

CANADA / JUDGMENT

# K.A.R. v. Dawson

2024 BCSC 2416

## COURT

Supreme Court of British Columbia

## DECIDED

16 December 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2416 K.A.R. v. Dawson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.A.R. v. Dawson,

2024 BCSC 2416

Date: 20241216

Docket: M198375

Registry: New Westminster

Between:

K.A.R.

Plaintiff

And

Cameron Dawson

Defendant

Corrected Judgment: The entirety of these Oral Reasons for Judgment has been amended to anonymize the plaintiff on May 14, 2025.

Restriction on Publication: A publication ban has been imposed by order of this court on May 13, 2025, restricting the publication, broadcast, or transmission of any information that could identify the plaintiff referred to in these proceedings as "K.A.R." and any related proceedings regarding K.A.R.

This publication ban applies indefinitely unless otherwise ordered.

Before: Associate Judge Harper

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

T. Harding

Counsel for the Defendant:

B. McLeod

Place and Date of Hearing:

Vancouver, B.C.

December 11, 2024

Place and Date of Judgment:

Vancouver, B.C.

December 16, 2024

[1] THE COURT: These are my oral reasons. If a transcript is required, I reserve the right to edit for clarity.

## Introduction

[2] The plaintiff was injured in a motor vehicle accident that occurred on or about March 18, 2017. She had significant pre-accident psychiatric issues.

[3] By notice of application filed October 1, 2024, the defendant brought several applications.

[4] The first two applications are for orders that the plaintiff to attend an independent medical examination ("IME") with a neurologist, Dr. George Medvedev, and an IME with a psychiatrist, Dr. Mitchell Spivak, pursuant to Rules 7-6(1) and (2). The plaintiff claims that her psychiatric issues were caused by the motor vehicle accident. Causation will be a live issue for trial. I will deal with the application for the psychiatric IME first.

## Application for Psychiatric IME

[5] A psychiatrist, Dr. Raymond Ancill conducted an IME at the request of the plaintiff and provided an expert medical report dated November 10, 2022. He opines that the plaintiff's psychiatric injuries stem from the motor vehicle accident.

[6] Dr. Niti Bhatia, on behalf of the defendant, has provided a critique of Dr. Ancill's report dated September 1, 2023, but it is a rebuttal report, not a report of first instance.

- [7] The plaintiff underwent an IME with a psychiatrist, Dr. Todd Bentley, by a court order obtained by the defendant after appearing before Master Robertson (now Associate Judge) on May 10, 2023. The defence has not served Dr. Bentley's expert report. It is obvious that the plaintiff's psychiatric condition is an issue for trial. The etiology of the injuries is not straightforward.
- [8] The issue of whether the court should exercise its discretion to disallow the IME with Dr. Spivak on the basis that there is no evidence that Dr. Bentley could have addressed the psychiatric issues within his area of expertise as a psychiatrist. Counsel for the plaintiff referred to several trial judgments in which the trial judge refers to Dr. Bentley's evidence.
- [9] In my view, none of those decisions provides authority for the proposition that Dr. Bentley is qualified to opine on psychiatric issues from the point of view of a psychiatrist. Dr. Bentley's prior evidence is an illustration of the typical incidental overlap between medical specialties. As noted, Dr. Bhatia's rebuttal report is, by definition, not a report of first instance. Its purpose is limited. She was asked for her review and critical assessment of Dr. Ancill's report. The defendant did not seek her evaluation or diagnosis of the plaintiff. In the present case, the psychiatric issues are essential component of the case. Trial fairness persuades me that the IME with Dr. Spivak should occur, and I make the order as sought.

### Application for Neurological IME

- [10] Regarding the IME with Dr. Medvedev, the issues are different. In her rebuttal report, Dr. Bhatia comments on Dr. Ancill's various diagnoses. She says:

The core feature of my understanding of these above conditions is that the majority of these diagnoses are neurological in nature and more often than not determined by a neurologist.

- [11] Further, the plaintiff has been referred for an electroencephalogram ("EEG") to see if she is having seizures. There is no evidence as to who referred to her for an EEG. I find that both Dr. Bhatia's comment and the referral for an EEG justify an IME with a neurologist. The order is granted.
- [12] Counsel for the defendant provided a draft order. Paragraphs 1 and 2 of the order that I make will be adapted from the proposed order as suggested by the defendant. 1(b) and 2(b) will say "The plaintiff shall fill out and sign any forms as amended to conform to Associate Judge Robertson's ruling made by memorandum to counsel dated June 20, 2023". Paragraphs 1(d) and 2(d) of the proposed order are granted as written.
- [13] I turn now to the defendant's application for production of Dr. Ancill's file. Specifically, the defendant seeks production of the engagement letter with the law firm of counsel for the plaintiff and all articles and reference materials quoted, referred to or used for reference in Dr. Ancill's report, including pinpoint references to the items he addresses and quotes in his report.

[14] Dealing with the engagement agreement first, the defendant seeks to justify a production of the agreement based on the suspicion without evidence that Dr. Ancill may have a financial interest in the outcome of the litigation, which, if true, would compromise Dr. Ancill's impartiality.

[15] The defendant cites an English case, *The Queen (Factortame Ltd.) v. Transport Secretary*, [2002] EWCA Civ. 932 (C.A.). At paragraph 9 of the defendant's written submissions, he says as follows:

The UK Court of Appeal was called to decide whether costs were recoverable for an accounting firm hired on a contingency fee basis to assist experts in a litigation matter as to the extent of damages.

[16] On the facts of the case, the court held that the agreement was not champertous. In the course of giving judgment, the court held as follows:

[65] The Practice Directions which relate to the Rules on expert evidence annexe a 'Code of Guidance on Expert Evidence' produced by a working paper set up by the Head of Civil Justice. This includes the following guidance:

"Payments contingent upon the outcome of case must not be offered or accepted. To do so would contravene the expert's overriding duty to the court."

[ ]

[70] [ ] Expert evidence comes in many forms and in relation to many different types of issues. It is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence. Where an expert has an interest of one kind or another in the outcome of the case, this fact should be made known to the court as soon as possible. [ ]

[ ]

[73] To give evidence on a contingency fee basis gives an expert, who would otherwise be independent, a significant financial interest in the outcome of the case. As a general proposition, such an interest is highly undesirable. [ ]

[17] The defence argues that the court should be able to review Dr. Ancill's engagement agreement to determine whether it gives Dr. Ancill an interest in the outcome of the litigation which may affect the admissibility or the weight given to his evidence.

[18] I disagree with the defence position here. The application for the engagement agreement is entirely without evidentiary support. It is a classic fishing expedition. If Dr. Ancill has a pecuniary interest in the outcome of the litigation, he has a positive duty to disclose that agreement. The application for production of the engagement agreement is dismissed.

[19] I turn now to the application for production of the references in Dr. Ancill's report. Pursuant to Rule 11-6(8)(b), production of the expert's file relating to the preparation of the opinion is required by the party tendering the report. The rule does not make it the obligation of the expert. In other words, the order, if granted, does not state that the expert is compelled; rather, it is the plaintiff in this case who would be compelled to obtain the expert's file and deliver it to the opposing party.

[20] Dr. Ancill's report is unusual in that he cites many professional references, textbooks, and articles, by my count, 27, but fails to cite them with specificity. For example, at page 26 of his report starting at line 4, he states:

However, as stated in the textbook of Traumatic Brain injury, 3rd Edition APA 2019, current thinking suggests that because clinicians have historically grouped all the symptoms together as a 'syndrome,' the tendency has been to attribute all the symptoms to a common underlying mechanism, be it physical or psychological. It is more clinically useful to consider each symptom that persists for months or years after a concussive injury than try and establish its underlying cause such as depression, vestibular damage, headache, and/or the diffuse injury to the brain.

Thus, although post-concussion symptoms occur collectively, the 'syndrome,' they may be from different pathologies, all of which are related to the initial traumatic event as in the case of [Ms. R.].

For example, headache may be due to a concussive injury or a neck injury, both of which she sustained in the MVC. She has headaches, chronic pain, depression, and anxiety all arising from the MVC, and it is likely that all these disorders are impacting her post-concussive symptoms but are not an alternate explanation.

[21] It is not at all clear in this passage where in the textbook Dr. Ancill gets his opinion. At some point during that paragraph, Dr. Ancill switches from discussing the textbook of Traumatic Brain Injury and goes to his opinion about the plaintiff, but he does not make it clear where he stops referring to the textbook and resumes with his own opinion.

[22] It is noteworthy, in my view, that the defendant did not object to Dr. Ancill's report pursuant to Rule 11-6(1)(f)(ii) for failing to set out "a description of any research conducted by the expert that led the expert to form the opinion". I think research in this context includes the reading of textbooks and articles. Further, under Rule 11-6(1)(f)(iii), the expert is required to set out a list of every document, if any, relied on by the expert in forming the opinion.

[23] Although Dr. Ancill did set out a list of the medical records he relied on, it is possible that he relied on other documents. If the meaning of the "document" is to be expanded to include textbooks and journal articles, I offer no opinion as to whether the definition of document does in fact include textbooks and journal articles because there was no argument on that before me.

- [24] I think objections on both grounds might have had merit, but the defence chose not to make them. If the objections had been made, Dr. Ancill might have decided to provide more specific references such that the defendant, through counsel, might have been able to easily locate them and provide them to counsel for the defendant.
- [25] The parties have already experienced a mistrial that occurred because the parties failed to adequately address a document agreement causing the defence to add numerous additional witnesses to their trial list. The trial judge declared a mistrial, I believe, on the second day of trial.
- [26] Unless the parties come to grips with the issue of the 27 references in Dr. Ancill's report, they may face another mistrial. There is no question that counsel for the defendant ought to be able to cross-examine Dr. Ancill on the references in his report. The question on this application is who should be responsible for producing the references.
- [27] A legal assistant in the plaintiff's counsel's law firm made an affidavit which attaches a spreadsheet where she lists the source of the references and the cost of obtaining copies. Some of the references are behind a pay wall. Counsel for the plaintiff submits that the plaintiff should not be required to pay for them. That argument is misplaced. Dr. Ancill's expert file, which includes his work product, must have those references in it. It is immaterial if his file is in paper form or electronic form.
- [28] The plaintiff further argues that some of the references are copyright protected, and the plaintiff would be in breach of the Copyright Act, R.S.C. 1985, c. C-42 if she produces them and required payment from the defence for the photocopies. I disagree. Dr. Ancill was able to use the copyrighted material in his report. He must be able to provide the references or else his report will be useless.
- [29] Although the notice of application was not served on Dr. Ancill because the order sought does not compel him to do anything, rather, it compels the plaintiff, the plaintiff could have obtained Dr. Ancill's evidence if there was any merit to the claim that any of the references were not produceable for any reason. Such a step would have been sensible, and might have avoided this application.
- [30] It is consistent with the action plaintiff's counsel's law firm took when defence counsel requested drafts of Dr. Ancill's report and other documents. A legal assistant at the plaintiff's law firm made the request of Dr. Ancill. Dr. Ancill responded to the request and the applications related to those documents, i.e., the drafts of his report and other documents, was withdrawn appropriately.
- [31] Rather than asking Dr. Ancill for the references to be produced, plaintiff's counsel's legal assistant searched online for the Ancill articles. According to her affidavit, she prepared an Excel spreadsheet showing the articles by title, author, publisher, number of pages, cost to obtain, and pages of Dr. Ancill's report where they are mentioned. Where the spreadsheet indicates the length as zero pages, this is because the legal assistant does not have access to

the text. She says those documents which require a subscription for access, she does not know the cost or terms of access.

- [32] As stated, it would have been a simple matter to ask Dr. Ancill for production of all of these references, but that's not what happened. The parties need to grapple with the deficiencies in Dr. Ancill's report regarding his use of textbook and journal articles.
- [33] The court can only make an order that is being sought. I disagree that Dr. Ancill does not need to produce his references. But to be absolutely clear, this is within the context of the plaintiff's obligation. I would be very doubtful that Dr. Ancill is not able to produce these references because, of course, he used the references in the preparation of his report. Therefore, I make the order as per the draft order presented by the defendant at paragraph 3(b) of that draft order.
- [34] That concludes the orders that I have made today. Are there any submissions on costs, Mr. McLeod?
- [35] CNSL B. MCLEOD: Yes. I submit that costs to the defendant in the cause would be appropriate because despite the lack of ruling in favour of the defence on the engagement agreement, the defence was substantially successful today. And also, picking up on questions from the court to counsel, I believe, remarks were made to the effect that reasonable counsel acting reasonably or in most cases that come before the court, the IMEs have been agreed by counsel that would be reasonable for this to have been agreed beforehand. The IMEs have been the main thrust of the application because as I submitted before, after the first appearance in front of Justice Dion [on October 15, 2024], we did not proceed with the application regarding the expert file until we had the one-day hearing before Your Honour. So therefore, wasn't the main thrust of what we had been coming to court for all these times. I submit costs in the cause would be the appropriate order.
- [36] THE COURT: Mr. Harding.
- [37] CNSL T. HARDING: Yes, Your Honour. Notwithstanding that the defence medical exams have been ordered, this court can't know if the defendant will produce them at trial. And if they don't, then that would have been a waste of time. The whole thing should be costs in the cause left to the trial judge, not costs in the cause in any event to the defendant.
- [38] THE COURT: So the defendant is not seeking costs in any event of the cause. The defence is seeking costs to the defendant in the cause. I think that is appropriate because costs follow the event, and the defendant has been largely successful on this application. So the order will be that the plaintiff will pay the defendant his costs of the application in the cause.
- [39] CNSL T. HARDING: And if I may, for clarification, Your Honour, the order that you've given pursuant to the notice of application 3(d), I was listening to your reasons, and it sounded like you were talking about identification of the references and maybe page numbers, but the order seeks copies of these documents. So I'm -- I'm unclear what your order means.

- [40] THE COURT: If you look at the notice of application -- well, I was working from the draft order, and I have made the order as per the defence draft order at paragraph 3(b), which is an amended list of documents to include the items at 3(b) of the draft order.
- [41] CNSL T. HARDING: So -- so that means copies of the documents.
- [42] THE COURT: Just read the order, Mr. Harding. Is there any doubt, Mr. McLeod, with respect to the order that I have made?
- [43] CNSL B. MCLEOD: No.
- [44] THE COURT: Thank you. I think I have made myself clear. We are concluded.
- [45] CNSL T. HARDING: Thank you, Your Honour.
- [46] THE COURT: Thank you.

"Harper A.J."

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.bccourts.ca/jdb-txt/sc/24/24/2024BCSC2416cor1.htm>

CASE PAGE              <https://chat.esheria.ai/case-law/canada/k-a-r-v-dawson-2024>

Prepared on 28 October 2026 · Esheria