

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Anderson v. QEII Health Sciences Centre, 2009 NSSC 242

**Date:** 2009/07/31

**Docket:** Hfx. 155158

**Registry:** Halifax

**Between:**

Victoria Renata Anderson, Mildred Anderson  
and Victor Anderson

Plaintiffs

v.

QEII Health Sciences Centre, Dr. S.A. Gee,  
and Dr. S. Sharma

Defendants

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**Judge:** The Honourable Justice David MacAdam

**Heard:** July 31, 2009, in Halifax, Nova Scotia

**Written  
Decision:** August 14, 2009

**Subject:** Trial by Jury - Judicature Act - Setting Aside - Delay - Right to Civil Jury.

**Summary:** The Plaintiffs filed a Notice of Trial with a Jury and Certificate of Readiness. The individual Defendants sought an order directing that, notwithstanding the jury notice, the trial be conducted by judge alone. The corporate Defendant supported the individual Defendants' application.

**Issues:** (1) Should the application be dismissed due to the Defendants' failure to bring it with due dispatch? (2) Are there substantial, cogent reasons for the court to exercise its discretion to deprive the Plaintiffs of their entitlement to trial by judge with a jury?

**Results:** (1) On the delay issue, the Plaintiffs submitted that an objection to a Notice of Trial with a Jury must meet the timelines set out in Rule 28 of the Civil Procedure Rules 1972. However, it was the filing of additional medical reports by the Plaintiffs that precipitated the application. As such, the court declined to dismiss the application due to delay.

(2) The right to a jury trial is governed by section 34 of the *Judicature Act*. The individual Defendants raised several issues that they claimed warranted striking the Jury Notice, including the availability of jurors for a relatively long trial, the difficulty in scheduling the number of experts required, difficulty in drafting appropriate questions in view of the complex and contradictory expert evidence. The court held that these considerations did not warrant setting aside the right to a trial by jury, as the right to a jury is not to be denied because the court or counsel will find it more difficult to conduct a jury trial. Nor did the requirement to consider a significant amount of documentary evidence and to assess contending experts' reports justify striking the jury. The Defendants also submitted that the scientific complexity of the issues would justify setting aside the jury notice. The court accepted, however, that the court should be reluctant to strike a jury notice even in cases involving scientific evidence and jargon. The court did not accept the suggestion that a judge lacking relevant scientific or technical training was necessarily in a better position than a jury to deal with such issues. However, the judge did have the advantage of sufficient time to render a decision so as to be able to carefully weigh the competing evidence and arguments, as compared to a jury, which would under practical time constraints that would make it difficult to deal appropriately with the evidence given the unique or rare nature of the circumstances in the case at bar, where the plaintiff was in "locked-in syndrome" and the expert evidence was expected to advance theories, rather than factual assertions, about the events. This was not a typical medical malpractice case. The judge's ability to take the time to weigh, analyze and consider the respective theories, and to request the further assistance of counsel if necessary, made it appropriate to set aside the Jury Notice in this case.

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