

CANADA / JUDGMENT

Bowden v. Sek

2023 BCSC 2058

COURT

Supreme Court of British Columbia

DECIDED

24 November 2023

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2023 BCSC 2058 Bowden v. Sek IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Bowden v. Sek, 2023 BCSC 2058 Date: 20231124 Docket: M211322 Registry: Vancouver Between: Ashley Bowden Plaintiff And David John Sek and Wescan Acoustics (2014) Ltd. Defendants

- and - Docket: M230153 Registry: Vancouver Between: Ashley Ann Bowden Plaintiff And Andrew Thomas Sturgeon Defendant
- and - Docket: M230154 Registry: Vancouver Between: Ashley Bowden Plaintiff And Kayla Cherly Block Defendant
- and - Docket: M230155 Registry: Vancouver Between: Ashley Bowden Plaintiff And Veronica Wynne Lund, 0732288 B.C. Ltd. Leonard Michael Sibernagel Defendants Before: The Honourable Justice Maisonville Ruling Re: Admissibility of Expert Report of Dr. Kshitij Chawla Counsel for the Plaintiff: S.N. Collins Counsel for the Defendants in Vancouver Registry Actions, S211322, M230153, M230154, and M230155: C.J. Keri L. Grant H. Dhatt, Articled Student Place and Date of Trial: Vancouver, B.C. September 11, 2023 Place and Date of Ruling with Written Reasons to follow: Vancouver, B.C. September 12, 2023 Place and Date of Written Reasons: Vancouver, B.C. November 24, 2023

- [1] The plaintiff seeks damages in personal injury involving four different sets of defendants in four separate motor vehicle accidents which occurred on January 15, 2015, July 2, 2017, July 3, 2018, and September 27, 2019 (the "MVAs"). The plaintiff seeks a ruling on the admissibility of Dr. Kshitij Chawla's report. There had already been a report prepared by Dr. Mark Adrian. Both physicians are psychiatrists. While Dr. Adrian has some certification in connection with pain management, Dr. Chawla has a subspecialty in that area.
- [2] The defendants argue that Dr. Chawla's report is inadmissible, pursuant to the common law on experts and to the case law surrounding s. 12.1(2)(a) of the Evidence Act, R.S.B.C. 1996, c. 124. Section 12.1(2)(a) reads: Limitation on expert evidence in vehicle injury proceedings
- 12.1 []
- (2) Except as provided under this section or the regulations,

- (a) a party to a vehicle injury proceeding, other than a fast track vehicle injury proceeding, must not tender the following at trial:
 - (i) expert evidence on the issue of vehicle injury damages, of more than 3 experts; (ii) more than one report on the issue of vehicle injury damages from each expert referred to in subparagraph (i), []
- [3] On Tuesday, September 12, 2023, I ordered that Dr. Chawla's report was admissible with brief reasons to follow. These are those reasons.
- [4] Expert evidence is admissible in accordance with in R. v. Mohan, [1994] 2 S.C.R. 9 at p. 20, where the Supreme Court of Canada set out the criteria to be:
- (a) relevance;
 - (b) necessity in assisting the trier of fact; and
 - (c) the absence of any exclusionary rule; and
 - (d) a properly qualified expert.
- [5] In Mohan, Justice Sopinka, in writing for the Supreme Court of Canada, noted that relevance is a threshold requirement: p. 20. Under this criteria, it also considers the logical relevance of the evidence. Evidence that would be logically relevant may be excluded where the probative value is outweighed by the prejudicial effect, *inter alia*: p. 21.
- [6] Considerations include whether the evidence is likely to assist in the fact-finding mission and where the opinion is necessary in the sense that it will provide information likely outside the experience and knowledge of a judge or jury: p. 23.
- [7] Section 12.1(2)(a) of the Evidence Act permits for the admission of three expert reports in relation to any one action. As noted here, the plaintiff was involved in four separate actions, which would enable the plaintiff to call 12 experts. I find that case law pertaining to s. 12 insofar as it considers the number of expert reports of similar experts in the situation does not govern this particular matter before the Court.
- [8] The question of whether to admit an expert opinion and report is a discretionary decision made by the court on the basis of the principles set out in Mohan. Those principles, as noted above, are whether it is helpful, necessary, and there is an absence of an exclusionary rule and there is a properly qualified expert. Here, I note that the existence of a diagnosis of chronic pain of the plaintiff and employment questions surrounding that issue will be key issues to be determined in this case. Dr. Chawla has a specialty qualification in pain management, which is more comprehensive than a certification. No exclusionary rule prevents the reports admission and the question of the plaintiff's injuries is relevant to the assessment of damages.
- [9] Dr. Chawla noted in his report the following diagnoses:

- 1) chronic axial/mechanical low back pain likely secondary to multifactorial etiology, including myofascial pain syndrome, discogenic low back pain, and sacroiliac joint pain;
 - 2) neck and upper back pain (resolved);
 - 3) chronic comorbid insomnia for chronic mood disorder, suggestive of depression and anxiety and thus some had a focus in accordance with his subspecialty.
- [10] His diagnoses differed from the diagnosis of Dr. Adrian, which focused on the physiatric aspect of the injury suffered by the plaintiff, being mechanical neck, upper back, and lower back pain.
- [11] I am satisfied there were sufficient differences in the two reports reflecting Dr. Chawla's and Dr. Adrian's different areas of expertise with Dr. Chawla's focus in respect of pain while Dr. Adrian's focus in respect of the physiatric aspects of the MVAs.
- [12] In all of the circumstances, I find Dr. Chawla's report to be admissible. Any issues going to duplication will go to weight. "Maisonville J."

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Prepared on 29 October 2026 · Esheria