

CANADA / JUDGMENT

# F.C.A.S. v. C.E.S.

2024 BCSC 2568

## COURT

Supreme Court of British Columbia

## DECIDED

24 September 2024

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2024 BCSC 2568 F.C.A.S. v. C.E.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: F.C.A.S. v. C.E.S., 2024 BCSC 2568 Date: 20240924 Docket: E203099 Registry: Vancouver Between: F.C.A.S. Claimant And: C.E.S. Respondent And: EHL Corporate Respondent (By Counterclaim) Corrected Judgment: The case name on the cover page and at the header section of each page thereafter has been corrected on April 8, 2025. Before: The Honourable Justice G.C. Weatherill Oral Ruling Re Admissibility of Witness's Will Say Statement Counsel for the Claimant: Y. Li-Reilly S.S. Silber M. Walwyn, Articled Student Counsel for the Respondent: L. Rudovica Counsel for the Corporate Respondent (By Counterclaim): F. Lamer Place and Date of Application Within Trial: Vancouver, B.C. September 24, 2024 Place and Date of Judgment: Vancouver, B.C. September 24, 2024

- [1] THE COURT: This is a trial. Trials, generally speaking, do not unfold typically as counsel and the parties would like them to unfold. There are ebbs and flows in every one of them. That has certainly been my experience.
- [2] Witness's will say statements are intended as a procedural tool to ensure fairness, to ensure efficiency, and to prevent what has been euphemistically called "ambush at trial". They are a relatively recent creation as I am sure Mr. Lamer can attest.
- [3] But counsel these days seem to think they cannot conduct a trial without having the complete substance of every witness's evidence in hand well in advance. That is not reality.
- [4] In my view, the evidence that the respondent wishes to elicit from Beth Cantor is relevant and admissible under the narrative exception to the rule against the admissibility of prior consistent statements. That exception is succinctly set out in the British Columbia handbook produced by the Continuing Legal Education Society of British Columbia entitled Introducing Evidence at Trial: A British Columbia Handbook, 3rd edition published 2017, at page 431: The narrative exception recognizes that a witness's statement or statements to other persons about an incident may show the physical, mental, or emotional state of the witness. In such circumstances, the fact that the witness made a prior consistent statement is a "narrative exception" and admissible evidence. Such evidence assists the trier of fact in understanding how the witness's allegations were initially disclosed and in assessing the truthfulness and credibility of the witness.

- [5] In *R. v. Dinardo*, 2008 SCC 24 at para. 37, the Supreme Court of Canada stated:
- [37] In some circumstances, prior consistent statements may be admissible as part of the narrative. Once admitted, the statements may be used for the limited purpose of helping the trier of fact to understand how the complainant's story was initially disclosed. The challenge is to distinguish between "using narrative evidence for the impermissible purpose of 'confirm[ing] the truthfulness of the sworn allegation'" and "using narrative evidence for the permissible purpose of showing the fact and timing of a complaint, which may then assist the trier of fact in the assessment of truthfulness or credibility" *McWilliams' Canadian Criminal Evidence* (4th ed. (loose-leaf)), at pp. 11-44 and 11-45 (emphasis in original); see also *R. v. F. (J.E.)* (1993), 85 C.C.C. (3d) 457 (Ont. C.A.), at p. 476).
- [6] The fact that the witness made the statement or statements, when the witness made the statement or statements, why the witness made the statement or statements, and why the witness did not make the statement or statements at the earliest opportunity remain relevant and admissible information to demonstrate the conduct of the witness. From the conduct of the witness, the trier of fact can draw inferences to determine credibility of the witness.
- [7] The credibility of the respondent in this case regarding her emotional state at the time she signed the marriage agreement is the central issue.
- [8] Now, the fact that I consider the evidence of Ms. Cantor in this regard to be admissible and relevant is not the end of the matter. I must go on to consider whether it is in the interests of justice given the various orders and rulings that have been made regarding witness disclosure and will say statements. I have done that.
- [9] I am satisfied that there is a reasonable explanation for Ms. Cantor not being included in the witness list of the notice of application, namely, that the respondent did not recall until recently that Ms. Cantor had relevant evidence. Now, she can be cross-examined on that point. Regardless, Ms. Cantor's name was added to the respondent's amended trial brief, and a will say statement was provided last week. I am satisfied there will be no prejudice to the claimant.
- [10] As I have said, the central issue in this case, or at least one of the central issues in this case, is the existence and extent of family violence and whether that had any effect on the respondent or her vulnerability at the time she signed the marriage agreement. I am satisfied it is in the interests of justice that Ms. Cantor's viva voce evidence be permitted.
- "G.C. Weatherill J."

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Prepared on 28 October 2026 · Esheria