

Ontario Lacrosse Association Defeats Competitor's Motion for Injunction

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27 February 2023

Competition amongst sporting organizations vying for eligible, talented athletes is commonplace. Accordingly, organizations take steps to ensure that their procedures, as established through means such as by-laws and regulations, are set up in a manner which best achieve this goal. However, organizations must be mindful that their procedures should remain outside the law and have a strong legal underpinning because they can potentially be vulnerable to challenge through the courts.

In *The Tewaaron Lacrosse League v. Ontario Lacrosse Association*, 2022 ONSC 3592 (CanLII), the Tewaaron Lacrosse League ("TLL") sued the Ontario Lacrosse Association ("OLA") for interference in economic relations by unlawful means and sought an interlocutory injunction to prohibit the OLA from stripping the OLA membership from any athletes who played in a competing league.

The OLA is the provincial governing body for the sport of lacrosse in Ontario and receives financial support from the Ontario government.

The TLL is a newly established five-team box lacrosse league whose goal is to establish itself as the premiere major junior box lacrosse program in North America for athletes between 18 to 23 years of age who may aspire to play professional lacrosse. However, the TLL was not a member of the OLA or of Lacrosse Canada.

The crux of the TLL's claim against the OLA was that it was being economically injured because OLA Regulation 6.07 undermined its ability to recruit top-calibre athletes who aspired to play for Team Ontario and/or Team Canada. In addition to losing OLA membership, athletes playing in a competing league could lose their eligibility to play for Team Ontario and/or Team Canada.

Even though the TLL was not a member of the OLA, it contended that the impugned OLA Regulation was oppressive, *ultra vires* OLA's by-laws, a restraint of trade, a breach of contract between the athletes and the OLA and a contravention of the *Competition Act*. It contended that the OLA had made an announcement of its intention to enforce the Regulation, which resulted in the TLL suffering alleged economic harm. Thus, the TLL sought the interlocutory injunction to suspend the effects of Regulation 6.07 and to stop the OLA's interference with the TLL's operations.

In response to the interlocutory injunction motion, the OLA submitted that it should be dismissed because the TLL had not satisfied the test for either a mandatory interlocutory injunction or a prohibitory interlocutory injunction.

The Supreme of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) ("*RJR-MacDonald*") established a three-part test that courts were required to consider on a motion for an interlocutory injunction.

First, a court must consider whether the moving party has shown that there is a serious issue to be tried. This factor sets a low threshold, which typically negates the need for any preliminary intensive review of the merits. However, where a party seeks to obtain a mandatory order or mandatory injunction, a higher, strong *prima facie* case, threshold must be established. The higher threshold requires a more careful assessment of the merits of the moving party's case.

Second, a court must consider irreparable harm. The irreparable harm analysis entails a consideration of whether damages will be provide the moving party with an adequate remedy, without the need for an interlocutory injunction. The moving party must adduce clear, and not speculative, evidence showing that irreparable

harm will result if an injunction is not granted.

Third, a court is obligated to assess the effect on the parties of granting or not granting the interlocutory injunction under what is called the balance of convenience test. This analysis contemplates determining which party will suffer the greater harm from the granting or the refusal to grant an interlocutory injunction pending a decision on the merits.

The motion judge found that since the TLL was seeking a prohibitory rather than mandatory injunction, it was only required to establish a serious issue to be tried in its claim for an injunction for interference in economic relations by unlawful means. However, the TLL was unable to meet this low threshold.

The motion judge noted that the TLL's action was based on an intentional tort and that while intent to harm was easy to plead, it was notoriously difficult to prove. Further, intentional interference with economic relations was a narrow tort which generally did not operate to interfere with competition between rivals in the same business trade.

There was no evidence that the OLA had targeted the TLL with amendments it had made to the Regulation or that its announcement to enforce the amended Regulation or even previous versions of the Regulation was enough to establish a serious issue to be tried.

Although the emergence of the TLL had been a catalyst for the making of amendments and the OLA's announcement, the motion judge found that the Regulation had been in existence for five decades and that even if there had been no amendments the plight of the TLL would have been the same.

The TLL and OLA were simply competing leagues that were entitled to compete for players and entitled to act in their own best interests. The motion judge specifically found that "Competitors are entitled to act in their own self-interest and to occasion economic harm on their rivals, and the tort of intentional infliction of economic harm is a narrow exception to that regulation of the marketplace."

Accordingly, the motion judge found that there was no serious issue to be tried because the TLL's claim for intentional interference with economic relations was simply unviable.

Similarly, the motion judge found that the claims of oppression, *ultra vires* regulations, restraint of trade, breach of contract between the athletes and the OLA, and a contravention of the *Competition Act* were also of doubtful merit.

The motion judge also found that the TLL's request for an interim injunction would have been dismissed because the balance of convenience weighed in favour of the OLA.

In that regard, the granting of an injunction would have substantially destabilized the OLA. The motion judge explained that the OLA teams and its approximately 33,000 members had invested time, money and energy in the organization as a result of its structure and the acute stability that the structure had provided. If the Regulation was suspended, players would be free to leave and re-join the OLA at any interval of their choosing, which would harm OLA teams and athletes due to the uncertainty of being able to field a competitive team, or a team at all.

In contrast, the TLL remained free to compete for players with the lure of better training and competition, and the possibility of establishing a better connection to professional leagues. The TLL also retained the freedom to schedule its own playing season so that it did not overlap with that of the OLA.

The balance of convenience also favoured the OLA because the TLL required players to field only five teams for one league, while the Regulation was designed for the governance of 66 lacrosse associations, competing in 13 leagues. Accordingly, the OLA would be more harmed by the granting of the injunction than the TLL would be harmed by the dismissal of its motion.

This case is important because, in addition to succinctly re-affirming the law as it relates to the test for interlocutory injunctions, it shows that while sports organizations such as the OLA should be cognizant of the potential to have their procedure, rules and regulations challenged in the court, judges will generally be reluctant to interfere with their internal affairs. It remains to be seen whether the TLL's action against the OLA or whether the dismissal of the injunction will effectively end the litigation. A PDF version is available for download [here](#).

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