

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between

Arland Richard Bruce

Plaintiff

and

Mark Steven Cohon,
Leo Ezerins,
B.C. Lions Football Club Inc.,
Edmonton Eskimo Football Club,
Calgary Stampeders 2012 Inc.,
Saskatchewan Roughrider Football Club Inc.,
Winnipeg Blue Bombers,
The Hamilton Tiger-Cat Football Club,
Toronto Argonauts Football Club Inc.,
Compagnie Club de Football des Alouettes de Montréal,
The Canadian Football League (CFL) Alumni Association,
Charles H. Tator,
Krembil Neuroscience Centre

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
- (d) 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, Arland Richard Bruce, is an unemployed professional football player and has an address for service at 18th Floor, 777 Dunsmuir Street, Vancouver, British Columbia.
2. The defendant, Mark Steven Cohon (“Commissioner Cohon”), is the commissioner of the Canadian Football League from 2007 to the present, with a business address at 50 Wellington Street East, 3rd Floor, Toronto, Ontario.
3. The defendant, Leo Ezerins (“Leo Ezerins”), is the founder and executive director of the CFL Alumni Association and lives in Hamilton, Ontario.
4. The defendant, B.C. Lions Football Club Inc. (“BC Lions”), is a company incorporated under the laws of British Columbia, with its registered office at 1500 - 1055 West Georgia Street, Vancouver, British Columbia.

5. The defendant, Edmonton Eskimo Football Club (“Edmonton Eskimos”), is a company incorporated under the laws of Alberta, with its registered office at 2900, 10180 – 101 Street, Edmonton, Alberta.
6. The defendant, Calgary Stampeders 2012 Inc. (“Calgary Stampeders”), is a company incorporated under the laws of Alberta, with its registered office at 2400, 525 – 8 Avenue SW, Calgary, Alberta.
7. The defendant, Saskatchewan Roughrider Football Club Inc. (“Saskatchewan Roughriders”), is a company incorporated under the laws of Saskatchewan, with its registered office at 1463 Albert Street, Regina, Saskatchewan.
8. The defendant, Winnipeg Blue Bombers (“Winnipeg Blue Bombers”), is a company incorporated under the laws of Manitoba, with its registered office at 315 Chancellor Matheson Road, Winnipeg, Manitoba.
9. The defendant, The Hamilton Tiger-Cat Football Club (“Hamilton Tiger-Cats”), is a company incorporated under the laws of Ontario, with a head office address at Roger Y. Achetti, 154 Main Street East 100, Hamilton, Ontario.
10. The defendant, Toronto Argonauts Football Club Inc. (“Toronto Argonauts”), is a company incorporated under the laws of Ontario, with its registered office address at Robert Nicholson, 212 King Street West, Suite #501, Toronto, Ontario.
11. The defendant, Compagnie Club de Football des Alouettes de Montréal (“Montréal Alouettes”), is a company incorporated under the laws of Quebec, with an address at 1260, Rue University, 1er etage, Montreal, Quebec.
12. The defendant, The Canadian Football League (CFL) Alumni Association (“CFLAA”), is a Canadian company having a registered office at 6050, 166th Street, Surrey, British Columbia.
13. The defendant, Charles H. Tator (“Dr. Tator”), is the Project Director of the Canadian Sports Concussion Project at the Krembil Neuroscience Centre, Toronto Western Hospital, with a business address at Primary LAB, Toronto Western

Hospital, Krembil Discovery Tower, 7KD 406, 60 Leonard Avenue, Toronto, Ontario.

14. The defendant, Krembil Neuroscience Centre (“KNC”), is a health care facility specializing in treating patients with diseases and injuries to the brain, spinal cord and eyes, with an administrative office at R. Fraser Elliott Building, 1st Floor, 190 Elizabeth Street, Toronto, Ontario.

(Collectively referred to as the Canadian Sports Concussion Project”)

15. At all material times, the CFL is an unincorporated association consisting of separately owned and independently-operated professional football teams which operate out of 9 different cities in Canada.
16. The CFL is engaged in interprovincial promotion, operation, organizing, and regulating the major professional football league in Canada.
17. At all material times the BC Lions, Edmonton Eskimos, Calgary Stampeders, Saskatchewan Roughriders, Winnipeg Blue Bombers, Hamilton Tiger-Cats, Toronto Argonauts, and Montreal Alouettes were the franchised teams of a professional sports league known as The Canadian Football League (the “Teams”).
18. The CFL is a legally distinct and separate entity from both the other teams and the Teams.
19. The CFL is not, and has not been, the employer of the Plaintiff, who was employed during the material time with the BC Lions and the Calgary Stampeders.
20. At the material time the CFL has received and provide funding for medical advice from medical consultants including but not limited to Dr. Tator, the Canadian Sports Concussion Project, The CFLAA and Leo Ezerins, including but not limited to the health risks associated with playing football, including the health risks associated with concussive and sub-concussive injuries.

21. At all material times, Dr. Tator, The Canadian Sports Concussion Project, Leo Ezerins, and the CFLAA was engaged as the agent, trustee, servant, joint venture, contractor, and/or employee for the purpose of promoting concussion awareness, prevention, management and research.
22. On September 29, 2012, the plaintiff was playing a football game for the BC Lions against the Saskatchewan Roughriders (the “Game”) at the Mosaic Stadium in Regina, Saskatchewan.
23. The plaintiff was knocked unconscious for several minutes after colliding with Saskatchewan Roughrider, Milt Collins during the game. (the “Incident”).
24. On November 18, 2012, the Plaintiff was permitted to return to play in the CFL West Division Final against the Calgary Stampeders despite still suffering from the effects of concussion.
25. On November 18, 2012, the Plaintiff, during the course of the CFL West Division Final, sustained multiple sub-concussion and concussive hits while playing the position of wide receiver.
26. Further, despite displaying the ongoing effects of concussion to medical professionals and coaching staff was permitted to return to play in the 2013 CFL season for the Montréal Alouettes.

The Canadian Football League (the “CFL”)

27. The CFL oversees Canada’s professional football league, acting as an association for the benefit of 9 independently operated teams.
28. Since its inception the CFL has governed and promoted the game of football, by acting as the governing body, establishing the rules related to player health and safety, league policies and team ownership.
29. The CFL from its inception has adopted the role of protecting the players, informing players of safety concerns and imposing unilaterally, a wide variety of rules to protect the players from injuries.

30. The CFL generates revenue through marketing, sponsorship, licensing, merchandise, and by selling national broadcasting rights to the games.
31. The CFL teams share a percentage of the CFL's overall revenue.
32. The CFL has enormous influence over the game of football at all levels of the game because of their financial strength, monopoly status and high visibility.
33. The CFL has expanded their influence over Canada to all levels of football generally through their use of media, and mass communications medium.
34. Part of the CFL's marketing strategy to promote CFL football is to glorify the brutality and ferocity of CFL football, in part by lauding the most brutal plays and ferocious players and collisions, while also taking on a leadership role in the promotion of concussion awareness, prevention, research and treatment.
35. On June 28, 2008, the CFL launched the CFL mission statement:
"This Is Our League"
36. Over a song written by Neverending White Lights called "Always," a media announcer explains the meaning of the mission statement as follows:

"This is a league of fast and crush where there is no safety in a sideline."...
"This is a league of black and blue"...
"This is a league of sons and daughters and mothers and fathers" ...
"This is a league you do more than cheer you belong"
"This is a league as diverse as our country" ...
"This is my league and it's your league this is our league" ...

Emphasis added
37. A list of pictures and video created by the CFL glorifying violent hits is posted on the CFL website (www.CFL.ca) which includes but is not limited to a yearly "Top 10 Hits"
38. The numerous images and videos on the CFL website contain numerous explicit examples of how the CFL market and glorify the violent nature of the CFL.

39. Simultaneously, the CFL threatens to fine players for hits that are characterized as “illegal and dangerous” while making a profits off of promoting these types of hits.

The Representation of the CFL made by Commission Cohon

40. On May 3, 2011, in Toronto, Ontario, Commission Cohon publically announced the CFL was voluntarily taking on a leadership role to promote concussion awareness, prevention, management and research (the “Campaign”).
41. Commissioner Cohon was joined at the Campaign by representatives of Football Canada, the umbrella organization for minor football, Canadian Interuniversity Sport (CIS), the Canadian School Sport Federation, The Canadian Football League Players Association, (CFLAP), Leo Ezerins, Executive Director of the Canadian Football League Alumni Association (CFLAA), Dr. Charles Tator the director of the Canadian Sports Concussion Project, and Matt Dunnigan, the spokesperson for ThinkFirst, described as a national charitable foundation dedicated to the prevention of brain and spinal cord injuries founded by Dr. Charles Tator.
42. Commissioner Cohon represented that the goal of the Campaign was as follows:
- (a) distribute simple to follow “concussion flyers and posters” to hundreds of thousands of athletes and coaches across the country.
 - (b) ensure the basic but all important information is on every coach’s clipboard, posted in every team’s locker room, and available to every parent and player.”

Emphasis added

43. Distribution of the concussion awareness flyers and posters was aimed at 100,000 kids playing pee wee minor football, 3,200 high schools with 750,000 athletes playing football and other sports and 52 universities with 2,000 football players and 8,500 other student athletes.

44. The concussion awareness poster and flyer state the following:



(the “Concussion Initiative”)

45. Commissioner Cohon made the following statement at the Campaign: “ ...Our sport, with a long and proud history in Canada, is an integral part of the fabric of this nation, so we feel a special obligation to learn all we can and lead whenever and wherever we can.”

46. At the Campaign the CFL Alumni voluntarily committed to work to make the game safer through best practices to give back to the game.

47. At the Campaign Commissioner Cohon and the CFL announced the following initiatives:

- (a) All teams must follow a standard protocol for assessing concussions known as SCAT2, developed by experts in the international medical community.
- (b) Ensure the league keeps accurate records on concussions by using a computerized system that is leading technology in the sports industry.
- (c) All CFL roster players be submitted to minimum baseline cognitive testing with the IMPACT system during training camp.
- (d) Rules and discipline procedures, when it comes to things such as spearing and blatant hits to the head, are designed to prevent injury.
- (e) All player concussion assessments are left solely and strictly in the hands of team medical personnel and therapists; coaches have no influence over when an athlete is to be cleared to play.
- (f) Coaches stress importance of players keeping their heads up at all times, a point reinforced with coaches and players by league officials after reviewing game tapes each week.
- (g) Constantly assess advances in helmet technology or any other innovation that would promote player health and safety.
- (h) Supports research being conducted by medical professionals such as Dr. Charles Tator.
- (i) All CFL players will receive educational materials to aid in recognizing signs and symptoms of concussion.
- (j) Administrations from all levels of football report a pronounced change in the “culture” from the expectation that the player “get back in there” to one that encourages the players to be honest about the symptoms and coaches to err on the side of extreme caution.

Emphasis added

48. At the Campaign Commissioner Cohn made the following statements:

- (a) The CFL has been looking at ways to improve concussion treatment for years.

- (b) The CFL has brought in standardized concussion treatment procedures, and the new computerized system will help even more.
- (c) A key element of the CFL's concussion procedure is enhancing the distinction between football and medical personnel, and making sure that medical personnel are the ones making decisions about when players can return, one of the most critical areas in addressing concussions.
- (d) There is a "clear" delineation between the football people and the medical staff. Commissioner Cohon stated: "The football people don't want to be involved with this."
- (e) The CFL's efforts were not occurring in a vacuum.
- (f) The CFL was paying close attention to what was going on in the NFL and in American research institutions like Boston University's Center for the Study of Traumatic Encephalopathy.
- (g) The CFL planned to share information from the concussion studies they were involved in America.
- (h) The CFL has a "very solid relationship with the NFL."
- (i) The CFL will share the concussion information they gather with people at the NFL, with our colleagues on the panel, with anyone who plays any sport.
- (j) Unreported concussions are far less of a problem in the CFL than they used to be, which is a positive sign that things are starting to change.
- (k) Every concussion is being reported and being dealt with.
- (l) The doctors and therapists can be trusted.
- (m) The teams can be trusted to report concussion.
- (n) Players realize how serious concussions are because of the increased awareness of concussion and its long term effects.
- (o) The CFL culture has changed.
- (p) Player safety plays a crucial role in the most recent collective bargaining agreement negotiations in 2010.
- (q) Player safety was the focus of the collective bargaining negotiations.

Emphasis added

49. On September 2, 2013 Commissioner Cohon made the following statements:
- (a) What we have been doing for years is putting the right protocols in place. We actually had protocols in place on our sidelines well before the NFL had them.
 - (b) ...We're focused on making sure we're doing the right things today, and we've done that in the past...

The Canadian Sports Concussion Project

50. The Canadian Sports Concussion Project is based at the Krembil Neuroscience Centre at the University Health Network's Toronto Western Hospital.
51. Including but not limited to, the following individuals at the material time were members of the Canadian Sports Concussion Project:
- (a) Charles Tator, MD, PhD, FRCPS, neurosurgeon & Founder, Think First;
 - (b) Karen D. Davis, PhD neuroscientist;
 - (c) Lili-Naz Hazrati, MD, PhD, FRCPC neuropathologist;
 - (d) Carmela Tartaglia, MD, FRCPC neurologist in Alzheimer;
 - (e) Richard Wennberg, MD, FRCPC neurologist in Epilepsy;
 - (f) Robin Green, PhD, CPsych neuropsychologist and Canada Research Chair (Tier 2) in traumatic brain injury;
 - (g) David Levy, MD, DOHS, DipSM team doctor, Hamilton Tiger Cats
 - (h) Leo Ezerins, Executive Director, Canadian Football League Alumni Association Advisory Board;
 - (i) Matt Dunigan, spokesperson for ThinkFirst.
52. At the material time, the Canadian Sports Concussion Project represents that the organization is the world's first program dedicated to a four prong approach to concussions – research, education, diagnosis and treatment.
53. At the material time, The Canadian Sports Concussion Project represents that it is led by internationally acclaimed concussion expert, Dr. Charles Tator.

54. At the material time, The Canadian Sports Concussion Project represents that the team includes world leaders in brain injuries, imaging, genetics, clinical care and psychiatry using the repetitive concussions that occur in sports to shed light into concussions that could affect all of us
55. At the material time, The Canadian Sports Concussion Project represents that their initiative is to translate the findings to sports organizations and medical professions so the best care can be provided and all sports can be enjoyed safely.
56. The Canadian Sports Concussion Project permits you to donate your brain without participation in the clinical study.
57. On December 21, 2012, the following members of the Canadian Sports Concussion Project: Dr. Tater, Leo Ezerins, Lili-Naz Hazrati, Maria C. Tartaglia, Phedias Diamandis, Karen Davis, Robin E Green, and Richard Wennberg (the “Research Team”) submitted to *The Frontiers in Human Neuroscience* an article titled *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology.*
58. 5 months after submission, the article was accepted for publication on May 8, 2013.
59. The paper represents that although the connection between repeated concussions and CTE – type neurodegeneration had “recently been proposed” the causal relationship had not yet been firmly established.
60. The background states that the prevalence of CTE among athletes with multiple concussion was “unknown”.
61. The Research Team performed a consecutive case series of brain autopsy studies on six retired professional football players from the CFL with histories of multiple concussion and significant neurological decline.
62. The Research Team released the following findings stating that “only three” (out of 6 donors) had post mortem neuropathological findings consistent with CTE.

The three other participants had Alzheimer's Disease , Amyotrophic lateral sclerosis (ALS) and Parkinson's disease.

63. The Discussion written by the Research Team represents the following:
- (a) Our case studies highlight that not all athletes with a history of repeated concussions and neurological symptomology present neuropathological changes of CTE.
 - (b) The “preliminary findings” support the need for further research into the link between concussion and CTE as well as the need to expand the research into “other possible causes” of tauopathy in athletes.
 - (c) The results point to a “critical need” for prospective studies with “good sampling methods” to allow us to understand the relationship between multiple concussions and the development of CTE.

Dr. Charles Tator

64. Dr. Tator received his M.D. at the University of Toronto 1961 and his Ph.D. in Neuropathology at the University of Toronto 1965.
65. Dr. Tator is the founder of ThinkFirst, an injury prevention advocacy group.
66. In 2012, ThinkFirst Canada joined Safe Communities Canada, SMARTRISK, and Safe Kids Canada to create Parachute, a national, charitable organization dedicated to preventing injury and saving lives.
67. Parachute is an advocacy group and injury prevention program.
68. Dr. Tator is the project director of the Canadian Sports Concussion Project at the Krembil Neuroscience Centre in Toronto.
69. Dr. Tator is a co- author of a scientific article titled, *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology.*
70. Dr. Charles Tator was a panel member at the Campaign on May 3, 2011.

71. On May 3, 2011 Dr. Charles Tator made the following statements at the Campaign:
- (a) It is important for everyone to be properly informed when it comes to concussions, while researchers try to learn more about them.
 - (b) We are at our “infancy” in examining the issue.
 - (c) It is extremely important for scientist to be involved.
 - (d) The definition of concussion has changed over the past few years and the management of concussion, the use of exercise for example, to bring on the symptoms of concussion. We did not know that a few years ago.
 - (e) In my view this is a new ball game.
72. At the Campaign Dr. Tator made the following statement about the CFL. “I can’t praise the CFL enough for its mature response and approach to solving these issues.”
- (a) At the Campaign Dr. Tator urged parents, coaches and players to do the following:
 - Understand the signs and symptoms of concussion, including confusion dizziness and fussy vision;
 - (b) ensure the athlete never returns to play when symptomatic; and
 - (c) follow a careful and gradual medically supervised step by step protocol before returning an athlete to play.
73. At the Campaign Matt Dunnigan, the spokesman for ThinkFirst, made the following statement: *“football is a great teacher of values such as teamwork, perseverance and leadership. ...But perseverance should never be confused with bad judgment and true leadership understands there is more to sport and life than the next play. So be a great teammate: ThinkFirst”*
74. In a Canadian Press article for Sportsnet Magazine dated July 26, 2011, Dr. Tator made the following statements about the Canadian Sports Concussion Project’s research on two of four CFL players found not to have Chronic Traumatic Encephalopathy (by virtue of their testing methods”):

- (a) We have been lead to believe by other work that this condition happens to everybody who has repeated concussions.
 - (b) Our Finding is quite different....and it adds to the importance of doing further research into this, because only two of our four professional football players - all of whom had multiple concussions- were found (to have) this degenerative condition. And we don't know why this is so.
 - (c) Right now we have more questions than answers about the relationship between repeated concussions and late brain degeneration.
75. Dr. Tator made this public statement before the publication of *Absence of Chronic Traumatic Encephaloipathy in retired football players with multiple concussions and neurological symptomatology.*
76. In the publication of *Absence of Chronic Traumatic Encephaloipathy in retired football players with multiple concussions and neurological symptomatology,* the Canadian Sports Concussion Project evaluates 6 brains.

CFL Alumni Association (CFLAA)

77. The CFLAA was founded in 2008.
78. The mandate of the CFLAA is to bring former players together in friendship events and philanthropy.
79. CFLAA voluntarily took made it one of their strategic priorities is to participate in research and programs that provide insight into sport related brain injuries.
80. The CFLAA has voluntarily taken a leadership role in promoting research and awareness of brain injury and concussion.
81. The Executive Director of the CFLAA, is Mr. Leo Ezerins.

Mr. Leo Ezerins

82. Leo Ezerins is a former CFL linebacker through the 1980's.
83. Leo Exerins graduated from Whitworth College in Spokane, Washington with a BA in Economics and Business.
84. Leo Ezerins is the current executive director of the CFLAA which has approximately 1000 participants.
85. Leo Ezerins is responsible for the day to day operations of the CFLAA.
86. Mr. Ezerins is a member of the Canadian Sports Concussion Project Team in the category of Sports.
87. Mr. Ezerins is listed as a co- author of the scientific article entitled: *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology.*
88. Mr. Ezerins, a presenter at the 2nd Annual Symposium: Canadian Sports Concussion Project University Health Network. Titled *Research on the Concussion Spectrum Disorders* on Saturday January 11, 2014, characterised the importance of concussion studies for retired CFL players with a 1905 Theodore Roosevelt which states:

“Football is on trial. Because I believe in the game, I want to do all I can to save it.”
89. At the Campaign in May 2011, Leo Ezerins stated that the CFL Alumni Association supports the research of Dr. Tator and have been working with Dr. Tator and his team “actively” to find brain donors and contributing to the research committee.
90. In a seven part guest series authored by Terry Ott on *The Concussion Blog* Leo Ezerins made the following representation: “The CFLAA is not an advocacy group”.

The Plaintiff, Arland Bruce

91. At the material time, the Plaintiff was employed as a wide receiver for the BC Lions.
92. The plaintiff began his CFL career with the Winnipeg Blue Bombers in 2001.
93. After playing for the San Fransisco 49ers in 2003, the plaintiff returned to the CFL, playing for the Toronto Argonauts from 2004-2009.
94. From 2009-2011, the plaintiff was contracted to the Hamilton Tiger Cats.
95. Following the Incident, the plaintiff played for the Montreal Alouettes in 2013.
96. The plaintiff was a CFL All-Star for the 2009 and 2010 season.
97. It was known or ought to have been known by the CFL and the Teams that Mr. Bruce had sustained multiple sub- concussive and concussive injuries over the span of his 14 year career in both the NFL and CFL.
98. In the Incident, the plaintiff was knocked unconscious for several minutes.
99. After the Incident, the plaintiff had an extensive period of amnesia regarding the Incident itself and a significant period of amnesia for a time after he regained consciousness.
100. Mr. Bruce reported concussion signs and symptoms to the BC Lions medical personnel and coaching staff including but not limited to the following:
 - (a) fogginess;
 - (b) headaches;
 - (c) sensitivity to light;
 - (d) sensitivity to sound;
 - (e) memory loss;
 - (f) confusion;

- (g) dizziness;
- (h) anxiety; and
- (i) personality changes.

101. At the material time the plaintiff was quoted in the Vancouver Sun as not being 100% recovered before being cleared to play in the Canada West Final.
102. If the plaintiff did not play in the Canada West Final, which was only 49 days after the Incident, the plaintiff would not qualify to play in the Grey Cup Final.
103. The day before the 2012 Canada West Final, for the benefit of the CFL and the Teams, the plaintiff issued a message to the fans telling the general public to buy a ticket because he was coming back to play.
104. At the material time the plaintiff was exposed to experienced multiple concussive and sub concussive hits compounding the injury sustained at the time of the incident.
105. Despite ongoing symptoms of concussion the plaintiff was medically cleared to play the 2013 season for the Montreal Alouettes.
106. During the 2013 season, the plaintiff displayed symptoms and signs of concussion including but not limited to:
 - (a) forgetfulness,
 - (b) anxiety,
 - (c) paranoia,
 - (d) lack of impulse control,
 - (e) headache, and
 - (f) insomnia
107. During the 2013 season the plaintiff experienced multiple sub concussive and concussive impacts compounding the effects of the Incident.

What the Defendants Knew or Ought to have known at the Time the Plaintiff returned to play

108. At the material time the CFL, CFLAA, Leo Ezerins, Dr. Tator, and the members of the Canadian Sports Concussion Project were aware or ought to have been aware that multiple sub concussive and concussive blows to the head can lead to long term brain injury including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

The Canadian Medical Association

109. The Canadian Medical Association defined concussion as follows:

Concussion – also known as mild traumatic brain injury (TBI) - is defined as ‘A complex pathophysiological process affecting the brain, induced by traumatic biomechanical forces.’ Typically, concussion results in rapid-onset neurophysiologic and neurologic dysfunction that resolves in a spontaneous manner over a relatively short period.

The History of Concussion and CTE

110. It has been known for decades that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.
111. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in “almost 50 percent of fighters [boxers] . . . if they kept at the game long enough” (the “Martland study”).
112. The article was published in the *Journal of the American Medical Association*. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease (aka “Punch Drunk”)
113. As early as 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

114. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers. After a three year study, the Medical Advisory Board recommended, among other things,
- (a) an accident survey committee to study ongoing accidents and deaths in boxing rings;
 - (b) two physicians at ring-side for every bout;
 - (c) post-bout medical follow-up exams;
 - (d) a 30-day period of no activity following a knockout and a medical follow up for the boxer, all of which was designed to avoid the development of “punch drunk syndrome,” also known at the time as “traumatic encephalopathy”;
 - (e) a physician’s prerogative to recommend that a boxer surrender temporarily his boxing license if the physician notes that boxer suffers significant injury or knockout; and
 - (f) a medical investigation of boxers who suffer knockouts numerous times.
115. The recommendations were codified as rules of the New York State Athletic Commission.
116. In or about 1952, the *Journal of the American Medical Association* published a study of encephalopathic changes in professional boxers.
117. That same year, an article published in the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (i.e., recommending that players cease to play football after receiving their third concussion.)
118. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive decline.

119. A 1963 study by Drs. Mawdsley & Ferguson found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function.
See "Neurological Disease in Boxers," Lancet 2:795-81.
120. A 1967 study examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma. Drs. Hughes & Hendrix, "Telemetered EEG from a Football Player in Action," *Electroencephalography & Clinical Neurophysiology* 24:183-86.
121. In 1969 (and then again in the 1973 book entitled *Head and Neck Injuries in Football*), a paper published in the *Journal of Medicine and Science in Sports* by a leading medical expert in the treatment of head injuries recommended that any concussive event with transitory loss of consciousness requires the removal of the football player from play and requires monitoring.
122. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics of "Dementia Pugilistica" ("DP"), including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.
123. A 1975 study by Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered two concussions took longer to recover than those who suffered from a single concussion. The authors noted that these results could be extrapolated to athletes given the common occurrence of concussions in sports.
124. In 1973, a potentially fatal condition known as "Second Impact Syndrome"—in which re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate—was identified. It did not receive this name until 1984. Upon information and belief, Second Impact Syndrome has resulted in the deaths of at least forty football players.

125. Between 1952 and 1994, numerous additional studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*, and the *New England Journal of Medicine*, and *Lancet* warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

- (a) repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;
- (b) encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;
- (c) acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;
- (d) with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career;
- (e) immediate retrograde memory issues occur following concussions;
- (f) mild head injury requires recovery time without risk of subsection to further injury;
- (g) head trauma is linked to dementia;
- (h) a football player who suffers a concussion requires significant rest before being subjected to further contact; and,
- (i) minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

126. In the early 1980s, the Department of Neurosurgery at the University of Virginia published studies on patients who sustained MTBI and observed long-term damage in the form of unexpected cognitive impairment. The studies were published in neurological journals and treatises within Canada and the United States.

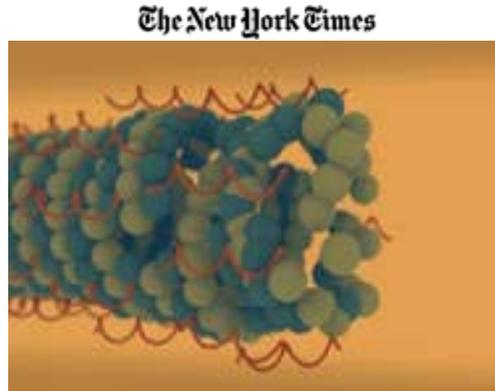
127. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered MTBI suffered pathological short-term and long-term damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second, particularly if that person was not properly treated and removed from activity so that the concussion symptoms were allowed to resolve.
128. The same studies showed that two or more concussions close in time could have serious short-term and long-term consequences in both football players and other victims of brain trauma.
129. In 1986, Dr. Robert Cantu of the American College of Sports Medicine published Concussion Grading Guidelines, which he later updated in 2001.
130. By 1991, three distinct medical professionals/entities, all independent from the NFL— Dr. Robert Cantu of the American College of Sports Medicine, the American Academy of Neurology, and the Colorado Medical Society—developed return-to-play criteria for football players suspected of having sustained head injuries.
131. By 1991, the NCAA football conferences and individual college teams' medical staffs, along with many lower-level football groups (e.g., high school, junior high school, and pee-wee league) had disseminated information and adopted criteria to protect football players even remotely suspected of having sustained concussions.
132. In 1999, the National Center for Catastrophic Sport Injury Research at the University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season.
133. In 1999, former Pittsburgh Steeler and Hall of Fame inductee Mike Webster filed with the NFL a request that he receive complete disability benefits based on the

fact that he had sustained repeated and disabling head impacts while a player for the Steelers. In 1999, Webster submitted extensive medical reports and testimony that stated, among other things, that Webster suffered from “traumatic or punch drunk encephalopathy [brain disease]” sustained from playing football that left Webster totally and permanently disabled as of 1991.

134. The NFL’s own physician independently examined Webster and concluded that Webster was mentally “completely and totally disabled as of the date of his retirement and was certainly disabled when he stopped playing football sometime in 1990.”
135. In 2001, a convention of neurological experts in Vienna, attended by Dr. Charles Tator and other leaders in the neurological field created a medical protocol that recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”
136. Mike Webster died in 2002 at the age of fifty.
137. In 2002, Dr. Bennet Omalu did the post mortem examination of Mike Webster’s brain.
138. Dr. Omalu holds four board certifications in Anatomic Pathology, Clinical Pathology, Forensic Pathology and Neuropathology.
139. Dr. Omalu is also board certified in Medical Management and is a Certified Physician Executive.
140. Dr. Omalu was the first to find physical evidence of Chronic Traumatic Encephalopathy [CTE] or dementia pugilistica in the brain as a disease entity in football players and boxers.
141. In 2006 a media wide publication stated that “all standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

142. In 2008 the Centre for the Study of Traumatic Encephalopathy at Boston University School of Medicine established the CSTE brain bank in Bedford VA Hospital to analyze the brain and spinal cords after the deaths of athletes, military veterans and civilians who had experienced repetitive mild traumatic brain injury.
143. Dr. Ann McKee is a Professor of Neurology and Pathology at VA Boston HealthCare System and Boston University School of Medicine.
144. Dr. Ann McKee is the Co-Director of the Center for the Study of Traumatic Encephalopathy, Director of the VISN-1 Neuropathology Laboratory for the New England VA Medical Centers and Director of Brain Banks for the Alzheimer Disease Center and Framingham Heart Study.
145. Dr. McKee is a board certified neurologist and neuropathologist, with a particular interest in chronic traumatic encephalopathy and other neurodegenerations that follow traumatic brain injury.
146. In 2008, in addition to the work being done by Dr. Omalu, Dr. Ann McKee found CTE in the brains of two deceased NFL players, John Grimsley and Tom McHale.
147. Dr. McKee, went on to investigate 85 donors were comprehensively analyzed for evidence of CTE as well as for other neurodegenerative diseases.
148. Evidence of CTE was found in 68 of the 85 donors, or 80%
149. One of the 85 donors who participated in the study participated in the CFL.
150. As a result of her research, Dr. McKee authored *Chronic Traumatic Encephalopathy in Athletes Progressive Tauopathy After Repetitive Head Injury* 2009 [J Neuropathol Exp Neurol](#). 2009 Jul;68(7):709-35 (the "Publication").
151. The Publication defines CTE as a progressive neurodegenerative disease that is a long-term consequence of single or repetitive closed head injuries for which there is no treatment and no definitive pre-mortem diagnosis.

152. From the Publication the following video was created to explain how the brain is damaged by CTE



Clinical Signs of CTE

153. From the Publication the following symptoms and impairments of CTE were identified as:
- (a) disorientation;
 - (b) slurred speech and problems with language;
 - (c) attention deficit;
 - (d) headaches;
 - (e) poor information processing;
 - (f) memory impairment;
 - (g) behavior and personality disturbances (e.g. depression, suicidal tendencies, apathy, poor impulse control including, drugs and alcohol gambling and sexual promiscuity);
 - (h) Psychiatric symptoms such as PTSD;
 - (i) Speech and gait abnormalities;
 - (j) symptoms of parkinsonism;
 - (k) occasionally motor neuron diseases, and
 - (l) dementia

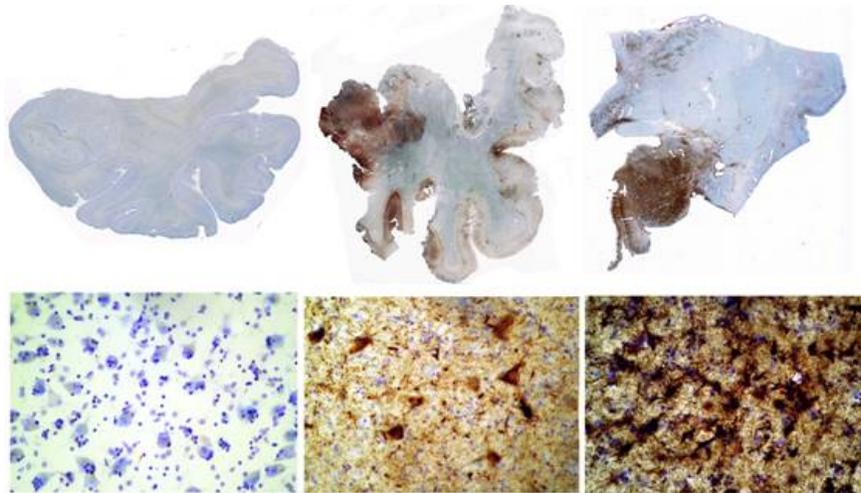
Stages of CTE

154. From the Publication the following four stages of CTE were identified as:

- (a) **Stage I:** This stage is marked by headache and loss of attention. It may also include short-term memory problems, depression, and aggressive tendencies. A couple of the individuals had had problems with executive function and explosively.
- (b) **Stage II:** In this stage, individuals were more likely to have experienced headache, attention and concentration problems, mood swings, short-term memory loss, and impulsivity. Less commonly they may have also experienced suicidal thoughts and language problems.
- (c) **Stage III:** This stage is marked by the symptoms of the previous stages, with the possible addition of visuospatial difficulties, more extensive cognitive and memory problems, and apathy. The authors say that at this stage, 75% of the individuals “were considered cognitively impaired.
- (d) **Stage IV:** This stage is commonly associated with more significant cognition problems and memory loss. “Most subjects also showed profound loss of attention and concentration, executive dysfunction, language difficulties, explosivity, aggressive tendencies, paranoia, depression, gait and visuospatial difficulties,” the authors say. Over 30% were suicidal at some point, and a few experienced problems with physical movement known as parkinsonism.

Images of CTE

155. From the Publication the pathological signs of CTE were identified as:



156. In the photograph above, the brain tissue has been immunostained for tau protein, which appears as a dark brown color.
157. Tau immunostained sections of medial temporal lobe have been obtained from 3 individuals and are identified as follows:
- (a) Top left: Whole brain section from a 65 year old control subject showing no tau protein deposition
 - (b) Bottom left: Microscopic section from 65 year old control subject also shows no tau protein deposition
 - (c) Top middle: Whole brain section from John Grimsley showing abundant tau protein deposition in the amygdala and adjacent temporal cortex
 - (d) Bottom middle: Microscopic section showing numerous tau positive neurofibrillary tangles and neurites in the amygdala
 - (e) Top right: Whole brain section from a 73 year old world champion boxer with severe dementia showing very severe tau protein deposition in the amygdala and thalamus
 - (f) Bottom right: Microscopic section from a 73 year old world champion boxer with severe dementia showing extremely dense tau positive neurofibrillary tangles and neurites in the amygdala
158. The Publication concluded that “the easiest way to decrease the incidence of CTE in contact sport athletes is to decrease the number of concussions.”

159. The Publication concluded that “there is overwhelming evidence that CTE is the result of repeated sublethal brain trauma.”
160. At the material time, it was known that Dr. Omalu, reported that CTE can only be definitively diagnosed by direct tissue examination. Without full autopsies and immunohistochemical brain analyses the cases may not be identified.
161. The Publication concluded that concussion prevention is the most compelling way to combat CTE.
162. At the material time, the Canadian Sports Concussion Project had a developed relationship with the authors of the Publication.
163. At the material time the Canadian Sports Concussion Project had access to the findings in the Publication explaining CTE.

Helmet Sensor Technology

164. At the material time the CFL, CFLAA, Leo Ezerins, Dr. Tator, and the members of the Canadian Sports Concussion Project were aware or ought to have been aware of the Riddell Revolution IQ Head Impact Telemetry System (HITS) Helmet



165. The Riddell Revolution Head Impact Telemetry System or (HITS) Helmets allow every football player on the field to monitor the number and severity of impacts received during game play.
166. The inner crown of the headgear is ringed with sensors that measure the number of hits to the head a player takes, what part of the head is contacted and the force of the impact.
167. Since 2008, the Calgary Stampeders have been using the HITS system.
168. Pat Clayton, the Stampeders medical director takes the helmet to his office and a scanner reads the data and computer software graphs a chart for him.
169. The data collected by HITS reveals that offensive linemen average between 86 and 92 hits to the head a game.
170. HITS assists the medical personnel to pinpoint the type of head contact.
171. These Riddell Revolution IQ HITS helmets contain a system of sensors that store data about the last 100 impacts a player has taken.
172. This data can later be wirelessly transmitted to a laptop for examination.
173. Up to six helmets can be linked to each HITS receiver, and players and trainers can access data with a web application for later evaluation.
174. At the material time, Commissioner Cohon was aware that the Stampeders were using the HITS system.
175. In 2011 an article on the CFL website located at, <http://www.cfl.ca/article/stampeders-investigate-head-hits> the following statements are made about the availability and use of the technology:
 - (a) All of the other teams have access to them;

- (b) If we identify a player who has a history of concussion it is in the players best interest and the interest of the team to be able to monitor that player for the rest of their career.
 - (c) Information from the HITS system lead to the retirement of CFL quarterback Dave Dickson in 2009.
176. Stampeders medical director, Pat Clayton, is quoted in the June 9, 2011 Article *Stampeders make strides on concussion research* as saying “It determined Dave Dickenson’s career. It determined he was not going to play anymore because we sat him down and said ‘look at this Dave. It was this minor of a hit that caused you this concussion, so it’s time for you to coach.’
177. The helmet costs \$999 and the HITS receiver costs \$299.
178. At the material time, the plaintiff was not aware, advised, offered or provided with the opportunity to utilize the HITS system by the CFL, the BC Lions and/or the Montreal Alouettes, th

Leo Ezerins

179. In the spring of 2011, the Hamilton Spectator enrolled 25 retired Tiger- Cats to take cognitive ImPact Tests.
180. The Spectator were advised to use the ImPact tests at the suggestion of the experts at the Dave Braley Sport Medicine and Rehabilitation Centre at McMaster University, which was involved with the Spectator’s project from inception and agreed to interpret the results.
181. Leo Ezerins was invited but declined to take the test.
182. Just after testing was complete, Leo Ezerins and former Hamilton Tiger-Cats Alumni president, Dave Lane, met with representative from McMaster and ImPact.
183. Five days after the meeting with the CFLAA and McMaster informed the Spectator that is was no longer willing to interpret the test results.

184. Leo Ezerins made the following public statement in response: “We are really protecting the CFL” ... “It is a very important issue and we want to make sure it does not reflect poorly on the game of football that we have the proper perspective.”
185. The results revealed that were interpreted revealed that 24 out of 25 scored below average in key brain function indicators.
186. Further Mr. Ezerins stated that the: “stories of concussion and its long term effects do not represent the majority of former football players”.
187. In a 7 part guest series written by Terry OTT, published on Dustin Fink’s Concussion Blog, Leo Ezerins is quoted as stating that the Boston University CTE researchers are on a “feed bag”; and his concern for concussions is more for “psychosomatic symptoms of brain injury.
188. Further, the series states that Chris Nowinski, co-founder and executive director of the Sports Legacy Institute, an organization dedicated to studying the effects of concussions and other sports related brain injuries in Massachusetts, asked Mr. Ezerins to stop “unduly antagonizing his researchers”
189. As a result of the Incident, the Plaintiff sustained injuries due to exposure to multiple sub concessive and concussive blows to the head.
190. The plaintiff's injuries have and will continue to cause him suffering, loss of enjoyment of life, permanent physical disability, loss of earning capacity, past and future, and loss of housekeeping capacity, past and future.
191. The plaintiff will be more susceptible to future injury and degenerative changes because of his injuries.
192. The plaintiff has sustained damages for the cost of medical treatment, including past and future costs of health care services to be provided in the USA and to be provided by the government of British Columbia. The plaintiff continues to

undergo medical care and treatment and continues to sustain damages, particulars of which will be provided at the trial of this action.

- (b) As a result of his injuries, the plaintiff has received and continues to receive care and services from his family.

Part 2: RELIEF SOUGHT

- 1. The plaintiff claims the following from the defendants:
 - (a) General damages;
 - (b) Special damages;
 - (c) General and special damages “in trust” for the care and services provided by his family;
 - (d) Punitive damages;
 - (e) Aggravated damages;
 - (f) Interest under the *Court Order Interest Act*, RSBC 1996, c. 79;
 - (g) Past and future costs of health care services under the *Health Care Costs Recovery Act*, SBC 2008, c. 27; and
 - (h) Costs.

Part 3: LEGAL BASIS

The CFL

Commissioner Mark Cohon

The Canadian Sports Project

Dr. Tator

The CFLAA

Leo Ezerins

The BC Lions

The BC Lions Head Coach

The BC Lions Medical Director

The BC Lions Training Staff

The Montreal Allouettes

The Allouettes' Head Coach

The Allouettes Medical Director

The Allouettes Training Staff

193.

Indeed, while the CFL knew or ought to have known for decades of the harmful effects of concussions on a player's brain, it actively concealed these facts from coaches, players, and the public.

The CFL was advised by physicians of all kinds regarding the risks associated with playing the game of football, including the risks associated with head impacts and concussion.

As described above, the CFL has known for decades that concussion can and does lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and CTE and its related symptoms.

Rather than take immediate measures to protect CFL players from these known dangers, the CFL failed to disseminate to then-current and former NFL players relevant health information it possessed regarding the significant risks associated with concussion.

At the material time the link between multiple subconcussive and concussion blows to the head was well established.

At the material time the CFL was aware of the link between multiple concussions and omitted it from the concussion initiative

At the material time the CFL was aware that “when in doubt sit out” and omitted it from the concussion initiative.

At the material time the CFL was aware of the following Helmet technology

The Calgary Stampederes had 8

The CFL’s accumulated knowledge about head injuries to players, and the associated health risks therefrom, was at all times superior to that available to the Plaintiff

The Canadian Sport Concussion Project and Dr. Tator

At the material time the Canadian Medical Association defined

The History of Chronic Traumatic Encephalopathy (“CTE”)

Dr. Tator

In an article published by Oracle in July of 2011, for the Ontario School Board Insurance Exchange, Dr. Tator made the following statements about the two of four CFL players found by the Sports Concussion Project to have Chronic Traumatic Encephalopathy: *“Often head injuries sustained in concussion which is not by itself considered catastrophic, however, when the concussion is repeated, they can have catastrophic effects such as degenerative brain conditions.*

The CLAA