

007 2/2000

Court File No. 99 CV 181819 [TORONTO]

JUDITH LOGAN

And

Plaintiff

Defendants

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF HEALTH ET AL.

short title of proceeding

*Indorsement attached, Oct 31, 2000*

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MOTION RECORD**

(Form 4C under the Rules)

DYE & DURHAM COMPUTERIZED FORMS SERVICE

Paul J. Evraire, Q.C.

Department of Justice, The Exchange Tower  
130 King Street West, Suite 3400, Box 36  
Toronto, Ontario, M5X 1K6

Per: Christopher A. Amerasinghe, Q.C.

[LSUC # 15521T]  
James Gray [LSUC # 15621J]  
Sadian Campbell [LSUC 35800T]

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Our File: ORO 2-452782

Solicitors for the Defendants

Opposing Fax No.: (416)-925-5344

Service of a true copy hereof admitted  
this 16<sup>th</sup> day of June 2000

*John Bell*  
Solicitor for J. Logan

Endorsement

This is a motion by the defendant to strike portions of the plaintiffs' particular motion record in this intended class proceeding. Those materials sought to be struck are:

1. The Report of Dr. Alvin - Monroe dated Feb 7, 2000.
2. The Report of Dr. R. Pilleri dated May 4, 2000.
3. A video tape of a June 1994 surgery to Judith Logan.
4. Excerpts from the 1996-97 Annual Report of the Education Commission for Canada.

5. The United States House of  
Representatives Sub-Committee Report  
dated June 4, 1992<sup>2</sup> entitled  
"Are FDA  
and NIH Ignoring the Danger  
of TMS (JAW) Implants?"

6. Vols 5-11 inclusive, being material  
from the Bellch - Macintosh action,  
known as Vitch TMS implant  
products liability action against  
the Attorney General and other defendants.

Item 3 has been withdrawn by the  
plaintiff of its own motion. Item 4  
has similarly been withdrawn by the  
plaintiff of its own motion without  
prejudice to its her right to prefer  
it at a later stage of the proceedings.

if a factual foundation is established and subject to objections by the defendant and rulings of this court. I will deal with the remaining

matters in the above order.

### 1 The Dr Olivieri - Nurse Report:

This report is attached to the affidavit of Judith Logan. It does not, however, comply with Rule 39.01 ~~(1)~~ ~~(2)~~ (4) of the Rules of Civil Procedure. Sections 35 and 52 of the Ont. Evidence Act are not applicable. Dr Olivieri Nurse is no longer a medical practitioner, which was found on leave obtained.

The report is accordingly struck, will have to file the report in affidavit form in accordance with the Rules within 20 days hereof and undertake to make the deposit amount for even ~~at~~ by the ~~deponent~~.

2. The Dr. R. Pillai Report:

Dr Pillai is not a medical practitioner. His report is not in affidavit form nor attached to an affidavit as an exhibit. It does not comply with Rule 39.01 and is accordingly struck, will have to file the report in affidavit form within 20 days hereof and undertake to make

The document available for cross  
examination by the defense.

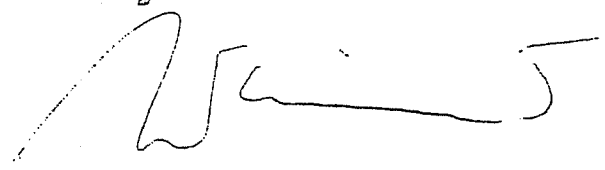
3. The U.S. House of Representatives  
Committee Report:

- The Report is <sup>even of threshold</sup> ~~of~~ <sup>relevance</sup> ~~to~~ <sup>the</sup> ~~issue~~  
on citizenship, has been  
articulated by the plaintiff, even  
given the concession that the  
report is tendered only as  
background information. The Report  
is so <sup>profound</sup> wide-ranging in its scope,  
and <sup>has such a potential for unfair</sup> prejudicial that absent  
clear relevance to the ~~controversy~~  
it cannot be included in the  
record.

4. Rule 30.1.01 (8) Motion by the  
 plaintiffs to be tried and  
 heard. Given this motion the  
 remaining issues under Rule 30.1.01-2  
 they pertain to the Bellini-Morford  
 proceedings are moot.

No order as to costs.

Oct 3, 2000



## Endorsement

This is a motion by the Defendant to strike portions of the plaintiffs' certification motion record in this intended class proceeding. Those materials sought to be struck are:

1. The Report of Dr. Olivieri-Munroe dated February 7, 2000
2. The Report of Dr. R. Pilliar dated May 4, 2000
3. A video tape of a June 1996 surgery for Judith Logan
4. Excerpts from the 1996 to 1997 Annual Report of the Information Commissions for Canada
5. The United States House of Representatives Sub-Committee Report dated June 4, 1992 entitled "Are FDA and NIGH Ignoring the Danger of TMJ (Jaw) Implants?"
6. Vols. 5 to 11 inclusive, being material from the Bulloch-MacIntosh action, known as Vitek TMJ implant products liability action against the Attorney General and other defendants.

Item 3 has been withdrawn by the plaintiffs of its own motion. Item 4 has similarly been withdrawn by the plaintiffs of its own motion without prejudice to her right to prefer it at a later stage of the proceeding if a factual foundation is established and subject to objections by the defendant and rulings of this court. I will deal with the remaining materials in the above order.

1. The Dr. Olivieri-Munroe Report:  
This report is attached to the Affidavit of Judith Logan. It does not, however, comply with Rule 39.01(4) of the Rules of Civil Procedure. Sections 35 and 52 of the Ontario Evidence Act are not applicable. Dr. Olivieri-Munroe is no longer a medical practitioner which not given or leave obtained.

The report is accordingly struck with leave to file the report in affidavit form in accordance with the Rules within 20 days hereof and undertaking to make the deponent available for cross-examination by the defendant.

2. The Dr. R. Pilliar Report:  
Dr. Pilliar is not a medical practitioner. His report is not in affidavit form nor attached to an affidavit as an exhibit. It does not comply with Rule 39.01 and is accordingly struck, with leave to file the report in affidavit form within 20 days hereof and undertaking to make the deponent available for cross-examination by the defendant.
3. The U.S. House of Representatives Sub-Committee Report:  
The Report is struck. no basis even if threshold relevance, to the issue on certification, has been articulated by the plaintiff, even given the concession that the report is tendered only as background information. The Report is so broad and wide-ranging in its scope, and has such a potential for unfair prejudicial that

absent their relevance to the certification this cannot be included in the record.

4. Rule 30.1.01(8) motion by the plaintiffs to be timetabled and heard. Given this motion the remaining issues under Rule 30.1.01 as they pertain to the Bulloch-MacIntosh proceeding are moot.

No order as to costs.

Oct. 3, 2000

“Justice Winkler”