

A motion brought by the defendant physician to strike portions of the Statement of Claim (pursuant to Rules 21 and 25) relating to allegations of “past incompetence and knowledge thereof”

*Blunt v. Dr. Vaidyanathan,*  
2018 ONSC 3243 (CanLII)

Summary by Jeremy Syrtash\*

MOTIONS

FULL DECISION

*Counsel for the Plaintiff:*

*Daniela Pacheco\**

*Counsel for Defendants: S. Zacharias*

The action arises from the labour and delivery of the plaintiff in 2000. The defendant physician took the position that the past allegations of “substandard practice” and reference to the fact that the defendant OB was the subject of an investigation by the College including 26 patient cases from September 1998 through to September 2000 were deficient as no material facts were provided and failed to provide particulars/specifics of the alleged past transgressions. The defendant physician relied on two cases to support his position: *Wai-Ping, 2005 Canlii 166602*, and *Macneil v. Humber River Regional Hospital, 2011 ONSC 669*.

Both of these cases supported the proposition that similar fact evidence is generally inadmissible due to unfair prejudice. However, if the similar fact evidence is specific enough, and thus probative, it could outweigh any unfair prejudice. Here, Dr. Vaidyanathan took the position that the similar fact allegations were lacking in particulars such that the pleading was not sufficient to establish the degree of similarity necessary for the similar facts to have the probative value necessary to outweigh the resulting prejudice.

The plaintiffs took the position that the allegations were detailed enough and pursuant to the instructions set out by the Court in *Wai-Ping*, and that the allegations were in fact probative enough. They also argued that it is permissible to plead speculative alternative theories of liability and that the proposed pleading made proper and tenable claims, pled with the particularity available to them to support their allegations of a breach of fiduciary duty.

In striking the impugned portions of the statement of claim, Justice Carole Brown found that the plaintiff failed to plead any material facts, or specifics, which would tie the concerns and complaints raised to the allegations that the defendant knew or ought to have known that he had deficient skills regarding labour and delivery.

She further held that the allegation in the pleading that “Dr. Vaidyanathan treated Kimberlee and Josee during a complicated labour and delivery, when he knew or ought to have known that he was incompetent and incapable of doing so safely” amounted to a bald allegation without any or sufficient material facts or specifics to support the allegation.