

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

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Judge: The Honourable Justice Arthur W.D. Pickup

Heard: July 21, 2015 in Halifax, Nova Scotia

Written Decision: September 22, 2015

Subject: Dental negligence; summary judgment on evidence; limitations periods

Summary: The plaintiff had dental surgery performed by the defendant Omura in 1983. She subsequently experienced various mental and physical health problems, which she alleged were caused by the negligence of the defendants, Omura and Kelly, her family physician. The defendants sought summary judgment on evidence, both on the basis that the claims against the defendants were statute-barred under the applicable limitations legislation, and on the basis that there was no evidence to support the allegations of negligence.

Issue: Should summary judgment be granted as against either or both of the defendants, due to the limitation period of the lack of evidence to support the negligence claim?

Result:

The court ordered summary judgment on the evidence in respect of both defendants. In each case there was evidence that the plaintiff had complained of deficiencies in her treatment in the 1980's or 1990's. The claims against both defendants were therefore statute-barred. In addition, the plaintiff provided no evidence – and, in particular, no expert evidence – that would support findings of negligence. As such, the claims had no real chance of success.

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