SUPREME COURT OF NOVA SCOTIA
Citation: *Fendley v. Omura*, 2015 NSSC 260

Date: 20150922
Docket: Halifax No. 339680
Registry: Halifax

Between:

Dorothy Fendley

Plaintiff

v.

Dr. Daniel Omura and Dr. Alvin G. Kelly

Defendants

Judge:	The Honourable Justice Arthur W.D. Pickup
Heard:	July 21, 2015 in Halifax, Nova Scotia
Counsel:	Dorothy Fendley (Self-Represented) Ian Dunbar, for the Defendant, Dr. Daniel Omura Colin Clarke, Q.C. and Ezra van Gelder, for the Defendant, Dr. Alvin. G. Kelly

By the Court:

[1] This is a motion for summary judgment on the evidence by both defendants in this proceeding, Dr. Daniel Omura and Dr. Alvin G. Kelly.

[2] The main action arises from a claim by Dorothy Fendley, the plaintiff, who claims Dr. Omura, a dentist, and a family physician, Dr. Alvin G. Kelly, were negligent in the treatment they provided to her following the extraction of her wisdom teeth by Dr. Omura in 1983.

[3] The defendants seek summary judgment, alleging this claim was brought after the expiry of the applicable limitation period, as it involved treatment received some thirty years ago. They also argue that Ms. Fendley has no expert evidence to support her allegation that her dental surgery resulted in numerous medical issues and conditions throughout her lifetime. As a result, they argue, she is unable to prove negligence on the part of Dr. Omura or Dr. Kelly.

Background Facts

[4] Ms. Fendley saw Dr. Omura on September 20, 1983, on referral, for issues concerning her jaw. Dr. Omura recommended that two molars be removed. He removed the impacted mandibular third molars at Peel Memorial Hospital in Brampton, Ontario, on October 13, 1983.

[5] Dr. Omura saw Ms. Fendley several times during October, November and December of 1983.

[6] At a November 14, 1983 appointment Ms. Fendley complained of swelling in her right mandibular. Dr. Omura did an incision and drained one of the surgery sites. Medication was prescribed and at a follow-up appointment two days later Dr. Omura observed a reduction in swelling. He saw her again two days later, observed no draining and prescribed further medication.

[7] Dr. Omura saw Ms. Fendley December 7, 1983 and observed she had returned to a normal healing pattern.

[8] Dr. Omura saw her on February 15, 1984 to follow-up on an earlier report by Ms. Fendley of paraesthesia of her lower lip. On that date he observed the paraesthesia had improved significantly.

[9] In October 1984 Dr. Omura began to treat the plaintiff for bilateral inflammation of the jaw muscles. He prescribed medication and bite splint therapy.

[10] Dr. Omura last saw Ms. Fendley on March 3, 1985 and was advised by her that she was depressed and wondered whether it was from a drug that had been prescribed (Tegretol). Dr. Omura advised her to contact Dr. Kelly, her family physician.

[11] Ms. Fendey filed an affidavit and pre-trial brief. In the pre-hearing submission, but not the affidavit, Ms. Fendley documents her contact with Dr. Omura during the relevant time.

[12] Dr. Kelly was Ms. Fendley's family physician and followed her progress and he continued to see her as a patient for years after the dental extraction. Ms. Fendley also included comments about Dr. Kelly's treatment in her pre-hearing submission, but not in the affidavit.

[13] Ms. Fendley has experienced anxiety, depression, chronic pain, neurosis and many other ailments over the years.

[14] Attached to the affidavit of Katie Archibald which was filed in this proceeding are several exhibits containing medical reports outlining these conditions. Ms. Fendley also provided medical related materials pertaining to her various medical conditions.

[15] In 1988 Ms. Fendley was admitted to Peel Memorial Hospital for psychiatric care. At that time she began to express dissatisfaction with her medical care and expressed anger against Dr. Kelly.

[16] She was admitted to Peel Memorial Hospital again in 1993 for more psychiatric care. At that time she again expressed in general terms dissatisfaction with her medical care.

[17] Ms. Fendley alleges these conditions, along with several others listed in her action (Cushing's disease, bilateral knee arthritis, hearing loss, etc.), were caused by the negligence of the defendant doctors.

[18] In this motion Ms. Fendley has filed no expert opinion to support her claim of negligence and to connect the several ailments she claims as a result of the dental surgery she received from Dr. Omura and the follow-up care by Dr. Kelly. Her oral submission consisted of a summary of her ailments and the diagnosis she has received from various medical practitioners.

[19] Ms. Fendley did file an affidavit which included numerous medical reports, however, none of these provided any expert opinion to support her claim. In fact, in some of the reports reference was made to her view that her present ailments were caused by the negligence of doctors, Omura and Kelly, however, no comments were made by the medical practitioners in response to these claims. She also included in her affidavit what appears to be extracts from the internet or medical journals discussing various diseases and conditions. These are of little or no assistance to the court.

[20] Dr. Omura retained Dr. Brian Smith, an oral and maxillofacial surgeon to provide expert opinion. Dr. Smith found that Dr. Omura had treated Ms. Fendley professionally and to a high standard.

[21] Dr. Kelly retained Dr. Graeme Bethune, a family practitioner in Halifax to provide expert opinion. Dr. Bethune found that Dr. Kelly had treated Ms. Findley professionally and to a high standard.

Law of Summary Judgment on the Evidence

[22] This motion for summary judgment on the evidence is brought pursuant to Rule 13.04 of the *Nova Scotia Civil Procedure Rules.*

[23] The defendants must show that there is no genuine issue of material fact requiring trial, and once this threshold is met Ms. Fendley must establish her claim as being one with a real chance of success.

[24] The test is well established and set out in *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 27:

> 27 The appropriate test to be applied on a motion for summary judgment is satisfied when the applicant has shown that there is no genuine issue of material fact requiring trial, and therefore summary judgment is a proper question for consideration by the court… Once the moving party has made this showing, the respondent must then "establish his claim as being one with a real chance of success".

[25] In *Coady v. Burton Canada Company,* 2013 NSCA 95, Saunders J. explained the application of the two-stage test as follows at para. 42:

> 42 At this point a summary of the analytical framework may be helpful. In the first stage the judge's focus is concerned only with the important factual matters that anchor the cause of action or defence. At this stage the relative merits of either party's position are irrelevant. It is only if the judge is satisfied that the moving party has met its evidentiary burden of showing there are no material factual matters in dispute that the judge will then enter into the second stage of the inquiry. The focus of that stage is not -- as the judge put it here -- to see if the "undisputed facts ... give rise to a genuine issue for trial". That is a misstatement of the test established in *Guarantee*. Instead, the judge's task is to decide whether the responding party has demonstrated on the evidence (from whatever source) whether its claim (or defence) has a real chance of success. This assessment, in the second stage, will necessarily involve a consideration of the relative merits of both parties' positions. For how else can the prospects for success of the respondent's position be gauged other than by examining it along with the strengths of the opposite party's position? It cannot be conducted as if it were some kind of pristine, sterile evaluation in an artificial lab with one side's merits isolated from the others. Rather, the judge is required to take a careful look at the whole of the evidence and answer the question: has the responding party shown, on the undisputed facts, that its claim or defence has a real chance of success?

[26] It is also well established that a party must put its "best foot forward" and raise any genuine issue of material fact.

[27] The Supreme Court of Canada in *Canada (Attorney General) v. Lameman,* 2008 SCC 14, explained this requirement at paras. 11 and 19:

> 11 …Each side must "put its best foot forward" with respect to the existence or non-existence of material issues to be tried… The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts..
>
> …

> 19… In the Court of Appeal and here, the case for the plaintiffs was put forward, not only on the basis of evidence actually adduced on the summary judgment motion, but on suggestions of evidence that might be adduced, or amendments that might be made, if the matter were to go to trial. A summary judgment motion cannot be defeated by vague references to what may be adduced in the future, if the matter is allowed to proceed. To accept that proposition would be to undermine the rationale of the rule. A motion for summary judgment must be judged on the basis of the pleadings and materials actually before the judge, not on suppositions about what might be pleaded or proved in the future…

[28] I am satisfied that there is no genuine issue of material fact requiring trial. As a result, Ms. Fendley must establish her claim as being one with a real chance of success.

Analysis

[29] The defendants submit their motions for summary judgment should succeed because the limitation period has expired and that there is no evidence that either breached the standard of care applicable to oral surgeons.

[30] For the reasons which follow, I am satisfied that Dr. Omura and Dr. Kelly have met their burden on both grounds, and that their motions for summary judgment are allowed and Ms. Fendley's claims against them are dismissed as she has not satisfied her burden of showing her claim has a real chance of success against either defendant.

Dr. Omura:

Limitation Period

[31] Dr. Omura submits his motion should succeed because the applicable limitation period has expired.

[32] The test for a summary judgment motion on the basis of an expired limitation period is set out in *Milbury v. Nova Scotia (Attorney General)*, 2007 NSCA 52, at paras. 20 and 23:

> 20 Did the defendants establish that there are no genuine issues of fact on the question of whether the plaintiff's action is statute barred because the limitation period has expired?...

> …
>
> 23 When the defendant pleads a limitation period and proves the facts supporting the expiry of the time period, the plaintiff has the burden of proving that the time has not expired as a result, for example, of the discoverability rule.

[33] As the alleged negligence in this action occurred in Ontario I am satisfied the substantive law of Ontario will apply, including the applicable limitation period.

[34] There are two possible limitation periods. The question is whether the limitation period should be contained in legislation in force at the time of the alleged negligent treatment or at the time of Ms. Fendley's claim.

[35] In the case of the former, it is one year from the date the claim is discovered by Ms. Fendley (s. 17, *Health Disciplines Act*, R.S.O. 1980, c. 196), or the latter which is two years from the day on which a claim is "discovered" (*Limitations Act* 2002, S.O. 2002, c. 24).

[36] I am satisfied that the appropriate limitation period is that contained in the *Health Disciplines Act*.

[37] The issue is discoverability and, therefore, it is necessary to determine when Ms. Fendley learned of the facts underlying her claim.

[38] In considering this issue, the court in *Langille v. Schwisberg*, [2010] O.J. No. 5812 (Ont. Sup. Ct. J.), explained the principles of discoverability as follows at paras. 117 – 119 and 121-122:

> 117 In *Moore v. Renault*, [2000] O.J. No. 983, 2000 CarswellOnt 935 (Ont. S.C.), para.12, the court held that once the defendant has pleaded a statutory limitation period, the burden shifts to the plaintiff to prove that his cause of action arose within the limitation period. A plaintiff does not need to know the full extent of the damages sustained before commencing a suit. A cause of action arises when the material facts on which it is based have been discovered or when they ought to have been discovered by the plaintiff through the exercise of reasonable diligence.
>
> 118 There is an evidentiary burden on the plaintiff to prove that the material facts giving rise to the cause of action were not within his/her knowledge within two years from the date the statement of claim was issued notwithstanding due

diligence: See *McSween v. Louis*, [2000] O.J. No. 2076 and *Findlay v. Ho*lmes, supra.

119 The general principle of discoverability in the limitation of actions context was stated by the Supreme Court of Canada in *Peixeiro v. Haberman* 1997 CanLII 325 (S.C.C.), (1997), 151 D.L.R. (4th) 429 at pages 435-436 as follows:

> 'It was conceded that at common law ignorance of or mistake as to the extent of damages does not delay time under a limitation period. The authorities are clear that the exact extent of the loss of the plaintiff need not be known for the cause of action to accrue. Once the plaintiff knows that some damage has occurred and has identified the tortfeasor ', the cause of action has accrued:' per Major, J.
>
> See also *Soper v. Southcott* et al. (1997), 36 O.R. (3d) 704 (Ont. Ct. - Gen. Div.).

…

121 In *Kenderry-Esprit (Receiver of) v. Burgess, MacDonald, Martin and Younger*, [2001] O.J. No. 776, Molloy J. stated at para. 17:

> 'The discoverability rule is a rule of general application to prevent a limitation period from beginning to run before a plaintiff can reasonably be aware of the existence of a cause of action: *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549, 151 D.L.R. (4th) 429. The discoverability rule clearly extends in negligence actions to awareness of damage: Kamloops (City) v. Nielsen, [1984] 2 S.C.R. 2, 10 D.L.R. (4th) 641 at p. 38 S.C.R., pp. 683-84 D.L.R. However, as was pointed out by Major J. in *Peixeiro* (at para. 18), the exact extent of the loss of the plaintiff need not be known for the cause of action to accrue. The question to be considered is "when the material facts on which [the cause of action] is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence": *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, 31 D.L.R. (4th) 481 at p. 224 S.C.R., p. 535 D.L.R.'

122 In *Oakville Hydro Electricity Distribution Inc. v. Tyco Electronics Canada Ltd.* (2004), 71 O.R. (3d) 330 (S.C.J.) at paras. 10-13 (S.C.J.) the court indicated that although the material facts giving rise to a cause of action must be discoverable, the probability of success is irrelevant. Rather, the limitation period will run from the time the prospective plaintiffs had, or ought to have had, knowledge of their potential claim, and the later discovery of facts which change

> a borderline claim into a viable one does not give rise to the discoverability principle.

[39] Dr. Omura says that by April 1993 Ms. Fendley believed that an injury had occurred during the operation and follow-up care by him. As highlighted by Dr. Omura, the medical reports of April and November 1993, which are attached as exhibits A to D of the affidavit of Katie Archibald, indicate that Ms. Fendley advised a psychiatrist on two occasions that her dental surgery caused some of her ailments:

> **April, 1993:** The patient relates her emotional problems secondary to physical problems that began when a dental abscess many years ago that developed into chronic jaw pain that has persisted.
>
> **November, 1993:** [The Plaintiff] has been suffering from chronic pain since 1983 after pulling her wisdom teeth.

[40] Ms. Fendley was obviously aware of and stated that her ongoing complaints began after her dental surgery. This was in 1993, some seven years before she began this action.

[41] Ms. Fendley's last appointment with Dr. Omura was March 3, 1985 and a lawsuit was filed on November 16, 2010, some twenty-five years later.

[42] It would appear that Ms. Fendley was diagnosed with an orthorstatic tremor in 2008, and because she received that diagnosis she appears to maintain that this allows her to avoid the limitation period.

[43] Ms. Fendley served on counsel for the defendants, a document entitled "Fax – McInnes Cooper Letter, Surgery and Treatment by Dr. Omura". This was entered into evidence as Chambers Exhibit 1 by consent of all parties.

[44] Counsel for Dr. Omura refers to p. 5 of this document where Ms. Fendley indicates:

> I reported to my physician that in my opinion the medical conditions were related to complication of my wisdom teeth removal. The removal of my wisdom teeth became a medical issue preventing me from dealing with my divorce. No Doctor acted on that complaint regarding investigation…

[45] Counsel for Dr. Omura points out that the court material that has been filed suggests that her divorce happened in 1993. Counsel argues that Ms. Fendley was

clearly reporting to her physician in the 90's that the removal of her wisdom teeth caused the medical conditions. In that paragraph Ms. Fendley continues:

> …No Doctor acted on that complaint regarding investigation investigation. At that time Dr. Kelly was also my Doctor in the hospital and in my opinion would remember his original diagnosis is Trigeminal Neuralgia. I do not understand why Dr. Kelly did not investigate this issue from the beginning of my hospital admission in 1985 times 3 admissions and 1993.

[46] I agree with counsel for Dr. Omura that these appear to be complaints to Dr. Kelly in respect of Dr. Omura and the dental surgery. I am satisfied that this evidence would suggest that Ms. Fendley was aware that there was an issue at that time.

[47] It is clear that while Ms. Fendley may not have been aware of all of the particulars of her cause of action in 1993, the evidence is clear she was telling medical practitioners of her belief that Dr. Omura's removal of her wisdom teeth caused her to have chronic pain and emotional problems.

[48] In written and oral argument Ms. Fendley makes no specific reference whatsoever to the discoverability rule or to the limitation argument made by the defendants.

[49] I am satisfied Ms. Fendely's claim is statute barred and, therefore, grant Dr. Omura's summary judgment application on that basis.

Breach of Standard of Care

[50] Dr. Omura says that Ms. Fendley has not provided any evidence that he breached the standard of care applicable to oral surgeons. Dr. Omura has filed his own expert's report from Dr. Brian Smith which states in part:

> **I read the treatment records multiple times and can say unequivocally that Dr. Omura treated [the Plaintiff] not only to a reasonable standard of care but in my mind, to [the] highest possible standard.** Dr. Omura did not seem to miss one step in the correct operative treatment and post-operative care. In fact, Dr. Omura seems to have gone above and beyond post-op care, in following up on [the Plaintiff's] post-op complaints, even when they would not normally be related to the removal of her wisdom teeth seven months previously...
>
> **Dr. Omura's treatment of the post-op complication was exactly as any prudent oral and maxillofacial surgeon should provide.** The incision and

> drainage along with the replacement of a drain was precisely the correct treatment for [the Plaintiff]. In fact, Dr. Omura followed [the Plaintiff] for several more appointments to assure that her recovery was progressing normally.

[51] Ms. Fendley has produced no evidence to the contrary. While she has provided several medical reports of what appear to be qualified specialists, no opinion is given as to how the various ailments she was treated for by these physicians have any connection to Ms. Fendley's complaints. While there was reference in a few of the reports to her complaint that the dental surgery by Dr. Omura caused her present problems, no comment was made by any of these practitioners on these allegations.

[52] In *Szubielski v. Price,* 2013 NSCA 151, the Nova Scotia Court of Appeal set out the requirements for a successful motion for summary judgment in cases alleging dental malpractice at paras. 12 and 13:

> 12 Ms. Szubielski seeks damages for alleged dental malpractice. This is obviously the type of case where the trier of fact will need the assistance of an expert. The issues of causation and standard of care in the circumstances presented here are outside the experience of a judge or a jury. Accordingly, as Ms. Campbell makes clear in her excellent factum on behalf of the respondents, Ms. Szubielski bore the burden of presenting expert evidence establishing both of her principal allegations. Specifically, she had to adduce expert evidence demonstrating that the respondents had breached the appropriate standard of care, and that she had suffered compensable injuries because of the respondents' breach.
>
> 13 Summary judgment motions in cases alleging medical or dental malpractice are typically brought (or opposed) by respondents (as defendants in the underlying action) who point to a lack of expert evidence in support of the plaintiff's position on the standard of care and/or causation. See for example, *MacNeil v. Bethune*, 2006 NSCA 21, and *Cherney v. GlaxoSmithKline Inc.*, 2009 NSCA 68, leave to appeal ref'd [2010] S.C.C.A. No. 17. Although there is no burden on a defendant to do so, a defendant may -- in order to provide greater comfort to the Court -- offer expert evidence establishing that the standard of care was not breached, and/or that the plaintiff's injuries were not caused by the defendant's acts or omissions. In such circumstances, if the plaintiff is able to present supportive expert evidence in answer to the defendants' motion, then she will have established a genuine issue of material fact requiring a trial, and the defendants' motion for summary judgment will be denied; whereas if she fails to offer such evidence, the defendants' motion will often succeed: *Johansson v.*

> *General Motors of Canada Ltd.*, 2012 NSCA 120, paras. 112-115 and the authorities cited therein.

[53] Ms. Fendley has not filed an expert report in this matter, nor has she presented any other evidence that supports the allegations of negligence. She has, therefore, failed to advance evidence supporting a finding of causation, which is a crucial element of her case. Ms. Fendley has failed to provide evidence that Dr. Omura breached the standard of care or that her injuries were caused by such breach. Her evidence was in the form of medical reports from various doctors and her oral submissions consisted of recitation of her ongoing medical condition. None of these materials, nor her submissions assisted in establishing that she has any possibility of success in this matter.

[54] I am satisfied that Ms. Fendley has not demonstrated any real chance of success in establishing that Dr. Omura acted negligently in the treatment he provided to her.

[55] I am satisfied Dr. Omura has met his burden and summary judgment should be granted.

Dr. Kelly:

<u>Limitation Period</u>

[56] For the reasons outlined above I find the following:

i. The test for summary judgment on the basis of an expired limitation period is as set out in *Milbury, supra*.

ii. that the Ontario law applies as to the limitation period as set out above and discoverability is the issue. That is, when did Ms. Fendley learn of the facts underlying her claim against Dr. Kelly?

[57] Ms. Fendley was obviously aware of and stated her ongoing dissatisfaction with Dr. Kelly as far back as 1988 when she was a patient at Peel Memorial Hospital.

[58] Like in Dr. Omura's case, while Ms. Fendley may not have been aware of all of the particulars of her cause of action in 1988 the evidence is clear she was

telling medical practitioners at Peel Memorial of her dissatisfaction with her treatment. As in the case of Dr. Omura, she made no reference in her written or oral arguments to the issue of discoverability or to the limitations defence being raised by Dr. Kelly.

[59] Ms. Fendley was cross-examined by counsel for Dr. Kelly. In cross-examination Ms. Fendley stated that she had a specific concern about the care that Dr. Kelly provided, specifically that he did not undertake the appropriate diagnostic measures nor did he refer her to other specialists in order to identify the root cause of the difficulties she was having then, and to which she attributes the difficulty she continues to have today.

[60] The following exchange took place during cross-examination.

> Ms. Fendley: It was basically for total frustration over the length of time between 1983 and 1993 that I was just hospitalized - in and out of hospital. I didn't really know what was going on and I had a lot of pain in both legs and jaw.
>
> Mr. van Gelder: Whatever the issue was that was causing those symptoms ... whatever the medical complaint was or the medical diagnosis that hadn't been determined at that point and time, correct?
>
> Ms. Fendley: No.
>
> Ms. van Gelder: And you felt anger towards Dr. Kelly, your frustration with Dr. Kelly because of that.
>
> Ms. Fendley: Yes. I can explain that further. I would ask for him to come and see me, I was having trouble with blowing up with water. I was taking steroid and very quickly I blew up and very quickly my legs were edematous and they were very painful, and he came to the room looked at my legs and said there was nothing wrong with them and that was the end of it. Every time I would take a walk or to the coffee shop or whatever, I would have blueness in the legs and blueness in my arms and I believe it was medication related.
>
> Mr. van Gelder: Is it fair to say that at that point and time you thought Dr. Kelly should have undertaken additional diagnostic tests?

Ms. Fendley: I think tests should have been done.

Mr. van Gelder: And that was something you felt at that point and time.

Ms. Fendley: Yes, I was pleading for tests.

Mr. van Gelder: And you thought he should refer you to specialists at that point and time.

Ms. Fendley: Yes I do.

Mr. van Gelder: And he did not?

Ms. Fendley: No.

Mr. van Gelder: And that's part what forms the basis of your action today, is that right?

Ms. Fendley: Yeah.

[61] I am satisfied and find that Ms. Fendley's claim is statute barred and, therefore, grant summary judgment to Dr. Kelly on that basis.

[62] In the event I am wrong in my determination as to the expiry of the limitation period, I am also satisfied that summary judgment should be granted on the basis that Ms. Fendley has not provided any evidence that Dr. Kelly breached the standard of care applicable to a family practitioner and, therefore, has failed to establish that her claim has a real chance of success.

[63] The issues relevant to the claim against Dr. Kelly are standard of care and causation. On the former, Dr. Bethune, a family practitioner in Halifax, Nova Scotia describes the extent to which Dr. Kelly went to address Ms. Fenley's complaints, including referring her to numerous specialists, personally assisting in surgical operations and remaining one of the physicians primarily responsible for

her care even when she was admitted to hospital. He reached the following conclusion:

> In Para 15 of the Notice of Action the Plaintiff contends in a general way that the Defendants failed to provide optimal care to the Plaintiff; failed to provide appropriate therapeutic advice; failed to seek advice from other medical specialists; and other similar allegations of a general nature. After reviewing all the documents that I had access to I could find no substance whatsoever to the above allegations.

[64] Dr. Bethune also opined on causation. On that point, he comments:

> In Paragraph 13 of the Notice of Action, the plaintiff claims that her conditions and all resulting losses were the result of the Defendants not identifying or treating the symptom of a severe infection as the result of her wisdom teeth removal. On reading the hospital records and Dr. Omura's notes it appears that Ms. Fendley did have an infection, but a mild infection. Furthermore she had an abscess about one month after the original surgery. She received an average length course of two common used antibiotics to treat both of these relatively minor infections. She appeared to have healed well following these treatments.
>
> There was no evidence that I could find in the documents that Ms. Fendley suffered from sepsis or severe blood poisoning following the teeth extraction in October 1983. She alleges that this happened in Para 10 of the Notice of Action.
>
> Furthermore the Plaintiff states that she suffered other losses as a direct result of errors and omissions of the defendants including Cushing's Disease, Orthostatic Tremor, tinnitus, hallucinations, a debilitating brain condition, mania, pelvic pain, hearing loss, a total knee replacement and a deformed spine. There is no medical condition that links all of the above, certainly not sepsis, which she did not suffer from anyway. …Ms. Fendley had minor infections at the site of her tooth extraction which was diagnosed and treated properly. She made a complete recovery from these minor infections.

[65] Ms. Fendley has not provided expert opinion. She has failed to provide any evidence that Dr. Kelly breached the standard of care or that her injuries were caused by such breach. The extent of Ms. Fendley's medical evidence was a number of medical reports outlining a number of ailments she has suffered over the years. As well in oral submissions, Ms. Fendley's evidence was a recitation of her medical difficulties, and is of no assistance in determining this issue.

[66] I am satisfied that Ms. Fendley has not proved any real chance of success in this matter. The motion for summary judgment is granted on both the limitation

defence and lack of proper proof of causation, and Ms. Fendley's action against Dr. Kelly is, therefore, dismissed.

[67] In summary, the action against Drs. Omura and Kelly are dismissed in their entirety.

[68] Costs are payable by Ms. Fendley in the amount of $500 to Dr. Omura and $500 to Dr. Kelly, for a total of $1000.

Pickup, J.