

SUPREME COURT OF NOVA SCOTIA

Citation: Durham v. Mahmoud-Ahmed, 2013 NSSC 421

Date: 20131212

Docket: Hfx No. 413262)

Registry: Sydney

Between:

Clarence Durham

Plaintiff

v.

Dr. Ashraf Mahmoud -Ahmed and Cape Breton Regional Hospital c/o Cape
Breton District Health Authority

Defendants

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Judge: The Honourable Justice Patrick J. Murray

Heard: October 17, 2013 in Halifax, Nova Scotia

Written Decision: December 12, 2013

Subject: The Defendant physician and the Defendant hospital sought particulars regarding the Statement of Claim filed against them. No defence has yet been filed.

Summary: The Defendants maintained that the Statement of Claim did not adequately disclose the particulars to enable a response and/or a valid defence. The Statement of Claim contained a summary of facts, but those facts were not specific enough to enable the Defendant to know the case which must be met by them. The Plaintiff maintained that much of the knowledge requested was already in the custody and control of the Defendants. The Plaintiff further argued that the Defendants failure to file an affidavit in support of the motion should result in

the motion for particulars being dismissed. The Plaintiff stated it would be oppressive in the circumstances to require particulars at this stage of the proceeding.

Issue: Should further particulars be ordered and/or should the relevant paragraphs in the Statement of Claim be struck?

Result: Further particulars ordered in respect of some but not all of the particulars demanded. Court found that in Nova Scotia it was unnecessary to file an affidavit in support of such motion. The Statement of Claim and the request for particulars have, in practice, been assessed on their face without the need for evidence.

Consideration of the principles of pleading in Nova Scotia, including the cases of **M.A. Hanna Co. v. NS (AG)**, 1990 Carswell NS 524 (NSSC) and **Penwell v. Harwood**, 2011 NSSC 309.

Civil Procedures 4.02; 13.03; 38.02; 38.08; 38.09; 39; 39.02 all considered in the decision.

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