THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Morrison v. Northern Health,* 2025 BCSC 1816

Date: 20250917
Docket: S20887
Registry: Terrace

Between:

Sarah Morrison and Ronald Luft

Plaintiffs

And

Northern Health, Mills Memorial Hospital, Kitimat General Hospital and Health Centre, Nurse NS, Dr. Huang, Dr. Passmore, Dr. McCann, Dr. McGivery and Dr. Jacobus Strydom

Defendants

Before: The Honourable Mr Justice Tindale

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	M. Patterson
Counsel for the Defendants Northern Health, Mills Memorial Hospital, Kitimat General Hospital and Health Centre and Nurse NS:	S. Aujla
Counsel for the Defendants Dr. Huang, Dr. Passmore, Dr. McCann, Dr. McGivery and Dr. Jacobus Strydom:	D.H. Liu
Place and Date of Hearing:	Prince George, B.C. April 7, 2025
Place and Date of Judgment:	Terrace, B.C. September 17, 2025

[1] The defendants Dr. Huang, Dr. Passmore, Dr. McCann, Dr. McGivery and Dr. Strydom (the "Defendant Physicians") pursuant to a Notice of Application filed December 19, 2024 seek orders striking parts of the Notice of Civil Claim and dismissing the claim of the plaintiff Ronald Luft.

[2] The defendants Northern Health, Mills Memorial Hospital and Kitimat General Hospital and Health Centre (the "Hospital Defendants") pursuant to a Notice of Application filed December 24, 2024 seek orders striking parts of the Notice of Civil Claim, striking or dismissing the claim of the plaintiff Ronald Luft, and striking or dismissing the claim against the defendant Nurse NS.

[3] The plaintiffs Sarah Morrison and Ronald Luft consent to an order dismissing the claim of the plaintiff Ronald Luft. The plaintiffs oppose the remainder of the relief sought by the Defendant Physicians and the Hospital Defendants.

Background

[4] The plaintiffs seek damages from the defendants for alleged medical negligence rising out of the medical care provided to Ms. Morrison on January 27, 2021 in respect of her labour and delivery. Mr. Luft is Ms. Morrison's partner and the father of their unborn child.

[5] The child was stillborn on delivery.

[6] The plaintiffs filed their Notice of Civil Claim on February 10, 2021. The Defendant Physicians filed their Response to Civil Claim on March 22, 2021. The Hospital Defendants filed their Response to Civil Claim on March 5, 2021.

[7] The plaintiffs filed an Amended Notice of Civil Claim on March 30, 2022. The Hospital Defendants filed an Amended Response to Civil Claim on August 2, 2022 and Defendant Physicians filed an Amended Response to Civil Claim on October 6, 2022.

Position of the Parties

Defendant Physicians

[8] The Defendant Physicians argue that the portions of the Notice of Civil Claim which plead discrimination should be struck and the Notice of Civil Claim be amended as follows:

1) Part 1, paragraph 47: The defendants included erroneous facts ~~and racial stereotyping~~ in the Plaintiff's records. These facts informed or influenced the way the Plaintiffs were treated by the Defendants. The ~~racial topes and stereotype~~ facts include the following: . . . ;

2) Part 3, paragraph 3 (p): be deleted; and

3) Part 3, paragraph 6: As a direct, foreseeable, and proximate result of the Defendants' negligent actions, ~~including treating the Plaintiffs with deliberate racial indifference,~~ the Plaintiffs have suffered the loss of their first child together, emotional distress, humiliation, shame, and embarrassment all to the Plaintiffs' damage.

[9] The Defendant Physicians argue that these pleadings do not establish the plaintiffs' cause of action in negligence. The Defendant Physicians note that the plaintiffs acknowledge in their written argument that they have not sought damages that fall within the jurisdiction of the British Columbia Human Rights Tribunal. As such, the Defendant Physicians suggest that the disagreement between the parties is quite narrow: whether the allegations of discrimination contribute to the plaintiffs' claim in negligence.

[10] The Defendant Physicians argue that the issue in this litigation is whether or not they provided medical services that were reasonable and the issue of discrimination is not material to any negligence claim.

[11] The Defendant Physicians further submit that discrimination, which is a matter addressed by the British Columbia Human Rights Code, is not an actionable wrong in common law in the British Columbia Supreme Court.

[12] In *Bajwa v. British Columbia Veterinary Medical Association*, 2012 BCSC 878, Mr. Justice Armstrong in discussing whether a common law tort of discrimination is available stated the following:

> [136] The plaintiff has pleaded discrimination as an independent, actionable tort at common law. In *Honda Canada Inc., supra*, the Supreme Court of Canada examined this issue:
>
> > [63] In this case, the trial judge awarded punitive damages on the basis of discriminatory conduct by Honda. Honda argues that discrimination is precluded as an independent cause of action under *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181. In that case, this Court clearly articulated that a plaintiff is precluded from pursuing a common law remedy when human rights legislation contains a comprehensive enforcement scheme for violations of its substantive terms. The reasoning behind this conclusion is that the purpose of the Ontario Human Rights Code is to remedy the effects of discrimination; if breaches to the Code were actionable in common law courts, it would encourage litigants to use the Code for a purpose the legislation did not intend — namely, to punish employers who discriminate against their employees. Thus, a person who alleges a breach of the provisions of the Code must seek a remedy within the statutory scheme set out in the Code itself.
> >
> > [Emphasis added.]
>
> [137] In *Seneca College of Applied Arts, supra*, the Supreme Court of Canada stated as follows:
>
> > For the foregoing reasons, I would hold that not only does the Code foreclose any civil action based directly upon a breach thereof but it also excludes any common law action based on an invocation of the public policy expressed in the Code. The Code itself has laid out the procedures for vindication of that public policy, procedures which the plaintiff respondent did not see fit to use.
> >
> > [Emphasis added.]
>
> [138] In British Columbia the *Human Rights Code*, R.S.B.C. 1996, c. 210 provides a statutory scheme that forecloses the possibility of a common law remedy for discrimination. I find that for the purposes of this action, a common law tort of discrimination is not available.

[13] The Defendant Physicians argue that while the plaintiffs have not advanced a stand alone claim for discrimination, they have left that option open in their

pleadings. As such, the Defendant Physicians submit that the plaintiffs' pleadings ought to be amended to clarify the scope of their action to ensure it does not exceed the jurisdiction of this court.

[14] Further, the Defendant Physicians argue that in an action for medical negligence discriminatory underpinnings are not material to whether the standard of care was breached by the Defendant Physicians.

Hospital Defendants

[15] The Hospital Defendants adopted the submissions of the Defendant Physicians.

Plaintiffs

[16] The plaintiffs consent to the dismissal of the personal injury claim of Mr. Luft. The plaintiffs are no longer seeking leave to amend the Amended Notice of Civil Claim to plead under the *Family Compensation Act*, R.S.B.C. 1996, c. 126.

[17] The plaintiffs argue that the Defendant Physicians' and the Hospital Defendants' applications pursuant to Rules 9-5 and 9-6 of the *Supreme Court Civil Rules* should be dismissed.

[18] The plaintiffs argue that discriminatory conduct can be relevant to an action in negligence. The plaintiffs are clear that they are not seeking a stand alone claim based on discrimination.

[19] The plaintiffs argue that the negligence of the defendants had a component that can be viewed as discriminatory. The discrimination is incidental to the negligence claim and does not come within the exclusive jurisdiction of the Human Rights Commission.

[20] The plaintiffs rely on the decision of *Deol v. Dreyer Davison LLP*, 2020 BCSC 771. In that case Madam Justice Marzari had to consider whether to strike the plaintiff's claim for constructive dismissal and other claims arising from allegations of

sexual harassment in the workplace. The defendants in that case argued that the recovery for losses caused by sexual harassment falls exclusively within the jurisdiction of the Workers' Compensation Board or the British Columbia Human Rights Tribunal.

[21] Madam Justice Marzari, after considering the decision in *Lewis v. WestJet Airlines Ltd.*, 2019 BCCA 63, stated the following at para. 82 of *Deol*:

> I am satisfied that the BCHRT does not have exclusive jurisdiction to consider this claim. To paraphrase the Court of Appeal in *Lewis* at paras. 18 and 19, it is possible that what is pled to be a breach of contract is conduct that, if true, is also discriminatory conduct that may be subject to alternative remedies before the BCHRT. However, that is not sufficient to establish that this Court does not have jurisdiction to hear Ms. Deol's claim in constructive dismissal.

[22] The plaintiffs argue that the paragraphs that the defendants are seeking to strike provide context to the negligence alleged by the plaintiffs and articulate the egregiousness of the negligence of the defendants.

Decision

[23] Rule 9-5 (1) reads:

> **Scandalous, frivolous or vexatious matters**
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of the pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs

[24] A pleading will be struck pursuant to Rule 9-5 (1) (a) if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable

cause of action or has no reasonable prospect of success: *R. v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42 at para. 17.

[25] Rule 9-6 (4) and (5) reads:

> **Application by answering party**
>
> (4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.
>
> **Power of court**
>
> (5) On hearing an application under subrule (2) or (4), the court,
>
> . . .
>
> (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly. . .

[26] On a Rule 9-6 application, the court must determine if there is a genuine issue for trial, assuming the uncontested material facts as pleaded by the plaintiffs are true: *Sandhu v. Sun Life Assurance Company of Canada*, 2016 BCSC 1077 at para. 12.

[27] The parties are in agreement that the personal injury claims of the plaintiff Ronald Luft should be dismissed. I order that the personal injury claims of the plaintiff Ronald Luft are dismissed.

[28] The plaintiffs agree that they are no longer pursuing a claim pursuant to the *Family Compensation Act*. Leave for the plaintiffs to amend their Amended Notice of Civil Claim to include claims pursuant to the *Family Compensation Act* is denied.

[29] The Hospital Defendants in their Notice of Application sought that the claim against Nurse NS either be struck or dismissed. There were no submissions made in this regard by the Hospital Defendants. It was my view that none of the parties were contesting the fact that Nurse NS was not an appropriate party to the litigation however I decline to make an order in that regard given it was not clearly stated on the record.

[30] The defendants are not seeking to strike or dismiss the negligence claim of the plaintiffs however the defendants argue that the references to racial stereotypes are incidental and not material to a negligence claim and should be struck from the pleadings.

[31] It is clear on the case law that if the plaintiffs' claim was solely for racial discrimination it would fall within the exclusive jurisdiction of the Human Rights Tribunal and this court would have no jurisdiction to hear the matter.

[32] However, the plaintiffs have been clear that they are not seeking damages for racial discrimination as a stand-alone order.

[33] In *Deol* the alleged sexual harassment directly contributed to the constructive dismissal claim which was not in the exclusive jurisdiction of the Human Rights Tribunal.

[34] In the case at bar the plaintiffs allege that the defendants did not provide the required duty of care which resulted in medical negligence. The references to racial stereotypes relate to the manner in which the plaintiff Sarah Morrison was assessed and treated by the defendants.

[35] The argument of the plaintiffs is that the racial stereotypes contributed to the negligent care of Sarah Morrison. The fact that racial stereotypes may be part of the evidence establishing medical negligence does not preclude this court from having jurisdiction to hear the matter.

[36] It is not plain and obvious that the plaintiffs' pleadings disclose no reasonable cause of action or have no reasonable prospect of success. In my view there is a genuine issue to be determined by the court.

[37] The application by the Defendant Physicians and the Hospital Defendants to strike portions of the plaintiffs' pleadings as outlined in their respective notices of application is dismissed.

Conclusion

[38] In summary I make the following orders:

a) The personal injury claims of the plaintiff Ronald Luft are dismissed;

b) Leave to the plaintiffs to amend their Amended Notice of Civil Claim to include the claim pursuant to the *Family Compensation Act* is denied;

c) The Defendant Physicians' and the Hospital Defendants' applications that portions of the plaintiffs' pleadings be dismissed or struck is dismissed; and

d) I decline to make an order with regard to Nurse NS as no submissions were made in this regard. However, the parties are at liberty to file a consent order dismissing the claim against Nurse NS if that was their intention.

[39] In my view the parties have had mixed success and as such each will bear their own costs of these applications.

"The Honourable Mr. Justice Tindale"