



ACTION NO. **N-187329**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHRISTIAN WAGNER

PLAINTIFF

AND:

CLINTON ANDREW PEARCE AND SCOTT RUSSELL LA BELLE

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff.

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(a) If the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, CHRISTIAN WAGNER, has an address for delivery at B20 - 980 Howe Street, Vancouver, in the Province of British Columbia.
2. The Defendant, CLINTON ANDREW PEARCE, whose occupation is unknown, resides at 18 - 855 Howard Avenue, in the City of Nanaimo, in the Province of British Columbia (the "Defendant Pearce").
3. The Defendant, SCOTT RUSSELL LA BELLE, whose occupation is unknown, resides at 461 8th Street, in the City of Nanaimo, in the Province of British Columbia (the "Defendant La Belle").
4. On or about September 1, 2017, at or near the intersection of 5th Street and Georgia Avenue, in the City of Nanaimo, in the Province of British Columbia, a motor vehicle owned by the Defendant La Belle and being negligently driven by the Defendant Pearce struck and collided with a motor vehicle driven by the Plaintiff, as a result of which the Plaintiff has suffered serious injury, loss and damages (the 'Collision').
5. As a result of the Collision and negligence of the Defendants, and each of them, the Plaintiff has sustained serious physical injuries as follows:
 - a. concussion;
 - b. post-concussion syndrome, including slowed auditory processing, dizziness, light sensitivity, noise sensitivity, difficulty concentrating, eye strain, drowsiness and fatigue;
 - c. headaches;
 - d. injury to his neck;
 - e. numbness in right leg;
 - f. sleep disruption;
 - g. post-traumatic stress disorder;
 - h. anxiety; and
 - i. such other injuries as shall be proven at trial.

all of which injuries have caused and continue to cause the Plaintiff pain, suffering, loss of enjoyment of life, permanent physical disability, loss of earnings, past and prospective, loss of income earning capacity, loss of opportunity to earn income and loss of housekeeping capacity, past and prospective.

6. As a further result of the injuries sustained in the Collision, the Plaintiff will be more susceptible to future injury and degenerative changes.

7. As a further result of the Collision and of the negligence of the Defendants, and each of them, the Plaintiff has sustained certain special damages, loss and expense for medical treatment and the Plaintiff continues to undergo such medical care and treatment and continue to sustain loss and expense thereby, particulars of which will be delivered upon request.

Part 2: RELIEF SOUGHT

- B. The Plaintiff claims against the Defendants, and each of them, for:
- a. special damages;
 - b. general damages;
 - c. damages for loss of earning capacity, loss of earnings, loss of opportunity to earn income;
 - d. damages for diminished housekeeping capacity;
 - e. damages for future care costs;
 - f. 27;
 - g. Interest pursuant to the *Court Order Interest Act*, RSBC 1996 c. 79;
 - h. costs; and
 - i. such further and other relief as to this Honourable Court seems just.

Part 3: LEGAL BASIS

9. The Collision was caused by the negligence of the Defendant Pearce, particulars of which are as follows:
- a. in failing to yield the right-of-way;
 - b. in driving into the path of a motor vehicle when the motor vehicle had the right-of-way to proceed through the intersection;
 - c. in disobeying an applicable traffic control device, to wit, a traffic light;
 - d. in proceeding to drive the motor vehicle through an intersection without ascertaining or without properly ascertaining, that the movement could be made in safety and/or without interfering with any other motor vehicles at or near the intersection;
 - e. in entering the intersection in violation of Section 129 of the *Motor Vehicle Act*, RSBC 1996, c. 318; and amendments thereto;

- f. in failing to keep any, or in the alternative, an adequate lookout;
 - g. in driving at an excessive rate of speed, or in the alternative, at a rate of speed that was excessive in the circumstances;
 - h. in driving without any, or in the alternative, with defective brakes;
 - i. in failing to keep the motor vehicle under proper or in the alternative, any control;
 - j. in failing to take reasonable or proper or any precaution to avoid the Collision;
 - k. in driving the motor vehicle without due care and attention or without reasonable consideration for other persons using the highway and contrary to the provisions of the *Motor Vehicle Act*, RSBC 1996, c. 318 and amendments thereto;
 - l. in operating the motor vehicle while the Defendant's ability to do so was impaired by alcohol, drugs, fatigue or any combination of the foregoing;
 - m. in driving or operating a motor vehicle while using an electronic device, contrary to section 214.2(1) of the *Motor Vehicle Act*, RSBC 1996, c. 318, and amendments thereto;
 - n. in driving or operating a motor vehicle while communicating by means of an electronic device with another person or another device by electronic mail or other text-based message, contrary to section 214.2(2) of the *Motor Vehicle Act*, RSBC 1996, c. 318, and amendments thereto; and
 - o. in failing to ensure that the motor vehicle that the Defendant operated was mechanically sound.
10. The said Collision was caused by the negligence of the Defendant LaBelle, particulars of which include failing to ensure that the motor vehicle which the Defendant Pearce operated was mechanically sound.
11. The motor vehicle driven by the Defendant Pearce was owned by the Defendant LaBelle and was driven by the Defendant Pearce with the express or implied consent of the owner, and the Plaintiff pleads the provisions of section 86 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, and amendments thereto.
12. The Plaintiff pleads the provisions of the *Negligence Act*, RSBC 1996, c. 333 and amendments thereto.
13. The Plaintiff relies on the following enactments:
- a. *Motor Vehicle Act*, RSBC 1996, c. 318, and amendments thereto;

- b. Negligence Act, RSBC 1996, c. 333 and amendments thereto; and
- c. Court Order Interest Act, RSBC 1996, c. 79, and amendments thereto.

Plaintiff's address for service:	RICE HARBUT ELLIOTT LLP Barristers and Solicitors 820 - 980 Howe Street Vancouver, BC V6Z 0C8
Fax number address for service (if any):	(604) 682-0587
E-mail address for service (if any):	Nil
Place of trial:	Vancouver, B.C.
The address of the registry is:	800 Smithe Street, Vancouver, B.C. V6Z 2E1

Date: 12/June/2018



Signature of John M. Rice
 Plaintiff Lawyer for Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A motor vehicle accident which occurred on or about the 1st day of September, 2017, at or near the intersection of 5th Street and Georgia Avenue, in the City of Nanaimo, in the Province of British Columbia, as a result of which the Plaintiff has suffered serious injury, loss and damages (the 'Collision').

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

1. *Motor Vehicle Act*, RSBC 1996, c. 318, and amendments thereto;
2. *Negligence Act*, RSBC 1996, c. 333 and amendments thereto; and
3. *Court Order Interest Act*, RSBC 1996, c. 79, and amendments thereto.

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]