

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BELLE RIVER DISTRICT MINOR HOCKEY ASSOCIATION INC. and
ESSEX COUNTY DANCERS INCORPORATED

Plaintiffs

and

THE CORPORATION OF THE TOWN OF TECUMSEH

Defendant

Proceeding under the Class Proceedings Act, 1992

**STATEMENT OF DEFENCE OF THE CORPORATION OF THE TOWN
OF TECUMSEH**

Admissions, denials, knowledge

1. The defendant admits the allegations in paragraphs 2, 3, 5-9 and 11 of the Fresh As Amended Statement of Claim.
2. The defendant denies the allegations in paragraphs 10 and 12-26 of the Fresh As Amended Statement of Claim.

Overview

3. As pleaded in more detail below, this claim fails for the following reasons:
 - (a) The impugned fees are not a tax, because the payment of the impugned fees was voluntary, not compulsory.

- (b) In the alternative, the impugned fees are not a tax because they are a regulatory charge:
 - (i) They are a part of two regulatory schemes: the regulation of gaming in Canada, and the municipal regulations of the Town of Tecumseh; and
 - (ii) The impugned fees are connected to these regulatory schemes both because the fees have a regulatory purpose, and the revenues generated by the fees are tied to the costs of the regulatory scheme.
- (c) In the further alternative, the impugned fees are not a tax because they are a proprietary charge.
- (d) The defendant has not been unjustly enriched by the fees, and in the alternative it has changed its position such that it is no longer enriched.
- (e) Claims for fees paid outside the basic limitation period are statute-barred.
- (f) The equitable doctrines of laches, acquiescence, and estoppel apply because the plaintiffs, the members of the class, and their representatives have acquiesced in the level of the fees and have unduly delayed commencing this action, and the defendant has relied on those implicit representations that the fees were proper and valid.

The parties

4. The defendant, The Corporation of the Town of Tecumseh (“Tecumseh” or the “Town”), is a municipal corporation operating and subsisting under the *Municipal Act, 2001*, SO 2001, c 25, and, before January 1, 2003, under the former *Municipal Act*, RSO 1990, c M.45. The Town is the responsible government with respect to matters within its jurisdiction. It has been given various

powers and duties under the laws of Ontario and Canada for the purpose of providing good governance to its citizens. Tecumseh is composed of three former municipalities – The Corporation of the Town of Tecumseh, The Corporation of the Village of St. Clair Beach, and The Corporation of the Township of Sandwich South – which were amalgamated on January 1, 1999, pursuant to a Minister’s Order made on November 19, 1997 under the former *Municipal Act*.

5. The plaintiffs are sophisticated not-for-profit corporations that raise funds and provide various services to the community. Their activities are based in Tecumseh and they provide services in Tecumseh and the surrounding area. To raise funds, they have held gaming events and in connection with those events they have applied for and received licences from the Town and from the Province of Ontario. Each plaintiff has represented, in those applications, that it is competent to conduct and manage gaming events and to be responsible for trust funds.

The claim

6. The claim seeks restitution of all amounts paid by class members as lottery licensing fees and lottery administration fees to the defendant on or after October 24, 1993 (being the date fifteen years before this action was commenced, pursuant to Ontario’s ultimate limitation period in s. 15(1) of the *Limitations Act, 2002*, SO 2002, c 24, Sch B).

7. In relation to each individual payment of the impugned fees, there is a distinct and independent cause of action. As such, each cause of action may be affected differently by the facts pleaded below depending on what circumstances obtained at or before the time the individual payment was made.

Charitable lottery gaming in Ontario

8. Part VII of the *Criminal Code of Canada*, RSC 1985, c. C-46 (the “*Criminal Code*”) is the headwaters of a broad interjurisdictional scheme to regulate gambling in Canada. It criminalizes almost all forms of gaming and then provides for certain carefully delineated exceptions. More specifically, s. 206 of the *Criminal Code* makes it a criminal offence to operate a lottery scheme in Canada. The *Criminal Code* then enacts certain carefully circumscribed exceptions in s. 207(1). One such exception, in s. 207(1)(b), allows “religious or charitable organizations” to operate lottery schemes “pursuant to a licence issued by the Lieutenant Governor in Council of the province” or his or her delegate, as long as the proceeds are used only for “charitable or religious object[s] or purpose[s]”. Subsection 207(2) allows the licences to contain “such terms and conditions relating to the conduct, management and operation of” the lottery scheme as the granting authority may prescribe. If the terms and conditions are violated, or if the proceeds are not in fact used for a charitable purpose, the person or entity conducting the lottery is committing a criminal offence.

9. Since 1970, when s. 207 of the *Criminal Code* came into force more or less in its present form, Ontario’s Lieutenant-Governor-in-Council has put in place several (sometimes overlapping) schemes to delegate the authority to issue charitable gaming licences. At some times, including at the present, the authority has been delegated to two actors simultaneously: municipalities may license lottery events of lower prize value whereas events of higher value (or games with certain characteristics) must be licensed by a provincial entity (now the Alcohol and Gaming Commission of Ontario or “AGCO”, previously a Minister of the Crown). However, even with respect to the latter, the municipality plays a role: the licence application to the AGCO must be supported by a letter from the municipality in which the event is to take place. In deciding which charitable

gaming events to permit and which to refuse, and in setting the terms on which they will be permitted, the municipality is pursuing its own regulatory mandate to provide good government for its citizens.

10. For the lower-value events, the municipality charges a fee for the licence (a “Lottery Licensing Fee”). The current fee for bingos is a flat fee of \$165, and for all other lotteries a fee equal to 3% of the prize board. Before 2003, the bingo fee was equal to 3% of the prize board. In 2003, the Town reduced the fee to nil and then gradually increased it to the current flat level of \$165 in 2007 (pursuant to the New Revenue Model, described below).

11. From 1970 until 1993, lottery licensing in Ontario was governed by Order-in-Council 274/1970 (the “1970 OIC”). Under the 1970 OIC, municipalities were given the authority to issue licences to conduct lottery events, in which prizes were limited to \$3,500.00 per event. During this period, Ontario’s Minister of Financial and Consumer Affairs¹ could impose terms on licences, which a municipality could then supplement. The Minister could prescribe the maximum level of licensing fees to be charged.

12. Between 1993 and 2008 (the period covering the bulk of the class), lottery licensing was governed by Order-in-Council 2688/93 (“1993 OIC”). The 1993 OIC delegated to the Director of what was then called the Gaming Control Commission (the “GCC”) the authority to issue licences to “conduct and manage” lottery schemes. It also gave municipalities the authority to issue licences to charitable groups to “conduct and manage” any “bingo lottery event where the amount or value of the prize or prizes awarded is no greater than \$5,500.00 in value”. The 1993 OIC required any lottery event to be conducted in accordance with the *Gaming Control Act, 1992*, SO

¹ Most of the functions of the Minister of Financial and Consumer Affairs have since devolved to the Minister of Government and Consumer Services.

1992, c 24² and gave the Director the authority to establish “[t]he maximum fees to be charged for the issuance of a licence”.

13. In 1998, the Gaming Control Commission was abolished and the Alcohol and Gaming Commission of Ontario (the “AGCO”) was established in its place. The functions and powers of the Director of the GCC were effectively transferred to the Registrar of the AGCO (the “Registrar”) at that time.

14. The GCC Director (and later the Registrar) established the requirements for lottery licensing during most of the claim period as follows:

- (a) The publication of mandatory Terms and Conditions which were set by the GCC and later the AGCO, which were regularly amended from time to time. The Terms and Conditions govern the various financial and record-keeping requirements imposed on charitable organizations, the accounting procedures that must be followed by them, and the rules of play for the game of bingo and other lottery events;
- (b) The publication of the Lottery Licensing Policy Manual (“LLPM”) to guide municipalities who are responsible for the design and implementation of their own regulatory activities, and to ensure harmonization between municipal regulation and the AGCO’s policies, standards and directives; and
- (c) The establishment of a Protocol to identify roles and responsibilities of municipal licensing authorities in connection with the administration of charitable gaming.

² The *Gaming Control Act, 1992* is provincial legislation that creates a system for registration and regulation of participants in the bingo industry other than the actual licensed charities.

15. Since 2008, in Ontario the authority to licence has been delegated by the Lieutenant-Governor-in-Council to the Registrar, by virtue of Order-in-Council 1413/2008 (the “2008 OIC”). Under the 2008 OIC, the Registrar has authority to specify the types of lottery events that may be conducted, the eligibility requirements to obtain a licence, and the permissible uses of the funds raised through charitable gaming, as well as to prescribe “the maximum fees to be charged for the issuing of a licence”.

16. Under the 2008 OIC, for lottery events where the prize board³ exceeds \$5,500.00, only the Registrar may issue licences. For lower-value events, however, municipalities may issue licences themselves. They must be satisfied that the charitable or religious organization meets the requirements established by the Registrar. Municipalities may also attach additional terms and conditions to the licence, conduct reviews of eligibility by particular licensees at any time, and suspend, cancel or refuse to issue licences.

Charitable gaming in Tecumseh

17. The Town has not enacted by-laws imposing requirements on charitable gaming different than or in addition to those in the AGCO Registrar’s Terms and Conditions and the Lottery Licensing Policy Manual. It enacted By-Law No. 2000-79 (August 8, 2000), By-Law No. 2002-69 (August 13, 2002) and By-Law No. 2006-51 (August 8, 2006), appointing Lottery Licensing Officers. However, some of the predecessor municipalities enacted substantive by-laws, as follows:

³ The “prize board” for an event is the total value of prizes offered at the event.

- (a) St. Clair Beach passed By-Law No. 754 (August 3, 1971), and amended it by By-Law No. 2130 (August 26, 1996), but St. Clair Beach did not license any bingo events within the time period at issue in this proceeding;
- (b) The pre-amalgamation Town of Tecumseh passed By-Law No. 976 (April 27, 1970), and amended it by By-Law No. 976 (December 1, 1993), but the pre-amalgamation Town of Tecumseh did not license any bingo events – although there were bingo events licensed by the AGCO; and
- (c) Sandwich South did not enact substantive by-laws, but passed By-Law No. 81-47 (September 28, 1981), appointing Evelyn Oliver as Lottery Licensing Officer.

18. The Town has set the fees for charitable bingo licences. Before 2003, the rate was set at 3.0% of the maximum value of the prize board, consistent with the amount prescribed by the AGCO. In 2003, the fee was reduced to nil and, over the following years, increased gradually. In 2007, after consultation with the industry, the “New Revenue Model” was introduced, and the fee level was changed (as authorized by the AGCO) to a flat fee of \$165.00, coinciding with 3.0% of a \$5,500 prize board.

19. As discussed above, charitable or religious organizations that have been licensed to conduct and manage lottery schemes in Ontario must abide by the licensing requirement, the terms of the licence, the Registrar’s Terms and Conditions, and any other requirements that the Registrar may impose. For lottery events that are conducted and managed in Tecumseh, the Town is responsible for administering this regulatory framework and ensuring compliance with the above requirements. This involves, *inter alia*:

- (a) reviewing applications for lottery licenses to ensure eligibility or qualifications of the applicant organizations;
- (b) reviewing financial statements and other reports from licensed organizations;
- (c) reviewing requests to change scheduling or format of licensed lottery events;
- (d) conducting inspections and audits of licensed organizations and events to ensure compliance;
- (e) monitoring and advising licensed organizations with respect to the permissible uses of funds generated from licensed events;
- (f) submitting required reports to the AGCO Registrar regarding licensed lottery events;
- (g) providing reports, information, and/or recommendations to its Council about various aspects of regulation of the charitable gaming industry in the Town;
- (h) maintaining current information on file for licensed organizations;
- (i) working with the relevant provincial entity (the GCC or later the AGCO) to coordinate the operation of the overall regulatory scheme; and
- (j) meeting and consulting with licensed organizations and industry participants.

20. These functions have required the services not only of the Town's Licensing and Enforcement Department, but also many other departments and offices within the Town.

Class members have been involved in the setting of the impugned fees

21. Throughout the class period, the Town has worked extensively with class members and their representatives to cooperate in the regulation of charitable gaming, including with respect to the level of licence fees and lottery administration fees.

22. One way in which this cooperation has occurred is through entities known as “Bingo Sponsor Associations” or “Hall Charities Associations” (“HCAs”), which are associations of the licensed charitable and religious organizations that conduct and manage lottery events regularly within a particular bingo hall. The Registrar’s Terms and Conditions recognize HCAs. There is one bingo hall at present in Tecumseh, hence there is one HCA at the moment.

23. Under the Registrar’s Terms and Conditions, the HCA is responsible for co-ordinating schedules and various other matters related to the conduct and management of lottery events by its member organizations. The HCA has co-ordinators that act as agents for the individual licensed organizations to handle some administrative aspects of applying for lottery licenses and filing the required reports.

24. Many of the class members in this proceeding are also members of the HCA. Over the years, the HCA has also played an important role in discussions and negotiations with the Town concerning lottery licensing, including licensing fees, on behalf of its members.

25. In addition to dealing with the HCA, the Town has, since 1993, engaged in regular and formal consultation with the industry and its stakeholders on municipal policy and the regulation of charitable gaming. Often the results of this consultation have been made public, for example in the form of discussion at, or a report to, Town Council.

26. In 2001-2002, increased border security as a result of 9/11 caused a precipitous decline in the Tecumseh bingo industry's fortunes. In response, the Town met with representatives from the bingo hall, and the hall owner/manager, for policy input and information-sharing, to support the bingo industry. One initiative was the reduction of the licensing fee to zero in 2003. After further consultation with the industry, the fee level was gradually raised from time to time.

27. In 2005, in response to the downward trend in attendance and revenues, the Registrar initiated a broad public consultation with the charitable gaming industry aimed at "modernizing" charitable gaming in Ontario. Representatives of the plaintiffs participated in this consultation process. The outcome of this process was the "New Revenue Model", under which the maximum licensing fee that municipalities could charge was set at \$165, rather than as a percentage of the prize board. Town Council set the fee at \$165 in 2007, where it remains to this day.

28. At all material times, it was open to the charities and their representatives to ask the Town for information or documentation pertaining to charitable gaming regulation, including with respect to the revenues and expenses associated with licence fees and lottery administration fees. Such a request could be made, most formally, by way of the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56. Financial information regarding revenue and expenses associated with the fees also appears in the Town's annual financial statements, budgets, and other documents, all published on the Town's website. All documentation that comes before Town Council (including staff reports), as well as minutes, are also available to the public online (save for privileged and *in camera* matters).

29. Despite the availability of information relating to the quantum of fees and expenses, at no time until the commencement of this action has any charitable gaming participant taken issue with the legality of the fees.

30. Since the beginning of the class claims period in 1993, charitable and religious organizations in Tecumseh have generated millions of dollars from gaming.

The impugned fees are not taxes

31. The impugned fees are legally and constitutionally sound, and there is no basis in law to compel their repayment. In particular, the impugned fees are not, in pith and substance, taxes.

32. First, the impugned fees are not compulsory. Part of the legal definition of a tax is that it is compulsory and enforceable by law. Being able to operate a gaming event, pursuant to a licence, is a valuable privilege, not a right: charitable gaming is a highly sheltered, highly regulated industry with a significant potential for economic gain, and it is illegal subject to narrow exceptions. Charitable and religious organizations that do not wish to hold gaming events, or that feel the fees are too high, do not have to do so. They are perfectly free to engage in their charitable activities; they may (and do) raise revenue in countless other ways. They are also free to seek out charitable gaming in jurisdictions that may offer different licensing terms. Charities that chose to hold gaming events have paid money voluntarily in exchange for the valuable right to engage in a lucrative activity that is otherwise illegal (indeed, criminal); this is the very opposite of a tax. No nexus between revenues and costs is necessary in this scenario.

33. Alternatively, even if the fees are compulsory, they are still not taxes, because they are regulatory charges. They are regulatory charges because (1) there is at least one relevant regulatory scheme, and (2) the fees are connected to a regulatory scheme.

34. The fees are a part of two regulatory schemes. First, they are part of the interjurisdictional regulation of gaming in Canada. The *Criminal Code* both criminalizes lottery schemes and enacts certain exceptions, one of which is charitable or religious gaming when licensed by a provincial Lieutenant Governor in Council. The provincial legislature has also regulated gaming. Second, because municipalities either license or facilitate licensing, the licensing is part of the entire scheme of municipal regulation.

35. Both of these schemes meet the legal definition of a regulatory scheme. They are complete, complex, and detailed codes of regulation. They have regulatory purposes that seek to affect behaviour. They have costs of regulation. Both involve a relationship between the person being regulated and the regulating body or bodies under which the person being regulated either benefits from or causes the need for the regulation. Namely:

- (a) The federal-provincial regulatory scheme is necessary, in part, because of the presence of charities and religious organizations that wish to hold gaming events;
- (b) The municipal regulatory scheme benefits those organizations because any aspect of the operation of the municipality that makes it more attractive to residents, workers, visitors, and businesses increases the class members' potential donor base; and
- (c) The municipal regulatory scheme further benefits those organizations because it enhances the gaming experience through inspections and other quality control measures.

36. The fees are connected or adhesive to both regulatory schemes. This occurs either where the fees have a regulatory purpose or where they are tied to the costs of the scheme. Both of these individually sufficient conditions are present in this case.

37. First, the fees themselves have a regulatory purpose (in fact, more than one purpose) in each scheme. The fees are part of a scheme to ration gaming and control the level of gaming in society. They also ensure that those who wish to hold lucrative gaming events pay an amount that is a proxy for the value of that benefit. And they ensure that some part of the proceeds of gaming is directed to the public good, which among other things mitigates the social costs and problems associated with the presence of gaming. These are all purposes of both applicable regulatory schemes. Again, no nexus between revenues and costs is necessary in this scenario.

38. Alternatively, the fees are connected to the regulatory schemes because the revenues generated by the fees are tied to the costs of each scheme:

- (a) The revenues generated by the fees are far below the total costs of Canada's federal-provincial gaming regulation scheme;
- (b) The revenues generated by the fees are also far below the costs of the municipal regulatory scheme. According to the Town's approved 2016 budget, the Town's total expenses in 2015 were approximately \$23.8 million. The total revenue for "lottery licences" was approximately \$185,000;
- (c) Further and in the alternative, the revenues from the fees do not exceed the costs of gaming, including its numerous indirect and social costs.

39. In the further alternative, the impugned fees are a proprietary charge. By virtue of the *Criminal Code* and the various orders-in-council, the Town has the right to issue licences and to facilitate applications for AGCO licences. It is entitled to dispose of that right on commercial terms.

40. The impugned fees are therefore not compulsory, and they, in any event, constitute a regulatory charge, or alternatively a proprietary charge. In all cases, the fees are not taxes and can be levied without express legislation.

41. The Town denies that it or its representatives were ever aware, as is alleged, that the impugned fees were actually in law taxes, or that they were improper in any way. At all times the Town and its representatives believed that the impugned fees were legally valid and entirely appropriate, as is the case.

No unjust enrichment

42. The plaintiffs make allegations of unjust enrichment at paragraphs 15-18 of the Statement of Claim. In response to those allegations, the Town pleads as follows:

43. **No enrichment:** The Town has not been enriched by the impugned fees. Indeed, as pleaded above, there is a nexus between the revenue from the fees and a regulatory scheme.

44. **No deprivation:** There is no corresponding deprivation of the plaintiffs. In exchange for the impugned fees, the plaintiffs and other class members received a valuable commercial privilege, to which they had no legal entitlement but for the licence granted, and from which they have enjoyed significant financial gains over the years. Moreover, the revenues, when spent by the Town, have benefitted the plaintiffs and the class members, both directly and indirectly. They have

been spent for the general good of the Tecumseh community, and thereby enhanced the size and quality of the player base and the donor base. They have been spent to better regulate gaming events themselves and thereby attract more gaming dollars. They have also been spent to enhance municipal facilities that many class members use to conduct community activities (e.g. arenas and gyms for children's sports).

45. Juristic reason: Even if there is an enrichment and a corresponding deprivation, there is a juristic reason, namely, the statutory and regulatory framework allowing municipalities to charge licensing fees and licensing administration fees. Another eligible juristic reason is the linkage, set out above, between the impugned fees and a regulatory scheme. The plaintiffs voluntarily elected to engage in this activity knowing the fees involved and the economic benefits they would reap.

46. Change of position: Even if there was no juristic reason for the enrichment, it would still be unjust to require the Town to make restitution. The Town received the revenue, in most cases, long before this action was commenced. Since the Town operates on a balanced-budget basis, it has adjusted its expenditures to take into account the available revenue. Hence, in each year since the impugned fees were received, the Town has changed its position by using the revenue to provide additional municipal services that it would not have provided, had it not received that revenue.

Claims in respect of fees paid outside the basic limitation period are statute-barred

47. This action was commenced on October 24, 2008. As certified, it seeks restitution of fees paid since October 24, 1993.⁴ The class has been divided into two subclasses, one consisting of

⁴ The individual plaintiffs also claim in relation to fees paid after January 1, 1990. This claim is barred by the ultimate limitation period in s. 15 of the *Limitations Act, 2002*. The Court of Appeal for Ontario has ruled that the class proceeding cannot raise claims in relation to fees paid before October 24, 1993.

those whose claims are not *prima facie* time-barred by the two-year basic limitation period in the *Limitations Act, 2002* (i.e. in respect of fees paid (a) between October 24, 2002 and December 31, 2003⁵ and (b) October 24, 2006, and following), and one consisting of those whose claims are *prima facie* time-barred (i.e. all other claims).

48. The Town pleads that claims in the *prima facie* time-barred subclass are, in fact, barred by ss. 4 and 5 of the *Limitations Act, 2002*. The class members are presumed to have discovered their claims when they paid the fees in question, and they cannot rebut that presumption.

49. Class members have always been aware that they were paying a fee. There has always been at least a potential legal question: is that fee properly characterized as a tax or a regulatory charge? A reasonable charity would have always been aware of that question, and, thus, of the claim that is advanced in this action.

50. Further, the facts that the plaintiffs plead in their statement of claim in support of their assertion that the impugned fees are actually taxes were all readily ascertainable more than two years before they commenced this action. In particular, the plaintiffs' own position in this action is that the dollar amounts of the revenues from the impugned fees and of the costs of operating the licensing scheme were disclosed in documents such as Tecumseh's approved operating budgets.

51. In addition, the class members were aware or could have been aware, directly or indirectly, of the facts now said to give rise to the claim through the extensive consultation between the Town and the bingo industry about the level of the impugned fees (pleaded above).

⁵ Preserved by the transition provisions in the *Limitations Act, 2002*.

52. Even if legal or other expert advice was necessary for the class members to realize that they had a potential claim, they should have obtained such advice promptly.

53. The plaintiffs make the bald allegation that the Town “concealed” the true nature of the impugned fees, and this rendered the claim non-discoverable. (Since commencing the action, the plaintiffs have disavowed any claim under the equitable doctrine of fraudulent concealment.) However, the acts of which the plaintiffs complain cannot be considered to have concealed anything material from the plaintiffs and other similarly situated class members:

- (a) Simply stating that a fee is authorized by the *Criminal Code*, or by an order-in-council of the Lieutenant-Governor, does not amount to concealment.
- (b) Similarly, characterizing the impugned fees as “fees” in by-laws or other publication is not concealment. At most, it is a legal statement (which, in any event, was accurate, as discussed above).
- (c) Holding *in camera* meetings at which the impugned fees were discussed does not constitute concealment.

54. Indeed, the Town has always been transparent about the circumstances under which the valuable lottery licences were made available. The plaintiffs were either always aware of the facts about which they now complain, or they simply failed to turn their minds to them. The latter cannot constitute concealment or non-discoverability.

Laches, acquiescence, and estoppel

55. The Town relies on the equitable doctrines of laches, acquiescence, and estoppel.

56. The plaintiffs have not prosecuted its claim without undue delay. The plaintiffs and other class members have acquiesced in the current and past levels of the impugned fees, in particular by participating in consultations over the years on the fees themselves. They have implicitly or expressly represented to the Town that they accept the fees, both as valid and in their quantum. And the Town has reasonably relied on that acquiescence by doing things that it would not have done had it believed that its entitlement to the revenues was in any doubt, namely: (1) making additional expenditures that it would not have otherwise made and (2) destroying documents pursuant to general document retention and destruction policies that it did not know might be relevant to a potential claim against it. Documents that have been so destroyed include “correspondence and applications pertaining to Lottery”, “Lottery reports and licences”, and “approval files for lottery organizations”.

Standing

57. Many of the class members are unincorporated associations, defunct or non-existent corporations or partnerships, or for other reasons within the knowledge of each such class member, have no legal existence or capacity to sue or be sued. As such, these class members have no standing to commence this action and have no right, in any event, to recover any alleged losses through the mechanism of a class proceeding.

Conclusion

58. The defendant asks that this action be dismissed with costs.

59. The defendant agrees that, if a trial of this action is necessary, it should be held at Windsor.

March 14, 2017

STOCKWOODS LLP
Barristers
Toronto-Dominion Centre
TD North Tower
77 King Street West,
Suite 4130, PO Box 140
Toronto ON M5K 1H1

Brendan van Niejenhuis (LSUC# 46752J)
Tel: 416-593-2487
brendanvn@stockwoods.ca

Fredrick Schumann (LSUC# 59377L)
Tel: 416-593-2490
fredricks@stockwoods.ca

Tel: 416-593-7200
Fax: 416-593-9345

Lawyers for the defendant

TO: **LERNERS LLP**
Barristers & Solicitors
85 Dufferin Avenue
P.O. Box 2335
London ON N6A 4G4

Peter W. Kryworuk (LSUC# 24513N)

Tel: 519-672-4510
Fax: 519-672-2044

Lawyers for the plaintiffs

BELLE RIVER DISTRICT MINOR
HOCKEY ASSOCIATION INC., et al
Plaintiffs

and THE CORPORATION OF THE TOWN OF
TECUMSEH
Defendant

Court File No. CV-08-12005

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

**STATEMENT OF DEFENCE OF THE
CORPORATION OF THE TOWN OF
TECUMSEH**

STOCKWOODS LLP

Barristers

Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Brendan van Niejenhuis (LSUC# 46752J)

Tel: 416-593-2487
brendanvn@stockwoods.ca

Fredrick Schumann (LSUC# 59377L)

Tel: 416-593--2490
fredricks@stockwoods.ca

Tel: 416-593-7200

Fax: 416-593-9345

Co-counsel for the defendant