

BRIEFING NOTE

Admissibility of Expert Reports

Maras v Seemore Entertainment Ltd. 2014 BCSC 1109

On June 18, 2014, the Court handed down a ruling on admissibility of expert reports. The reports had been generated for purposes of a jury trial where the Plaintiff was claiming for damages arising from a civil assault. Many of the experts are well known in BC litigation. Admissibility objections were taken regarding portions of the reports or the reports in their entirety.

In a comprehensive review of the current legal principles, Abrioux, J. reiterated the purpose of expert opinion evidence at trial. The form of expert reports was also reviewed, as was counsel's role in instructing experts.

The Court noted the guiding principles regarding expert opinion evidence are:

1. relevance;
2. necessity in assisting the trier of fact;
3. the absence of any exclusionary rule; and
4. a properly qualified expert.

To be necessary, the evidence must likely be outside the experience or knowledge of a judge or jury. It must be of assistance to the trier of fact.

The role of the trial judge is to ensure that the expert stays within the proper bounds of his or her expertise, and the evidence remains within its proper scope. The ultimate question is whether the expert's evidence is sufficiently reliable to merit consideration by the trier of fact.

Abrioux, J. looked at the form of the reports in question, noting that some were relatively brief and contained an introduction, a summary of facts and assumptions, and the opinion itself. Others contained lengthy appendices and schedules, and some contained voluminous summaries or comments on documents. Certain reports were further complicated by the fact that they included argument under the guise of opinion or opinion beyond the expertise of the expert. He disapproved the fairly common practice where an expert includes a detailed summary of the interview, or comments on documents provided, characterizing it as neither relevant, necessary, nor of assistance to the trier of fact to have such detail. He said (at paragraph 29) "Generally speaking, appendices to the reports should be streamlined, and only include what is necessary for the formulation of the expert's opinion and/or the facts and assumptions upon which it is based."

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In reviewing the specific reports in question, he ordered certain passages to be redacted. With other reports, he provided the experts an opportunity to prepare replacement reports and, at the same time, provided directions, including the need to have a clear delineation between facts and assumptions, and opinion.

An important aspect of the decision is that it takes some of the older case law and updates it in terms of Rule 11-6, being the “new” rule governing expert reports.

The Court recognized that it is appropriate for counsel to assist with format (not substance) so that the reports conform with Rule 11-6. It also demonstrates the importance of a well thought out objection letter to challenge the type of reports that are routinely served in litigation.

Counsel need to be mindful of the Court’s comments when commissioning future expert reports but should also revisit any reports that have been obtained to avoid the risk of having the report, or portions of the report, ruled inadmissible.



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