

- **L. v. Jiwa, January 2019**

**Opening**

**1. Introduction**

- *Ladies and Gentlemen of the jury, good morning / afternoon.*
- *My name is Sandy Kovacs, and with me is David Gomel.*
- *We are the lawyers representing the plaintiff, Constable John L., for injuries he suffered in a pedestrian/vehicle collision.*
- *In this opening statement, I am going to summarize the issues and evidence I expect in this trial.*

**2. Rule and Consequence**

- *This trial is about a very basic and common sense rule that is meant to protect the community and keep it safe.*
- *The rule is that a driver who negligently hurts another person is required to pay for the harms and losses he or she causes.*
  - *This rule is simple – you are responsible for what you do, and if you break something, you have to fix it.*
  - *This is a fundamental value that our society shares.*
- *In this trial, you are going to be asked to apply that rule in circumstances where the defendant struck Cst. L with her SUV, causing him injuries and financial losses.*

**3. The story of what the defendant did (focus on defendant, set the scene, and never use the word “accident”)**

- *Let me take you back to March 18, 2014.*
- *It is late at night.*
- *It's raining.*
- *The defendant, Jennifer Feng Jia, is driving a Nissan SUV owned by the co-defendant, Dong Zhao.*

- *She is driving south along Royal Oak Avenue in Burnaby.*
- *She plans to turn left at Kingsway Avenue, to head east.*
- *The intersection of Kingsway and Royal Oak is a BUSY intersection.*
- *It is fully controlled by overhead traffic signals.*
- *There are marked crosswalks in all directions.*
- *There are pedestrian-controlled devices at all four corners of the intersection.*
- *Ms. Jia makes her left turn.*
- *She does so without regard to Cst. L, who is walking in the marked pedestrian cross walk, on an activated pedestrian signal.*
- *Ms. Jia crashes into the back of Cst. L.*

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- *John L is a Constable with the RCMP.*
- *At the time of this crash, he is literally in the middle of a training exercise to become an undercover officer.*
- *There are four other police officers walking directly behind Cst. L in the crosswalk – they are all engaged in the same undercover training scenario exercise.*
- *Cst. L is roughly 5' 9".*
- *At the time of the crash, he weighed 185 pounds.*
- *On impact, he is thrown through the air.*
- *He lands several meters away from the point of impact.*
- *The coins from his pockets -- his chapstick, and his other personal items -- are strewn across the road.*

- *His fellow officers are beside him within seconds.*
- *Cst. L is unresponsive.*
- *He appears severely dazed and in shock.*
- *His fellow officers try to keep him awake.*
- *But his eyes roll back into his head.*
- *His head drops.*
- *His body starts convulsing.*
- *One of the officers holds Cst. L's head, to protect it from striking the pavement.*
- *The paramedics arrive a few minutes later.*
- *They tell Cst. L's fellow officers that his condition is serious, and that they should notify his emergency contacts.*

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- *Cst. L's wife, Tamara, is at home in bed in Kelowna.*
- *She gets a call from her husband's Staff-Sergeant in the middle of the night.*
- *She is told of the collision and that it does not look good.*
- *The Staff-Sergeant and his wife come to Mrs. L's home to be by her side.*
- *They stay there until the early hours of the morning.*

#### **4. Liability**

- *This past Friday, the defendants formally admitted 100% fault for this Crash, and that Cst. L does not share any of the blame.*

## 5. Damages – injuries, Harms and Losses

- *But the defendants continue to deny the Crash caused any or any significant injury or harm to Cst. L.*
  1. The plaintiff, John Livingstone, sustained no injury, loss, damage or expense as a result of the collision.
- *You are here today because Cst. L will say his experience is quite different from what the defendants plead. (NOTE: Pleadings do not go before a jury and this is potentially dangerous ground)*
- *Cst. L was diagnosed with several injuries resulting from this Crash, including:*
  - *A concussion;*
  - *Chronic back pain;*
  - *Depression;*
  - *Anxiety; and*
  - *Post traumatic stress disorder*
- *Cst. L will say he has followed the medical advice from his treating physicians and therapists, as best he could. Since the crash, he has had:*
  - *65 physiotherapy treatments;*
  - *11 massage therapy treatments; and*
  - *16 counselling sessions with a registered psychologist. He continues to pursue counselling today.*
- *Cst. L also dedicated himself to a daily rigorous exercise regimen in order to regain his physical health after the car crash. He continues with this exercise regimen today.*
- *It has now been nearly five years since the Crash.*

- *But Cst. L continues to experience significant physical, psychological, and cognitive symptoms -- everyday.*
- *These lasting injuries affect his functioning – both at work, and at home.*

## **6. Impact of Injuries on Work**

- *Cst. L is now 54 years old.*
- *You will hear that he is from British Columbia; he grew up in North Delta.*
- *Cst. L married young and had two sons in his 20s. He obtained work in the automotive service to support his young family.*
- *Remarried to his new wife Tamara, who supported and encouraged him to pursue his dreams, when he was 39 years of age – with his two boys in his care and a new baby on the way -- Cst. L made the leap to pursue his life-long dream of joining the RCMP.*
- *In July 2005 Cst. L graduated from RCMP Depot.*
- *He was posted to Penticton; his entire family relocated there from Nanaimo. He started off as a General Duties officer, but in pursuit of his ultimate plan to work on serious crime matters, he joined the Drug Section at the first opportunity.*
- *In 2010, just five years into his RCMP career, Cst. L and his family were moved to Kelowna so that he could join a newly created and highly specialised unit), called CFSEU (the Combined Forces Special Enforcement Unit), in a plainclothes investigator role.*
  - *The mandate of this unit was to investigate organized crime. It was part of a multi-jurisdictional task force funded by the Province.*
- *In 2012, Cst. L started the long application process to become an Undercover Operator.*
- *It was Cst. L's ambition to work as an undercover officer because he could then be involved in investigating the highest level, complex, cases in policing – the most serious crimes, homicides, including unsolved cold cases.*
- *He knew this was a challenging path. He was hungry for that challenge.*

- *Cst. L finally travelled to Vancouver in March, 2014, to finish the last level of the undercover course: an intense, three-week-long covert program of challenging scenario-based testing.*
- *He was nearly half way through when the crash happened on the night of March 18, 2014.*
- *Cst. L has no memory of the events at the scene of the crash, immediately following impact. His first memory is of waking up in hospital. Even there, his recall of events is not clear.*
- *You will hear from him about his experience during the acute phase of his recovery.*
- *You will hear about the darkness. The pulsing headaches. The light sensitivity. The fatigue. The body pains, including severe back pain. The isolation. The anxiety he was feeling about being away from work, especially since he had what some might call “invisible” injuries. He had no casts, no bandages, no wheelchair. But he was far from well.*
- *Appreciating the optics, and feeling both self-imposed and external pressure to return to his duties, Cst. L went back to work at CFSEU just 2 months after the crash.*
- *You will hear from the occupational health nurse who was assigned by the RCMP to help Cst. L navigate through his graduated return to work. Her name is Patti Parker. She will speak to the symptoms he was continuing to report throughout his return to work process.*
- *You will also hear from Cst. L himself about the challenges he experienced with his return-to-work process. His symptoms did not resolve. But he pushed through.*
- *Then he got his second chance. The RCMP invited him to return to the Undercover Course the following year. He took his second chance.*
- *But he had to start the course again, right from the beginning. He did not hesitate to do this because he did not want to give up on his career ambitions. Undercover work is his calling.*
- *But you will hear that Cst. L found the course much more difficult this time around, especially when it came time to undergo the exact same scenario test he was performing at the time of the crash the year before.*
- *Nevertheless, he successfully completed the course, in the spring of 2015.*

- *He was then called on to join the Undercover Operations Unit, headquartered in Surrey.*
- *In November 2015 Cst. L sold his house in Kelowna, and once again his family followed him, this time to Abbotsford, so that he could begin his work in the Undercover Unit.*
- *The casework in the Undercover Unit is unique. It is a highly specialised unit that offers – requires – significant overtime hours. This translates to surplus income.*
- *You will hear from some of Cst. L's colleagues about that overtime income, in their experience resulting in increased earnings of 50-60% over and above the base salary, sometimes even higher.*
- *Unfortunately, Cst. L found the job very difficult due to his injury symptoms, including chronic back pain, headaches, forgetfulness, low mood, anxiety, and a decreased ability to cope with stress.*
- *He lasted one and a half years in the Unit. The increase in his symptoms caused by the stress of his work in the Unit took a serious toll on his overall health, and on his family at home.*
- *In July 2017, to salvage his health and his marriage, Cst. L had little choice but to transfer out of the Undercover Unit. But his options were limited.*
- *He found an opening with the Chilliwack detachment, as a general duties officer. He found himself back at square one, attending to domestic dispute calls and breaking up bar fights. This was a significant step backwards in Cst. L's career.*
- *Six months later, in March 2018, a plainclothes investigator's opening came up in Chilliwack's Serious Crime Unit. He remains in that role today.*
- *This job still involves a significant amount of stress – he is dealing with emotionally distressing cases, including child pornography offences – but the stressors are not as constant. He is also able to take "on call" assignments, on his own terms, from the undercover work pool, allowing him some rest between stressful assignments.*
- *But this new arrangement is still stressful – and it does not offer nearly as much overtime as the Undercover Unit did. Cst. L is left earning less than what he would have had he been able to stay in the Undercover Unit.*
- *But Cst. L's lost earnings are not confined to overtime.*

- *The entire trajectory of his career was altered by the crash.*
- *You will hear evidence about the negative impact his injuries have had on his promotability, and his pension.*
- *Cst. L continues to struggle with even his existing role. He is concerned about whether he will last working as a RCMP officer AT ALL for the next 11 years, until age 65, the age he planned to work until so that he could get his full pension.*

## **7. Impact of Injuries on home-life**

- *Amongst the witnesses at trial, you will also hear from medical doctors who have assessed Cst. L. They will speak to his physical and psychological injuries and the impact these have on his functioning.*
- *Cst. L's continuing injuries and symptoms have affected not only his work, but also his personal life: his life with his wife, his daughter, and his friends.*
- *Cst. L has become increasingly frustrated with his daily pain and anxiety. He is highly irritable. He no longer enjoys some of the activities he previously pursued (such as snowboarding, spending times with friends and family). He has become increasingly isolated. He spends a lot of time alone with his dog.*
- *His wife, Tamara L, will give evidence about the changes she has observed in Cst. L since the crash. She will speak the change in his personality, his mood, particularly aggravated while he was working in the undercover unit but something that continues to challenge him today. She will say that their relationship has been pushed to the brink.*
- *Tamara will explain that something had to give. She felt compelled to make Cst. L choose between her, or his undercover work, which was making him miserable at home. She will say that this was not a choice she imposed on him before the crash. In fact, she was always wholly supportive of his career before the crash, not hesitating to move both her home and her job to follow his career with the RCMP. She will say that she would prefer to have her husband back as he was before the crash, but she knows that's not reality. She and Cst. L have to learn to live, and adjust, to their new reality.*

## **8. Money**

- *At the very beginning of the opening statement I explained the basic rule that when a driver is careless and injures another person, he or she is required to compensate that person for all their harms and losses.*



- *And in our system of justice, the judge will explain that the only way to make restitution is through an award or payment of monetary damages.*
- *That's why you're here.*
- *To decide the fair and proper money damages Cst. L should receive for what he has lost because of the defendants' carelessness.*
- *And so I want to finish off by summarizing what Cst. L says he has lost, and what you will be asked to compensate him for at the end of this trial.*
- *First, Cst. L has lost money he has spent on his treatment, therapy, medication, and travel to medical appointments in the nearly 5 years since the crash. These are called "out-of-pocket expenses" or "special damages" The defendants have admitted that Cst. L should be awarded \$8,009 for his out of pocket expenses incurred to date.*
- *Cst. L will also need ongoing medical treatment and counseling for his injuries. At the end of the trial, the court will ask you to value these anticipated future medical expenses and award the amount you determine to be appropriate to compensate him for his future out-of-pocket expenses.*
- *Cst. L also missed work. He missed opportunities and lost income because of his injuries.*
  - *This includes not only the two months he missed from work, but the lost over-time from the date of the collision until present.*
  - *At the end of the case, you will be asked to value Cst. L's past wage loss and award that amount.*
- *Cst. L says his injuries have impacted his career path such that he will earn much less overtime for the remainder of his career, his promotion (if any) will likely be delayed, and the medical evidence will show there is a very real risk that he cannot last working as a RCMP officer altogether until his planned retirement at age 65. At the end of the case, you will be asked to value Cst. L's predicted lost earnings that may reasonably arise in the future, due to his injuries.*
- *These are Cst. L's pecuniary (or economic) damages for the things that the defendants have taken away. However, Economic losses are not the only kinds of losses compensated for by our system of justice.*

- *Cst. L has also lost his health. He will live with chronic injuries for the rest of his life. Cst. L has developed depression and emotional problems as a result of his injuries that affect his functioning. At the end of the case, you will be asked to value Cst. L's "pain and suffering" for his injuries and for the impact these injuries have had on his life.*
- *At the end of the trial, you will hear from me again, after you've heard all the evidence.*
- *Thank you for your attention.*