

Angela Paniccia, as Executrix for the Estate of Lino Paniccia for the Benefit of the Estate of Lino Paniccia, Angela Paniccia, Danny Paniccia, Melissa Paniccia, Selena Waugh, Jason Paniccia and Her Majesty the Queen in Right of Alberta (plaintiffs) v. Dr. Stephen Toal (defendant)
(1003 07117; 2011 ABQB 326)

Indexed As: Paniccia Estate et al. v. Toal

Alberta Court of Queen's Bench
Judicial District of Edmonton
Shelley, J.
July 29, 2011.

Summary:

Paniccia died of diffuse gastric cancer. His estate sued his family doctor for damages for medical malpractice (i.e., failure to diagnose and treat the cancer and inform him properly). Liability was at issue. The parties had an agreement regarding damages, although it was left for the court to determine Paniccia's likely age of retirement, when, if ever he could have returned to work and his household duties, and his life expectancy given the nature of his diagnosis.

The Alberta Court of Queen's Bench concluded that the doctor's negligence delayed identification and treatment of Paniccia's diffuse gastric cancer. Proper diagnosis would not on a balance or probabilities have led to successful treatment of the cancer (i.e., at best his condition would have been terminal once identified). The doctor's negligence shortened Paniccia's life by six months. Even if diagnosed earlier he would not have returned to work or resumed employment.

Editor's note: For a subsequent court decision in this proceeding - see [2012] ABQB TBEEd. JA.083; 2012 ABQB 11.

Medicine - Topic 4241.2

Liability of practitioners - Negligence or fault - Causation - A doctor ordered a barium swallow x-ray for a patient complaining of recent onset stomach pain - The radiologist's report was inconclusive, but indicated that it could be gastritis (inflammation) or less likely cancer - The doctor diagnosed the patient with gastritis and treated him accordingly, without referring him for a gastroscopy for a year and a half - The patient died of diffuse gastric cancer - His estate sued - The Alberta Court of Queen's Bench found that the doctor breached the standard of care by failing to inform the patient that cancer was a possibility, but that breach did not result in any different outcome than if he had informed the patient - The doctor also breached the standard of care by failing to diagnose properly - The cancer would have been identified earlier with an gastroscopy - The patient's life would have been extended by six months but for the breach of standard of care in diagnosis - See paragraphs 108 to 210.

Medicine - Topic 4242

Liability of practitioners - Negligence or fault - Standard of care - The Alberta Court of Queen's Bench reviewed the standard of care required of a physician respecting

diagnosis, especially when faced with a radiologist's report containing a differential diagnosis - See paragraphs 32 to 40.

Medicine - Topic 4242

Liability of practitioners - Negligence or fault - Standard of care - A doctor ordered a barium swallow x-ray for a patient complaining of recent onset stomach pain - The radiologist's report was inconclusive, but indicated that it could be gastritis (inflammation) or less likely cancer - The doctor diagnosed the patient with gastritis and treated him accordingly, without referring him for a gastroscopy for over a year and a half - The patient died of diffuse gastric cancer - His estate sued - The Alberta Court of Queen's Bench held that the doctor failed to meet the standard of care when he concluded that there was no chance of cancer even though the radiologist's reports had confirmed that it was a possibility (i.e., he failed to follow the established protocol where there was a differential diagnosis) - The doctor also failed to advise the patient of the possibility of cancer and misinformed him when specifically asked if that was a possible explanation for the stomach pain - See paragraphs 65 to 107.

Medicine - Topic 4248

Liability of practitioners - Negligence - Failure to inform or disclose (incl. treatment choices) - [See second **Medicine - Topic 4242**].

Medicine - Topic 4250

Liability of practitioners - Negligence - Failure to diagnose an illness - [See both **Medicine - Topic 4242**].

Cases Noticed:

Wilson v. Swanson, [1956] S.C.R. 804; 5 D.L.R.(2d) 113, refd to. [para. 32].
Neuzen v. Korn, [1995] 3 S.C.R. 674; 188 N.R. 161; 64 B.C.A.C. 241; 105 W.A.C. 241; 127 D.L.R.(4th) 577, refd to. [para. 33].
Lapointe v. Chevrette, [1992] 1 S.C.R. 351; 133 N.R. 116; 45 Q.A.C. 262; 90 D.L.R.(4th) 7, refd to. [para. 33].
Lapointe v. Hôpital Le Gardeur - see Lapointe v. Chevrette.
Carlsen v. Southerland (2006), 225 B.C.A.C. 150; 371 W.A.C. 150; 2006 BCCA 214, refd to. [para. 34].
Kehler v. Myles and Foothills Provincial General Hospital (1986), 74 A.R. 259; 48 Alta. L.R.(2d) 258 (Q.B.), affd. (1988), 92 A.R. 345; 64 Alta.L.R.(2d) 97 (C.A.), leave to appeal refused [1989] 1 S.C.R. x; 101 N.R. 231; 95 A.R. 236, refd to. [para. 35].
Keller v. Penkoske et al. (1999), 256 A.R. 1; 1999 ABQB 912, affd. (2004), 348 A.R. 54; 321 W.A.C. 54 (C.A.), refd to. [para. 35].
O'Grady v. Stokes (2005), 375 A.R. 109; 2005 ABQB 247, refd to. [para. 35].
Kaban v. Sett and Salvation Army Grace General Hospital, [1994] 1 W.W.R. 476; 90 Man.R.(2d) 26 (Q.B.), affd. [1994] 10 W.W.R. 620; 97 Man.R.(2d) 185; 79 W.A.C. 185 (C.A.), refd to. [para. 36].
Bergen v. Sturgeon General Hospital et al. (1984), 52 A.R. 161; 28 C.C.L.T. 155 (Q.B.), refd to. [para. 37].

MacDonald v. Vail, [1976] 2 S.C.R. 825; 8 N.R. 155; 66 D.L.R.(3d) 530, refd to. [para. 38].

Crick v. Mohan (1993), 142 A.R. 281; 41 A.C.W.S.(3d) 1148 (Q.B.), refd to. [para. 39].

Adair et al. v. Hamilton Health Sciences Corp. et al., [2005] O.T.C. 399 (Sup. Ct.), refd to. [para. 40].

Strachan v. Reynolds et al., [2004] B.C.T.C. 915; 2004 BCSC 915, refd to. [para. 40].

Hughes v. Cooper Estate, [1997] B.C.T.C. Uned. 787; 36 C.C.L.T.(2d) 42; 71 A.C.W.S. (3d) 892 (S.C.), refd to. [para. 40].

Dickson et al. v. Pinder et al. (2010), 489 A.R. 54; 2010 ABQB 269, refd to. [para. 41].

Lepp v. Hopp, [1980] 2 S.C.R. 192; 32 N.R. 145; 22 A.R. 361; 112 D.L.R.(3d) 67, refd to. [para. 42].

Reibl v. Hughes, [1980] 2 S.C.R. 880; 33 N.R. 361; 114 D.L.R.(3d) 1, refd to. [para. 42].

Ciarlariello et al. v. Schacter et al., [1993] 2 S.C.R. 119; 151 N.R. 133; 62 O.A.C. 161, refd to. [para. 42].

Munir v. Jackson, [2006] O.J. No. 1671; 148 A.C.W.S. (3d) 151 (Ont. Sup. Ct.), refd to. [para. 43].

Guest v. Bonderove & Co. et al. (1988), 88 A.R. 277; 59 Alta. L.R.(2d) 86 (C.A.), refd to. [para. 45].

Blackwater et al. v. Plint et al., [2001] B.C.T.C. 997; 93 B.C.L.R.(3d) 228; 2001 BCSC 997, varied (2003), 192 B.C.A.C. 1; 315 W.A.C. 1; 235 D.L.R.(4th) 60; 2003 BCCA 671, affd. [2005] 3 S.C.R. 3; 339 N.R. 355; 216 B.C.A.C. 24; 356 W.A.C. 24; 2005 SCC 58, refd to. [para. 46].

Hanke v. Resurface Corp. et al., [2007] 1 S.C.R. 333; 357 N.R. 175; 404 A.R. 333; 394 W.A.C. 333; 2007 SCC 7, refd to. [para. 48].

Fleming v. Reid and Gallagher (1991), 48 O.A.C. 46; 4 O.R.(3d) 74; 82 D.L.R.(4th) 298 (C.A.), refd to. [para. 98].

Arndt et al. v. Smith, [1997] 2 S.C.R. 539; 213 N.R. 243; 92 B.C.A.C. 185, refd to. [para. 108].

Authors and Works Noticed:

Picard, Ellen I., and Robertson, Gerald B., *Legal Liability of Doctors and Hospitals in Canada* (4th Ed. 2007), generally [para. 25].

Counsel:

B.A. Guido and A.W. Heil (Odishaw & Guido), for the plaintiffs;
V.R. Prather and A.L. Froese (Bennett Jones LLP), for the defendant.

This case was heard on November 29 and December 10, 2010, before Shelley, J., of the Alberta Court of Queen's Bench, Edmonton Registry, who filed the following memorandum of decision on July 29, 2011.

Action allowed.

Editor: Elizabeth M.A. Turgeon

Medicine - Topic 4248

Liability of practitioners - Negligence - Failure to inform or disclose (incl. treatment choices) - A doctor ordered a barium swallow x-ray for a patient complaining of recent onset stomach pain - The radiologist's report was inconclusive, but indicated that it could be gastritis (inflammation) or less likely cancer - The doctor diagnosed the patient with gastritis and treated him accordingly, without referring him for a gastroscopy for over a year and a half - The patient died of diffuse gastric cancer - His estate sued - The Alberta Court of Queen's Bench held that the doctor failed to meet the standard of care when he concluded that there was no chance of cancer even though the radiologist's reports had confirmed that it was a possibility (i.e., he failed to follow the established protocol where there was a differential diagnosis) - The doctor also failed to advise the patient of the possibility of cancer and misinformed him when specifically asked if that was a possible explanation for the stomach pain - See paragraphs 65 to 107.

Medicine - Topic 4250

Liability of practitioners - Negligence - Failure to diagnose an illness - The Alberta Court of Queen's Bench reviewed the standard of care required of a physician respecting diagnosis, especially when faced with a radiologist's report containing a differential diagnosis - See paragraphs 32 to 40.

Medicine - Topic 4250

Liability of practitioners - Negligence - Failure to diagnose an illness - A doctor ordered a barium swallow x-ray for a patient complaining of recent onset stomach pain - The radiologist's report was inconclusive, but indicated that it could be gastritis (inflammation) or less likely cancer - The doctor diagnosed the patient with gastritis and treated him accordingly, without referring him for a gastroscopy for over a year and a half - The patient died of diffuse gastric cancer - His estate sued - The Alberta Court of Queen's Bench held that the doctor failed to meet the standard of care when he concluded that there was no chance of cancer even though the radiologist's reports had confirmed that it was a possibility (i.e., he failed to follow the established protocol where there was a differential diagnosis) - The doctor also failed to advise the patient of the possibility of cancer and misinformed him when specifically asked if that was a possible explanation for the stomach pain - See paragraphs 65 to 107.