

The Stanley Cup: The Unintended Legal Impacts of Hockey's Greatest Prize

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“In summertime village cricket is the delight of everyone.”² Lord Denning’s colourful opening to *Miller v Jackson* is known by all who have studied law in Canada and is perhaps the most well-known example of the impact of sports on the common law. But it should come as little surprise to anyone in Canada that a different Lord would have a more extensive role in our jurisprudence.

In 1893, Frederick Stanley, 16th Earl of Derby and formerly Governor General of Canada - but more commonly known to hockey fans everywhere as “Lord Stanley” - donated a silver rose bowl to be awarded to the winner of the Dominion Hockey Challenge. Nearly 130 years later, the Stanley Cup continues to be a part of the fabric of Canadian society. Given its prominence in the minds of Canadians, it is of little surprise that the Stanley Cup has found its way into nearly every aspect of Canadian jurisprudence:

- *Criminal Law* - The Alberta Queen’s Bench commented that the venue in which someone convicted of sexual assault serves their conditional sentence was as important as the term: “[I]t cannot be disputed that there is a dramatic qualitative difference between a conditional sentence served in one’s home or in the community and one actually served in prison. Indeed, the difference is so great that there is hardly a comparison. To illustrate, one need only think of Kain serving his sentence at home, watching the Stanley Cup Playoffs on a large-screen colour t.v., yelling to his roommate to get him another beer while he’s up; and then think of David, who at the same time was serving his sentence in prison, not able to watch the hockey game because it was on after lights-out and not able to ask his cell-mate for a beer.”³ The riots that followed the Vancouver Canucks’ Stanley Cup losses to the Rangers (1994) and Bruins (2011) yielded a large number of reported decisions.
- *Tax Law* - The tax court has considered whether pension income received from the National Hockey League Pension Society located in Montreal was taxable in Canada for players who spent their entire careers playing for American teams. The challenge of making and succeeding in the playoffs was noted: “Even for players like the Appellants, who had exceptionally long professional sports careers, playoffs occur by chance. Making playoffs depends on coaches, other players, a lack of serious injuries and other teams’

¹ Special thanks to Leo Rebello, Student-At-Law at Dutton Brock LLP for his research and to Randy Maniloff, “NCAA Tournament and Courts (Of Law)”, Coverage Opinions, Vol 6, Iss 3 for inspiring this article.

² *Miller v Jackson*, [1977] EWCA Civ 6, para 1.

³ *R v Charters*, 2004 ABQB 533, para 39 per Martin J., as he was then.

successes or failures. At times the Appellants made the playoffs, but at other times they didn't, despite their plans, skills and hard work.”⁴

- *Family Law* - NHL players are not immune from the breakdown of a marriage. Dave Bolland, who scored the Stanley Cup-winning goal for the Chicago Blackhawks in 2013, raised issues of residency and jurisdiction.⁵ Meanwhile, Chris Simon, who was a member of the 1996 champion Colorado Avalanche, was ordered to pay increased child support after a significant increase in his playing salary.⁶

It is tort law that the impact of the Stanley Cup on Canadian culture can be seen most significantly. Unsurprisingly, alcohol has played a role in many incidents which occurred following a Stanley Cup finals game. An intoxicated pedestrian was struck and seriously injured on his way home by a driver who had himself been drinking after watching the Calgary Flames and the Tampa Bay Lightning on TV in 2004.⁷ Two men were involved in a single vehicle collision after watching the 2012 Finals between the Los Angeles Kings and the New Jersey Devils at a local restaurant. Both the plaintiff passenger and the defendant driver had been overserved by the restaurant, which was offering a draft beer special.⁸

Not all of the relevant tort cases involve inebriated fans. Joshua Morrow was drafted by the Nashville Predators in 2002 but his hockey career ended prematurely due to a medical error while undergoing shoulder surgery.⁹ The Supreme Court of British Columbia was required to quantify the past and future income loss in the context of a medical malpractice claim. The court noted the difficulty assessing hypothetical earnings given the uncertainty in a young hockey player's career trajectory, particularly when even “those highly skilled in the area have difficulty predicting an outcome for a player”.¹⁰ To illustrate the point, the court took judicial notice that Martin St. Louis, 2004 Stanley Cup champion on the Tampa Bay Lightning, has enjoyed a highly successful career despite never being drafted in the NHL.¹¹

However, the top Stanley Cup references were undoubtedly scored at the expense of the Toronto Maple Leafs. Faced with a motion to dismiss a civil action for delay 22 years after it was commenced, Justice Paul Howard provided a recap of the events that shaped the world in

⁴ *Nanne and Mikita v The Queen*, [1999] TCJ No 871, para 15. Nikolai Khabibulin, the starting goaltender for the 2004 Stanley Cup champion Tampa Bay Lightning is the subject of another notable tax case involving the taxation of a signing bonus and the application of the Canada/USSR Income Tax Convention. See *Khabibulin v The Queen* (1999), [2000] 1 CTC 2061.

⁵ *Bolland v Bolland*, 2016 ONSC 4390.

⁶ *Simon v Simon* (1999), 46 OR (3d) 349 (CA), leave to appeal to SCC refused.

⁷ *Knibb v Foran*, 2017 ABQB 375.

⁸ *Hummel v Jantzi*, 2019 ONSC 3571.

⁹ *Morrow v Outerbridge*, 2009 BCSC 433. See *Mori v Weeks*, 2001 BSC 1094 in which the court found that the evidence of the plaintiff's prospects of playing professional hockey were not established but nonetheless awarded \$25,000 in non-pecuniary damages for the plaintiff's loss of opportunity to continue his hockey career. See also *Saunders v Rempel*, 2019 BCSC 2177, paras 44 - 49.

¹⁰ *Morrow v Outerbridge*, 2009 BCSC 433, para 268.

¹¹ In addition to winning the Stanley Cup, Martin St. Louis was the NHL's leading scorer on two occasions, won the Hart Trophy for the most valuable player, the Lester B. Pearson award for peer-chosen most valuable player, and Lady Byng Memorial Trophy for most gentlemanly player on three occasions, played in six all-star games, won an Olympic Gold Medal and was elected to the Hockey Hall of Fame in 2018.

1993 - the brief tenure of Prime Minister Kim Campbell, the finale of Cheers, the first public access to the World Wide Web and the Blue Jays' second World Series Championship.¹² But his comments on the state of the NHL best demonstrated the passage of time - and perhaps His Honour's personal frustrations:

The Toronto Maple Leafs had lost the conference finals earlier that spring, four games to three, to the Los Angeles Kings, who themselves were defeated by the Montreal Canadiens in the next and final round of the Stanley Cup playoffs. (Leaf fans had only just begun to learn to use decades to count the intervals since their team had last won the Cup.)¹³

Similarly, Justice Jody Fraser of the Court of Queen's Bench of Alberta commented on the Maple Leafs' lack of recent Stanley Cup success when discussing the challenges of defining "reasonable and probable grounds" in the context of an arrest and the issuance of a search warrant. His Honour held: "Where exactly it lies between a balance of probabilities and a reasonable suspicion is still a topic of debate. It may be similar to debating how many angels can dance on the head of a pin, or if the Leafs will ever win another Stanley Cup."¹⁴

So while nearly every village in the UK may have its own cricket field where the young men play and the old men watch, an entire nation remains fixated on the holy grail of hockey, Lord Stanley's Cup.

¹² "Touch 'em all Joe!" per Tom Cheek.

¹³ *Meriano v Benoot*, 2016 ONSC 4839, para 6.

¹⁴ *R v Gomez*, 2020 ABQB 439, para 50.