

CITATION: Delfino v. Intercounty Baseball League, 2025 ONSC 4165
COURT FILE NO.: CV-17-00000316-0000
DATE: 2025-07-14

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Lee Anthony Delfino and Standing O) Derek Sinko, counsel for the Plaintiffs
Entertainment Group Inc.)
)
Plaintiffs)
)
- and -)
)
The Intercounty Baseball League and John) J. Tatner and T. Nwaokocha, counsel for the
Kastner) Defendants
)
Defendants)
)
) **HEARD:** April 8, 9, 10, 11 and 14, 2025 at
Brantford

THE HONOURABLE JUSTICE L. BALE

REASONS FOR JUDGMENT

OVERVIEW

- [1] This action was commenced by statement of claim in September 2017. It proceeded to trial in April 2025, under the simplified procedure.
- [2] The plaintiffs, Lee Delfino and Standing O Entertainment Group Inc. (“Standing O”), claim damages against the defendants, the Intercounty Baseball League (the “IBL”) and John Kastner, in the amount of \$74,057 for breach of contract, or alternatively, negligence.
- [3] In 2016, the plaintiff Mr. Delfino was the president and sole officer and director of Standing O. Standing O was the owner of the Brantford Red Sox baseball team. The Brantford Red Sox were a member team of the IBL.
- [4] The IBL is a high-level amateur baseball league operating in Ontario. The IBL is an incorporated non-profit organization.
- [5] In 2016, the defendant Mr. Kastner was the commissioner of the IBL. In this role, he was an officer (but not a director) of the IBL.

[6] This claim arises out of a playoff eligibility decision made by the commissioner during the 2016 playoff season.

THE FACTS

[7] The following facts are not contested:

1. In 2016, the IBL was governed by:
 - a. The Intercounty Baseball League Constitution;
 - b. By-Law No. 1 – A by-law relating generally to the transaction of the affairs of The Intercounty Baseball League; and
 - c. The Intercounty Baseball League Rules of Operation - 2016.
2. There were eight member teams in the IBL in 2016: Barrie, Brantford, Burlington, Guelph, Hamilton, Kitchener, London, and Toronto. The ownership of the teams was a mix of privately-owned and not-for-profit organizations or individuals.
3. Pursuant to the IBL Constitution, each team's membership is registered annually (November 1) for the season, and the team is chartered to operate the franchise in their designated municipality. Each member team appoints one representative to the IBL board of directors and has one vote on the board.
4. Mr. Kastner was the commissioner of the IBL from 2013 to 2022. He received an annual honorarium for filling this role.
5. The players in the IBL enter into agreements with their respective teams which bind them to the rules of the league. The players do not receive compensation, except for reimbursement of certain allowable expenses. Players are typically young men who play in the league as an extracurricular activity, college players who come home in the summer, and/or retired professional players.
6. The IBL baseball season runs from approximately May to September each year. In 2016, each member team played in the regular season and was guaranteed to play in the first round of the playoffs. Each playoff round consisted of a best of seven-game series, as follows:
 - a. Quarter-finals (first round) – all member teams played in the first round;
 - b. Semi-finals (second round) – the four member teams which won their quarter-final series advanced to this semi-final round; and
 - c. Championships (third round) – the two member teams which won their semi-final series advanced to this championship round.

7. The Brantford Red Sox played the Toronto Maple Leafs in the quarter-finals (first round) of the 2016 playoffs. The results of the games were as follows:
 - a. Game 1 – August 3, 2016: Brantford beat Toronto 9-8;
 - b. Game 2 – August 4, 2016: Toronto beat Brantford 6-5;
 - c. Game 3 – August 7, 2016: Brantford beat Toronto 16-6;
 - d. Game 4 – August 10, 2016: Toronto beat Brantford 6-4;
 - e. Game 5 – August 14, 2016: Brantford beat Toronto (score unknown);
 - f. Game 6 – August 15, 2016: Toronto beat Brantford 4-3; and
 - g. Game 7 – August 17, 2016: Toronto beat Brantford 4-2.
8. Brantford was eliminated by Toronto from the playoffs in seven games. Toronto went on the semi-finals, and then to the championship round.
9. Mike Wagner was a pitcher for the Toronto Maple Leafs during the 2016 season. He participated in the quarter-final series between Brantford and Toronto as follows:
 - a. He pitched 8 1/3 innings in Game 4;
 - b. He pitched 3 2/3 innings in Game 6; and
 - c. He pitched 4 innings in Game 7 (which went into extra innings).
10. At some point prior to Game 4 of the series, it came to Mr. Delfino's attention that, on August 6, 2016 and August 7, 2016, Mike Wagner played in a baseball tournament for the Battisoni Diesel in Battle Creek, Michigan.
11. Article 12 of the The Intercounty Baseball League Rules of Operation - 2016, provides, *inter alia*, that:

Player Registration

...

 - 3) A player who signs an IBL Player's Agreement cannot be rostered with any other baseball team in that current season without a release. Similarly, a player cannot play in the IBL while a registered player in another league. If an IBL player is released mid-season to play in another league he must return to the IBL by the signing deadline or is ineligible for the remainder of the season.

12. Mike Wagner had played the requisite number of season games with Toronto, as a properly-rostered import player, to qualify to play in the 2016 playoffs. His eligibility was not questioned until Game 4 of the quarter-finals.
13. On August 10, 2016, Mr. Delfino lodged a player eligibility protest regarding Mike Wagner. Game 4 was played under protest. Shortly after the game, Mr. Delfino filed a formal written protest, asserting that Mike Wagner was not eligible to play.
14. On August 11, 2016, the commissioner acknowledged Mr. Delfino's protest and requested details of the basis of the protest. Mr. Delfino replied:

Our basis for this protest is this:

We were informed via one of Toronto's players that one of his teammates: Mike Wagner had been playing for another team in another league over the weekend of August 5-7th 2016.

We investigated this notion further and in fact found out that Mike Wagner had been playing for another team. We have an overwhelming amount of proof to support this claim.

Please let me know if you have any other questions.

15. The commissioner conducted an investigation which included the following steps:
 - a. An internet search of Mike Wagner's background;
 - b. An internet search of the Buffalo MUNY league and Mike Wagner's team;
 - c. A conversation with a representative of the MUNY league;
 - d. A review of the newspaper articles provided to him by Mr. Delfino;
 - e. Individual telephone consultations with the following people:
 - i. Mr. Delfino;
 - ii. The owner of the Toronto Maple Leafs;
 - iii. The IBL secretary-treasurer;
 - iv. The board of directors' representatives from the Barrie, Kitchener, and London; and
 - v. The former commissioner of the IBL (2000-2009).

16. As a result of his investigation, the commissioner concluded that: (1) the player eligibility rule was intended to prevent teams from bringing in “ringers” or “hired-guns” in the playoffs; specifically, a higher caliber player or difference-maker who would create an unfair advantage; and (2) that the MUNY league was more than likely a men’s recreational league.
17. On August 12, 2016, the commissioner dismissed the plaintiffs’ protest and released a decision in writing, which provided in part that:

...

There is no question that Wagner played in another league and filing the protest is valid.

But in rulings such as this, particularly of this gravity, one has to consider the spirit of the regulation. I think we all agree that it was intended to stop a player from playing in a comparable recognized league of similar or higher calibre.

The core concern is about a player parachuting in from a higher league as a hired gun.

Investigating the MUNY there were some key discoveries. They don’t really register players. Players aren’t carded and can go from team to team in the same season. All of the teams are in the greater Buffalo area. The league does not appear to keep stats. Teams are sponsored by copy shops, delis, bars and one team is simply called “Deb’s Team”.

Teams do not have tryouts. Players aren’t carded or registered as teams put their players on a list that is sent to the league and new players can sign up through the league and are assigned to a team because the league has a commitment to “parity”.

It is for all intents and purposes, a recreational men’s league.

The tournament the team was in on the weekend, while called the World Series, is not restrictive to champions and appears to be a senior tournament that any team can enter.

Given the status of the league I don’t feel that a successful protest, which would see awarding the game to Brantford, is reflective of what is a violation of a rule that I feel is really intended to address a different scenario.

I think awarding the result of a game, particularly a playoff game, is reserved for the most egregious violations of the rules. The games, unless

there is a very clear violation of the rule, and the spirit of which it is written, should be won and lost on the field.

I think our fans, and I would argue our players, expect nothing less. It was a valid protest, certainly not frivolous, but the penalty would not be reflective of the perceived crime. To that end, the league will not require the \$100 protest fee.

...

18. Mr. Delfino filed another protest following Game 6. The commissioner responded that there was no new evidence and reiterated his prior decision to deny the protest. He advised that Mike Wagner was eligible to play in the balance of the 2016 playoff season.

[8] Mr. Delfino asserts that had Mike Wagner been disqualified from play, Brantford would have made at least the semi-final round of the playoffs. As a result of the loss of opportunity to participate in subsequent playoff rounds, the plaintiffs claim damages; specifically, lost opportunity to generate revenue through gate receipts, concession and beer garden sales, merchandise and program sales, and 50/50 ticket sales.

THE PLAINTIFFS' CLAIM IN CONTRACT

Jurisdiction of the Court

[9] The IBL is a private, voluntary organization incorporated in 2005 as the governing body of the member teams which participate in the baseball league.

[10] In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, [2018] 1 S.C.R. 750, at para. 12, the Supreme Court of Canada considered the court's jurisdiction to review decisions of voluntary associations. The court concluded that:

1. Judicial review is reserved for state action;
2. There is no free-standing right to procedural fairness. Courts may only interfere to address procedural fairness concerns of voluntary associations if legal rights are at stake;
3. Even where review is available, the courts will only consider those issues that are justiciable.

[11] Courts have jurisdiction to intervene in decisions of voluntary associations only where legal rights, such as a right in property or contract, are affected: *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22, [2021] 1 S.C.R. 868, at para. 27.

- [12] The plaintiffs acknowledge that this not a case for judicial review or an application in the nature of *certiorari*, seeking to quash the commissioner’s decision to permit Mike Wagner to play in the 2016 playoffs. Rather, the plaintiffs’ claim is premised upon their contractual right for the Brantford Red Sox to play in the IBL, in accordance with the rules of the league. In essence, the plaintiffs claim that the decision of the commissioner not to disqualify Mike Wagner from the 2016 playoffs was a breach of contract that caused damages to them in the form of loss of chance – profits that could have been earned if their team had qualified for subsequent rounds of the playoffs.

The Contractual Relationship

- [13] The general common law rule of privity of contract provides that only a party to a contract can sue and be sued for a breach of the terms of the contract.
- [14] A unique form of contractual relationship may arise from membership in corporations and voluntary associations. These relationships have, at times, been referred to as web of contracts cases; unions that may be constituted by a web of contracts among members: *Aga*, at paras. 43-48. In some cases, insubordination by a member may equate to a breach of his contractual obligations to the organization. Likewise, a breach by a corporation of its own by-laws, may equate to a breach of its contractual obligations to its members: *Senez v. Montreal Real Estate Board*, [1980] 2 S.C.R. 555, at pp. 566-557. However, membership in a voluntary association is not automatically contractual. Membership is contractual only where the conditions for contract formation are met, including an objective intention to create legal relations. Such an intention is more likely to exist where property or employment are at stake: *Aga*, at para. 49.
- [15] Pursuant to the IBL Constitution and the by-laws, the membership of the IBL consists “of the teams that are participating in the League each season”; Each team is registered with the IBL annually to operate the franchise team in their municipality for that year. Each team appoints one representative to the board of directors to manage the affairs of the IBL. Each team, through their appointed director, is entitled to one vote. On or around January 1, 2016, the board of directors passed the by-laws for the 2016 baseball season.
- [16] I accept that a contractual relationship existed between the eight member teams and the IBL in 2016. By joining the IBL in January 2016, each of the eight member teams accepted the IBL’s Constitution, by-laws, and rules of operation, as they existed at the time, and thereby undertook an obligation to observe and comply with them. Likewise, the IBL as a corporate entity was bound to obey its own governance rules with respect to the eight member teams.
- [17] I do not, however, accept that a contractual relationship existed between the plaintiffs and the commissioner, such that he may be sued personally under this web of contracts. Cases in which employees and officers of companies are found personally liable for actions carried out under a corporate name are exceedingly rare and typically involve circumstances of fraud, deceit, dishonesty, or want of authority: *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (C.A.). No such circumstances are alleged in this case. The commissioner is an officer of the IBL, appointed by the board of directors. He is paid an

honorarium to fulfill this role. He has no voting rights. Though the IBL as a corporate entity may have a contractual relationship with the commissioner, I am not satisfied that the commissioner has an independent contractual relationship with the plaintiffs. The plaintiffs did not have authority to sue the commissioner in contract on behalf of the IBL. The plaintiffs' claim for breach of contract against the commissioner cannot succeed.

The Terms of the Contract

[18] A web of rules governs the IBL and its members: the IBL Constitution, the By-laws, the Rules of Operation, and the Official Rules of Baseball. Collectively, these documents are intended to bind the operations of the league.

[19] Generally, the IBL Constitution provides for the following:

1. The objectives of the IBL;
2. The right of each member team to operate the only baseball franchise in the IBL in its designated municipality;
3. An obligation on all members to abide by the Constitution and the Rules of Operation;
4. Basis for termination of membership;
5. The payment of annual fees;
6. Representation of the member teams;
7. Procedure for amendments to the Constitution.

[20] The following articles of the Constitution are noteworthy:

ARTICLE II

OBJECT

- 2.01 To promote and improve baseball at its highest amateur level.
- 2.02 To protect the mutual interest of its members.
- 2.03 To assist in the development of players at the Junior level.
- 2.04 To institute and regulate [competition] for declaring:
 - (a) A league champion;

- (b) A representative in Ontario championship playoffs, if/when applicable;
- (c) A representative in an Ontario tournament to determine a representative for Canadian Championship, if/when applicable.

...

ARTICLE III

FRANCHISES – FRANCHISE OWNERSHIP

...

3.11 The members shall recognize and abide by the Constitution and the Rules of Operation. The Rules of Operation shall be the final authority that governs all aspects of the operations of the League.

[21] The By-laws of the IBL make provision, amongst other things, for the following:

1. the location of the IBL head office;
2. the composition, voting structure, and powers of the board of directors;
3. the appointment and duties of officers of the corporation, including the commissioner;
4. membership, meetings, quorum, and voting;
5. dues, securities, and borrowing;
6. committees, etc.

[22] The following paragraphs of the by-laws are noteworthy:

11. The Commissioner shall preside at all meetings of the Corporation. He shall perform such other duties as usually pertain to the office of a President. He shall be empowered to levy penalties against members of the Corporation and club personnel. His decisions shall be final, following the these (sic) By-Laws and Rules of Operation, unless he appoints a committee to investigate. The Commissioner shall be the sole authority on what deliberations may be made public.

17. The membership shall consist of the Teams that are participating in the League each season.

[23] The IBL Rules of Operation are more detailed, and make provision, amongst other things, for the following:

1. Game day/on-field rules: Time limits for batting practice, home team responsibilities for equipment, pre-game ceremonies, anthems, weather delays, regulation baseballs and bats, uniforms, bat boys, crowd control, line-up cards, public announcements, curfews, etc.;
2. Postponed games: Scheduling and rescheduling;
3. Procedure for determining end of season ties, playoff placement, etc.;
4. Protests: player eligibility protests, and umpire's interpretation of the rules;
5. Player qualifications for post-season: number of appearances, injured players, replacement players, junior players;
6. Official Rules: applicability of the Official Rules of Baseball, designated hitters, batting order cards, coaches;
7. Gag rule, social media policy, and atmosphere;
8. Discipline: suspensions, ejections, hearings, fines, and forfeitures;
9. All star game and selection;
10. Arrears, umpire mileage and fines;
11. Committees: appeals and hearings;
12. Signing Players: player classification, compensation rules, signing timelines, player registration, rosters, tampering, junior affiliates, releases, trades;
13. Appendices re: umpires, pace of play initiatives (music, warm up pitches, timing of pitches, etc.) memorandum of understanding with the Ontario Baseball Association (junior players), minimum standards re: scoreboards, cleanliness, bat boys, washrooms, concession stands, etc.

[24] The following paragraphs of the Rules of Operation are noteworthy:

GENERAL

Should situations arise which are not covered by these Rules of Operation, the Constitution and the bylaws, the Commissioner shall act in the best interest of the IBL and resolve the issues to the best of his ability.

ARTICLE 3

PLAYOFFS

Eight teams make the playoffs with 1 vs. 8; 2 vs. 7; 3 vs. 6; 4 vs. 5. The higher finishing team has home field advantage. All series are best-of-seven. The surviving teams are re-seeded after the first round for the semifinals.

ARTICLE 4

PROTESTS

Protests may only be made on two (2) situations as follows:

a) The eligibility of a player-protest must be filed with the Commissioner within 12 hours of completion of the protested game.

OR

b) An umpire's interpretation of the rules – protest must be lodged at the time of the occurrence and before play resumes. The opposing manager and the official scorer must be advised at the same time as the umpire. Details of the protest must then be lodged with the Commissioner via email within 12 hours of the completion of the game in question.

c) If the Commissioner determines that a protest will be heard, the protesting team will forward a fee of \$100 by electronic money transfer to the league. Following that, all parties affected will be notified of a hearing via email. The fee will be returned if the protest is successful.

d) All parties to the protest will be given the opportunity to participate in a hearing via a conference call chaired by the Commissioner.

e) The outcome of the protest will be determined by the Commissioner. His decision is final and is not subject to appeal.

ARTICLE 5

TO QUALIFY FOR POST-SEASON

1) In order to qualify for unrestricted participation in the playoffs a position player must have 20 plate appearances and a pitcher must have appeared in at least four games and have pitched at least 8 innings.

...

6) Prior to the start of the playoffs the league will advise each club with their list of playoff eligible players.

ARTICLE 6

OFFICIAL RULES

1) The IBL uses the latest revision of the Official Rules of Baseball. Minor changes, specific to the IBL, may be put in place by the IBL.

ARTICLE 10

Arrears, Umpire Mileage and Fines

...

5) The Commissioner has the authority to impose fines and set fine amounts on behalf of the league for violation of the Rules of Operation, The IBL Constitution, bylaws, policies or Official Rules of Baseball.

ARTICLE 11

COMMITTEES

1) The Commissioner may appoint a 3 – 5 person committee to hear an Appeal with the power to act. The Commissioner shall be an ex-officio member of all Committees. The Commissioner may name other committees to consider any other particular matter as the need arises.

2) A club may appeal a decision by the Commissioner involving a fine in excess of \$500 and/or a player's suspension, or a suspension levied against any other club official by the Commissioner, in excess of ten games.

3) All other decisions made by the Commissioner or IBL committees are final and binding.

ARTICLE 12

SIGNING PLAYERS

...

Each club is permitted to sign a maximum of four (4) non-Canadian players who must be amateurs and proper immigration papers must be forwarded to the Registrar along with the Player's Registration Card.

PLAYER REGISTRATION

1) A signed player's registration card is valid for the current season.

2) The player's rights remain with his last registered team unless he is released, left unprotected or does not play with his registered team for a full season.

3) A player who signs an IBL Player's Agreement cannot be rostered with any other baseball team in that current season without a release. Similarly, a player cannot play in the IBL while a registered player in another league. If an IBL player is released mid-season to play in another league he must return to the IBL by the signing deadline or is ineligible for the remainder of the season.

4) The Registrar must have in his hands a properly completed Player Registration Card before a player's name may be shown on a batting order card.

5) Releases from other clubs, as required, Pro releases and Immigration papers are all part of the registration process and must be filed at the same time as the Player Registration Card. (A penalty, which could include a forfeiture, will be imposed for use of a player not properly signed). The normal standard is forfeiture of the game(s) where the player appeared.

APPENDIX 1

Discipline of players and team officials

This will be done by the Commissioner with the UIC and umpires as a resource.

Discipline will be done as quickly as reasonable, with the knowledge that the league is operated solely by volunteers. ...

[25] The Official Rules of Baseball include approximately 200 pages of content which need not be summarized.

[26] The plaintiffs' case rests on the interpretation and application of Article 12(3) of the Rules of Operation regarding Player Registration – specifically, that “a player who signs an IBL Player's Agreement ... cannot play in the IBL while a registered player in another league.” They assert that, as a result of this rule, Mike Wagner was not properly signed, and the 2016 playoff games he participated in should have been declared forfeitures by the commissioner under Article 12(5).

Delegation of Authority to the Commissioner

[27] The plaintiffs' case is based on the claim that the commissioner's decision to allow Mike Wagner to play in the 2016 playoffs violated the player eligibility rules, and that this error resulted in a breach of contract by the IBL. However, this position minimizes the significance

of the powers that were delegated to the commissioner by the governance documents of the IBL. The intention to delegate sole decision-making authority over disputes within the league to the commissioner is found throughout the governance documents, including in particular that:

1. Protests: Protests, including player eligibility protests, are to be determined by the Commissioner. The Commissioner's decisions are final and are not subject to appeal.
2. Discipline: Discipline will be done by the Commissioner with the umpire in charge and umpires as a resource. Discipline will be done as quickly as reasonable, with the knowledge that the league is operated solely by volunteers.
3. Fines and penalties: The Commissioner has the authority to impose fines and set fine amounts on behalf of the league for violation of the Rules of Operation, the IBL Constitution, bylaws, policies or Official Rules of Baseball. The Commissioner is also empowered to levy penalties against members of the corporation and club personnel.
4. Appeals: Appeals can be brought in relation to decisions by the Commissioner involving fines in excess of \$500 and/or a player's suspension, or a suspension levied against any other club official by the Commissioner, in excess of ten games. The Commissioner can appoint a committee to hear the appeal. All other decisions made by the Commissioner or the IBL committees are final and binding.

[28] It is clear that the appointment of a commissioner to regulate the operations of the league-play during the baseball season was a fundamental term of the contracts entered into between the member teams in joining the IBL. It is also clear that, except with respect to fines over \$500, the parties intended that the decisions made by the commissioner were to be final and binding.

[29] Good faith contractual performance is a general organizing principle of the common law of contract: *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494, at para. 93. Good faith manifests itself in various doctrines, including but not limited to:

1. the duty of cooperation between the parties to achieve the objects of the contract;
2. the duty to exercise contractual discretion in good faith;
3. the duty not to evade contractual obligations in bad faith; and
4. the duty of honest performance.

See: *2161907 Alberta Ltd. v. 11180673 Canada Inc.*, 2021 ONCA 590, 462 D.L.R. (4th) 291, at para. 44; *Jones v. Quinn*, 2024 ONCA 315, at para. 74.

[30] Absent from the plaintiffs' case is any allegation that the defendants breached these performance obligations. Mr. Delfino stated the following during examinations for discovery:

[H]onestly, John Kastner is the right man for the job. He's a fantastic commissioner. I think he's the, if I were, even despite all of this, I would still vote for him. He made a, he made the bad, he made a wrong call on a decision that, like I said, was objective, and he made a subjective decision. Am I disappointed in him for making that decision? For sure. But I will still, to this day, say nothing but good things about John Kastner.

[31] Certainly, the commissioner must strive to adhere to the governance documents and rules of the sport, and his decisions must be made in good faith. But sports commissioners, umpires, referees, and sporting event judges are human. It cannot be that every arguable deviation from the prescribed rules of a game can constitute a breach of contract amongst the members of an organization; this would result in commercial absurdity. The stated objectives of this amateur baseball league, including the promotion and improvement of baseball, the development of junior players, and institution and regulation of competition, would be derailed if every questionable strike called at an important moment could result in a lawsuit.

[32] In *Highwood*, at para. 34, the Supreme Court of Canada explained that there is no single set of rules delineating the scope of justiciability: the proper approach "must be flexible"; the court should consider "whether it has the institutional capacity and legitimacy to adjudicate the matter," whether it would be "an economical and efficient investment of judicial resources to resolve" the dispute, and whether any other body "has been given prior jurisdiction of the matter." Although not immunized from judicial oversight, courts are reluctant to interfere in the internal operations of businesses and voluntary organizations without sufficient cause. It is therefore not surprising that the court has not been provided with any caselaw in which a sports organization, either amateur or professional, has been successfully sued for breach of contract arising from a "bad call" by a decisionmaker authorized to make such calls by the organization.

[33] The member teams in the IBL contracted for a decisionmaker, not perfect decisions. I do not accept that the plaintiffs' disagreement with the commissioner's application of the rules is a breach of contract in the circumstances of this case.

Interpretation of the Contract(s)

[34] In the event that I am incorrect in concluding that the alleged breach of contract is not actionable because the governing documents delegate decision making to the commissioner and do not bind the IBL to perfect application of the rules, I am further not satisfied that the commissioner's interpretation of the player registration rule was incorrect.

[35] The analysis that follows is somewhat layered. Had the commissioner's decision been subject to judicial review, his decision would have been reviewed on a reasonableness standard: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65,

[2019] 4 S.C.R. 653. Had the commissioner’s decision been appealed, his interpretation of the contracts would have been a question of mixed fact and law, subject to a palpable and overriding error standard of review: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633. Neither option was available to the plaintiffs given the private nature of the dispute and the contractual finality of the commissioner’s decision. Instead, this court is asked to interpret the contracts to determine whether the commissioner’s application (or non-application) of the player eligibility rule amounted to a breach of contract.

[36] The overriding objective of contractual interpretation is to determine the intent of the parties and the scope of their understanding. To do so, a decisionmaker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract: *Sattva*, at para. 47.

[37] In *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, at para. 65, the Court of Appeal for Ontario summarized the principles articulated in *Sattva* and explained that, when interpreting a contract, an adjudicator should:

1. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;
2. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
3. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
4. Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[38] Under the related contracts principle, when parties make multiple contracts as part of an overall transaction, they must be read together and harmonized to give effect to the parties’ intentions, prevent clashes, and avoid rendering any of them meaningless: *Ottawa (City) v. ClubLink Corporation ULC*, 2021 ONCA 847, 159 OR (3d) 255, at para. 54; *SS&C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, 2024 ONCA 675, at para. 29. Generally, courts favour interpretations that advance the contract’s

commercial purpose and are commercially reasonable: *2484234 Ontario Inc. v. Hanley Park Developments*, 2020 ONCA 273.

- [39] In this case, it is not disputed that Mike Wager was a non-Canadian, amateur player, with a valid registration card and valid immigration papers for the 2016 IBL season. It is further not disputed that Mike Wagner had appeared in the required number of games and pitched the required number of innings in the 2016 regular season to qualify as eligible to play in the playoffs. Rather, the plaintiffs argue that Mike Wagner’s simultaneous participation in the MUNY league tournament violated the player eligibility rules of the IBL. Specifically, the plaintiffs’ position is that the player registration rule must be interpreted strictly:

ARTICLE 12

Player registration

3) A player who signs an IBL Player’s Agreement cannot be rostered with any other baseball team in that current season without a release. Similarly, a player cannot play in the IBL while a registered player in another league. If an IBL player is released mid-season to play in another league he must return to the IBL by the signing deadline or is ineligible for the remainder of the season.

...

5) Releases from other clubs, as required, Pro releases and Immigration papers are all part of the registration process and must be filed at the same time as the Player Registration Card. (A penalty, which could include a forfeiture, will be imposed for use of a player not properly signed). The normal standard is forfeiture of the game(s) where the player appeared. [Emphasis added.]

- [40] The plaintiffs argue that there was no room for the commissioner to engage discretion in determining player eligibility, and that the words and phrases “rostered with any other baseball team” and “registered player in another league” have a plain and ordinary meaning which must be adhered to and applied. The defendants do not agree that the terminology is unambiguous. They argue that it has never been the intention of the IBL to prohibit IBL players from playing baseball in any other forum. Rather, the player eligibility rule, read as a whole in the context of the collective governing documents, and in the surrounding circumstances known to the member teams upon joining, did not disqualify play by Mike Wagner in the 2016 playoffs and did not require forfeiture of games won by Toronto as a result.

- [41] The words team, roster, registered, and league are not defined in the governing documents. The Oxford dictionary defines each term as follows:

1. Team: a group of players forming one side in a competitive game or sport;
2. Roster: a list of members of a team or organization, in particular of athletes available for team selection;

3. League: a group of sports clubs which play each other over a period for a championship;
4. Registered: entered or recorded on an official list or directory.

[42] The plaintiffs argue that to be eligible to play in the 2016 playoffs, IBL players were prohibited from playing on any other baseball team, in any other league, and that there is no room for alternate interpretation. The plaintiffs further argue that the commissioner had no discretion in the application of the rule, stressing that the IBL constitution explicitly states that “the Rules of Operation shall be the final authority that governs all aspects of the operations of the League.”

[43] I am not satisfied, on a balance of probabilities, that the commissioner’s interpretation and application of the player eligibility rule amounts to a breach of contract:

1. I am not satisfied that it was the intention of the member teams (i.e., the contracting parties) to create a blanket prohibition on participation in baseball of all forms while rostered in the IBL. A strict interpretation of the rule, as promoted by the plaintiffs, would require that an IBL player would need a release to play in a corporate slo-pitch league, or an after-church baseball league, or potentially in a father-son baseball game, and that an IBL player could not play in any organized baseball tournament of any kind, regardless of the level of skill or organization. I do not accept that this is a commercially reasonable interpretation that is consistent with the objectives of the IBL Constitution. Rather, I accept that the contracting teams understood that the purpose of the player eligibility rule was to prevent the transfer of players after the trade-deadline, and to prevent teams from bringing in players from higher-level leagues as “ringers” or “hired guns,” thereby creating an unfair advantage in the playoffs. There is no evidence which contradicts the commissioner’s finding that Mike Wagner played in an uncarded, non-competitive, beer league in the USA.
2. The plaintiffs were not strangers to the IBL. Mr. Delfino was an active player in the league for many years before becoming an owner. The defence provided evidence from multiple witnesses as to the circumstances known to the member teams at in 2016 regarding the interpretation and application of the player eligibility rule. Specially, they gave evidence that several players had played in both the IBL and recreational leagues and participated in tournament play, without protest. This evidence was uncontroverted. I find that in 2016 Mr. Delfino was aware that IBL players routinely played in lower-level events without triggering ineligibility to play in the IBL.
3. I do not accept the plaintiffs’ interpretation of Article 12 – Player Registration (3) as being a form of strict liability clause, entirely outside of the discretion of the commissioner. This interpretation would render other provisions of the governing documents ineffective. As noted above, the protest rule (Article 4), which includes player eligibility protests, provides that the outcome of the protest will be

determined by the commissioner. Article 12 – Player Registration (5) provides that the penalty to be imposed for the use of an ineligible player *could* include a forfeiture. While forfeiture might be the norm, it cannot be said that this clause excludes any discretion on the part of the commissioner. The commissioner, in my view, reasonably exercised his discretion by concluding that:

I think awarding the result of a game, particularly a playoff game, is reserved for the most egregious violations of the rules. The games, unless there is a very clear violation of the rule, and the spirit of which it is written, should be won and lost on the field.

4. The preamble to the Rules of Operation specifies that if situations arise which are not covered by the Rules of Operation, the Constitution and the bylaws, the commissioner will act in the best interest of the IBL and resolve the issues to the best of his ability. I find that the commissioner’s interpretation and application of the player eligibility rule was consistent with this provision.

[44] The IBL governance documents attempt to prescribe a procedure for meeting the basic objectives of the IBL: to institute and regulate a league which promotes amateur baseball. The implementation of those objectives involves the interpretation and implementation of a large collection of rules. In this case, I am satisfied that the commissioner’s interpretation and application of the player eligibility rule was consistent with the intent of the member teams and the IBL and the scope of their understanding of rule in 2016. I am not satisfied, on a balance of probabilities, that the IBL’s failure to find Mike Wagner ineligible to play in the 2016 playoffs, and/or to declare as forfeitures any games he played in during the quarter-final round between Brantford and Toronto, constitutes a breach of contract.

THE PLAINTIFFS’ CLAIM IN NEGLIGENCE

Standard of Care

[45] Conduct is negligent if it creates an objectively unreasonable risk of harm. To avoid liability, a person must exercise the appropriate standard of care.

[46] The parties agree that the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15, applies to this case. In particular, s. 43 provides as follows:

Duties of directors and officers

Standard of care

43 (1) Every director and officer in exercising his or her powers and discharging his or her duties to the corporation shall,

- (a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply with Act, etc.

(2) Every director and officer shall comply with,

(a) this Act and the regulations; and

(b) the corporation's articles and by-laws.

Cannot contract out of statutory duty

(3) No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act and the regulations or relieves him or her from liability for a breach of this Act or the regulations.

[47] As explained above, there is no basis upon which this court could find that the commissioner, as an officer of the corporation, or the directors of the IBL acted without honesty or good faith, or without a view to the best interests of the IBL. The plaintiff Mr. Delfino's own words endorse the commissioner as "the right man for the job," "a fantastic commissioner" who "made a wrong call on a decision." There is simply no evidence that the commissioner failed to act honestly and in good faith with a view to the best interests of the IBL.

[48] The measure of what level of care, diligence, and skill that a reasonable person would exercise in comparable circumstances includes consideration of the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury: *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201, at para. 28. In this case, the commissioner conducted as thorough and thoughtful an investigation into the protest filed by the plaintiffs that the time constraints and voluntary nature of the position would reasonably permit. The governance documents of the IBL make no reference to financial profitability of member teams through their participation in the league. Financial profit, while not prohibited, is not a stated objective of the IBL. The commissioner was not required to consider the potential gravity of loss of profit by the plaintiffs in considering the question of Mike Wagner's player eligibility. The commissioner exercised the care, diligence, and skill that a reasonably prudent person would exercise in the same circumstances, as a decision-making official in an amateur sports league.

[49] The commissioner did not breach the standard of care required of him in his position as an officer. The IBL did not breach the standard of care owed to the plaintiffs by failing to intervene in the commissioner's reasonable decision. The defendants are not liable to the plaintiffs in negligence.

Natural Justice and Procedural Fairness

- [50] The plaintiffs argue that they were denied natural justice and procedural fairness by the manner of the commissioner's investigation and decision.
- [51] The most basic requirements of natural justice are notice, opportunity to make representations, and an unbiased tribunal: *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165. Natural justice is not itself a source of jurisdiction. Rather, where there is a legal right at issue, natural justice may be relevant to whether the legal right was violated: *Aga*, at paras. 30-31.
- [52] Procedural fairness is context-specific and is determined on the individual circumstances of each case. The following non-exhaustive factors are relevant to determining what the duty of procedural fairness requires in a given set of circumstances:
1. The nature of the decision being made and the process followed in making it: The more the circumstances resemble judicial decision making, the more likely it is that procedural protections closer to a trial model will be required by the duty of fairness;
 2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates: Greater procedural protections may be required when there is no right of appeal;
 3. The importance of the decision to the affected individuals: Decisions that are more important to the lives of those involved require more stringent procedural protections;
 4. The legitimate expectations of the person challenging the decision: It is generally unfair for decisionmakers to act in a manner which contravenes representations as to procedure or to backtrack on substantive promises without significant procedural rights;
 5. The choices of procedure made by the decisionmaker, particularly where the statute leaves to the decisionmaker the ability to choose its own procedure: Important weight must be given to the choice of procedure in the context of institutional constraints: see *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 24-28.
- [53] Notice and bias are not raised as issues in this case. Rather, the plaintiffs assert that "a hearing" was not held and they were not given sufficient opportunity to make representations.
- [54] The principle of *audi alteram partem* requires decisionmakers to "hear" both sides before deciding a dispute, but a "hearing" can take many forms. In this case, minimal guidance is provided in the governance documents as to the method of hearing of protests, and hearing is not defined. The governance documents appear to provide that:

1. The commissioner has discretion to determine whether a protest will be heard. Notification of any hearing will be by email.
2. The parties to the protest will be given an opportunity to participate in a hearing via conference call chaired by the commissioner.

[55] The process of appointing a commissioner to regulate disputes in a baseball season is tailored specifically to address the speed with which decisions must be made, the voluntary nature of the organization, and the objective level of importance of those decisions. The adjudication process is necessarily far less onerous than that required in judicial and quasi-judicial proceedings.

[56] In this case, I am satisfied that the process was fair to all parties involved in the protest. Both sides were permitted to submit documents and make representations to the commissioner in writing and via teleconference. The commissioner conducted an independent investigation and consulted with appropriate sources. The commissioner gave written reasons which clearly articulated the basis of his conclusion. The protest was conducted in a timely and thoughtful manner. I am not satisfied that the plaintiffs were deprived of natural justice. The process followed by the commissioner to determine the protest was procedurally fair to all parties.

Loss of Chance/Opportunity

[57] The plaintiffs claim that, but for Mike Wagner's participation in games 4, 6, and 7 of the playoffs, Brantford would have advanced to the second round of playoffs. There are too many variables and contingencies in sport for this court to predict the outcome of those baseball games, in the theoretical absence of Mike Wagner, with any measure of confidence. However, having found that the defendants were not in breach of contract and were not negligent, it is unnecessary to address the evidence and arguments raised by the plaintiffs regarding their alleged loss of chance or opportunity to obtain an economic benefit or avoid an economic loss.

CONCLUSION

[58] The parties are strongly urged to resolve the issue of costs.

[59] Accordingly:

1. The plaintiffs' claim is dismissed.
2. If the parties are unable to resolve the issue of costs:
 - a. The party seeking costs shall serve and file written cost submissions, not exceeding 5 double-spaced pages in length (hyperlinked to applicable case law), in addition to a bill of costs and any relevant offer(s) to settle by August 7, 2025; and

- b. The party responding to a request for costs shall serve and file written responding cost submissions, not exceeding 5 double-spaced pages in length (hyperlinked to applicable case law), in addition to a bill of costs and any relevant offer(s) to settle by August 28, 2025.

L. Bale, J.

Date Released: July 14, 2025

CITATION: Delfino v. Intercounty Baseball League, 2025 ONSC 4165
COURT FILE NO.: CV-17-00000316-0000
DATE: 2025-07-14

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Lee Anthony Delfino and Standing O Entertainment
Group Inc.

Plaintiffs

– and –

The Intercounty Baseball League and John Kastner

Defendants

REASONS FOR JUDGMENT

L. Bale, J.

Date Released: July 14, 2025