeles, Atlanta and Detroit
- Had a knack for uncovering regional and local stories that would touch readers across the country

Alberta Report Newsmagazine, Edmonton, 1979-1986

Senior Editor

Edited sections and wrote about:

- Sports, including coverage of the Edmonton Oilers and Calgary Flames
- Business, including the energy industry, real estate and the collapse of the Northlands Bank and the Canadian Commercial Bank
- Wrote over 50 cover stories on subjects such as Peter Lougheed, Wayne Gretzky, Peter Pocklington and Nelson Skalbania

St. Thomas, Ont. Times-Journal 1977-1979

Reporter-Editor

Duties included:

- Covering city hall, hospital board, school board, public utilities
- Wrote features, took photos, edited copy, laid out pages

Dunnville, Ont. Chronicle 1976-1977

Reporter-Editor

Duties included:

- Covering regional council, provincial court, school board, sports
- handled re-design of the newspaper

**BOOKS
POPULAR HISTORY**

- Fall 2013 ***The NHL: A Centennial History: 100 Years of On-Ice Action and Boardroom Battles.*** The definitive account of the league's first century. Doubleday Canada.
- Fall 2008 ***The Montreal Canadiens: 100 Years of Glory.*** An examination of key personalities and developments that made the Canadiens one of the most durable and successful franchises in pro sport. Doubleday Canada.
- Fall, 2003 ***Epic Wanderer: David Thompson and the Mapping of the Canadian West.*** The first full and complete biography of the celebrated fur trader, explorer and mapmaker. Doubleday Canada.
- Fall. 1999 ***Indian Fall: The Last Great Days of the Plains Cree and the Blackfoot Confederacy.*** The story of the opening of the Canadian West, told through the lives of four heroic 19th century native leaders. Penguin Canada.
- Fall, 1998 ***Canada On Ice: Fifty Years of Great Hockey from the Archives of Maclean's.*** A collection of hockey writing, which I edited. Penguin Canada.

- Spring, 1996 ***Money To Burn: Trudeau, Mulroney and the Bankruptcy of Canada.***
An examination of the impact of recurring government deficits and the accumulation of debt that led to a national fiscal crisis in the mid-1990s. Stoddart Publishing.
- Fall, 1992 ***The Stanley Cup: A Hundred Years of Hockey At Its Best.*** A rollicking history of hockey's holy grail. McClelland & Stewart.

OFFICIAL HISTORIES

- Summer 2014 ***Trent University: Fifty Years of Excellence.*** A history of the growth, evolution, struggles and periodic crises at a small, liberal arts and sciences university based in Peterborough, Ont., 120 kilometres northeast of Toronto.
- Spring 2009 ***The St. Lawrence Seaway: Fifty Years and Counting.***
An official history, commissioned by the board of directors and published as part of the Seaway's 50th anniversary celebrations in 2009.
- Fall, 2002 ***Trials and Triumphs: The Remarkable Story of the Canadian Generic Pharmaceutical Industry.*** An official history commissioned by the Canadian Generic Pharmaceutical Association.

AWARDS

- The 2005 G.B. MacGillivray Award, presented by the Thunder Bay Historical Society for historical writing about northwestern Ontario.
- The 2004 University of British Columbia Medal for Biography for ***Epic Wanderer.***
- The 2000 Canadian Authors Association Lela Common Award for Canadian history for ***Indian Fall.***
- The 1992 Canadian Nurses Association award of excellence for a *Maclean's* cover on new treatments for back pain.
- The 1988 Canadian Institute of Mining and Metallurgy feature writing award for a *Maclean's* cover on Canada's gold mining industry.
- The 1984 Western Magazine Award in business writing for an *Alberta Report* cover on the collapse of Dome Petroleum.

PUBLIC SPEAKING

- Delivered dozens of speeches to historical societies, Canadian Clubs, service clubs and schools across the country during national book promotion tours.
- Made hockey interesting to audiences dominated by elderly women and captured the attention of Toronto business audiences with talks about the 19th century West.
- Given over 100 live or taped interviews on radio and television in response to interest generated by *Maclean's* stories and my books.

EDUCATION

Fall, 1974 Bachelor of Arts in English. Western University, London. ON.

EXHIBIT “2”

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