

2011 01G 0013 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:**

HUGH GEORGE and BEN BELLOWS

PLAINTIFFS

**AND:**

HER MAJESTY THE QUEEN IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR

DEFENDANT

BROUGHT UNDER THE *CLASS ACTIONS ACT*  
BEFORE THE HONOURABLE MR. JUSTICE RICHARD LEBLANC,  
CASE MANAGEMENT JUDGE

**AMENDED STATEMENT OF CLAIM**

(Amended pursuant to Rule 15.01 of the *Rules of the Supreme Court, 1986*)

1. The Plaintiff Hugh George, age 59, was a carpenter foreman with Newfoundland and Labrador Housing at the date of the moose/vehicle collision described herein. He resides at PO Box 346, Dildo, NL, A0B 1P0.
2. The Plaintiff Ben Bellows, age 54, was a maintenance worker with a school board at the date of moose/vehicle collision described herein. He resides at PO Box 102, Mount Moriah, NL, A0L 1J0.

3. The Plaintiffs make this claim against the Crown as of right, pursuant to the *Proceedings Against the Crown Act*, R.S.N.L. 1990, c. P-26.
4. In this Statement of Claim, the terms “highway” and “motor vehicle” have the meaning defined by the *Highway Traffic Act*, RSNL 1990, c. H-3, ss. 2(aa) and (oo), specifically:
  - (a) “highway” means a place or way, including a structure forming part of the place or way, designed and intended for, or used by, the public for the passage of traffic or the parking of vehicles and includes all the space between the boundary lines of the place or way;
  - (b) “motor vehicle” means a vehicle propelled, driven or controlled otherwise than by muscular power, other than a trailer or a vehicle running upon fixed rails.

#### ***Nature of the Problem***

5. The moose is the largest species of the deer family, typically inhabiting boreal and mixed deciduous forests of the Northern Hemisphere in temperate to sub-arctic climates.
6. An adult Newfoundland moose may be six to seven feet high at the shoulder, while females may weigh over 800 pounds and males over 1000 pounds.

7. A typical moose can eat up to 70 pounds of food per day, consisting of terrestrial and aquatic vegetation, including fresh shoots from trees such as balsam fir, willow, birch, and trembling aspen.
  
8. Large ice sheets covered the island of Newfoundland in the last glaciation, and wiped it clear of life. Various plant and animal species colonized the island after the retreat of the glaciers about 18,000 years ago, but the moose was not one of these, and is therefore not classified as a native species. The wolf was a native species and a natural moose predator, but was known to be extinct or near extinction on the island by the start of the twentieth century. In the early 1900's, the Defendant decided to bring moose to the island for the purpose of releasing them and populating the island. Moose are therefore an exotic and invasive species brought to the island deliberately by the Defendant, knowing that no natural predator (other than black bears which prey on very young calves only) was present to keep a check on numbers. The Defendant introduced moose at a time when Newfoundland had a highway system and motor vehicles and the potential for moose vehicle collisions was apparent.
  
9. Moose have a large, heavy body and long legs, which makes them particularly dangerous when hit by the type of motor vehicles often referred to as passenger cars. In collision at highway speeds (roughly 70 to 110 kph), a car's bumper and front grill typically will break the moose's legs, causing the body of the moose to clear the car's hood and deliver the bulk of the body weight into the windshield, crushing the windshield, front roof

support beams, and anyone in the front seats. Such collisions may result in fatality, severe head injury, spinal cord injury, and severe trauma to operators and occupants.

10. Wildlife management practices of the Defendant have allowed the moose population on the island to reach numbers in the range of 120,000 to 200,000, depending on the estimate, causing widespread environmental damage, far exceeding the carrying capacity of the land and multiplying the danger of moose collision for users of the highways.

10.11. Highway maintenance practices undertaken by the Defendant include mitigation measures such as warning signs designating portions of the highways as high risk for moose vehicle collisions, driver education campaigns, and highway corridor brush cutting. The Defendant knows, and has known or ought to have known throughout the Class Period, that these measures are ineffective and unsupported by scientific research.

### *Injuries of the Representative Plaintiffs*

11.12. On August 5, 2010 at approximately 20:30 hours, Hugh George was returning home travelling west on the Argentia access road near Placentia Junction, when the motor vehicle in which he was operator and sole occupant struck a moose. The Plaintiff was travelling below the speed limit and was very familiar with the highway.

12.13. As a result of the collision, the Plaintiff suffered a hemorrhage deep within the brain. He has suffered a prolonged hospital admission and left hemiparesis with complete loss of use of his left arm. He presently can ambulate for short distances with a four point cane,

but must be supported by an assistant. For the most part, he is confined to a wheelchair and may be unable to return to his occupation as a carpenter foreman. Modifications are being made to his home to accommodate his disabilities, and he will need care related to his injuries for the rest of his life.

~~13.~~14. On July 10, 2003 at approximately 9:45 hours, Ben Bellows was returning home after bringing his daughter Crystal to St. John's. He was travelling west on the Trans Canada Highway 10 kilometers west of Clarendville, when the motor vehicle in which he was operator and sole occupant struck a moose. The Plaintiff was travelling below the speed limit, at 92 kph, and was familiar with the highway.

~~14.~~15. As a result of the collision, the Plaintiff Ben Bellows suffered a complete injury to his cervical spine at C6-7, and quadriplegia. He endured a prolonged hospital admission and is confined to bed or a wheelchair. He has enormous needs for care, and neither he nor his wife Helen Bellows have been able to return to gainful employment. His care needs are being supplied by his wife Helen, and by respite care supplied by government services. Helen is consequently unable to be gainfully employed outside the home. Ben Bellows subsists with Helen on benefits provided by government programs.

~~15.~~16. The Plaintiffs Hugh George and Ben Bellows bring this claim as representatives of the class defined herein.

***Tort of Strict Liability***

~~16.17.~~ The Plaintiffs say that the Defendant is strictly liable for the conduct of the abnormally hazardous activity of introducing and managing a non-native invasive species, the moose, to the island of Newfoundland, and the Representative Plaintiffs and class members claim damages for personal injury as set out in the class definition.

~~17.18.~~ The hazardous activity of introducing and managing an invasive species has been pursued for profit or the purpose of the Defendant, who can afford to furnish compensation to the victims of its acts and omissions, and it is fair and just that strict liability should be imposed.

~~18.19.~~ In traditional *Rylands v. Fletcher* terms, the Defendant has turned over Crown lands to a non-natural use, namely the pasturing of a non-native invasive species, and the invasion of highways by this species constitutes an escape. In traditional *scienter* terms, the release of moose into the wilds of insular Newfoundland constitutes an escape by a wild animal from the Defendant's control, and physical damage to users of the highways has been the result.

~~19.20.~~ The Plaintiffs say that the principle of strict liability is not limited to actions between adjoining landowners and applies to claims of personal injury such as the present.

### ***Tort of Public Nuisance***

~~20.21.~~ The Plaintiffs say the importance of highways and of the public right of safe and unimpeded use of highways has been recognized from earliest times, and where an

interference with that right occurs and affects a substantial number of persons, a public nuisance will exist.

~~21-22.~~ The Plaintiffs and the members of the class defined herein have suffered special or particular injury or damage by reason of the Defendant's introduction and management of a non-native invasive species, the moose, which has substantially and continuously interfered with the public right of safe and unimpeded use of highways on the island of Newfoundland, and they claim personal injury damages in tort of public nuisance.

### *Tort of Negligence*

~~22-23.~~ The Defendant is at fault or negligent in the introduction of moose to the island, and in its management of moose and highway safety thereafter. Particulars of this fault or negligence include, but are not limited to, the following:

- (a) introducing a non-native invasive species with no effective natural predator;
- (b) constructing and maintaining a modern highway system without adequate consideration to moose/vehicle safety issues;
- (c) failing to implement measures designed to promote moose/vehicle highway safety when the scope and severity of the problem became known, for example, animal fencing with safe passageways for animals and animal presence warning systems

at termination points, which measures have been implemented in adjacent and distant jurisdictions;

- (d) following a moose management strategy based on high animal densities and maximum hunter success, thereby allowing the moose population to exceed environmental limits and materially increase the risk to users of the highways;
- (e) failing to properly collect and assemble data on the frequency and location of moose/vehicle collisions to enable decisions to be made which promote safety;
- (f) failing to properly account for the costs of its moose management strategy in moose collision-related property loss, human injury and death;
- (g) failing to implement properly the mitigation measures which the Defendant has adopted, such as vegetation control along highways;
- (h) failing to respond to user complaints of imminent danger from moose near highways;
- (i) failing to implement mitigation measures which have been recommended, such as a spring cull (when calves are driven away by cow moose) along high risk highways; and

- (j) failing to implement driver awareness programs of sufficient impact and longevity to be effective.

~~23.~~24. The Plaintiffs say that decisions of the Defendant surrounding moose management and highway safety in relation to moose are operational decisions and do not amount to policy decisions as understood in the law of negligence. Alternatively, if they are policy decisions, they have been made in bad faith or are so patently unreasonable as to exceed proper governmental discretion.

~~24.~~25. As to all the above, the Plaintiffs say that moose/vehicle collisions on the highways of the island of Newfoundland are not acts of God or nature, but acts of government, and the Defendant is legally responsible for the damage caused.

### *The Class*

~~25.~~26. The Plaintiffs take this class proceeding on behalf of persons or the estates of persons who were admitted as inpatients to a hospital and on behalf of the estates of persons who are deceased as a result of a collision or near collision with a moose, while operating or occupying a motor vehicle on a highway in the island portion of Newfoundland and Labrador. Accidents within the two insular national parks are excluded.

~~26.~~27. Close family members of such persons or estates have suffered a loss of care, guidance and companionship and this proceeding is taken on behalf of a family class as well.

***Limitations***

27-28. The Plaintiffs plead that the running of time for limitation purposes has been postponed in relation to the Plaintiffs and class members on the basis that they did not know or, considering all circumstances of the matter, ought not to have known that they had a cause of action.

28-29. The Plaintiffs state that some members of the class are or have been persons under a disability by reason of being less than 19 years of age, or by reason of being incapable of the management of their affairs because of disease or impairment of their physical and mental condition. The Plaintiffs state that the running of time with respect to any limitation period is postponed so long as such persons are or have been under a disability.

29-30. The Plaintiffs additionally state that any limitation period has been postponed or suspended by reason of the equitable doctrine of concealment, whereby the Defendant has failed to disclose to the Plaintiffs and class members, information which in good conscience it ought to have disclosed.

30-31. And the Plaintiffs claim:

- (a) an order certifying the proceeding as a class action;
- (b) special damages to be determined;
- (c) general damages;
- (d) interest pursuant to the *Judgment Interest Act*, RSN 1990, c. J-2;

(e) such other relief as this Honourable Court deems just.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 21<sup>st</sup> day of April, 2011.

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**CHES CROSBIE BARRISTERS**  
Solicitors for the Plaintiffs whose  
address for service is:  
169 Water Street, 4<sup>th</sup> Floor  
St. John's, NL A1C 1B1  
*Per: Chesley F. Crosbie, Q.C.*

**TO: DEPARTMENT OF JUSTICE – CIVIL DIVISION**  
Solicitors for the Defendant  
4<sup>th</sup> Floor, East Block, Confederation Building  
PO Box 8700  
St. John's, NL A1B 4J6  
*Attention: Rolf Pritchard*