

**File No: 10-29178  
Registry: Vancouver**

**In the Provincial Court of British Columbia  
(CIVIL DIVISION)**

**BETWEEN:**

**NADA ISHAK**

**CLAIMANT**

**AND:**

**DR. KEVIN AMINZADEH INC.  
c.o.b.a. EAGLE CREEK DENTAL CENTRE**

**DEFENDANT**

**REASONS FOR JUDGMENT  
OF  
THE HONOURABLE JUDGE GIARDINI**

**COPY**

**Appearing on her own behalf:**

**N. Ishak**

**Counsel for the Defendant:**

**J. Brun**

**Place of Hearing:**

**Vancouver, B.C.**

**Date of Judgment:**

**February 20, 2012**

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[1] THE COURT: Today I am dealing with an application made on behalf of the defendant in this matter who is Dr. Kevin Aminzadeh, the claimant is Ms. Nada Ishak. The application before me today by the defendant is that I dismiss the claim for failure to comply with the Rules with respect to filing dental-legal reports in this case to support the claimant's claim.

[2] I am going to give a brief summary of what the claim is about. In February 2010, Ms. Ishak filed a claim against the defendant dentist, Dr. Kevin Aminzadeh. That claim was subsequently amended in September of the same year. The claim is for \$3,150 for the cost of fixing dental work, the cost of having dental work done, in the claim it actually says to fix dental work, that Dr. Aminzadeh had done plus \$20,000 for pain and suffering. Replies, of course, were filed.

[3] The defendant retained legal counsel who, beginning in September 2010 and ending as late as March 2nd, repeatedly wrote to Ms. Ishak, telling her about the provisions of Rule 7.4(12) of the *Small Claims Rules* and explaining that, if the Rule was not complied with, the defendant was going to ask for the claim to be dismissed.

[4] In the first letter, September 22, 2010, Ms. Brun, acting for the defendant, actually quoted from Rule 7.4(12). The

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Rule provides that a certificate of readiness has to be filed within six months after serving the notice of claim. The certificate of readiness has to include copies of all medical reports and records of expenses and losses incurred.

[5] In addition, in that letter, Ms. Brun explained that in malpractice claims such as this, the claimant is required to provide a dental-legal report. She explained that the dental-legal report has to be written by a qualified expert and has to set out the following:

1. the standard of care to be applied under all circumstances;
2. whether the standard of care was breached under all circumstances; and
3. whether the alleged damages being sought by the claimant resulted in that breach.

[6] The letter went on to explain that a qualified expert in this case was a general dentist and if an expert report was obtained, it had to set out what the defendant should have done, what he did wrong, and that the defendant's negligent actions resulted in the problems or injuries the claimant was now alleging.

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[7] Other letters were sent, one on October 21, 2010, that again set out what was required for a dental-legal report; November 15, 2010, another letter dealing with some other matters, but also again dealing with the requirement for a dental-legal report; November 29, 2010, another letter and, in that letter, as was done previously Ms. Brun wrote:

Please be advised that if you fail to file a proper dental-legal report from a qualified expert in accordance with the above, we will be making an application to have the claim dismissed.

[8] There was a further letter on January 7, 2011; another letter on February 7, 2011. The February 7 letter was a specific reminder that Ms. Ishak was to file the certificate of readiness by March 8th. In that letter, Ms. Brun wrote:

As you are aware, you must file a certificate of readiness at the Vancouver Registry by March 8, 2011, with an attached dental-legal report in order for your claim to have any chance of success. Please refer to our previous correspondence as to what entails a proper dental-legal report by a qualified expert. If you fail to file a proper dental-legal report from a qualified expert, we will be applying to have your claim dismissed.

[9] There was a further letter on March 2, 2011, and in that letter, Ms. Brun reminded Ms. Ishak again that the March 8, 2011, date was quickly approaching.

[10] The certificate of readiness was not filed on March 8, 2011, however, the registrar granted Ms. Ishak an extension to

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file the certificate by March 10, 2011. On June 20, 2011, Ms. Brun again wrote to Ms. Ishak and reviewed the fact that an extension had been granted. She noted that while a certificate of readiness was filed on March 9, 2011, there were no attached medical reports or records of expenses incurred.

[11] On September 26, 2011, Ms. Brun again wrote to Ms. Ishak. In that letter, she again pointed out that Ms. Ishak was required to file a certificate of readiness with an attached dental-legal report. She again noted that Ms. Ishak had been warned that if she did not file a report from a qualified expert, the defendant would apply to have the claim dismissed.

[12] I was advised today that on last Thursday which was February 16, 2012, Ms. Ishak sent two letters to the defendant's counsel and I believe some photographs. These letters are as follows: One is a "To Whom It May Concern" letter, it is not dated and it is from Dr. Trevor Shew from Broadway Station Dental Centre. I am assuming that the photographs, the x-ray, the dental x-ray, the dental photographs, were attached to his letter. In this letter, he commented that the implant supported crown that replaced 23-6 could be observed on the radiographic evaluation. He noted this is the cause of the food impaction that has been reported

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by the patient, Ms. Ishak, further he noted that a full coverage crown for 23-5 to form a positive contact with implant crown 3-6 was a good treatment option to alleviate the problems with food impaction. He further commented that to restore 23-5 was the preferred option rather than the replacement of the implant supported crown.

[13] I am going to deal with this letter first. It is my conclusion that this letter is not a dental-legal report as is required by our Rules. This letter contains dental information. It contains statements of what Dr. Shew thought may be appropriate treatment, but it does not fulfil the requirements for a dental-legal report. It does not address the factors that Ms. Brun clearly set out in her letter of September 22, 2010, namely: it does not address the standard of care to be applied under all circumstances, it does not address whether the standard of care was breached under all circumstances, and it does not address whether the alleged damages sought resulted from that breach.

[14] I now turn to the second letter filed by Ms. Ishak. This letter is also on the letterhead of Broadway Station Dental Centre. It is dated February the 16, 2012. It is addressed to "Whom It May Concern," and is signed by Dr. Douglas Liu.

[15] I will summarize this letter. It indicates that Ms.

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Ishak presented with a one millimetre open contact between teeth number 3-5. Apparently, this tooth had a pre-existing composite restoration and implant supported crown on number 3-6. This resulted in a food trap between number 3-5 and 3-6 and underneath the number 3-6 crown resulting in persistent gum swelling and pain.

[16] I note that this letter refers to the photos and periapical radiograph so I was mistaken when I said that the photos were attached to Dr. Shew's letter. I will make sure that they are stapled together when they are marked as exhibits.

[17] The letter of February 16 goes on to state that a crown fabricated in August 2012 [sic] (apparently wrongly dated) for tooth 3-5 as the large DO composite restoration was undermining the lingual cusp. It continues to describe what was done. It talks about a follow-up appointment that took place on February 9, 2012, and that Ms. Ishak reported that food impaction had been eliminated between teeth 3-5 and 3-6, but food was still being trapped between number 3-6 crown and the gingiva.

[18] Dr. Liu wrote his recommendation was to replace the number 3-6 crown with a new crown. He also indicated that ideal, but more comprehensive treatment, in quadrants 2 and 3

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would have involved undertaking some work with tooth 26 before the fabrication of the number 3-6 implant.

[19] Again, in considering whether this constitutes a dental-legal report, I considered the factors set out in Ms. Brun's September 22, 2010, letter. Dr. Liu's February 16, 2012, letter does not address the standard of care to be applied under all circumstances, it does not address whether the standard of care was breached under all circumstances, and it does not address whether the alleged damages being sought by the claimant resulted from that breach. I find that the February 16, 2012, letter is not an appropriate medical-dental report.

[20] Today, Ms. Ishak attended with her daughter who asked if she could address the court. Her daughter is a dental nurse. She provided the court with her perspective and some background about the application. She wanted to refer me to some research she had undertaken at UBC. I declined to consider that research. I explained it would not be appropriate for me to receive that evidence because that was not a proper dental-legal report, either.

[21] Before I adjourned to briefly think about this application and to consider my decision, Ms. Ishak asked me to consider the merits of her situation. She in essence asked me

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not to make a technical decision, if I can put it that way, but to consider the very difficult situation in which she finds herself. She explained she went to a doctor who, she thought, was going to be a good doctor and do a good job. However here she is a few years later having paid money but not the relief and the result she was hoping to receive.

[22] Ms. Ishak also wanted to address the court after I came back from the break. She wanted to submit another letter I declined to allow her to do so because under all the circumstances it was not appropriate.

[23] I am going to touch on Ms. Ishak's request. As a judge, I preside not only over civil cases, but also over other cases, such as criminal cases, and youth cases. I hear often submissions, about dealing with the merits of an application, dealing with the spirit of the law, and not getting caught up in technicalities. My view is that what some people call "technicalities" are very important rights, such as the *Charter of Rights*, and rules such as the Civil Rules that apply in Provincial Court. The reason for the Rules is to provide as level a playing field to the parties to ensure that the parties know what they need to do, and to assist them to understand the process.

[24] I acknowledge that it is very difficult for a person who

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is self-represented and who does not have the resources to hire a lawyer to come to court. It is very difficult to understand some of the processes and very difficult to represent oneself in a way that a lawyer would. To the extent that I can do so I try to level the playing field and to overcome some of those disadvantages. However, our system is based on the rule of law and I must make my decisions based on the rule of law.

[25] In this particular case, the lawyer for the defendant identified early on what had to be done. Ms. Ishak has had ample opportunity to try to address the issue of the dental-legal report. She may not have the resources; I cannot argue with that. I know that obtaining an appropriate medical-legal or dental-legal letter costs money quite a bit of money. However, such a report is required because we cannot embark on a trial and use scarce court resources until the appropriate steps have been taken. More importantly, the defendant ought not to be put to the expense and disruption of a trial if the Rules have not been followed. The Rules are not there to make things difficult; they are there to make sure that cases proceed in as orderly a way as possible.

[26] Ms. Brun provided me with a casebook. I am not going to review all of the cases. She has provided me with the cases

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of *Ince v. Okamura*, *Sigurdur v. Fung* and *Louie, Michell v. Emond*, *Poy v. Coates*, *Chun v. Daher* and *Lo Ray v. Foster*, *Olivier v. Cervienka*.

[27] The *Olivier* case is the most recent. It is a decision of my brother Judge Morgan in Quesnel and issued December 1, 2011. Judge Morgan summarized some of the other cases. In particular, he summarized Judge Skilnick's reasons in *Sigurdur v. Fung*. I can do no better than to follow suit. I am going to paraphrase rather than read the reasons out loud.

[28] Judge Skilnick pointed out that it is not enough for a claimant to merely assert that a professional, such as a dentist, has been negligent or has breached a contract by failing to provide professional services according to the required standard. There has to be some supporting evidence. Judge Skilnick set out the reasons why that so. First, an accusation of negligence or failure to meet a professional standard, as he put it, cuts a wide swath. Fairness dictates that when a person is accused of such a breach, they need to know the case they have to meet so that they can prepare to defend themselves. Second, an accusation against the reputation of a professional person is a serious matter. It should not be tried publicly on the strength of suspicion or hope of proof materializing. Third, the amount of court time

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required in cases of professional negligence should not be allocated without some indication of how the claimant intends to prove the case.

[29] Judge Skilnick points out that we need to consider not only fairness to the defendant in a particular case, but also fairness to other litigants who are waiting for long periods for available court time.

[30] It is always troubling for a judge to make a decision about whether a person can go to trial before the trial has even started. Know that if we were in the same shoes as the litigant we would want our day in court. However, that day in court can only come if the Rules have been followed. In this case, they have not been followed. I am not criticizing Ms. Ishak for not following the Rules because I realize it can sometimes be difficult to follow the Rules, however as judges we have to work with the rules we have.

[31] In this case, if Ms. Ishak had been surprised by the requirement to file a medical-legal report or if it had not been brought to her attention that a dental-legal report was necessary, I would have done what I did in the case I heard involving the mother, who was appearing for her son, and the doctor of veterinary medicine. I would have given some additional time for the litigant to get things together and to

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get a medical-legal report. However, in this case, the lawyer for the defendant has written letters for months, beginning in September 2010, setting out what had to be done but it has not been done.

[32] So, in all of the circumstances, I find it is appropriate to decide this application in favour of the defendant. This means I dismissing the claim, at this stage, for failure to comply with Rule 7.4(12).

[REASONS FOR JUDGMENT CONCLUDED]