Court of Appeal File Number: 16 – 17 – CA

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

MR. BRYAN SUTHERLAND

Appellant (Plaintiff),

-and-

DR. MOSES ALATISHE

Respondent (Defendant).

APPELLANT'S SUBMISSIONS

Mr. Bryan Sutherland PI.

The Self-Representing Appellant (Plaintiff)

25 Lorne Street,
Sackville, New Brunswick, Canada
Postal Code: (E4L 3Z8)

Stewart McKelvey Law Firm
Attorney Robert Dysart, the Defence,
Solicitor for the Defendant Dr. Moses Alatishe,
Suite 601, Blue Cross Centre,
644 Main Street,
Moncton, New Brunswick, Canada
Postal Code: (E1C 1E2)

BRYAN SUTHERLAND PI.

PART I: **INDEX**

PART II: FACTS:

1. The Appellant (Plaintiff) Mr. Bryan Sutherland commenced this action on January 20th 2015. Throughout this civil proceeding it has been discovered/admitted that the Respondent (Defendant) Dr. Moses Alatishe:

(a) Had no liability insurance which covered his medical practice, during the years that he diagnosed/treated the Appellant;

(b) Had no objective medical test or scientific evidence that validated his claims/diagnosis that the Appellant had a:

(i) Brain disease therein the Appellant's brain;

(ii) Brain defect therein the Appellant's brain;

(iii) Brain disability therein the Appellant's brain;

(iv) Brain abnormality therein the Appellant's brain;

(v) Chemical imbalance therein the Appellant's brain;

(vi) Biochemical imbalance therein the Appellant's brain;

(vii) Biological disease therein the Appellant's brain;

(viii) Genetic or hereditary problems therein the Appellant's brain;

(ix) Low serotonin therein the Appellant's brain;

(x) Dopamine excess therein the Appellant's brain;

(xi) Chronic illness therein the Appellant's brain.

(c) Had no cure to remedy his claims/diagnosis for he had never discovered, detected, established, proved, or found any problem therein the Appellant's brain.

2. The Appellant's CT scan of his brain read "no evidence of space occupying disease." The Appellant's EEG results were "Normal." The facts are therein the Appellant's medical chart, included as documentary evidence referenced therein the Appellant's Affidavit of Documents, deposed at examination, acknowledged as fact therein admissions, and is reiterated by the

Appellant's expert witnesses provided therein the expert's reports. None of the evidence has been heard yet, because there has been no trial yet, and there has only been preliminary hearings.

3. Throughout this proceeding the Defence have sought many remedies and argued many excuses which has delayed this proceeding from seeing trial. Some of these many remedies and/or excuses are:

(a) Dismissing the action of the Plaintiff on the grounds that he does not have the legal capacity to commence or continue the action;

(b) Appointing a litigation guardian to continue the action on the grounds that the Plaintiff is incapable of managing his own affairs;

(c) The Plaintiff only has a grade 10 education (compared to the education of the Defendant);

(d) That summary judgment be granted in favor of the Defendant on the grounds that the Plaintiff's claim is statute-barred;

(e) That summary judgment be granted in favor of the Defendant as there is no merit to the Plaintiff's claim as it does not disclose a cause of action;

(f) That the Appellant is out of time to appeal; and

(g) That the Appellant is out of time to bring further expert evidence.

4. More specifically, the Respondent filed his second motion seeking 2 remedies from the Honorable Court of Queen's Bench. The motion was heard on May 25th 2016, at which the Defence asked for the 2 remedies as follows:

(a) Pursuant to Rule 22.01(3) and Rule 22.04 of the Rules of Court, that summary judgment be granted in favor of the Defendant, Dr. Moses Alatishe, in the within action, and the Plaintiff's claim be struck, on the basis that there is no merit to the Plaintiff's action as it is statute-barred pursuant to section 1, 2, 5, and 27 of the Limitation of Actions Act, SNB 2009, c L-8.5 ("LAA"); and

(b) In the alternative, pursuant to Rule 22 of the Rules of Court, that summary judgment be granted in favor of Dr. Moses Alatishe as there is no merit to the Plaintiff's claim as it does not disclose a cause of action.

5. Both of the remedies sought were technical and preliminary summary judgments, being a judgment following hearing, not judgment following trial. The remedy sought by the Respondent for summary judgment being that the Appellant's claims was statute-barred was not granted. The remedy sought by the Respondent for summary judgment being that the Appellant's claim was without merit, as it does not disclose a cause of action, was adjourned for 2 months.

6. While the Appellant disputes that it was mandatory to call an expert witness, he obtained 2 expert reports within the 2 months adjournment, one of those expert reports by a medical expert witness.

7. A review hearing was heard on September 23rd 2016, in which the Defence disputed the content and evidence provided therein the expert reports, which was improperly argued, for the evidence had not yet been heard, and it could only be heard at trial.

8. On the date of September 28th 2016, the Honorable Justice George S. Rideout issued and filed his Decision on Review Hearing, and granted summary judgment in favor of the Respondent. The Appellant disputes the decisions/judgment of the technical and preliminary summary judgment.

9. I submit that the Honorable Justice George S. Rideout has made errors in his decisions/judgment, as addressed herein, and the Appellant brings this appeal before your Honorable Justices today.

PART III: ISSUES:

10. The issues to be decided on this Motion are as follows:

A: Should the decisions/judgment for Summary Judgment be reversed, and the action be set down for trial, for the Appellant (Plaintiff) has brought specialist expert evidence against the Respondent (Defendant) and has appropriately introduced it via motion for further evidence;

B: In the alternative, should the decisions/judgment for Summary Judgment be varied, and the action be set down for trial, for the Appellant (Plaintiff) had produced medical expert evidence prior to summary judgment being granted;

C: In the alternative, should the decisions/judgment for Summary Judgment be set aside, and the action be set down for trial, for other malpractice cases have gone to trial without expert evidence, and other cases have been set down for trial without expert evidence;

PART IV: LAW AND ARGUMENTS:

11. With respect to time, Rule 3.01 reads:

> **3.01 Computation**
>
> **Except where a contrary intention appears**, in the computation of time under these rules or under an order or judgment of the court
>
> (a) where a number of days is prescribed, it shall be reckoned exclusively of the first day and inclusively of the last day,
>
> (b) where a period of less than 7 days is prescribed, holidays shall not be counted,
>
> (c) where the time for doing an act or taking a step in a proceeding expires on a holiday, the act or step may be done or taken on the next day that is not a holiday,
>
> (d) service of a document, other than an originating process, made after 4 o'clock in the afternoon or on a holiday shall be deemed to have been made on the next day that is not a holiday.
>
> **[Emphasis Added]**

12. There are many **contrary intentions that appear** to this specific case. Not only does the Appellant have a bona fide intent, some **contrary intentions that appear** to this case is set forth hereunder:

(a) The Defence have argued that this medicolegal matter raises complex issues;

(b) The Appellant (Plaintiff) is a self-representing layman, and is not protected by a lawyer, and is particularly vulnerable;

(c) The Appellant (Plaintiff) has no prior history with the Courts for any criminal or civil reasons, and this is his first experience with learning the *Rules of Court* of NB;

(d) The Appellant (Plaintiff) is untrained in the area of law and is untrained in any post-secondary education;

(e) The Appellant (Plaintiff) is untrained in the area of medicine and as a former patient is particularly vulnerable;

(f) The Appellant (Plaintiff) has a grade 10 education and does not have a diploma and has acted to the best of his educated ability;

(g) **The Appellant (Plaintiff) had** very little money and resources prior to summary judgment being granted, and had **informed the Court that he could not afford expert evidence prior, to summary judgment being granted**;

(h) The Appellant (Plaintiff) had submitted and served 2 expert reports prior to summary judgment being granted, one being a medical expert report, both of which were wrongly prejudged by the presiding preliminary justice, not a trial justice;

(i) The Appellant (Plaintiff) has further submitted 2 more medical expert reports, since summary judgment being granted, and a medical expert has amended his expert report since Summary Judgment.

13. In particular, a highlighted **contrary intention that appears** is that the Appellant had informed the Court that he could not afford expert evidence at the hearing on motion, heard May 25th 2016. The Appellant still managed to obtain 2 expert reports within the 2 month adjournment, 1 of those expert reports had been provided by a medical expert witness. Further to the expert evidence put before the court, prior to summary judgment being granted, **the Appellant's inability to afford enough expert evidence should not have deprived the Appellant of *fundamental justice* and having his *day in court*.**

14. With respect to the Defence's second Notice of Motion (Form 37A), the Respondent brought a motion for summary judgment.

15. Rule 37.03 reads:

> **37.03 Content of Notice of Motion or Preliminary Motion**
>
> **A Notice of Motion or Preliminary Motion shall**

> (a) state the precise order sought,
>
> **(b) state the grounds to be argued, including a reference to any** statutory provision or **rule to be relied on,** and
>
> (c) list the documentary evidence to be used at the hearing of the motion.
>
> **[Emphasis Added]**

16. The learned preliminary motions judge erred when he allowed the Defence to cite Rule 52, for Rule 52 was not relied on therein the Defence's Notice of Motion (Form 37A), and the Appellant was not familiar with, nor ready to argue Rule 52 at the hearing on motion for summary judgment.

17. In order for a party to bring a motion for summary judgment, Rule 39.01(4) is clear:

> **39.01 By Affidavit**
>
> (4) **Except in the case of a motion for summary judgment under Rule 22,** and subject to section 34 of the *Judicature Act*, **an affidavit for use on a motion need not be confined to statements of fact within the personal knowledge of the deponent,** but may contain statements as to his information and belief, if the source of his information and his belief therein are specified in the affidavit.
>
> **[Emphasis Added]**

18. To clarify, a supporting Affidavit on a motion for summary judgment needs to be confined to statement of facts. Furthermore, Rule 22.02(2) reads:

> **22.02 Affidavit Evidence**
>
> (2) **A defendant applying for summary judgment shall file and serve an affidavit**
>
> (a) **setting out the facts verifying his contention that there is no merit in the whole or part of the claim,** and
>
> (b) stating that he knows of no fact which would substantiate the whole or part of the claim.
>
> **[Emphasis Added]**

19. As properly included therein the Amended Certificate of Appellant (Form 62F), listed thereunder Affidavit Evidence of: is the supporting Affidavit of the Respondent (Defendant) Dr. Moses Alatishe, sworn for March 3rd 2016. The Affidavit of Dr. Moses Alatishe needed to be confined to statement of facts. Also provided therein the Amended Certificate of Appellant (Form 62F), listed thereunder as Affidavit Evidence of: is the rebutting Affidavit of the Appellant (Plaintiff) Mr. Bryan Sutherland, sworn for May 10th 2016. The Appellant's 88 page Affidavit had demonstrated that the Respondent (Defendant)'s Affidavit did not consist of statements of facts and the Appellant (Plaintiff)'s Affidavit had referred to and attached many Exhibits showing "facts" and deposed by the Respondent (Defendant) to be wrong. The learned preliminary motions judge erred when he failed to acknowledge the Respondent (Defendant)'s many inconsistencies deposed therein his Affidavit, and that the content deposed therein the Respondent (Defendant)'s Affidavit was not fact, but rather arguments.

20. Despite that Rule 52 should not have been allowed to be cited by the Defence, as the Respondent did not rely on Rule 52, the learned preliminary motions judge correctly stated therein the decision on motion for summary judgment, dated for June 1st 2016, at paragraph [20], which reads:

> [20] I have quoted excessively from the authorities because Mr. Sutherland has indicated at the hearing on this motion that he **might** want to call expert evidence. At the same time, he is asking the court to enter this matter for trial and obviously he is not fully aware of the effects of Rule 52.01(1) and (3) or 52.03.

21. Rule 52.01 and 52.03 provides:

> **52.01 Condition Precedent to Calling Expert Witness at Trial**
>
> (1) **Where a party intends to call an expert witness at trial, he shall serve on every other party a copy of the expert's signed report** which shall contain, or be accompanied by, a statement containing the expert's name, address and qualifications and the substance of his proposed testimony. **Service shall be made as soon as**

practicable and no later than the Motions Day at which the trial date is fixed.

(2) Where a party intends to call an expert witness at trial but cannot obtain from him a report, or where, because of the nature of the proposed evidence, the expert is not required by the party to submit a written report, the party may comply with paragraph (1) by serving on every other party a report signed by the party or his solicitor which sets out the name, address and qualifications of the expert and the substance of the evidence which he is expected to give.

(3) A party who has not complied with this subrule shall not call an expert witness without leave of the court.

(4) Where a report has been served under paragraph (1) or paragraph (2), on motion the court may order that any records, documents or other materials on which the report is based be produced for inspection and copying.

(5) On consent of all parties, the court may receive in evidence at the trial a report served under paragraph (1) without requiring the expert to attend and give oral evidence.

52.03 Medical Expert

(1) Where, under Rule 52.01(1), a party has served a report of an expert who is a medical practitioner as defined in Rule 36.01 the report may, with leave of the court, be admitted in evidence without proof of signature or qualifications of the medical practitioner and without his attendance at trial.

(2) When an opposite party, within 10 days after service of a report of a medical practitioner under Rule 52.01(1), serves notice in writing requiring the attendance of the medical practitioner at trial, the report shall not be received in evidence unless the medical practitioner is called as a witness.

(3) Where a medical practitioner is required to attend and give oral evidence at or before trial and the court is of the opinion that his evidence could have been introduced as effectively by way of a medical report, the court may order the party who required the attendance of the medical practitioner to pay the costs of his attendance.

[Emphasis Added]

22. In addition, to the contrary intentions that appear (Rule 3.01), the Respondent (Defendant) not relying on Rule 52 as required by Rule 37.03(b), and the Respondent (Defendant)'s Affidavit being loaded with inconsistencies and not facts pursuant to Rule 39.01(4) as required for summary judgment, with respect to Rule 52, the errs of the learned preliminary motions judge can be boiled down to 3 sections. The remedies sought by the Appellant that the decision be reversed, varied, and set aside are divided and described within the sections *Optional Expert Witness*, *Medical Expert*, and *Specialist Report*, as set forth hereunder:

Optional Expert Witness / Rule 52.01 (Set Aside):

23. The remedy granted by the learned preliminary motions judge that the Appellant (Plaintiff)'s claim was without merit, as it does not disclose a cause of action, in the absence of expert opinion was wrong. Rule 52.01(1) reads that **a party who intends to call an expert witness**, not will call an expert witness, not needs to call an expert witness, not must call an expert witness. I submit that it is not mandatory for a party to call an expert witness at trial, nor is it mandatory to call an expert witness to have an action set down for trial.

24. To be more concise, the jurisprudence referenced therein the Defence's Brief and cited by the learned preliminary motions judge were from trials that had already happened. The trial arguments of "no hope of success" were decided at trial, not before trial. Furthermore, the "no hope of success" were trial decisions/judgment, not preliminary decisions/judgment. For an Affidavit on a motion for summary judgment Rule 22.02(2)(a) requires a Defendant to set out the facts that there is no merit to the action, not that the Plaintiff cannot prove his action. Proof thereof is a trial question, and not a preliminary judgment. Proof of the action is established at trial, not before trial. The learned preliminary motions judge erred when he prejudged the Appellant's actions, based on trial arguments of "no hope of success." In addition, at the end of the day, expert evidence is opinion, not fact. Another double standard is that despite the

Defence's arguments about either the Appellant's absent and/or proper expert evidence, the Defence have still provided no expert evidence of their own.

25. I submit that the "no hope of success" trial arguments cited were malpractice trials and/or trials with complex issues, which were set down and heard without those Plaintiff's obtaining expert evidence. Furthermore:

(a) If other medicolegal claims were set down without expert opinion, why couldn't the Plaintiff's action be set down without expert opinion?

(b) If other malpractice claims had gone to trial without expert evidence (as cited by the learned preliminary motions judge) why couldn't the Plaintiff's action go to trial?

(c) If other patients have had their day in court against their physicians, why couldn't the Appellant?

26. The mandatory requirement placed onto the Appellant to call an expert witness or not see motions day or trial was wrong. Anybody can see negligence on its face, without the hiring of an expert witness. Other patients have had their trials without expert evidence (as already cited by the learned preliminary motions judge), and the Appellant is entitled to have his trial without expert evidence.

27. I submit that the learned preliminary motions judge erred when he struck and dismissed the Appellant (Plaintiff)'s action. The Appellant did not require expert evidence to have the action set down for trial, nor did the Appellant require expert evidence to have his trial heard. The Appellant asks that this Honorable Court set aside the technical and preliminary summary judgment.

Medical Expert / Rule 52.03 (Varied):

28. With respect to the **contrary intentions that appear**, and in particular to the fact that the Appellant's **inability to afford expert evidence**, and the fact that it **is not mandatory for a party to call an expert witness** in order to set an action down for trial or have a trial, if by some unreasonable way that it is mandatory for a party to call an expert witness to set down and go to

trial, it is submitted that the Appellant (Plaintiff) had obtained expert evidence prior to summary judgment being granted and prior to the action being set down.

29. The hearing on motion for summary judgment, heard on May 25th 2016, was adjourned for 2 months to give the Appellant (Plaintiff) time to arrange for expert evidence. During the 2 months adjournment, the Appellant obtained 2 expert reports from 2 separate expert witnesses. The expert reports were submitted to the court and served onto the Defence prior to the Review Hearing.

30. One of the expert reports that was submitted to the court and served onto the Respondent was from a medical expert who has practiced in the area of medicine for many years, being the medical expert report of Dr. Fred Baughman. To be clear, in terms of relevant expert evidence, the Appellant had called an expert practicing in the same area as the Respondent. The Appellant did not call an expert plumber, nor did the Appellant call an expert electrician, rather the Appellant called a medical expert, as titled as Rule 52.03. Any potential medicolegal matter raising any potential complex issues is in regards to the area of medicine, in which the Appellant called a medical expert.

31. A review hearing was fixed for the date of and heard September 23rd 2016. At the review hearing, the Defence attacked the content of the medical expert report of Dr. Fred Baughman, the content which was not heard for there has been no trial, content that can only be heard at trial. The early review of the expert evidence must have confused the preliminary justice, for in his decision on review hearing, dated for and filed September 28th 2016, the learned preliminary motions judge erred when he prejudged the content of the medical expert report of Dr. Fred Baughman set forth therein his decision on review hearing. The content of Dr. Fred Baughman's expert report was prepared and was to be presented at trial when all of the evidence is to be heard and then judged. The learned preliminary motions judge erred when he prejudge the evidence on a preliminary motion.

32. The learned preliminary motions judge also erred when he prejudged the qualifications of Dr. Fred Baughman, for Dr. Fred Baughman has much experience as an M.D. (medical doctor) just as the Respondent has much experience as an M.D. Both Dr. Fred Baughman and Dr. Moses Alatishe are medical doctors who have practiced in the area of medicine. The err of the preliminary motions judge was to not recognize that the Appellant had produced a medical expert report from a medical expert prior to summary judgment being granted.

33. In addition, Rule 22.04(1) reads:

> **22.04 Disposition of Motion**
>
> *Where No Defence or Merit to Action*
>
> (1) Where, on a motion for judgment, **the applicant satisfies the court that**
>
> (a) **there is no** defence or **merit to** a claim or **part thereof**, and
>
> (b) the applicant is entitled to judgment,
>
> the court may grant judgment.
>
> **[Emphasis Added]**

34. The Appellant had produced a medical expert report prior to summary judgment being granted. The medical expert report was provided by a medical expert. Despite any technicality, the claim has merit as a whole, but at bare minimum has merit in part. The learned preliminary motions judge erred when he struck and dismissed the Appellant (Plaintiff)'s action in whole, for medical expert evidence was before the court prior to summary judgment being granted, and the content of the medical expert report thereof should not have been prejudged by the learned preliminary motions judge. If medical negligence can only be seen by a medical expert, I submit that the Appellant already had that medical expert, as titled by Rule 52.03.

35. I submit that the learned motions judge erred when he struck and dismissed the Appellant (Plaintiff)'s action for it had merit in whole, but at bare minimum in part, which was provided by

a medical expert prior to summary judgment being granted. The Appellant asks this Honorable Court to vary the technical and preliminary summary judgment.

Specialist Report / No Rule (Reversed):

36. With respect to the **contrary intentions that appear**, in particular the fact that the Appellant had informed the court of his **inability to afford expert evidence** (and/or enough expert evidence) and having **already called a medical expert prior to summary judgment being granted**, and prior to setting the action down for trial or having a trial, the learned preliminary motions judge erred in his use of the word "psychiatrist" and/or "specialist."

37. It should not be required for a party to call an expert witness. However, if this is a complex medicolegal claim, which requires the hiring of an expert witness, then a medical expert (Rule 52.03) practicing in the area of medicine is the proper expert witness to call, that of which the Appellant did call prior to summary judgment being granted. The *Rules of Court* of New Brunswick do not define "specialty" nor set forth any mandatory requirement of calling a "psychiatrist." The learned preliminary justice should have referred to the appropriate expert witness as a medical expert (Rule 52.03), not a "psychiatrist."

38. On September 28th 2016 summary judgment was improperly granted in favor of the Respondent. While the Appellant does not believe that he needed an expert witness, nor does the Appellant believe that he needed to call a "psychiatrist," as it is not defined in the *Rules of Court* of NB, after summary judgment, the appellant worked with the resources that he had to obtain expert evidence from a "psychiatrist."

39. The Appellant has brought a motion to have further expert evidence (and/or fresh expert evidence) to be deemed admissible and introduced properly. The Appellant also has applied the same test and principles from other cases and has also asked for a new test and new principles to be applied in this preliminary judgment situation.

40. The Appellant has also served his evidence prior to motions day as required by Rule 52.01(1), and there is no prejudice caused to the Respondent, for none of the evidence has been heard yet, and there has been no trial yet. The Appellant is ready for trial.

41. I submit that the learned preliminary motions judge erred when he struck and dismissed the Appellant (Plaintiff)'s action for not calling a type of "specialist" or a "psychiatrist," for there is no Rule therein the Rules of Court that a party must call a type of "specialist" or a "psychiatrist" to set an action down or have a trial. The Appellant asks that this Honorable Court reverse the technical and preliminary summary judgment.

Setting Down:

42. The second part of the orders sought by the Appellant (Plaintiff) are that the action be set down for trial. Whether the decisions/judgment be:

(a) Set aside, for the Appellant did not need an expert witness to set the action down for trial and have a trial;

(b) Varied, for the Appellant had produced a medical expert report prior to summary judgment being granted; and/or

(c) Reversed, for the Appellant did not have a specialist psychiatrist expert report before summary judgment was granted, but he has it now, and has properly introduced it via motion for further (and/or fresh evidence)…

43. It is clear that the preliminary process has been completed. The Appellant has his facts and evidence ready, including his:

(a) Citations, pursuant to Rule 1 of the *Rules of Court* of New Brunswick;

(b) Material facts, pursuant to Rule 27 of the *Rules of Court* NB;

(c) Documentary evidence, pursuant to Rule 31 of the *Rules of Court*;

(d) Examination evidence, pursuant to Rule 32 and 33;

(e) Admissions, pursuant to Rule 51; and of course

(f) Expert evidence, pursuant to Rule 52, including 5 expert reports, and varying in degrees and credentials from the scope and range of:

i) Expert witness;

ii) Medical expert witness; and

iii) Specialist expert witness.

44. Given the simplicity of this action, and any potential medicolegal complexity of this action, and how to deal with the issues thereof, it was/is all before the court now, and the Appellant requires that this action be set down for trial forthwith.

45. Rule 37.10 reads:

> **37.10 Disposition of Motion**
>
> **On the hearing of a motion**, the court may allow or dismiss the motion or adjourn the hearing, with or without terms; or, **in the alternative or in addition, may direct**
>
> (a) in a proper case, that the motion be converted into a motion for judgment,
>
> (b) the trial of an issue with such directions or upon such terms as may be just, or
>
> (c) **where the proceeding is an action, that it be set down for trial forthwith** or within a specified time, or, where the proceeding is an application, that it be heard at such time and place and upon such terms as may be just.
>
> [**Emphasis Added**]

46. Since the decisions/judgment were on a preliminary motion, and having now been reversed, varied, and/or set aside, the Appellant asks this Honorable Court for an order that this action be set down for trial forthwith, pursuant to Rule 37.10(c).

47. Rule 22.05 reads:

> **22.05 Where a Trial is Necessary**
>
> (1) **Where summary judgment is refused**, or is granted in part only, **and a trial is necessary, the court may order that the action be set down for trial** in the normal

> course or within a specified time and may specify the material facts which are not in dispute and may define the remaining issues where they are not sufficiently defined in the pleadings.
>
> **[Emphasis Added]**

48. Since this was a technical and preliminary motion for summary judgment, and having now been reversed, varied, and/or set aside, the Appellant asks this Honorable Court for an order that this action be set down for trial, pursuant to Rule 22.05(1).

Other Relief Sought:

49. The Appellant (Plaintiff) asks this Honorable Court for an order that the intended Respondent (Defendant) pay costs of the within:

(a) Judgment Following Hearing (Form 60A), in the amount of $3.500.00; and

(b) Appeal, in the amount of $2.000.00.

50. Since the Honorable George S. Rideout has already improperly prejudged the expert evidence on a preliminary motion, the Appellant (Plaintiff) asks this Honorable Court for an order that the Honorable Justice George S. Rideout respectfully and immediately recuse himself, for since he has already prejudged the expert evidence without it first being heard, he cannot impartially adjudicate on the matters.

Limitation Period:

51. The Respondent (Defendant) Dr. Moses Alatishe has cross-appealed. The within section disputes and contests the Defence's remedy sought and grounds to be argued for the reasons set forth as follows hereunder.

52. The Appellant (Plaintiff) reiterates from the hearing on motion for summary judgment that he first knew or ought reasonably to have known that the injury, loss, or damage had occurred, and was caused by an act or omission, and was an act or omission by the Respondent (Defendant), upon when he was for the first time able to review his medical chart, in 2014, then

commenced the action January 20th 2015. Prior to reviewing his medical records, there was no way for the Appellant to know that there was longstanding errors that had occurred.

53. For clarification on known and knowable, the Appellant (Plaintiff) was clear therein his Statement of Claim, paragraph 79, that the Defendant did not give the Plaintiff's attorney the amount of information requested (being the complete and full file of the Plaintiff from the Defendant's private office), which was demonstrated when more documents emerged after litigation was commenced, and will be proved at a full trial. It was not unreasonable for the Honorable Justice George S. Rideout to decide that a full trial would have to be heard before deciding the limitation period, for the Appellant was not provided all of his medical information, which contained the errors of the Respondent (Defendant) and will be proved at trial. Since the documents were not all provided, there was no way to discover the undisclosed errors.

54. Despite any question of when the Appellant (Plaintiff) first knew or ought reasonably to have known that the injury, loss, or damage had occurred, and was caused by an act or omission, and was an act or omission of the Respondent (Defendant), the limitation period is postponed until 1 year after termination of disability, which the action was commenced within time from the postponement.

55. In the case of any potential complexity, the Appellant (Plaintiff) first knew or ought reasonably to have known that the injury, loss, or damage had occurred, and was caused by an act or omission, and was an act or omission by the Respondent (Defendant), upon when he first obtained a medical expert report, for if the merit of the claim cannot be deduced and discovered without the opinion of a medical expert, then a medical error cannot be deduced and discovered without the opinion of a medical expert, which was discovered within time by a medical expert. The Appellant has long argued that he does not need an expert opinion to discover the claim's merit, injury, loss, or damage. The Respondent should not be able to have it both ways; if the Appellant cannot discover medical errors without the opinion of a medical expert, then the Appellant cannot discover the claim without the opinion of a medical expert. In the case of any

potential complexity, the claim was discovered upon the production of the expert reports, all of which came after the action was commenced. If the claim is complex then the Appellant first knew or ought to have reasonably known when he obtained his expert reports. All 5 expert reports being within time of 2 years from the action being commenced.

56. It would be most unpleasant for the Appellant (Plaintiff) to have to enter the Supreme Court of Canada before this matter has ever seen trial. The Appellant has acted in good faith, and to the best of his ability, bringing this action against the doctor that abused him. The Appellant requires a trial on the matters and issues.

PART V: RELIEF SOUGHT:

57. The Appellant (Plaintiff) Mr. Bryan Sutherland requests that this Honorable Court grant an Order that:

A: The decisions/judgment for Summary Judgment be reversed, and the action be set down for trial, for the Appellant (Plaintiff) has brought specialist expert evidence against the Respondent (Defendant) and has appropriately introduced it via motion for further evidence;

B: In the alternative, the decisions/judgment for Summary Judgment be varied, and the action be set down for trial, for the Appellant (Plaintiff) had produced medical expert evidence prior to summary judgment being granted;

C: In the alternative, the decisions/judgment for Summary Judgment be set aside, and the action be set down for trial, for other malpractice cases have gone to trial without expert evidence, and other cases have been set down for trial without expert evidence;

D: The intended Respondent (Defendant) pay costs of the within Appeal and Judgment;

E: The Lord Justice George S. Rideout, who granted the decisions/judgment, and who prejudged the expert evidence prior to trial, very respectfully be ordered to immediately and appropriately recuse himself;

F: For Such further and other relief as this Honorable Court deems just.

ALL OF WHICH is respectfully submitted this 15th Day in the Month of November in the Year of 2017.

The Self-Representing Appellant (Plaintiff) and
the Forward Moving Party

BRYAN SUTHERLAND PI.

The Appellant (Plaintiff): Bryan Sutherland
Initials: B. S.

Prepared By: Bryan Sutherland PI.
Telephone Number: 1 (506) 536-0748
Preferred Mailing Address:
25 Lorne Street
Sackville, New Brunswick, Canada
Postal Code: (E4L 3Z8)

SCHEDULE A: **LIST OF AUTHORITIES:**

NIL

SCHEDULE B: **STATUTES OR REGULATIONS:**

NIL