

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lungu v. Cabrita*,  
2024 BCSC 2059

Date: 20241112  
Docket: S03765  
Registry: Abbotsford

Between:

**Viorica Lungu**

Plaintiff

And

**Tanya Cabrita**

Defendant

Before: The Honourable Justice Whately

## **Reasons for Judgment**

In Chambers - Summary Trial

The Plaintiff, appearing in person:

V. Lungu

Counsel for the Defendant:

A.D. Atkinson  
H.K. Nijjar

Place and Date of Chambers Summary  
Trial:

Chilliwack, B.C.  
October 24, 2024

Place and Date of Judgment:

Abbotsford, B.C.  
November 12, 2024

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**Introduction**

[1] This is a summary trial application pursuant to R. 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR]. Dr. Tanya Cabrita, the defendant physician, requests that this matter proceed via a summary trial and that this Court dismiss the action brought by the plaintiff, Ms. Viorica Lungu.

[2] In her notice of civil claim, Ms. Lungu alleges that she was injured as a result of a trigger point needling treatment which was administered by Dr. Cabrita on May 10, 2021. Ms. Lungu alleges that Dr. Cabrita was negligent in the medical care she provided, that Dr. Cabrita performed a medical procedure without obtaining Ms. Lungu’s informed consent, and that Dr. Cabrita’s actions constitute battery.

[3] Ms. Lungu opposes Dr. Cabrita’s application to have the matter dismissed. Ms. Lungu is self-represented.

[4] Ms. Lungu also filed a cross-application, in addition to her response to Dr. Cabrita’s application. In her-cross application, Ms. Lungu repeats many of the statements in her application response. It appears that she may also be seeking judgment in her favour on a summary basis. Ms. Lungu also seeks an order to cross-examine the physician who provided an expert report in support of Dr. Cabrita.

[5] Regardless of how Ms. Lungu’s cross-application is framed, I must determine whether this matter is suitable for summary trial or whether it would be unfair to proceed via a summary trial.

[6] If this matter is suitable to be decided on a summary basis, the issues are as follows:

- a) Did Dr. Cabrita breach the standard of care such that she was negligent in the medical services she provided to Ms. Lungu?
- b) Was Ms. Lungu fully informed of the risks associated with the procedure? And, did an undisclosed risk actually materialize?

- c) Did Dr. Cabrita have Ms. Lungu’s express or implied consent to perform the treatment?

[7] For the reasons below, I determined that this matter is suitable for disposition by summary trial. I allow Dr. Cabrita’s application and dismiss Ms. Lungu’s claim against her. As a result, Ms. Lungu’s cross-application is also dismissed.

**Factual Background**

[8] This application arises in a medical malpractice action involving a trigger point needling treatment performed by Dr. Cabrita on Ms. Lungu on May 10, 2021.

[9] Ms. Lungu was referred to Dr. Cabrita by her family practitioner, Dr. Eman Yousif. Dr. Cabrita is a physiatrist and, in May 2021, was working at the Canadian Pain & Regenerative Institute (the “CPRI”).

[10] While Ms. Lungu disputes the purpose of the referral, given the nature of Dr. Cabrita’s practice, it appears Ms. Lungu was referred due to pain in her neck, and possibly pain in other areas. Ms. Lungu denies needing any treatment for pain in her neck or shoulders but concedes that around 2021 she had pain in her neck from multiple car accidents.

[11] Dr. Cabrita provided the court with CPRI intake forms which she says were filled in by Ms. Lungu prior to her appointment on May 10, 2021.

[12] The intake forms include an online general intake form which was completed on May 8, 2021. The information on the form lists Ms. Lungu’s name and address, her occupation (makeup artist and singer), the hours she worked per week, and some general information about prior treatment.

[13] Other CPRI intake forms also include a “Neck Disability Index” and a “Brief Pain Index”. These forms indicate that Ms. Lungu had pain in the neck, headaches caused by neck pain, and pain which was rated “severe”. The Brief Pain Index include a diagram of a human body where someone drew various marks on the neck, upper back, shoulders and hips, to indicate areas of pain.

[14] Ms. Lungu denies filling out these forms. While my decision does not turn on this point, in all the circumstances and reviewing the evidence of both parties, I find that Ms. Lungu did fill out the forms, or at the very least provided the information that was inputted into them. Counsel for Dr. Cabrita drew my attention to an issue with respect to a later signature on a consultation record by Dr. Cabrita and provided an explanation for same. This does not change my finding with respect to the CPRI intake forms.

[15] Dr. Cabrita states that on May 10, 2021, Ms. Lungu attended at the CPRI. She states that she received a medical history from Ms. Lungu and conducted a physical assessment. Dr. Cabrita found that Ms. Lungu had restriction in the motion of her neck, tenderness on palpation, taut myofascial bands, and bilateral shoulder girdle dysfunction.

[16] Dr. Cabrita diagnosed Ms. Lungu with soft tissue myofascial pain and discussed treatment options with her. These treatment options included, among other things, trigger point injections and needling.

[17] Dr. Cabrita states that she discussed the potential risks of trigger point treatment with Ms. Lungu. These risks included redness and irritation to the injection sites, bleeding, bruising, soreness lasting one to five days, nerve injury, a punctured lung, injury to surrounding tissues, and infection.

[18] Along with denying that she filled out any CPRI intake forms, or that she made the marks on the diagram to indicate the location of pain, Ms. Lungu also denies that Dr. Cabrita conducted a physical examination, or asked her any questions. Ms. Lungu also denies that Dr. Cabrita explained either the trigger point injection treatment or the risk involved.

[19] Ms. Lungu further denies that she was suffering from pain that would require the type of treatment proposed and conducted by Dr. Cabrita.

[20] However, in a letter dated March 8, 2022, Ms. Lungu wrote the following: “Because of my constant neck pains, my family doctor decided to send me to a specialist, Tanya Cabrita ...”.

[21] During the hearing I questioned Ms. Lungu about historical medical records that appeared to describe her as suffering from “neck pain radiating to the shoulders.” Ms. Lungu said the records were incorrect.

[22] Due to the combination of the medical records, Ms. Lungu’s own evidence and words, and the history Dr. Cabrita describes in her report, I accept that Ms. Lungu was referred to Dr. Cabrita because of long-standing pain in her neck and shoulder area.

[23] After hearing the various treatment options, Dr. Cabrita says that Ms. Lungu agreed to undergo the trigger point injections. Dr. Cabrita says that as they were beginning the treatment, Ms. Lungu expressed concerns about a syringe she saw, which was filled with a solution. Ms. Lungu was concerned that Dr. Cabrita would vaccinate her without her permission, and expressed this to Dr. Cabrita. Dr. Cabrita told Ms. Lungu that the syringe contained lidocaine, which is an anaesthetic also used by dentists.

[24] Following a discussion about Ms. Lungu’s preference to avoid medications or injections, Ms. Lungu and Dr. Cabrita agreed to proceed with trigger point needling treatment without using the lidocaine or any other injectate. Dr. Cabrita says she documented Ms. Lungu’s verbal agreement to needling without injectate in her consultation notes. Dr. Cabrita says that Ms. Lungu thereafter cooperated with her instructions for the treatment and did not at any time ask Dr. Cabrita to stop the treatment.

[25] Ms. Lungu states that she had no idea why she was receiving the treatments but did not object and followed Dr. Cabrita’s instructions because she did not feel she could say no. She was concerned and afraid that Dr. Cabrita was injecting a

substance into her, even though Dr. Cabrita said she would not use injectates. Despite this concern, she says she did not tell Dr. Cabrita to stop.

[26] Ms. Lungu says that during the procedure Dr. Cabrita “pierced her brutally,” and that despite Ms. Lungu’s obvious discomfort, Dr. Cabrita coerced her to continue. Ms. Lungu says that Dr. Cabrita pierced her bones with the needles and that this destroyed her bones, destabilized her body, and injured her spinal cord and her ligaments.

[27] Dr. Cabrita says she did not use any injectate, and did not inject anything into Ms. Lungu’s body. She also says that she did not pierce or touch Ms. Lungu’s bones with the needle at any point.

[28] Following the trigger point injections, Ms. Lungu states that she suffers permanent and debilitating pain in her bones and around her spinal cord. She says that subsequent imaging proves the injuries to her bones were caused by Dr. Cabrita’s treatment.

[29] Ms. Lungu took me through her evidence and spent significant court time taking me through old medical records as well as more recent medical reports, results, and scans. Ms. Lungu interpreted these records herself and has come to her own medical conclusions about the scans and images, as well as about the standard of care provided.

[30] For example, Ms. Lungu states that it is obvious, based on medications she was prescribed, that Dr. Cabrita was negligent, because one of the medicines is often used to treat multiple sclerosis, which Ms. Lungu does not have. Ms. Lungu says that Dr. Cabrita was a “very angry doctor” who tortured her with long needles and “prickled” her bones without her consent. Ms. Lungu says that the evidence shows that Dr. Cabrita is malicious and had the intent to harm Ms. Lungu.

[31] Ms. Lungu directed me to other documents in her affidavit evidence that she says prove that Dr. Cabrita caused her injury, including an oddly worded letter from her family doctor, Dr. Yousif. The letter states that Ms. Lungu did not have: “any

shoulders or shoulder blades problem nor radiology done until June 2021.”

Ms. Lungu says that scans done after the trigger point needling prove that her injuries were caused by Dr. Cabrita, because the same issues did not show on scans done years earlier.

[32] Dr. Cabrita produced an expert report authored by Dr. Heather Finlayson. Dr. Finlayson reviewed Ms. Lungu’s imaging from July 27, 2021; September 8 2021; and September 13, 2021. Dr. Finlayson found that there was no evidence of needle trauma or any other injury that could have been caused by the trigger point needling administered on May 10, 2021.

### **Procedural History**

[33] Ms. Lungu filed a notice of civil claim on April 14, 2023. Dr. Cabrita provided Ms. Lungu with a list of documents and conducted an examination for discovery of Ms. Lungu on January 23, 2024, and April 23, 2024.

[34] Ms. Lungu has not provided a list of documents nor conducted any discoveries. She has had Dr. Cabrita’s list of documents, which include all of Ms. Lungu’s own medical records, since January of 2024.

[35] A trial of this matter is set to begin on February 5, 2025, for five days.

[36] On July 12, 2024, Dr. Cabrita served Dr. Finlayson’s expert report on Ms. Lungu. Dr. Finlayson is a physiatrist with similar expertise to Dr. Cabrita, namely physical medicine and rehabilitation, or physiatry. Dr. Finlayson’s opinion supports the care provided by Dr. Cabrita to Ms. Lungu.

[37] On February 5, 2024, and June 12, 2024, counsel for Dr. Cabrita wrote to Ms. Lungu stating that they intended to bring a summary trial application to dismiss Ms. Lungu’s claims. In the letters, counsel set out Dr. Cabrita’s position on each of the causes of action, and provided caselaw cites and copies of cases to Ms. Lungu. The letters also advised that Ms. Lungu would be required to establish all the



necessary elements of her claims against Dr. Cabrita and explained what those elements were.

[38] The letters also stated that it was Dr. Cabrita’s position that Ms. Lungu required expert evidence in order to establish that Dr. Cabrita had breached the standard of care and that this breach caused Ms. Lungu’s injuries.

[39] This summary trial application was originally scheduled for the week of August 12–16, 2024, on the assize list in Chilliwack. The parties appeared before a justice of this Court on the afternoon of August 16, 2024. The matter was adjourned both at Ms. Lungu’s request, and because there was insufficient time to hear the application that afternoon. The justice adjourned the application and directed Ms. Lungu to serve an expert report on or before October 7, 2024, if she intended to rely on one at trial. Ms. Lungu did not serve an expert report on or before October 7, 2024.

[40] The new date for Dr. Cabrita’s summary trial application was set for October 24, 2024. In the interim, Ms. Lungu filed a cross-application and sought to have it heard in Chambers the week of October 15, 2024.

[41] Ms. Lungu’s cross-application is generally in the nature of a response to Dr. Cabrita’s summary trial application. In it, she appears to seek the court’s permission to have her matter continue to trial, and she may also be seeking judgment in her favour under R. 9-7. Ms. Lungu also applies for an order to cross-examine Dr. Finlayson on her expert report. Ms. Lungu seeks upwards of 22 orders against Dr. Cabrita (and Dr. Finlayson), examples of which include:

- an order that Dr. Cabrita prove who completed her questionnaire;
- an order for Dr. Cabrita to “bring to court a Dr. Radiologist who will talk about my bone scan done in 2020”;

- an order for Dr. Cabrita to prove “on what basis did she diagnose me in the absence of evaluation and tests and on what basis did she decide that I need to be pierced on my bones without test and without diagnosis”;
- an order for Dr. Finlayson “to be brought to court to testify to prove what steps Dr. Cabrita took to determine the diagnosis”; and
- an order that the report from Dr. Heather Finlayson “not be accepted in Court or taken in consideration, because it is done in solidarity, an old boys club and she has a bias testimony”.

[42] Ms. Lungu’s application was adjourned to be heard at the same time as Dr. Cabrita’s summary trial application.

[43] To date, Ms. Lungu has not obtained an expert report. When I asked why she has not done so, she stated that she was waiting for a referral and did not know why it was taking so long. Ms. Lungu also stated that she planned to go to America to obtain further imaging, and to seek out physicians who could provide expert evidence. She did not have a specific plan, or a timeline for doing so.

**Suitability**

[44] A summary trial is governed by R. 9-7 of the *SCCR*. Rule 9-7(2) permits a party to an action to apply to the court for judgment under the rule, either on an issue or generally. The parties may tender evidence in support or in response to such an application in a variety of forms, including: (i) affidavit; (ii) answers to interrogatories; (iii) examination for discovery transcripts; (iv) admissions; and (v) expert reports.

[45] The summary trial procedure is an important tool in achieving the objectives of proportionality and efficiency in our system of civil justice: *Hudema v. Moore*, 2021 BCSC 587, aff’d 2021 BCCA 482.

[46] The summary trial rule makes the judge a gatekeeper in decided whether or not to proceed with a summary trial. Judgment should not be given if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so.

By the same token, judges should not be timid in considering suitability and deciding an action under the summary trial rule if it is just and proportional to do so: *Brissette v. Cactus Club Cabaret Ltd.*, 2017 BCCA 200 at para. 25.

[47] As mentioned, Ms. Lungu is self-represented. She has not retained counsel or conducted discoveries, nor has she provided a list of documents. She has not filed an expert report as directed by a justice of this Court, and as carefully and strongly advised on more than one occasion by counsel for Dr. Cabrita. Ms. Lungu will not be able to obtain any expert reports in time for trial.

[48] However, Ms. Lungu filed extensive materials in response to the summary trial application, which I have reviewed. Ms. Lungu took me through her various affidavits and statements. She referred me to many documents including referrals from her family physician, imaging reports, copies of Dr. Cabrita's affidavits with Ms. Lungu's notations on them, and print-outs of medical records going back several years. I also asked Ms. Lungu to outline any additional evidence she would produce at trial, if given the opportunity.

[49] I have a great deal of sympathy for Ms. Lungu. She has suffered many traumas in her life, and it is clear that her interaction with Dr. Cabrita was confusing and upsetting to her.

[50] However, I do not find that deciding this matter on the materials before me will cause Ms. Lungu any unfairness. This matter can be decided taking Ms. Lungu's case at its highest and assuming that she would be able to adduce some of the evidence she described that was not before me.

[51] I find I am also able to decide the issue of informed consent despite the differences between Ms. Lungu's and Dr. Cabrita's evidence on this point. For the purpose of this summary trial, I considered this issue on the basis that I fully accept Ms. Lungu's version of the communications – or lack thereof – with Dr. Cabrita.

[52] As will be discussed below, the primary problem with Ms. Lungu's claims is that the only expert evidence that has been adduced in this matter unequivocally

supports Dr. Cabrita. Without expert evidence of any kind to support Ms. Lungu's claims, this Court is simply not in a position to make a finding of professional negligence based on the facts set out in Ms. Lungu's pleadings.

[53] I have sympathy for Ms. Lungu's struggle to find counsel to assist her with her case and her inability to obtain an expert to support her claims. That being said, Ms. Lungu has been given very clear advice and direction about what she needed to produce in order to prove her claims against Dr. Cabrita.

[54] Ultimately, I do not believe that Ms. Lungu's failure to provide expert evidence in support of her claims against Dr. Cabrita is because she is self-represented or because she has not had sufficient time to do so.

**Standard of Care and Causation**

[55] Physicians have a duty to conduct their practice in accordance with the conduct of a prudent and diligent doctor in the same circumstances. Specialists must exercise the degree of skill of an average specialist in their field (*ter Neuzen v. Korn*, [1995] 3 S.C.R. 674, 1995 CanLII 72 (S.C.C.)). However, the standard of care expected of physicians is not a standard of perfection (*Carlsen v. Southerland*, 2006 BCCA 214 at para. 13).

[56] Ms. Lungu says that Dr. Cabrita breached the standard of care in performing trigger point needling. Ms. Lungu has not provided this Court any expert evidence with respect to the standard of care. She says that she has plans to go to America to find an expert, but this plan is vague and does not convince me that such evidence will ever be forthcoming.

[57] Dr. Finlayson says that Dr. Cabrita properly assessed and diagnosed Ms. Lungu, and that trigger point needling was a reasonable treatment that was appropriately administered.

[58] Dr. Finlayson also confirms that Dr. Cabrita appropriately described the risks associated with the needling to Ms. Lungu. In Dr. Finlayson's assessment,

Dr. Cabrita's failure to describe the risk of bone injury caused by needles to Ms. Lungu was not a breach of the standard of care as Dr. Finlayson is not aware that such a risk even exists. Dr. Finlayson also states that the standard of post-treatment care provided by Dr. Cabrita was appropriate.

[59] I find that Dr. Cabrita has adduced reliable evidence that she met the standard of care in Ms. Lungu's case. Dr. Finlayson is a specialist in physical medicine and rehabilitation. Her report is clear and to the point, and I accept that she is qualified to give expert evidence.

[60] I understand that Ms. Lungu believes she has all the evidence she needs to prove her claim. However, her evidence is based on her own interpretation of the medical evidence, which she urges me to accept. I am not a trained physician, nor is Ms. Lungu.

[61] Ms. Lungu has the onus of establishing all the elements of her claim against Dr. Cabrita. This onus remains on summary trial (*Gichuru v. Pallai*, 2013 BCCA 60 at para. 35). In the context of a medical malpractice claim, this onus would require Ms. Lungu to file expert evidence, as necessary, to prove her claim.

[62] This Court has repeatedly found that a plaintiff's claim will fail where a defendant has adduced evidence that the standard of care has been met and the plaintiff has not adduced evidence to the contrary (*American Pyramid Resources Inc. v. Royal Bank of Canada* (1986), 2 B.C.L.R. (2d) 99 (S.C.) at 105; *Steeves v. Air Canada*, [1996] B.C.J. No. 2879 (S.C.) at paras. 17-21; *Pushee v. Roland*, 2002 BCSC 1771 at paras. 16-21; *Ince v. Sanders*, 2010 BCSC 872 at para. 27).

[63] In the absence of expert evidence, Ms. Lungu is unable to meet the burden of proving a breach in the standard of care.

[64] Further, I do not think that Ms. Lungu would be able to adduce the additional evidence she requires to prove this critical part of her claim even if the matter were to proceed to trial in February 2025, or later.

[65] In terms of causation, Ms. Lungu submits that post-treatment imaging proves that the needling treatment caused her injury, because the issues shown in her post-treatment imaging were not there before the treatment. To prove this claim, Ms. Lungu provided MRI results which appear to indicate joint osteoarthritis, cartilage loss, tendinopathy, and bursitis. She asks me to find that these results prove that Dr. Cabrera's treatment caused these problems.

[66] I discussed with Ms. Lungu the challenges I have in coming to the conclusions she urges me to make in the absence of expert evidence. I also pointed out that her own medical history shows a long history of pain in her neck, emanating to the shoulders. Various records refer to this pain as "chronic". As such, I cannot even agree with Ms. Lungu's basic assertion that, on their face, her records show that she did not experience pain prior to the needling treatment.

[67] As stated in Dr. Finlayson's report, the post-treatment imaging of Ms. Lungu does not show signs of needle trauma or any other injury that can be attributed to the trigger point needling treatment Ms. Lungu received on May 10, 2021. In the absence of any other evidence to the contrary, I accept Dr. Finlayson's findings in this regard.

[68] Ms. Lungu has not established that the treatment provided by Dr. Cabrera caused, or is even capable of causing, the injuries that Ms. Lungu says she suffered.

**Informed Consent**

[69] The legal framework for assessing informed consent is well established. Ms. Lungu would need to establish all of the following factors to succeed in her claim for lack of information consent:

1. she was not fully informed of the nature of any material risk of a procedure and any special or unusual risks related to the procedure;
2. a reasonable person in her position, properly informed, would not have proceeded with the procedure; and

3. an undisclosed material, special, or unusual risk actually materialized and caused the plaintiff damage (*Liu v. Chuo*, 2019 BCSC 109 at para. 81; *Kooijman v. Bradshaw*, 2016 BCSC 2316 at para. 68).

[70] Ms. Lungu's and Dr. Cabrita's evidence differs as it relates to the risks discussed prior to the needling. Dr. Cabrita documented that she informed Ms. Lungu of the common and rare risks associated with trigger point needling and injections. Dr. Cabrita says she told Ms. Lungu that the common risks included redness and irritation, bleeding, bruising and soreness lasting 1–5 days and that rarer risks included nerve injury, punctured lung, and infection, but that trigger point injections take place away from nerves.

[71] Ms. Lungu says that Dr. Cabrita did not explain the procedure to her, and did not tell her that the needles would, or could, pierce her bones. Ms. Lungu also says that Dr. Cabrita did not explain that she would inject a solution into Ms. Lungu's bones, causing permanent pain in her neck, shoulders, and back.

[72] Dr. Cabrita confirmed that she did not discuss these risks with Ms. Lungu because they are not recognized risks of the treatment.

[73] As pointed out by Ms. Lungu, there is no signed written consent by her, and Dr. Cabrita acknowledges that she proceeded on verbal consent only. I cannot decide at a summary trial what was actually said or not said prior to the treatment.

[74] Dr. Cabrita accepts that for the purposes of the summary trial, I should proceed on the basis of Ms. Lungu's assertion that she was not informed of the material, special, or unusual risks of trigger point needling. Dr. Cabrita says that in order for Ms. Lungu to succeed in her claim for lack of informed consent, she also must show that:

- the undisclosed risks she alleges she was not informed of are material, special, or unusual risks of trigger point needling, and
- the risks actually materialized and caused damage.

[75] Dr. Finlayson states that she does not consider the risks of needles piercing bones, or needles causing injury to bones, or permanent pain, to be material, special, or unusual risks of trigger point needling. She is not aware that such risks exist and would therefore not inform her patients of such risks.

[76] Further, the evidence does not show that the undisclosed risks described by Ms. Lungu materialized. Dr. Cabrita denies hitting Ms. Lungu's bones and denies injecting a solution into her bones. Dr. Finlayson's report confirms that there is no evidence that any such injury occurred as a result of the trigger point needling conducted by Dr. Cabrita, or at all.

**Battery**

[77] Ms. Lungu alleges that Dr. Cabrita committed battery when she performed trigger point needling on her. Battery is an intentional tort, involving the unprivileged and unconsented invasion of a person's bodily security. The tort of battery does not require proof of causation. It does, however, require the defendant to prove consent for what was done (*Glaholt v. Ross*, 2011 BCSC 1133 at para. 184).

[78] In a medical context, consent can be oral, written, or implied by the words or conduct of a patient (*Kemp v. Vancouver Coastal Health Authority Ltd.*, 2017 BCCA 229 at paras. 104–105).

[79] Dr. Cabrita states that she had express verbal consent from Ms. Lungu to proceed with the needling. She also states that she had implied consent to proceed, as Ms. Lungu followed all instructions and did not ask her to stop the procedure at any point. When Ms. Lungu expressed concern about injectate or being vaccinated without her consent, Dr. Cabrita assured Ms. Lungu that she would not inject anything into her, and the procedure continued. Dr. Cabrita says she reasonably believed Ms. Lungu consented to the trigger point needling.

[80] Ms. Lungu states that Dr. Cabrita lied to her about having tight muscles, and thereby forced her to have the trigger point needling, during which Dr. Cabrita intentionally pierced her bones. Ms. Lung further states that Dr. Cabrita coerced her



and forced her to continue with the procedure after she questioned whether Dr. Cabrita was injecting her with something. While she admits she did not ask Dr. Cabrita to stop the treatment at any time, she says she did not ask to have the procedure, did not need the procedure, and that Dr. Cabrita had a “set up intention” to harm her bones and cause permanent damage.

[81] With respect, Ms. Lungu’s depiction of events and of Dr. Cabrita’s malintent simply do not have an air of reality. I find that under all the circumstances, Dr. Cabrita reasonably believed Ms. Lungu consented to the trigger point needling and therefore did not commit battery.

**Ms. Lungu’s Cross-Application**

[82] I have the discretion to make orders on or before the hearing of a summary trial. I declined to do so in this case.

[83] Ms. Lungu appeared to seek, among a host of other orders, an order to cross-examine Dr. Finlayson. Ms. Lungu has not produced her own expert opinion evidence to provide a basis for a productive or useful cross-examination, or even as a basis to convince me that I ought to exercise my discretion to order a cross-examination (*Magdalena v. Vancouver Coastal Health Authority*, 2016 BCCA 16 at paras. 29 and 32; *Mikhail v. Northern Health Authority (Prince George Regional Hospital)*, 2010 BCSC 1817 at paras. 70, 81 and 85).

[84] The remaining orders sought in Ms. Lungu’s application are also dismissed. There is no basis for any of the orders sought.

**Conclusion**

[85] Ms. Lungu’s claims are dismissed in their entirety. Costs of this application are awarded to Dr. Cabrita as the successful party.

“J. Whately J.”