

FEB 18 2005



L050414

No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MARGARET BIRRELL

Plaintiff

AND:

PROVIDENCE HEALTH CARE SOCIETY dba PROVIDENCE HEALTH  
CARE and dba ST. PAUL'S HOSPITAL and dba THE B.C. EAR BANK,  
and VANCOUVER COASTAL HEALTH AUTHORITY dba VANCOUVER GENERAL  
HOSPITAL and dba VANCOUVER HOSPITAL and dba THE B.C. EAR BANK,  
and THE UNIVERSITY OF BRITISH COLUMBIA dba THE B.C. EAR BANK,  
and JOHN DOE

Defendants

WRIT OF SUMMONS

Brought under the *Class Proceedings Act*

(Name and  
address of  
each  
Plaintiff)

Margaret Birrell  
c/o Klein Lyons  
1100 - 1333 West Broadway  
VANCOUVER, B.C. V6H 4C1

(Name and  
address of  
each  
Defendant)

Providence Health Care Society  
1081 Burrard Street  
Vancouver, B.C.  
V6Z 1Y6

Vancouver Coastal Health Authority  
10<sup>th</sup> Floor  
601 West Broadway  
Vancouver, B.C.  
V5Z 4C2

The University of British Columbia  
2329 West Mall  
Vancouver, B.C.  
V6T 1Z4

John Doe

**ELIZABETH THE SECOND**, by the Grace of God, of the United Kingdom, Canada and Her  
other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

TO the Defendant(s): Providence Health Care Society, Vancouver Coastal Health Authority, The University of British Columbia and John Doe

**TAKE NOTICE** that this action has been commenced against you by the Plaintiff(s) for the claim(s) set out in this writ.

**IF YOU INTEND TO DEFEND** this action, or if you have a set-off or counterclaim which you wish to have taken into account at the trial, **YOU MUST**

- (a) **GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above registry of this Court within the Time of Appearance provided for below and **YOU MUST ALSO DELIVER** a copy of the "Appearance" to the Plaintiff's address for delivery, which is set out in this writ, and
- (b) if a Statement of Claim is provided with this writ of summons or is later served on or delivered to you, **FILE** a Statement of Defence in the above registry of this court within the Time for Defence provided for below and **DELIVER** a copy of the Statement of Defence to the Plaintiff's address for delivery.

**YOU OR YOUR SOLICITOR** may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

**JUDGMENT MAY BE TAKEN AGAINST YOU IF**

- (a) **YOU FAIL** to file the Appearance within the Time for Appearance provided for below, or
- (b) **YOU FAIL** to file the Statement of Defence within the Time for Defence provided for below.

**TIME FOR APPEARANCE**

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

(or, where the time for appearance has been set by order of the court, within that time.)

**TIME FOR DEFENCE**

A Statement of Defence must be filed and delivered to the plaintiff with 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

(or, if the time for defence has been set by order of the court, within that time.)

(1)	The address of the registry is: 800 SMITHE STREET VANCOUVER BC V6Z 2E1
(2)	The plaintiff's address for delivery is: KLEIN, LYONS #1100 – 1333 WEST BROADWAY VANCOUVER BC V6H 4C1 Fax number for delivery: 874-7180
(3)	The name and office address of the plaintiff's solicitor is: David A. Klein KLEIN, LYONS #1100 – 1333 WEST BROADWAY VANCOUVER BC V6H 4C1

The plaintiff's claim is for general and special damages for injuries, loss and expense suffered as a consequence of the receipt of human tissue and/or bone supplied by the B.C. Ear Bank. The plaintiff makes this claim on her own behalf and on behalf of all other persons who are recipients of tissue and/or bone from the B.C. Ear Bank.

The B.C. Ear Bank is a transplant tissue bank located at St. Paul's Hospital in Vancouver, British Columbia. St. Paul's Hospital is part of Providence Health Care which is owned and operated by Providence Health Care Society. The B.C. Ear Bank is operated under the supervision of The University of British Columbia's division of otolaryngology. The B.C. Ear Bank, which has operated since in or about 1974, was first located at Vancouver General Hospital. Vancouver General Hospital is now Vancouver Hospital which is operated under the supervision and authority of the Vancouver Coastal Health Authority. The B.C. Ear Bank was moved into Shaughnessy Hospital which is now closed. The Plaintiff does not presently know the identity of the entity that has legal responsibility for the liabilities of Shaughnessy Hospital. John Doe has been named for that entity. Responsibility for the B.C. Ear Bank was transferred to St. Paul's Hospital in or about 1993 and the B.C. Ear Bank was relocated to the St. Paul's Hospital site in or about 1995.

The B.C. Ear Bank collected, processed, sterilized and stored bone and tissue and then sent these materials to hospitals across Canada and to the United States for transplant purposes. Reviews of the operations of the B.C. Ear Bank revealed that the B.C. Ear Bank has incomplete and inadequate documentation as to whether proper screening and other procedures were conducted to prevent the transmission of HIV or Hepatitis B or Hepatitis C to transplant recipients. On or about February 19, 2003, a recall was issued of all tissues and bones distributed by the B.C. Ear Bank. In addition, hospitals and physicians were notified that they should contact transplant recipients of materials distributed by the B.C. Ear Bank for appropriate patient follow up and testing.

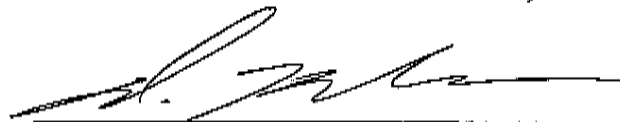
In or about 1994, the plaintiff received an ear tissue transplant with materials supplied by the B.C.

Ear Bank. In January 2005, the plaintiff received a letter from her physician informing her of the documentation problems at the B.C. Ear Bank and advising her that she should undergo testing for HIV, Hepatitis B and Hepatitis C.

The Defendants owed a duty care to the plaintiff and to all other recipients of tissue and/or bone supplied by the B.C. Ear Bank. The Defendants were negligent in their operation and supervision of the B.C. Ear Bank. The Defendants' employees, servants and agents owed a duty of care to the plaintiff and to all other recipients of tissue and/or bone supplied by the B.C. Ear Bank. The Defendants' employees, servants and agents were negligent in the operation of the B.C. Ear Bank and the Defendants are responsible for the negligence of their employees, servants and agents. As a result of the negligence of the Defendants and of their employees, servants and agents, the plaintiff and other recipients of tissue and/or bone from the B.C. Ear Bank have suffered injury, damage, loss and expense.

The plaintiff also claims court order interest, costs, and such further and other relief as to this Honourable Court may seem just.

Dated: February 18, 2005



Solicitor for the Plaintiff

This WRIT OF SUMMONS is issued by David A. Klein of the firm of KLEIN LYONS, Barristers and Solicitors, whose place of business and address for service and delivery is 1100 – 1333 West Broadway, Vancouver, BC, V6H 4C1, Telephone: 604-874-7171