

(PRECEDENT STATEMENT OF CLAIM "B")

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Plaintiffs

- and -

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the rules of court, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE

GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

DATE:

Issued

by _____
Local Registrar

Address of court office:

10th Floor
393 University Avenue
Toronto, Ontario
M5G 1E6

TO:

AND TO:

C L A I M

1. The Plaintiffs claim:

A. AS TO THE PLAINTIFF, *****:

- (a) damages in the amount of \$1,000,000.00;
- (b) prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) his costs of this action together with applicable Goods and Services Tax payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (d) such further and other relief as to this Honourable Court may seem just.

B. AS TO THE PLAINTIFF, *****:

- (a) damages in the amount of \$50,000.00, pursuant to the provisions of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended;
- (b) prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) his costs of this action together with applicable Goods and Services Tax payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (d) such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff, ***** , resides in the City of Brampton, in the Province of Ontario, and was at all material times a pedestrian within the meaning of the *Highway Traffic Act*, R.S.O. 1990, c. H. 8, as amended.

3. The Plaintiff, *****, resides in the City of Brampton, in the Province of Ontario, and is the son of the Plaintiff, *****. This Plaintiff brings this action pursuant to the provisions of the *Family Law Act*, R.S.O. 1993, c. F.3, as amended, for his pecuniary and non-pecuniary losses arising as a result of the injuries sustained by *****(name of main plaintiff).
4. The Defendant, *****, resides in the City of Brampton, in the Province of Ontario and was at all material times the operator of a 1990 Ford motor vehicle bearing Ontario License Plate Number***** (hereinafter referred to as the “Defendants’ motor vehicle”).
5. The Defendant, *****, resides in the City of Brampton, in the Province of Ontario and was at all material times the owner of the Defendants’ motor vehicle.
6. On or about the 23rd day of March, 2001, the Plaintiff, *****, was walking in a careful and prudent manner southbound across Windmill Boulevard in the pedestrian crosswalk at or near its intersection with Steeles Avenue West, in the City of Brampton. At or about the same time, the Defendants’ motor vehicle was proceeding in a northbound direction on Windmill Boulevard, when suddenly and without warning it made a left turn onto Steeles Avenue, striking the Plaintiff, *****, and causing him serious and permanent personal injuries as hereinafter described.

7. The Plaintiffs claim that the casualty aforementioned was caused as a result of the joint and/or several negligence of the Defendant, *****, for whose negligence the Defendant, *****, is in law responsible, and the negligence of the Defendant, *****, the particulars of which are as follows:

A. AS TO THE DEFENDANT, ***** :

- (a) he failed to yield the right of way to the Plaintiff, *****, to which he was entitled under the circumstances;
- (b) he made a lefthand turn onto Steeles Avenue without first ascertaining that he could do so in safety;
- (c) he failed to keep a proper lookout;
- (d) he was travelling at an excessive rate of speed considering the circumstances and as such he could not control the Defendants' motor vehicle within his range of vision;
- (e) he failed to keep the Defendants' motor vehicle under proper control;
- (f) on the occasion in question he was an incompetent driver lacking in reasonable skill and self-command and ought not to have attempted to operate a motor vehicle;
- (g) he failed to have the brakes on the Defendants' motor vehicle in proper working order or, in the alternative, he failed to apply them properly or at all;
- (h) he failed to give any warning to the Plaintiff, *****, of the approach of the Defendants' motor vehicle although such warning was reasonably necessary under the circumstances;
- (i) he failed to slow down or stop or turn sufficiently to the right or left so as to avoid striking the Plaintiff, *****,

- (j) he could have and should have seen the Plaintiff, *****, approaching and he could have and should have avoided the accident;
- (k) he failed to take reasonable care to avoid an accident which he saw or should have seen was likely to occur;
- (l) he failed to exercise due care and skill in the management of the Defendants' motor vehicle;
- (m) he failed to observe the rules of the road as required by Parts IX and X of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended;
- (n) he had the last clear chance to avoid the collision and failed to avail himself of that chance;
- (o) he made an unexpected manoeuvre without giving a proper warning;
- (p) he failed to have the Defendants' motor vehicle in a fit and proper condition, suitable for its safe operation on a highway;
- (q) he attempted to suddenly cross the path of the Plaintiff, *****, when he knew or ought to have known it was unsafe and dangerous to do so;
- (r) he failed to give any adequate signal or warning to the Plaintiff, *****, of his approach or intended course;
- (s) by the exercise of reasonable care he might have and could have seen the Plaintiff and could have avoided the accident;
- (t) he voluntarily permitted himself to arrive at such a condition, resulting from the consumption of alcoholic beverages, or from fatigue, that his normal faculties, apperception, will and judgement were impaired to such an extent that when driving a motor vehicle he was a menace to himself and to the public;
- (u) he permitted himself to arrive at such a condition from drinking alcoholic beverages, or absorbing drugs, or from fatigue that his normal faculties, apperception, will and judgement were so affected that he no longer had the capacity to operate a motor vehicle with the caution characteristic of a reasonably careful driver who has not consumed such beverages or absorbed

such drugs or who is not compromised by fatigue;

- (v) he was operating his cellular or mobile telephone and as such failed to observe the Plaintiff, *****.

B. AS TO THE DEFENDANT, *****:

- (a) she failed to have the Defendants' motor vehicle in a fit and proper condition, suitable for its safe operation upon a highway;
- (b) she permitted the Defendant, *****, to operate the Defendants' motor vehicle when she knew or ought to have known that, under the circumstances, ***** was an incompetent driver lacking in reasonable skill and self-command who ought not to have attempted to operate the Defendants' motor vehicle;
- (c) she permitted the Defendant, *****, to operate the Defendants' motor vehicle when she knew or ought to have known that he was incapable of operating the Defendants' motor vehicle with the caution and care necessary having regard to the traffic and weather conditions there and then existing;
- (d) she failed to have the brakes, steering mechanism and/or other equipment on the Defendants' motor vehicle in a proper working order;
- (e) she negligently entrusted the Defendants' motor vehicle to the Defendant, *****, when she knew or ought to have known that he had an extensive driving record and was a poor driver.

8. The Plaintiffs further plead that the Defendant, *****, was charged with the offense of making an improper left turn contrary to subsection 141(5) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, as a result of the aforesaid motor vehicle accident and was convicted of that charge. The Plaintiffs plead and rely on this Defendant's conviction under the *Highway*

Traffic Act and plead that ***** is estopped from denying that he made an improper left turn contrary to subsection 141(5) of the *Highway Traffic Act*, R.S.O. 1990 c. H. 2, as amended.

9. As a result of the casualty aforementioned, the Plaintiff, *****, sustained serious and permanent personal injuries including a closed head injury, a loss of consciousness, a fracture to the fourth cervical spine, sUBLUXATION of the fifth and sixth cervical spine, bilateral pelvic rami fractures, a left acetabular fracture and lacerations to his head together with a general tearing and straining of the muscles and ligaments throughout his body. ***** has suffered from and continues to suffer from dizziness, headaches, difficulty concentrating, pain in the pelvis, pain in the shoulders, neck, trunk and thighs, difficulty walking, and pain and weakness in the left leg. These injuries have been accompanied by great pain and suffering and profound physical and emotional shock. ***** enjoyment of life has been irretrievably lessened and his ability to earn a livelihood caring for his grandchildren has been and remains permanently impaired.

10. As a further result of the casualty aforementioned, the Plaintiff, *****, has been required to undergo a lengthy stay in hospital as well as an extensive course of rehabilitation. In addition, he has been required to ingest medications. This Plaintiff has been put to medical, hospital, health care and other out-of-pocket expenses, the full details of which are not

available at the time of the issuance of the Statement of Claim. This Plaintiff undertakes to provide full particulars of the out-of-pocket expenses prior to the trial of this action.

11. The Plaintiffs state that ***** has sustained permanent serious impairments of important physical, mental or psychological functions and/or permanent serious disfigurement within the meaning of Section 267.5(5) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, such that the Defendants are liable for all of the injuries and losses sustained by the Plaintiffs as a result of the aforementioned motor vehicle accident.

12. The Plaintiffs further state that ***** has sustained a catastrophic impairment within the meaning of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, arising directly or indirectly from the use and operation of the Defendants' motor vehicle such that the Defendants are liable for the damages for health care expenses that ***** has incurred and will incur in the future arising as a result of the aforementioned motor vehicle accident.

13. As a result of the casualty aforementioned, the Plaintiff, *****, has been deprived of the care, guidance and companionship normally provided by the Plaintiff, ***** . This Plaintiff claims damages for the loss of past and future care, guidance and companionship pursuant to the provisions of

the *Family Law Act*, R.S.O. 1990, c. F. 3, as amended. This Plaintiff has also provided and/or paid for nursing, housekeeping and other services to and for ***** and consequently is entitled to compensation for the value and the cost of services performed. The particulars of these claims will be provided prior to the trial of this action.

14. The Plaintiffs further plead and rely on the *Negligence Act*, R.S.O. 1990, c. N. 1., as amended, and the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

The Plaintiffs propose that this action be tried at the City of Toronto.

DATE OF ISSUE: The day of November, 2001.

BOGOROCH & ASSOCIATES
Barristers and Solicitors
Suite 1707
Sun Life Centre
150 King Street West
Toronto, Ontario
M5H 1J9

RICHARD M. BOGOROCH
Tel: 416-599-1700
Fax: 416-599-1800
Law Society Registration No. 22973 H

Solicitors for the Plaintiffs

- and -

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

STATEMENT OF CLAIM

BOGOROCH & ASSOCIATES
Barristers & Solicitors
Suite 1707
150 King St. West
Toronto, Ontario
M5H 1J9

RICHARD M. BOGOROCH
416-341-5600
Fax No. 416-599-1800
Law Society Registration No. 22973 H

Solicitors for the Plaintiffs
(10-254 TSC/ss)