

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Laine v. Riahi*,
2025 BCSC 1892

Date: 20250929
Docket: S237393
Registry: Vancouver

Between:

Kari Tapio Laine
By His Litigation Guardian Robyn Daphne Beattie-Laine

Plaintiff

And

**Dr. Tahereh Riahi, Dr. Tahereh Riahi Corporation and Dr. G Saini Dental
Corporation dba Premier Mountains Family Dentistry**

Defendants

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Plaintiff:

R.D. Nairne

Counsel for the Defendants, Dr. Tahereh
Riahi and Dr. Tahereh Riahi Corporation:

D.R. Robertson

Place and Date of Hearing:

Vancouver, B.C.
August 13, 2025

Place and Date of Judgment:

Vancouver, B.C.
September 29, 2025

Introduction

[1] The defendants Dr. Tahereh Riahi and Dr. Tahereh Riahi Corporation (collectively, the “Riahi Defendants”) apply for an order that the trial of this action be conducted by judge alone and striking the notice requiring trial by jury.

[2] The plaintiff opposes all of the relief sought.

[3] The defendant, Dr. G Saini Dental Corporation dba Premier Mountains Family Dentistry (“Saini Corp”) initially took no position on the application. The plaintiff subsequently discontinued the action as against it.

Background

[4] The plaintiff Mr. Laine is 73 years of age. His wife Ms. Beattie-Laine is acting as his litigation guardian.

[5] In this action, the plaintiff is claiming for damage, loss and expense arising from a dental treatment performed by Dr. Riahi on or about September 27, 2021. Following the treatment, the plaintiff developed infective endocarditis and suffered one large stroke followed by a series of smaller strokes. He alleges this was due to Dr. Riahi’s failure to prescribe prophylactic antibiotics prior to the treatment and/or his failure to advise the plaintiff to take antibiotics after treatment. It is also alleged Dr. Riahi was negligent because he was aware the plaintiff had pre-existing conditions.

[6] The plaintiff’s pre-existing conditions included high blood pressure, and that in or about November 2020, he had undergone a heart valve replacement procedure and was taking anti-rejection drugs. He says as a result, he was at increased risk of infection and required antibiotics before and after undergoing dental treatment. There was a medical alert on his file with the defendants, so they were, or ought to have been aware that special precautions were required.

[7] The plaintiff alleges he has suffered profound and permanent disability, cognitive deficits, impaired mobility, paralysis, impaired speech and blindness as a

result. He claims for pain and suffering, breach of contract, special damages including past care costs, future care costs, loss of housekeeping capacity, tax gross-up, management fees, an in-trust claim for past and future services by family members, costs and interest. He had retired at the time of the procedure and is not claiming for loss of income or future loss of capacity to earn income.

[8] The Riahi Defendants have denied liability and deny that any allegedly negligent treatment they provided caused, exacerbated, contributed to or accelerated any of the foregoing conditions. They dispute all heads of damage.

History of Proceedings

[9] On November 1, 2023, the plaintiff filed the notice of civil claim.

[10] On January 31, 2024, the Riahi Defendants filed a response to civil claim. On the same day, Saini Corp filed a separate response to civil claim.

[11] On May 2, 2024, the plaintiff filed a notice of trial, returnable November 24, 2025 for 15 days and a notice requiring trial by jury. The Riahi Defendants did not raise any objections to a jury trial at the time.

[12] On September 4, 2024, Dr. Riahi was examined for discovery. On September 5, 2024, Ms. Beattie-Laine, the litigation guardian, was examined for discovery.

[13] On October 22, 2024, plaintiff's counsel advised the defendants of their intention to amend the notice of civil claim to add a claim for battery (lack of informed consent).

[14] On March 21, 2025, counsel for the Riahi Defendants expressed concern about there being an insufficient number of days reserved for a jury trial.

[15] On April 25, 2025, Dr. Saini was examined for discovery, as representative of the Saini Corp.

[16] On May 29, 2025, the Riahi Defendants consented to the plaintiff amending the notice of civil claim to add a battery claim. It is not clear whether an amended notice of civil claim has been filed yet.

[17] On May 5, 2025, a case planning conference was held before Justice Maisonville. She made an order which included a term adjourning the November 24, 2025 trial date to January 5, 2026 for 25 days. On May 9, 2025, plaintiff's counsel filed a new notice of trial and a second notice requiring trial by jury.

[18] On June 6, 2025, the Riahi Defendants filed an application to strike the notice requiring trial by jury. On July 25, 2025, they filed an amended version of the application. The amendments appear to involve the addition of more medical evidence.

[19] On July 10, 2025, Saini Corp filed a notice of discontinuance of the plaintiff's claim against it.

[20] The plaintiff has indicated that he intends to rely on the following expert opinions at trial:

- a) Dentistry standard of care (Dr. Mehta, report dated June 2, 2025);
- b) Hospitalist / Internal Medicine;
- c) Physiatry (Dr. Giantomaso, report dated September 16, 2024);
- d) Cardiology;
- e) Infectious Disease;
- f) Cost of Care (Ms. Abdel-Barr, Occupational Therapist, report dated May 29, 2025); and
- g) Psychiatry (Dr. Mok, report dated May 29, 2025).

[21] The Riahi Defendants have indicated they intend to rely on the following expert opinions:

- a) Dentistry standard of care (Dr. Potluri, report dated May 27, 2025);
- b) Infectious Disease (Dr. Steiner, report dated April 30, 2025);
- c) Cardiologist;

- d) Neurologist;
- e) Geriatrician;
- f) Neuro-ophthalmologist;
- g) Occupational Therapist / Cost of Future Care;
- h) Economist; and
- i) Life expectancy specialist.

[22] The plaintiff anticipates calling 2-5 lay witnesses. The Riahi Defendants anticipate calling 6-10 lay witnesses.

Applicable Law

Striking Jury Notice

[23] Rule 12-6(3) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (“SCCR”) provides that a party may require that the trial of an action be heard by the court with a jury by filing a notice requiring trial by jury and serving a copy on all parties of record within 21 days after service of the notice of trial but at least 45 days before trial.

[24] Rule 12-6(5)(a) sets out circumstances under which the court may refuse a jury trial:

Court may refuse jury trial

(5) Except in cases of defamation, false imprisonment and malicious prosecution, a party on whom a notice under subrule (3) has been served may apply

(a) within 7 days after service for an order that the trial or part of it be heard by the court without a jury on the ground that

- (i) the issues require prolonged examination of documents or accounts or a scientific or local investigation that cannot be made conveniently with a jury,
- (ii) the issues are of an intricate or complex character, or
- (iii) the extra time and cost involved in requiring that the trial be heard by the court with a jury would be disproportionate to the amount involved in the action, ...

[25] In *Rados v. Pannu*, 2015 BCCA 459 [*Rados*] at para. 7, the Court of Appeal confirmed that the test for striking a jury notice is as follows:

[7] In my opinion, the chambers judge correctly stated and applied the test for striking a jury notice where issues require prolonged examination of documents, a scientific or local investigation, or are found to be intricate or complex. This test was set out by this Court in *Nichols v. Gray* (1978), 9 B.C.L.R. 5 (C.A.) at 14:

On the basis of the evidence before him, the chambers judge may find or may decline to find:

1. That the issues require prolonged examination of documents or accounts;
2. That the issues require a scientific or local investigation; or
3. That the issues are of an intricate or complex character.

When he makes those findings he is not, at that stage, exercising a discretion, but, rather, making findings of fact on the basis of evidence. If, after considering the evidence, he does not make one of those findings, then there is no ground for granting the order. However, if the evidence is such that one or more of those findings of fact is made, or should be made, then the judge is required to exercise the discretionary jurisdiction contemplated by the subrule. If the finding is either that the issues require prolonged examination of documents or accounts, or that the issues require a scientific or local investigation, then the discretion must be exercised in relation to the question of whether the examination or investigation can be made conveniently with a jury. If the finding is that the issues are of an intricate or complex character then the discretion must be exercised in relation to the question of whether the trial should be heard by the court without a jury. Clearly the discretion in the latter case has a broader amplitude.

[26] At para. 12 of *Rados*, the Court of Appeal approved the following statement of the factors which can shape the exercise of the court's discretion:

[12] At the outset, it is important to note that the chambers judge correctly articulated the relevant legal principles controlling the exercise of his discretion. He also pointed out, at para. 38, that:

There are a multitude of factors that are capable of shaping the exercise of discretion in an individual case, including:

- the anticipated length of the trial;
- the number of experts to be called;
- the volume of expert evidence;
- the nature and character of the expert evidence;
- the extent to which there are conflicts in the expert evidence;

- the nature of the inquiries the trier of fact will be asked to make to resolve those conflicts, including by having regard to scientific literature;
- the extent to which the case necessarily involves reference to unfamiliar medical terminology;
- the number of issues to be resolved by the jury;
- the character of those issues; and
- complexities that may arise as a consequence of the interaction between issues.

[27] In *MacPherson v. Czaban*, 2002 BCCA 518 at para. 17, the Court of Appeal noted that once the factual foundation has been established, the decision whether to strike the jury notice is discretionary. It also indicated that a jury trial in a personal injury case is a presumptive right and it is only where the judge is satisfied, under the [Rule 12-6(5)] criteria, that the issues cannot be tried fairly by a jury that the jury notice should be struck. The onus of persuasion is on the applicant, and that onus is not easily satisfied.

Extension of Time

[28] Rule 22-4(2) allows the court to extend or shorten any time periods provided for in the *SCCR*:

Extending or shortening time

(2) The court may extend or shorten any period of time provided for in these Supreme Court Civil Rules or in an order of the court, even though the application for the extension or the order granting the extension is made after the period of time has expired.

[29] In *Wallman v. Insurance Corporation of British Columbia*, 2012 BCSC 1849 [*Wallman*] at paras. 38–40, the Court considered when discretion to extend the time should be exercised in relation to an application to strike a jury notice:

[38] The parties acknowledge that it is the original jury notice that must be considered in determining whether the application to strike the jury is brought in time. Where that time has passed, the judicial discretion to extend time limits afforded in what is now Rule 22-4, formally Rule 3(2), should be exercised where:

- (a) at an early stage of the proceedings, the plaintiff formed an intention to strike the jury notice;

- (b) there has been such a change in circumstances as to materially alter the character of the proceedings and render them clearly inappropriate for trial by judge and jury; or
- (c) trial fairness so requires reconsideration of the mode of trial that the lapse of time cannot bar the motion to strike.

[39] In support of that description of the criteria, I rely on *Reischer v. Love*, 2005 BCSC 1352, *Harder v. Nikolov*, 2001 BCSC 1101, and *Gulamani v. Chandra*, *supra*. These criteria permit the jury notice to be set aside where the failure to apply was due to inadvertence, where there was always an intention to apply, where the facts have substantially changed and the applicant cannot fairly be required to have applied earlier, where the interests of justice speak strongly in favour of trial by judge alone.

[40] The case law does not expressly describe an obligation to bring an application to strike a jury promptly on becoming aware the issues have become complex. It seems rational, however, in my opinion, to consider any delay in bringing the application as a factor in granting or refusing leave to extend the time within which the application may be brought. The Rule requires early application to strike a jury so as to ensure the parties do not long labour under a false impression with respect to the mode of trial.

Analysis

Extension of Time

[30] The Riahi Defendants failed to file their application within 7 days after being served with each of the first (and second) jury notice, as contemplated in Rule 12-6(5)(a). Accordingly, they require an extension of time to apply. They rely on two bases for seeking an extension:

- a) There has been a material change in the case through the ongoing development of medical evidence, namely the independent medical examinations and expert reports, the continuing medical treatments and hospitalizations, complex issues relating to infections and drug reactions, and the new allegation of intentional battery; and
- b) It would not be in the interests of justice to have a jury trial because causation is too complex an issue for a jury to fully understand.

[31] Defendants' counsel notes that in *Wallman*, the Court set aside the jury notice despite the application to set it aside not having been filed until two years after the original jury notice was filed.

[32] The plaintiff argues that this application has been made substantially out of time. The first jury notice was served on the defendants on May 3, 2024. They raised no objection at the time. Their first jury-related concern was raised in March 2025. That focused on whether an adequate number of days had been reserved to complete the jury trial. On this application, the defendants do not suggest their failure to apply earlier was due to counsel inadvertence or that they had formed the intention to apply to strike the jury notice at a much earlier stage of this proceeding.

[33] The plaintiff says the underlying facts known when the first jury notice was served have not changed substantially since then. Within weeks after the plaintiff underwent the dental procedure, he suffered a massive stroke which left him totally disabled. There has been no substantial change in the nature of his claim since the notice of civil claim was filed. Some of the post-procedure medical conditions on which the Riahi Defendants rely when arguing there has been a material change, such as the plaintiff's bladder cancer and related procedures, are not related to his claim. It is not yet entirely clear whether certain other conditions, such as recurrent infections he has experienced in 2025, are related. The parties will have to wait to see what the experts say on this.

[34] I agree that, generally speaking, the nature of the plaintiff's claim has not changed substantially since the action was started, there clearly have been numerous significant developments with the plaintiff's health during 2025. On the evidence currently available, it is not entirely clear how those will impact the health conditions and issues which are the focus on this action. It does appear likely that they will have to be considered to some extent. The plaintiff generally acknowledges in his notice of civil claim that his health concerns were more complex than normal prior to him undergoing the dental procedure. That complexity continues to be a key consideration when assessing post-procedure developments. The complexity has manifested in several new ways during 2025. I am satisfied that there has been a change in circumstances which is sufficient to warrant consideration [or re-consideration] of the appropriate mode of trial which should not be barred by the Riahi Defendants' delay in making this application. Stated another way, fairness

requires reconsideration of the mode of trial, given the complexities inherent in this case.

[35] I agree that it is appropriate to extend time for the Riahi Defendants to apply to strike the notice requiring trial by jury.

Will the issues require prolonged examination of documents or accounts or scientific investigation, or are otherwise of an intricate or complex nature?

[36] The defendants say the plaintiff has a complex medical history. This includes:

- a) Prior to the dental treatment, he received hypothyroidism treatment resulting from thyroid cancer treatment, hypertension, low-grade follicular lymphoma and chemotherapy, transient ischemic attack (mini stroke) with vision loss and a bladder tumor;
- b) Following the dental treatment, the plaintiff was hospitalized for an extended stay, received treatment for an acute stroke and MSSA endocarditis with emboli. A catheter was inserted which resulted in a blood infection and a feeding tube. He has significantly impaired vision and was restricted to a wheelchair;
- c) Treatments the plaintiff received included physiotherapy, occupational therapy, chiropractic treatment, massage therapy and speech therapy;
- d) In or around April 2025, he was hospitalized for sepsis; and
- e) He underwent several medical procedures in 2025, including transurethral resection of bladder tumor (“TURBT”), Bascilus Calmette Guerin treatment [a treatment for early-stage bladder cancer], cystoscopy, hospitalizations for adverse drug reactions related to chronic suppression therapy [related to his prosthetic heart valve], including several septic episodes and subsequent TURBT.

[37] The defendants say that a pivotal issue is whether the plaintiff developed infective endocarditis and/or strokes as a result of the dental treatment and alleged failure to prescribe prophylactic antibiotics. Another is the plaintiff’s pre-existing and post-treatment medical conditions and the extent to which, if at all, alleged negligent treatment caused, exacerbated, contributed to or accelerated these conditions.

[38] They point a consultation note dated June 17, 2025 from Dr. Parfitt, an infectious diseases expert, who commented that it had taken her several hours to work through the plaintiff's chart due to the incredible complexity of his case and due to challenges associated with virtual care. Another specialist, Dr. Davis, stated in a clinical note dated July 7, 2025 that the plaintiff was a very complicated patient.

[39] Counsel also noted that there is a claim for recovery of medical costs, pursuant to the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27. The claim is currently estimated at about \$320,000 and involves a summary of expenses which is 32 pages in length. The plaintiff is unable to testify, which is expected to give rise to significant evidentiary issues, because the parties will likely seek to tender out-of-court statements for the truth of their contents. They also expect that a disproportionate volume of medical records will be sought to be entered into evidence, including over 2,000 pages of hospital records, which does not include records relating to more recent hospitalizations which have yet to be produced.

[40] They say the foregoing issues will require prolonged examination of documents that cannot be conveniently made with a jury, that the issues require scientific investigations which cannot be made with a jury and the issues are of an intricate and complex nature.

[41] The plaintiff says the defendants have not established that the jury would have to engage in a prolonged examination of a large number of documents. All that they have established is that a large number of documents have been produced. They deny that the defendants have established that a scientific investigation is required which cannot be made conveniently with a jury. They appear to acknowledge that the case does involve some complexity, but say that must be assessed cumulatively with the whole of the trial in mind and with an appreciation of the extent to which factual findings will impact on weight that will be given to expert reports and guide the assessment of issues such as assessment of damages. It is the character of the issues and not the number of issues that matters.

[42] There is clearly a large volume of documents involved in this matter, with more to come as additional treatment records are produced on an ongoing basis leading up to trial. The fact that materials in evidence are lengthy does not necessarily mean that a prolonged examination of them is required. See *Wallman* at para. 43:

43 The fact the materials in evidence are lengthy does not necessarily mean that a prolonged examination of them is required. The common experience is that in most cases, hospital, medical, or accounting records, having been made an exhibit, play very little role in the proceedings. That was a finding of the Chief Justice in *Wipfli (Guardian ad litem of) v. Britten* (1981), 32 B.C.L.R. 343 (S.C.). To determine whether a prolonged examination will be required by the trier of fact, the court must consider carefully what the evidence will actually be: *Guichon v. Johnston*, [1998] B.C.J. No. 2643 (S.C.).

[43] And at para. 56:

56 In my view, the evidence is not sufficient to establish this case will require a prolonged examination of documents or accounts. For reasons set out in *Wipfli v. Britten*, I am not satisfied it will be necessary for the jury in this case to pore over either medical or accounting records. That task here, as in many personal injury cases, even complex ones, is likely to be left largely to experts. Certain evidence is of an intricate and complex character, namely, neuropsychological evidence, the evidence of the significance of the MRI, the detailed evidence with respect to care needs, the relevant multipliers, contingencies, income tax gross-ups, and management fees, and the biomechanical evidence. Such evidence alone in other cases has been held not to be so complex as to deprive the litigant of the presumptive right to a trial by jury.

[44] It is likewise reasonable to assume in the present case that the various existing and anticipated expert reports referenced above will provide the majority of the necessary analysis.

[45] With respect to the suggestion that more extensive use of medical records is likely in this case because the plaintiff is unable to testify on his own behalf, I do not find this argument persuasive. They suggest this will likely give rise to significant evidentiary issues around the use of those records and out-of-court statements. Evidentiary issues of this sort are determined by the trial judge, who will then instruct the jury accordingly.

[46] A concern I have is that, to the extent that many of the anticipated expert reports are not currently available and in evidence on this application, the defendants to some extent are asking me to assume there will be additional complex, intricate and conflicting expert evidence which will be problematic for a jury to deal with. In the absence of those reports, I do not consider it appropriate to make the assumption that such issues will rise to the level of making the case one which is inappropriate for a jury. The defendants bear the onus of persuasion on this application, so these evidentiary gaps are problematic for them.

[47] I accept that scientific investigation is required, but it is also reasonable to expect that assistance will be available through various expert reports, so I am not persuaded that this is something that cannot be handled with a jury.

[48] I do accept that the issues of liability, causation and damages are of an intricate and complex nature.

Can the issues be conveniently decided by a jury?

[49] The term “cannot be made conveniently with a jury” was discussed in the chambers judge’s decision in *Rados v. Pannu*, 2015 BCSC 453 at para. 36–37:

[36] The phrase “cannot be made conveniently with a jury” means that what is required is the ability to have a proper trial, which includes not just an understanding of the evidence by the jury as it is elicited, but retention of this understanding throughout the trial and an appreciation at the end of the day about how that evidence relates to the issues to be decided. As Chief Justice McEachern explained in *Wipfli (Guardian ad litem of) v. Britten*, [1981] B.C.J. No. 1706 (B.C.S.C.), at para. 26:

Convenience, in the sense in which that word is used in the rule, does not depend solely upon whether or not the jury can be made to understand the evidence . . . What is required before it is convenient to have a scientific investigation made with a jury is the ability to have a proper trial, which includes not just an understanding of the evidence as it is being given, but also an ability to retain this understanding throughout a long trial in a form which permits an analysis of the evidence in relation to the difficult [issues] which must be decided at the end of the case.

[37] It is reasonable to infer that the longer the trial and the more prolonged the examination of documents or scientific inquiry will be, the more difficult it will be for a jury to retain a clear understanding of the evidence and its significance to the determination of the issues in the case.

[50] The defendants argue that the present case is comparable to *Wallman*. The trial in that case was set for 35 days and it was expected that 19 expert witnesses would be called. It also involved a significant scientific investigation. At para. 57:

[57] The issues will also require careful consideration of scientific evidence by the jury. In my view, that scientific investigation cannot conveniently be undertaken by a jury. The trier of fact in this case, as in *Gulamani*, will have to consider evidence going to many issues over a protracted period. It may be necessary to retain fine detail from the examination in chief and cross-examination of many witnesses on multiple issues for weeks before those issues are traversed by defence witnesses. Considered on their own, most, but not all, of the expert reports in this case may be understood by a jury in light of the full examination in chief and cross-examination of the experts, but retention of that understanding over several weeks is likely to be so difficult, in my view, that fruitful analysis at the end of the day may be impossible.

[51] They also refer to *Campbell v. Khan*, [1996] B.C.J. No. 2005 (S.C.) [*Campbell*] and *Guichon v. Johnston*, [1998] B.C.J. No. 2643 (S.C.) [*Guichon*]. *Campbell* involved a plaintiff who sustained a closed head injury and was alleging behavioural and psychological changes. The court noted the issues were extremely unusual and complex from both a legal and scientific point of view. *Guichon* involved a plaintiff alleging traumatic brain injury and developing multifaceted injuries. Issues included causation, contributory negligence and consent.

[52] The plaintiff argues that it should be assumed that a jury is as capable as a judge acting alone. The issue is whether the jury would be overwhelmed by trying to make an assessment, referring to *Jackson v. Yusishen*, 2013 BCSC 1982 at paras. 3 and 21. It should be assumed that a jury will be intelligent and mindful of its duty to judge the case fairly. Where there are complex issues, it is the task of counsel to simplify the evidence and present the case in a way that a jury can understand: *Khan v. Tyler*, 2018 BCSC 1634 at paras. 35–36.

[53] The plaintiff points to examples in other cases where trials with a similar number of anticipated expert witnesses and of a similar estimated length did not have their jury notices struck. These include *Simpson v. Prizer-Painter Stove Works Inc.*, 2024 BCSC 2500 [*Simpson*], which was a product liability action in which a plaintiff was claiming permanent brain injury allegedly caused by kitchen oven

explosion. The trial was scheduled for 24 day and was expected to involve 22 expert witnesses and 26 lay witnesses. The exact number of expert reports was expected to be around 500 pages. At para. 56, the court noted:

[56] The real issue when considering whether to strike a jury notice is the comparative advantage of a judge sitting alone and a judge sitting with a jury. Judges do have a clear advantage in addressing corporate law issues and unravelling complicated transactions. In my view, there is much less comparative advantage for a judge alone when assessing scientific or medical evidence in which both the judge and the jury are lay persons. ...

[54] A second is *Lal v. Anderson*, 2023 BCSC 2038 [*Lal*], which involved a medical negligence claim against a hospital, doctors and nurses who provided care before, after and during the plaintiff's "traumatic" birth. The plaintiff alleged brain injury, amongst other injuries. It involved a trial scheduled for 20 days with 35 witnesses, 31 expert reports and further reports expected. The court followed what was described as a "modern view" as to the capabilities and sophistication of juries [at paras. 29 *et seq* and 54].

[55] In this case the trial is scheduled for 25 days. At present, about 16 expert reports are anticipated, with further reply reports being a reasonable possibility. Saini Corp is no longer involved in the action, so that may well shorten the trial somewhat. There are complex liability, causation and damages issues, but they do not appear to be markedly more complex in character than the types of issues the juries had to contend with in *Simpson* and *Lal*, above. I am satisfied that these matters can be conveniently determined by a jury.

Conclusion

[56] The application is dismissed.

[57] The plaintiff is entitled to costs of the application from the Riahi Defendants.

"Associate Judge Bilawich"