

# BRYAN SUTHERLAND PI.

Tel: 1 (506) 536-0748  
120 Charlotte St.  
Sackville, NB,  
E4L 2Y8

Date: Thursday January 25<sup>th</sup> 2018

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## Via Courier

Stewart McKelvey Law Firm  
Robert Dysart, the Defence  
Solicitor for Dr. Moses Alatishe  
Suite 601, Blue Cross Centre,  
644 Main Street,  
Moncton, NB, E1C 1E2

Dear Attorney Dysart:

**Re: Bryan Sutherland v. Moses Alatishe; and  
Court of Appeal File Number: 16 – 17 – CA.**

Accordingly, please find enclosed for service:

1. Notice of Motion (Form 37A) dated for October 19<sup>th</sup> 2017;
2. Supporting Affidavit of the Appellant (Plaintiff) Mr. Bryan Sutherland, sworn for October 19<sup>th</sup> 2017; and the
3. Documentary Evidence from Exhibit A to Exhibit K.

All of which being listed above has already been filed with the Court of Appeal Registry. The Hearing on Motion has been set for the same day as the appeal, from what I understand that the date is to be March 20<sup>th</sup> 2018, commencing at the time of 10:00 a.m., even though the March docket has not been issued yet.

I also enclose for signing, my Acknowledgment of Receipt Card (Form 18A) that of which I require you to date and sign, and then return Form 18A back to me forthwith, so that I can demonstrate to the Court proof of service thereon you.

Kindest regards,



**BRYAN SUTHERLAND PI.**

Enclosures and/or Attachments

Cc: Registrar, Court of Appeal of New Brunswick

**BRYAN SUTHERLAND PI.**

# BRYAN SUTHERLAND P.I.

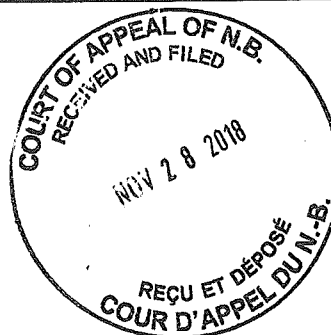
Letterhead Reference Number: 841

Date: Friday October 20<sup>th</sup> 2017

Via Courier

**Directive Mailing Address:**

To: the Court of Appeal  
Registrar of the Court of Appeal,  
Justice Building,  
427 Queen Street,  
Fredericton, New Brunswick, Canada  
Postal Code: (E3B 5H1)



**REGARDING: Mr. Bryan Sutherland, the Plaintiff Vs. Dr. Moses Alatishe, the Defendant:  
Court File Number: MC - 28 - 2015; and  
Court of Appeal File Number: 16 - 17 - CA;  
File Form 37A for Amended & Further Evidence.**

Dear Registrar of the Court of Appeal, Ms. Caroline Lafontaine:

On Wednesday October 18<sup>th</sup> 2017, I received both the transcribed Hearing on Motion for Summary Judgment heard May 25<sup>th</sup> 2016 and the Review Hearing heard on September 23<sup>rd</sup> 2016. The transcription was also needed as Documentary Evidence on my Motion.

Please find enclosed, in duplicate, for filing:

1. Notice of Motion (Form 37A) dated for Thursday October 19<sup>th</sup> 2017;
2. Supporting Affidavit of the Appellant (Plaintiff) Mr. Bryan Sutherland, sworn for Thursday October 19<sup>th</sup> 2017; and the
3. Documentary Evidence from Exhibit A to Exhibit L.

All of which I am filing with the Court of Appeal Registry today. Kindly enface on the original and copy, the date stamp of issue, return the original to the Appellant Mr. Bryan Sutherland, and retain and file the copy with the Court of Appeal Registry. Thanks.

I have called the Court of Appeal Office in advance regarding time and scheduling of the Hearing on Motion. If you have any questions, then you can reach me at the telephone number: 1 (506) 536-0748.

I'm directing your attention to Rule 62.15(1). I will be unable to perfect my appeal until the matters addressed therein the motion have been concluded by this Honorable Court, as the result will affect the Appeal Book and/or the Appellant's Submissions.

Specifically, I hope that this Motion can be scheduled around 1 month from the filing date so that this Appeal does not get tangled in delay. In addition, I prefer the time to be booked around 11:00 a.m. or after, for it is a lengthy drive from Sackville/Moncton. Thank you very much.

# BRYAN SUTHERLAND PI.

Letterhead Reference Number: 841

Date: Friday October 20<sup>th</sup> 2017

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Kindest regards,

**BRYAN SUTHERLAND PI.**



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Private Investigator: Bryan Sutherland

Initials: B. S.

Enclosures

Prepared By: Bryan Sutherland PI.  
Telephone Number: 1 (506) 536-0748  
Preferred Mailing Address:  
120 Charlotte Street,  
Sackville, New Brunswick, Canada  
Postal Code: (E4L 2Y8)

**CARBON COPY:**

**TO:** Stewart McKelvey (Moncton)  
Attorney Mr. Robert M. Dysart  
Solicitor for the Respondent (Defendant)  
Dr. Moses Alatishe

Court of Appeal File Number: 16-17-CA

N° Du Dossier: \_\_\_\_\_

IN THE COURT OF APPEAL OF NEW BRUNSWICK

DANS LA COUR D'APPEL DU NOUVEAU-BRUNSWICK

ENTRE:

BETWEEN:

**MR. BRYAN SUTHERLAND**

Plaintiff,

Demandeur (intimé),

-and-

-et-

**DR. MOSES ALATISHE**

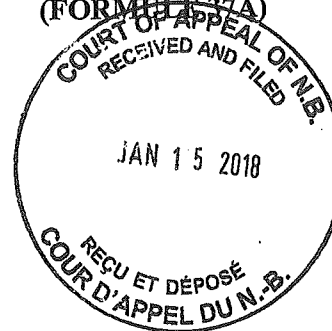
Defendant.

Défenderesse (requérante).

**NOTICE OF MOTION  
(FORM 37A)**

**AVIS DE MOTION  
(FORMULE 37A)**

**TO THE RESPONDENT (DEFENDANT):  
DR. MOSES ALATISHE**



**TO THE ADDRESS OF:**  
Stewart McKelvey Law Firm  
Suite 601, Blue Cross Centre,  
644 Main Street,  
Moncton, New Brunswick, Canada  
Postal Code: (E1C 1E2)

1. The Appellant (Plaintiff) will apply to the Court of Appeal at 427 Queen Street, Fredericton, NB, on the 20<sup>th</sup> day of March, 2018 at 10:00 a.m. (or p.m.) for an order that: C.A.

Le demandeur demandera à la Cour à . . .  
..... (lieu précis) . . . . ., le . . . . .  
.....  
..... 2017. . . . ., à . . . . . h .  
....., d'ordonner :

- (A) The expert reports of Dr. Robert Carroll, Dr. Brenda LeFrancois, and such further and other expert evidence as may be submit before *Motions Day*, be deemed admissible evidence on the grounds that the Court of Appeal or a judge thereof may receive evidence as to matters which have occurred after the date of the order or decision appealed from, pursuant to Rule 62.21(2)(b);
- (B) In the alternative, the expert reports of Dr. Robert Carroll, Dr. Brenda LeFrancois, and such further and other expert evidence as may be submit before *Motions Day*, be deemed admissible evidence on the basis that the Court of Appeal or a judge thereof may receive evidence on special grounds, upon any question of fact, pursuant to Rule 62.21(2)(c);

(C) In addition, the Amended expert report of Dr. Fred Baughman and such further and other amendments as may be made before *Motions Day*, be deemed admissible evidence for the reason that the Court of Appeal may allow any amendments, pursuant to Rule 62.21(4);

(D) For cost; and

(E) For such further and other relief as this Honorable Court deems just.

2. The grounds to be argued are: Les motifs soulevés sont:

(A) Pursuant to Rule 22 of the *Rules of Court* of New Brunswick, that the Judgment entered in favor of the Respondent (Defendant), and which is the judgment appealed from, is a technical and preliminary summary judgment and that there has been no Trial;

(B) Pursuant to Rule 3 of the *Rules of Court* NB. Not only does the Appellant (Plaintiff) have a bona fide intent, but the contrary intentions that appear to this case is set forth hereunder:

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

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

(III) 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;

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

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

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

(VII) 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;

(VIII) 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;

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

(C) Pursuant to Rule 52 of the *Rules of Court*, that not only has there been no trial, there has been no motions day, and the expert reports of Dr. Robert Carroll, Dr. Brenda LeFrancois, and

any other expert evidence as may be submitted before motions day, are admissible, and would not cause prejudice to the Respondent (Defendant), for there has been no motions day;

- (D) Pursuant to Rule 1, the expert evidence could not be adduced at trial because there has been no trial yet; alternatively, it could not be discovered by due diligence for the contrary intentions that appear;
- (E) Pursuant to Rule 1, the expert evidence is relevant, however it cannot be prejudged to bear a decisive issue in the trial for there has not yet been a trial, alternatively, the evidence is relevant for is various degrees of expert evidence and/or medical expert evidence which bears a decisive issue for the coming trial and deduces any potential medicolegal complexity that arises from matters or issues;
- (F) Pursuant to Rule 1, the evidence is credible and capable of belief, for this is expert evidence, and the outstanding curriculum vitae and credentials demonstrates its credibility;
- (G) Pursuant to Rule 1, in its belief it cannot affect the result of the trial, for there has not been a trial yet, alternatively, the expert evidence would have affected the result of the preliminary Justice's decision and the "Judgment Following Hearing" (Form 60A), for it contains various degrees of evidence from an expert, and/or medical expert, and/or specialist expert;
- (H) Pursuant to Rule 62, regarding further evidence, as to matters:
  - (I) The medical documentary evidence was already before the Court and disclosed therein the Affidavit of Documents of the Plaintiff, pursuant to Rule 31, and the requirement of medical expert opinion provided to deduce the content of those medical records is further evidence to matters that have occurred after the date of the summary judgment and decision appealed from, and should receive the medical expert evidence and report of Dr. Robert Carroll, Dr. Brenda LeFrancois, and such further and other expert evidence as may be submitted before *Motions Day*;
  - (II) There was already medical expert evidence before the Court and served onto Defence counsel prior to summary judgment being granted, and the medical expert evidence is further evidence as to matters that have occurred after the date of the summary judgment and decision appealed from, and should receive the medical expert evidence and report of Dr. Robert Carroll, Dr. Brenda LeFrancois, and such further and other expert evidence as may be submitted before *Motions Day*;
- (I) Pursuant to Rule 62, regarding further evidence, on special grounds, the contrary intentions that appear are special grounds upon fact, and this Honorable Court should receive the expert evidence;
- (J) Pursuant to Rule 62, regarding amendments, the medical expert report of neurologist Dr. Fred Baughman was submitted to the Court prior to summary judgment being granted and the amended medical expert report should be allowed;

(K) Creating a new test and applying new principles for admission of expert evidence submitted and served before motions day.

3. The Appellant (Plaintiff) Mr. Bryan Sutherland pleads and relies on the *Rules of Court* of New Brunswick, and in particular being Rules 1, 3, 22, 31, 37, 39, 52, and 62 of the *Rules of Court*, and upon further statutory provisions or further expert evidence as may be submitted to this Court.

4. Upon the hearing of the motion the following affidavits or other documentary evidence will be presented:

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

(A) The Affidavit of the Appellant (Plaintiff) Mr. Bryan Sutherland, sworn on October 19<sup>th</sup> 2017; and

(B) Such further and other material as may be submitted to this Court.

5. You are advised that:

Sachez que :

(a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;

(b) the plaintiff (or as may be) intends to proceed in the English Language; and

b) le demandeur (ou selon le cas) a l'intention d'utiliser la langue ..... ; et

(c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 7 days before the hearing.

c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 7 jours avant l'audience.

DATED herein the Town of Sackville, here at the County of Westmorland, inside the Province of New Brunswick, within the Country of Canada, here on this 19<sup>th</sup> Day in the Month of October in the Year of 2017.

FAIT à ..... le ..... 2017.  
.....  
.....  
.....

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

**BRYAN SUTHERLAND PI.**



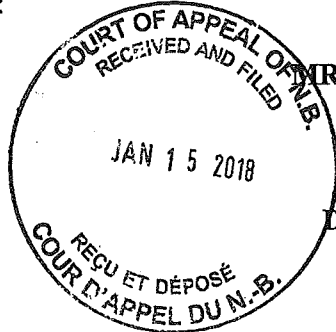
Bryan Sutherland  
Initials: B. S.

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)

**BRYAN SUTHERLAND PI.**

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:



MR. BRYAN SUTHERLAND

Appellant (Plaintiff),

-and-

DR. MOSES ALATISHE

Respondent (Defendant).

**AFFIDAVIT**

I (Bryan Jason. Arnold. Sutherland) am a lifelong citizen of the country of Canada, and I reside herein the town of Sackville, here at the county of Westmorland, inside the province of New Brunswick, from within the country of Canada, and I hereby MAKE OATH AND SAY:

**Legal History of Technical and Preliminary Summary Judgment:**

1. THAT I am the Appellant (Plaintiff) and I have been robbed of my *Day in Court* (robbed of a *Trial*) and I have been robbed of a **Motions Day**.
2. THAT the Respondent (Defendant) was granted a technical and preliminary summary judgment prior to the action ever being set down for trial at **Motions Day**. Attached hereto and marked as Exhibit "A" is the "Judgment Following Hearing" (Form 60A) which was entered thereon and dated for October 5<sup>th</sup> 2016. I clarify that this was a judgment following a preliminary hearing, not a judgment following trial. The evidence against the Respondent (Defendant) has never been heard. I was not served with this judgment following a technical hearing until the date of January 12<sup>th</sup> 2017.
3. THAT the "Judgment Following Hearing" (Form 60A) entered was based on 2 decisions issued by the Honorable Justice George S. Rideout.
4. THAT attached hereto and marked as Exhibit "B" is the decision on motion for summary judgment dated for and filed June 1<sup>st</sup> 2016. Out of the 2 remedies sought by the Defence, summary judgment sought for the claim being statute-barred was not granted, and summary judgment sought for no merit to the action was adjourned for 2 months, to give Plaintiff's counsel time to retain a medical expert witness.
5. THAT within the 2 month adjournment, I had obtained 2 expert reports, 1 of them being from a medical expert witness, as required to support the allegations therein my Statement of Claim. Attached hereto and marked as Exhibit "C" is the decision on Review Hearing dated for and entered on September 28<sup>th</sup> 2016. Summary judgment was still granted in favor of the Defendant Dr. Moses Alatishe, despite my expert evidence and medical expert evidence further demonstrating the merit to my claim either in part or as a whole.

**BRYAN SUTHERLAND PI.**



6. THAT for obvious reasons, I dispute the summary judgment being granted, and I am appealing. Attached hereto and marked as Exhibit "D" is my "Notice of Appeal" (Form 62B) that of which was issued on the date of August 29<sup>th</sup> 2017.
7. THAT after serving the Defence with the Notice of Appeal, I received a 2 page letter addressed to myself from attorney Mr. Robert M. Dysart sent to me via regular mail dated for September 11<sup>th</sup> 2017, which is attached hereto and marked as Exhibit "E." The letter indicates that further expert evidence that I have obtained would amount to fresh evidence. Mr. Dysart informs me that I may want to consider a motion. He indicates that he will be objecting to the introduction of such evidence.
8. THAT given the advice from opposing counsel, I bring this motion.

**Remedies Sought & Grounds to be Argued:**

9. THAT I have a bona fide intent to bring this motion allowing the evidence of Dr. Robert Carroll, Dr. Brenda LeFrancois, and such further and other expert evidence that I may submit prior to **Motions Day**.
10. THAT there are many contrary intentions that appear in regards to the computation of time. I ask this Honorable Court for leniency in my specific case for the contrary intentions that appear. I lay out and set forth the various contrary intentions that appear hereunder:
  - (a) The Defence have argued that this proceeding is a complex medicolegal matter, and if that be the case deemed by this Honorable Court of Appeal, then I ask this Honorable Court for leniency on a confusing, perplexing, and complex basis;
  - (b) I am self-representing and am not protected by a trained lawyer who would possess the skills, knowledge, experience, and expertise to not make a preliminary mistake, and I am particularly vulnerable, and I ask this Honorable Court for leniency on a vulnerable legal basis;
  - (c) I have never dealt with the Courts for any criminal or civil reasons, prior to commencing this lawsuit, and this action is the first time that I have ever learned the *Rules of Court* NB, and I ask this Honorable Court for leniency on a new experience and first time basis;
  - (d) I am a layman untrained in law, and am untrained in any post-secondary education, and if I had misunderstood one of the *Rules of Court* of New Brunswick, jurisprudence, and or legislation, then I ask this Honorable Court for leniency on an untrained legal basis;
  - (e) I am a layman untrained in medicine, and a patient is particularly vulnerable, for if I cannot give evidence about these matters without a medical expert Witness(es) then I ask this Honorable Court for leniency on an untrained medical basis;
  - (f) I am a layman with a grade 10 education, for if I misread or was unable to read the *Rules of Court* of New Brunswick, legislation and/or Jurisprudence correctly given my absence of a diploma or education, then I ask this Honorable Court for leniency, on an educational basis;

- (g) I had informed the Court prior to summary judgment being granted in favor of the Defendant, that I could not afford an expert witness. I believe that my lack of funds should not decide whether the Defendant is innocent or guilty, and I ask this Honorable Court for leniency on an inability of affordability basis;
- (h) I had provided medical expert evidence prior to summary judgment being granted which was able to support my material facts therein my pleading, which the content was wrongly prejudged by the presiding preliminary justice, and I ask this Honorable Court for leniency on a prejudged evidence error basis;
- (i) I had provided medical expert evidence prior to summary judgment being granted, but if it was not enough, I have now provided 2 more further expert reports, and a medical expert has amended his expert report, and I ask this Honorable Court for leniency on a further evidence and amended evidence basis.
11. THAT I stress the fact that I informed the Court of Queen's Bench of my inability to afford an expert at the Hearing on Motion for summary judgment, heard on May 25<sup>th</sup> 2016. Attached hereto and marked as Exhibit "F" is the cover page, pages 40, 47, and 65 of the transcript of the Hearing on Motion for summary judgment. I indicate that:
- (a) I don't have exactly the finances at this time to call them;
- (b) If I get the opportunity and the funds, I would love to call an expert; and
- (c) I have trouble with finances.
12. THAT the Court had knowledge that I could not afford an expert at that time. Even though I had provided 2 expert reports prior to summary judgment being granted, one of the expert reports being a medical expert report, I have obtained more expert reports now with further funds over time. I do not believe that my claim should have been struck based on my inability to afford "enough" expert evidence. I believe that the money in my pocket should not decide the Defendant's guilt or innocence, nor decide if the Defendant is liable or not liable. Anybody can see and establish negligence on its face.
13. THAT by the *Rules of Court* of New Brunswick, and in particular Rule 52.01(1), is clear that a party who intends to call an expert witness shall serve a copy of the experts signed report, and that service shall be made as soon as practicable, but no later than the **Motions Day** in which the trial date is fixed. To be clear again, I have never had a **Motions Day**. I believe that my further submitted expert evidence and my amended expert evidence is admissible evidence for it has all been submitted and served onto the Defendant prior to **Motions Day**. I believe that the further and amended expert evidence cannot cause prejudice and does not cause prejudice to the Defendant for he has been served with this evidence prior to **Motions Day**. Still this preliminary matter has not affected the trial, for trial has not yet happened.
14. THAT whether the expert evidence that has been submitted after the decision and/or order/judgment be deemed fresh evidence, or further evidence, or amended evidence, the case law on past existing matters sets forth the hurdles to be cleared by past cases.
15. THAT the reason that my expert evidence could not be adduced at trial yet, is because there has not been a trial yet. In the alternative, prior to the technical judgment being granted in favor

of the Defendant, the reason that the expert evidence could not be discovered by due diligence and could not be adduced prior to entering the "Judgment Following Hearing" (Form 60A) is for the same reasons of the contrary intentions, all which appear to this specific case.

16. THAT the evidence is relevant but could not yet have bared a decisive or potential decisive issue at trial, for there has been no trial yet. In the alternative, the evidence is relevant in the sense that it bears a decisive or potential decisive issue when trial finally comes. The further expert evidence which has been provided since the order and decision appealed from in conjunction with the expert evidence provided to the Court, prior to the preliminary judgment being granted in favor of the Defendant is, as a whole, able to set a *Standard of Care* amongst experts, and/or medical experts, and/or specialist experts despite any dispute or argument of degree required to set a *Standard of Care*.
17. THAT the evidence is credible and reasonably capable of belief, for the curriculum vitae (also known as CV hereinafter) of each expert witness is outstanding. The credentials of the expert witnesses CV speaks for itself. Such successful and highly trained expert witnesses are professional and possess the skills, knowledge, experience, and expertise to set a *Standard of Care* and give expert evidence on any potential complex issues which arise out of this medicolegal matter. In addition, the evidence is credible and is reasonably capable of belief for all of my expert reports provided by all of my expert witnesses complement each other and all share a general consensus that the Defendant has fallen below an acceptable and/or a reasonable *Standard of Care*.
18. THAT the evidence can be believed when it is finally heard and when taken into account with the other evidence to be adduced at trial and which has not yet been heard, it will certainly affect the result, but no evidence has yet been heard because there has been no trial yet. In the alternative, if I had the further expert evidence in my possession prior to summary judgment being granted in favor of the Defendant then it would have completely changed the result of the order and decision appealed from, for despite any dispute or argument on the type of expert evidence required, if any, I would have had expert evidence, and medical expert evidence, and specialty expert evidence, all concurring with each other, and there would have been no confusion to whether I could set a *Standard of Care* within the areas of expert opinion, and/or medicine, and/or specialty.
19. THAT attached hereto and marked as Exhibit "G" is my "Affidavit of Documents" (Form 31B) that of which was sworn for the date of November 6<sup>th</sup> 2015 and filed with the Court registry on the date of November 9<sup>th</sup> 2015. I had served my Form 31B onto the Defendant Dr. Moses Alatishe. To clarify, the evidence was all before the Court prior to summary judgment being granted in favor of the Defendant Dr. Moses Alatishe. Despite the evidence being before the Court, pursuant to Rule 31, the Defence had argued that the matter raises complex issues in the area of medicine. I believe that the documents spoke for themselves no matter if an expert witness provided evidence to deduce the medical charts or not. In addition, I believe that my claim has merit, in part, or as a whole.
20. THAT further, the medical documents in conjunction with all the other documentary evidence was before the Court prior to summary judgment being granted. The further expert reports provided are further evidence to the documents which were already before the Court. The matters of obtaining further expert opinion to comment on the documentary evidence which was already provided has come after the date of the order/judgment which is currently being appealed from. Such matters of further expert opinion are further matters which came after the date of the

order/judgment and decision, but was already before the Court prior to the Judgment Following Hearing. I ask that this Honorable Court receive into evidence the further expert reports, and that the further expert evidence be deemed admissible evidence for it was already before the Court in document form and existed prior to summary judgment.

21. THAT in addition, during the 2 month adjournment, I had provided 2 Expert Witnesses reports, 1 of them being a medical expert witness report, giving expert evidence deducing my medical information. Both of these expert reports are attached as exhibits and are described and referred to in paragraphs hereunder. While I do not believe that I needed expert evidence for the evidence was already in document form and the documents were deposed before the Court prior to summary judgment, I still managed to obtain some expert evidence prior to the Review Hearing, despite my economic hardships. Summary judgment was still granted, and I dispute that the expert evidence provided at the time would not have been deemed enough expert evidence, in the case of any medicolegal complexity. I also dispute summary judgment being granted for the expert evidence was wrongly prejudged by the preliminary justice. The expert evidence was never heard for it could only be heard at trial, not on a preliminary matter. The question should have been, did I get expert evidence? And the fact was, yes I did. The other question should have been, did I obtain medical expert evidence? And the fact was, yes I did.
22. THAT I believe that I had obtained enough expert evidence to simplify any question of a potential complex medicolegal issue. However, the fact remains that I had served the Defence and provided expert evidence and medical expert evidence before the Court prior to summary judgment being granted in favor of the Defendant Dr. Moses Alatishe. The further expert evidence that I have provided after the order/judgment and decision appealed from is referred to in exhibits and listed and described hereunder. Since I already had expert evidence and medical expert evidence before the Court prior to summary judgment being granted. The further matters are that I have provided further expert evidence. I ask that this Honorable Court receive into evidence the further expert reports and the further expert evidence be deemed as admissible, for expert evidence was already before the Court prior to summary judgment being granted, and existed before summary judgment, being granted whether it was enough expert evidence or not.
23. THAT I also raise another huge fact that expert evidence can be served no later than the **Motions Day** in which the Trial date is fixed, pursuant to Rule 52. There has never been a trial yet, nor has there been a **Motions Day** yet, therefore I submit that the expert reports and expert evidence is still served within time.
24. THAT in the alternative, to the further matters of being able to obtain further expert evidence, which had already existed in document form pursuant to Rule 31, and in expert evidence form pursuant to Rule 52, and was before the Court prior to summary judgment being granted in favor of the Defendant Dr. Moses Alatishe, I ask that this Honorable Court receive the further expert evidence as being admissible on special grounds and upon any question of fact, being the contrary intentions that appear to this case.
25. THAT the expert report of Dr. Fred Baughman, attached as an exhibit and listed and described hereunder, was served onto the Defendant Dr. Moses Alatishe prior to summary judgment being granted. While I believe that the content of his expert report was enough expert evidence, which was wrongly prejudged therein its content, if for some reason that it was not enough expert evidence, Dr. Baughman has amended his expert report. The Court of Appeal may accept and allow any amendment. I ask that this Honorable Court allow the amended report of Dr. Fred Baughman. The amended expert report has also been served before **Motions Day**.

**Expert Evidence:**

26. THAT after the Hearing on Motion for summary judgment, and during the 2 month adjournment, I obtained a medical expert report from neurologist Dr. Fred Baughman. Attached hereto and marked as Exhibit "H" is the expert report of Dr. Baughman dated for July 14<sup>th</sup> 2016. This is an expert report from a medical expert witness. The expert report of Dr. Baughman was served onto the Defendant Dr. Moses Alatishe and submitted to the Court of Queen's Bench prior to summary judgment being granted.
27. THAT in addition, after the Hearing on Motion for Summary Judgment, and during the 2 month adjournment, I obtained an expert report from Dr. Roger Crossman. Attached hereto and marked as Exhibit "T" is the expert report of Dr. Crossman dated for June 22<sup>nd</sup> 2016. The expert report of Dr. Crossman was served onto the Defendant Dr. Moses Alatishe and submitted to the Court of Queen's Bench prior to summary judgment being granted.
28. THAT despite my served and submitted expert evidence and medical expert evidence, the content of the Expert Reports were wrongly prejudged by the preliminary and presiding Justice George S. Rideout. This will be argued in greater depth on the Appeal.
29. THAT since my expert evidence was prejudged and rejected by the Honorable Court of Queen's Bench, I have obtained further expert evidence to clarify any misunderstandings. Attached hereto and marked as Exhibit "J" is my obtained expert report from Psychiatrist Dr. Robert Carroll dated for December 20<sup>th</sup> 2016. Dr. Carroll also provides medical expert evidence on the matters and issues. Dr. Robert Carroll's expert report has already been served onto the Defence.
30. THAT since my expert evidence was prejudged and rejected by the Honorable Court of Queen's Bench, I have obtained further expert evidence to clarify any misunderstandings. Attached hereto and marked as Exhibit "K" is my obtained expert report from Dr. Brenda LeFrancois dated for October 11<sup>th</sup> 2017. Dr. LeFrancois also provides medical expert evidence on the matters and issues. Dr. LeFrancois's expert report has already been served onto the Defence.
31. THAT since my expert evidence was prejudged and rejected by the Honorable Court of Queen's Bench, I have obtained further expert evidence being the amended expert report of neurologist Dr. Fred Baughman dated for January 3<sup>rd</sup> 2017, which is attached hereto and marked as Exhibit "L." Dr. Baughman's amended expert report also provides medical expert evidence on the matters and issues. Dr. Baughman's amended expert report has already been served onto the Defence.
32. THAT I do not believe that I required expert evidence to have this action set down for trial for other malpractice cases have gone to trial without retaining expert witnesses. I believe that if expert evidence was required to set the action down for trial, then I had enough expert evidence prior to summary judgment being granted. If for some reason that I did not have enough expert evidence before, then I believe that I have enough expert evidence now. I do not believe that it should have taken this much excessive expert evidence to have an action set down for trial, especially since it is unfair that other malpractice cases were set down with no expert evidence. It is also unfair because despite my expert evidence being prejudged by the preliminary presiding justice, the Defence had never provided expert evidence of their own, and that absence of weight and quality was not taken into account on the Defence side.

33. THAT I ask that this Honorable Court allow the admissions of my further evidence, being the expert report of Dr. Robert Carroll and Dr. Brenda LeFrancois, and such further and other expert evidence as may be submitted to this Honorable Court.

34. THAT I ask that this Honorable Court allow the amended expert report by Dr. Fred Baughman, and such further and other amendments as may be submitted to this Honorable Court.

**The Principles of Further Evidence:**

35. THAT the existing principles for admission of further evidence are as follows:

- a) The evidence should generally not be admitted, if by due diligence it could have been adduced at the **trial**. This principle is less stringently applied in criminal, compared to civil cases;
- b) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the **trial**;
- c) The evidence must be credible, in that it is reasonably capable of belief; and
- d) It must be such that if believed, it could reasonably, when taken with the other evidence adduced at the **trial**, be expected to have affected the result.

36. THAT however, these principles apply to situations that have come after **trial**. The uniqueness of this specific case is that there has been no trial for the judgment was a preliminary judgment, in which my medical expert evidence was wrongly prejudged by the presiding preliminary justice. My expert evidence has never been heard, for the evidence can only be heard at trial.

37. THAT the content of an expert report cannot be judged until it is heard, and it can only be heard at trial. I believe that it was an error for the preliminary Honorable Justice George S. Rideout to prejudge the expert evidence of my expert reports prior to it being heard at trial.

38. THAT the existing case law on finding fresh evidence or further evidence to be admissible is after trial. In addition to me proving the old test and principles, I ask for a new test with new principles for admissible expert evidence prior to the due date of its submission being **Motions Day**. In order for expert evidence to be admissible after preliminary judgment, I believe that the following test and principles should apply to this situation:

- a) The party has retained or hired the expert witness prior to trial;
- b) The party who has retained or hired the expert witness has served the expert report onto all of the adverse parties prior to the due date required [in New Brunswick, the due date being no later than the motions day in which the trial date is fixed, pursuant to Rule 52.01(1)];
- c) The expert report is relevant in the sense that it provides expert opinion that may simplify any issues that are in dispute; and


d) The expert opinion must be capable in that it provides expert evidence that may set a standard of care to any issues in question or in dispute when heard at trial.

39. THAT I believe that the above test would be reasonable to decide if further expert evidence should be admissible on motions and applications which are brought prior to a trial. I have met all four of the requirements that have been listed above.

40. THAT I make this Affidavit on a Motion for the admission of my further expert evidence and my amended expert evidence.

SWORN TO BEFORE ME herein the Town of )  
Sackville, here at the County of Westmorland, )  
inside the Province of New Brunswick, within )  
the Country of Canada, here on this 19<sup>th</sup> Day in )  
the Month of October in the Year of 2017. )

BEFORE ME: )

  
\_\_\_\_\_  
Wynn W. Meldrum  
A Commissioner of Oaths  
Being a Solicitor

  
\_\_\_\_\_  
Deponent: Mr. Bryan Sutherland

IN THE COURT OF APPEAL OF NEW BRUNSWICK

BETWEEN:

**MR. BRYAN SUTHERLAND**

Appellant (Plaintiff),

-and-

**DR. MOSES ALATISHE**

Respondent (Defendant).

**ACKNOWLEDGEMENT OF RECEIPT CARD  
(FORM 18A)**

**TO THE DEFENCE SOLICITOR: MR. ROBERT M. DYSART**

**TO THE DEFENDANT: DR. MOSES ALATISHE**

**TO THE ADDRESS OF:**

Stewart McKelvey Law Firm (Moncton)  
Suite 601, Blue Cross Centre,  
644 Main Street,  
Moncton, New Brunswick, Canada  
Postal Code: (E1C 1E2)

**ACKNOWLEDGEMENT OF RECEIPT**

I hereby acknowledge that on the \_\_\_\_\_ day of January, 2018, I received via Courier the following documents:

- (a) Notice of Motion (Form 37A), dated for October 19<sup>th</sup> 2017;
- (b) Supporting Affidavit of the Appellant (Plaintiff) Mr. Bryan Sutherland, sworn for October 19<sup>th</sup> 2017; and the
- (c) Documentary Evidence from Exhibit A to Exhibit K.

.....  
*Attorney Mr. Robert M. Dysart  
 Solicitor for the Respondent  
 (Defendant) Dr. Moses Alatishe*

Prepared By: Bryan Sutherland PI.  
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