

CANADA / JUDGMENT

R. v. Ali

2023 BCSC 2420

COURT

Supreme Court of British Columbia

DECIDED

27 July 2023

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2023 BCSC 2420 R. v. Ali IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Ali, 2023 BCSC 2420 Date: 20230727 Docket: 29405 Registry: Vancouver Rex v. Ibrahim Ali Restriction on Publication: Pursuant to s. 486.4(2.2) of the Criminal Code of Canada, any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way. Restriction on Publication: Pursuant to s. 486.5(9) of the Criminal Code of Canada, no person shall publish in any document or broadcast or transmit in any way, the contents of the application made pursuant to s. 486.5(1); any evidence taken, information given or submissions made at a hearing under subsection 486.5(6); or any other information that could identify the person to whom the application relates as a victim, witness, or justice system participant in the proceedings. Corrected Judgment: The cover page and text of the judgment was corrected throughout on December 3, 2024 Before: The Honourable Mr. Justice Bernard Oral Ruling on Expertise of Don Calpito Counsel for the Crown: D.J. Porte I. Keeley C.J. Smith Counsel for the Accused: K. McCullough B. Lynskey Place and Date of Hearing: Vancouver, B.C. July 11, 2023 Place and Date of Ruling with Reasons to Follow: Vancouver, B.C. July 11, 2023 Place and Date of Judgment: Vancouver, B.C. July 27, 2023

- [1] THE COURT: On July 11, 2023, I ruled, with reasons to follow, that the Crown had shown that Don Calpito is an expert in Telus Communications' cellular telephone service, and qualified to provide opinion evidence in the following areas:
- (1) the manner in which Bell Mobility and Telus Communications cellular phones communicate with the Telus Communications cellular network;
 - (2) the location and coverage of Telus Communications cell towers in Burnaby, B.C., including factors that affect cellular coverage; and
 - (3) the approximate geographic location of a cellphone when accessing the Telus Communications cellular network based on cell tower usage.
- [2] The following paragraphs articulate the reasons for my ruling. They should be read in conjunction with my reasons for finding David Mak of Rogers Communications an expert, also delivered today (see R. v. Ali, 2023 BCSC 2422).

- [3] In the qualifications voir dire, Mr. Calpito's curriculum vitae was entered as Exhibit #1. It shows that Mr. Calpito has worked for Telus Communications for approximately 23 years, in various capacities. From December 2002 to January 2007, he was the Team Manager in the Fraud and Wireless Security Management Department; from January 2007 to August 2022, Mr. Calpito was a Senior Security Investigator for Telus Corporate Security; and, since August 2022, he has held the position of Manager, Technology Security.
- [4] Mr. Calpito has been qualified as an expert to testify in the areas identified by the Crown, more than 150 times. Mr. Calpito testified that he has never not been found to be an expert in Telus Communications cellular telephone service, when presented for qualification as one. He said his knowledge has been acquired through holding various Telus employment positions and through in-house training.
- [5] As with Mr. Mak (the expert from Rogers Communications who took the witness stand before Mr. Calpito, and was found qualified to testify as an expert) Mr. Calpito was extensively cross-examined by Mr. Ali. In this cross-examination, he amply demonstrated the depth of his knowledge, his comfort with the areas of his proposed expertise, and his ability to express himself clearly and confidently (as did Mr. Mak, before him). When Mr. Calpito was asked why Telus engineers were not asked to testify about these matters, he said "There have been no such requests" and pointed out that it had been many years since an engineer had testified for Telus; rather, he has been providing this sort of expert evidence for many years.
- [6] As with Mr. Mak, Mr. Ali's challenge to Mr. Calpito's expert qualification was that he lacked formal education and a professional designation. He argued that Mr. Calpito did not have "the rigorous knowledge we expect from experts" and that this somehow compromised his ability to challenge the expertise of Mr. Calpito effectively, leaving the trier of fact to "take his word for it."
- [7] The Crown adopts its argument made in Mr. Mak's qualifications voir dire, and submits that it is obvious that Mr. Calpito is properly qualified. The Crown notes that he has been similarly qualified more than 150 times by Canadian courts, and says nothing turns on whether an engineer could also give the same sort of evidence. I agree.
- [8] In the qualifications voir dire for Mr. Mak, the Crown cited *R. v. Mills*, 2019 ONCA 940, at para. 52, and I found this dispositive of Mr. Ali's position that the absence of a formal education and professional designation are fatal. Paragraph 52 of *Mills* is reproduced here, for convenience:
- [52] Expert evidence can be provided by a witness who has "acquired special or peculiar knowledge through study or [page156] experience in respect of the matters on which he or she undertakes to testify": *Mohan*, at p. 25 S.C.R. (emphasis added). Thus, a witness can be qualified by the court as an expert whether his or her expertise was acquired through on-the-job experience or through formal education (or a combination thereof). Just because that specialized knowledge is gained on the job, sometimes developed through the "accumulated

wisdom" of a group of people, does not, on its own, diminish its value (assuming it otherwise meets the other criteria for admission): R. v. Dominic, [2016] A.J. No. 395, 2016 ABCA 114, 616 A.R. 356, at para. 22.

- [9] I am satisfied that there is no material distinction to be drawn between Mr. Mak and Mr. Calpito vis-à-vis their qualifications to testify as experts in the areas identified by the Crown. Mr. Calpito is amply qualified in this regard. His experience and training throughout his lengthy employment with Telus, is more than sufficient to qualify him as an expert in Telus Communications cellular telephone service for the purpose of providing opinion evidence in the areas enumerated by the Crown.
- [10] Accordingly, I am satisfied that it is appropriate to qualify Mr. Calpito as sought by the Crown. "Bernard J."

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Prepared on 26 October 2026 · Esheria