

CANADA / JUDGMENT

R. v. Ali

2023 BCSC 2422

COURT

Supreme Court of British Columbia

DECIDED

27 July 2023

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

2023 BCSC 2422 R. v. Ali IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Ali, 2023 BCSC 2422 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Pursuant to s. 486.4(2.2) of the Criminal Code of Canada, any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.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. Before: The Honourable Mr. Justice L. Bernard Oral Ruling on Expertise of David Mak 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 6, 2023 Place and Date of Ruling with Reasons to Follow: Vancouver, B.C. July 7, 2023 Place and Date of Judgment: Vancouver, B.C. July 27, 2023

- [1] THE COURT: On July 7, 2023, I ruled, with reasons to follow, that the Crown had shown that David Mak is an expert in Rogers Communications cellular telephone service, and qualified to give opinion evidence in the following areas:
- (1) the manner in which Rogers cellular phones communicate with the Rogers cellular network;
 - (2) the location and coverage of Rogers cell towers in Burnaby, B.C., including factors that affect cellular coverage;
 - (3) the approximate geographic location of a cellphone when accessing the Rogers cellular network based on cell tower usage; and
 - (4) the interpretation of Rogers cellular phone records including all detailed records.
- [2] The following paragraphs articulate the reasons for my ruling.
- [3] In the qualifications voir dire, Mr. Mak's curriculum vitae was entered as Exhibit #1. It shows that Mr. Mak has worked for Rogers for approximately 24 years in various capacities. From September 2001 to May 2006, he was a network support analyst, which required him to

understand wireless technology, cell sites, the switching system, and how cellphone coverage is provided. He has held his present position as Lawful Access Response Investigator and Liaison for Law Enforcement Agencies, since May 2006. This position requires him to inter alia, stay current with new developments in the Rogers wireless network.

- [4] Mr. Mak testified that he has been qualified by Canadian courts as an expert in Rogers Communications cellular telephone service to give the sort of opinions sought in the case at bar, approximately 55 times. He added that he has never not been qualified by a court when presented as an expert in Rogers Communications cellular telephone service. During the course of his examination in chief in the qualifications voir dire, and even more so during a lengthy cross-examination, he demonstrated his extensive knowledge and experience in the areas for which he was tendered and beyond. He testified with assurance and clarity throughout the voir dire.
- [5] Mr. Ali argued that Mr. Mak lacks the appropriate formal education and professional designation to be considered an expert in the Rogers Communication cellular telephone service for the purpose of providing opinions in the areas stated. He submits that the court should demand more, without helpful articulation of what that "more" should be. He says Mr. Mak is "just a technician" with "a superficial understanding" of cellular telephone service and the areas in which his opinions are sought. In this regard, it is not contentious that Mr. Mak's alleged expertise comes primarily from his extensive employment experience with Rogers, from his in-house training, and from in-depth online courses provided by Ericsson (the manufacturer of cellphones and cellular equipment used by Rogers).
- [6] In support of his position, Mr. Ali cites *R. v. Giles*, 2016 BCSC 294, at paras. 60-63:
- [60] In *R. v. Pham*, 2013 ONSC 4903, Durno J. dealt with the issue of the scope of the expertise of an RCMP officer the Crown sought to qualify as an expert witness. The officer had extensive experience in drug investigations and dealing personally with drug users. He had also supplemented his knowledge with workshops and reading.
- [61] The Crown sought to qualify him to give expert evidence with respect to the "Nature of heroin and opium and its effects, methods of consumption; methods of distribution, including importation and hierarchy in drug organizations, production, pricing and concealment and packaging of heroin and opium; associated street terminology; and the habits and behaviours of users of heroin." The court found the witness to be qualified in relation to matters such as methods of consumption and distribution but not qualified to give evidence on the effect of heavy heroin use and whether the symptoms of the accused were consistent with such use.
- [62] Durno J. provides a non-exhaustive list of factors to assist in the determination of whether the witness is qualified at para. 31:

[31] In summary, the following non-exhaustive list of factors assist in determining whether a tendered expert witness is qualified:

- the manner in which the witness acquired the special skill and knowledge upon which the application is based;
- the witness' formal education (i.e. degrees or certificates);
- the witness' professional qualifications (i.e. a member of the College of Physicians and Surgeons);
- the witness' membership and participation in professional associations related to his or her proposed evidence;
- whether the witness has attended additional courses or seminars related to the areas of evidence in dispute;
- the witness' experience in the proposed area(s);
- whether the witness has taught or written in the proposed area(s);
- whether, after achieving a level of expertise, the witness has kept up with the literature in the field;
- whether the witness has previously been qualified to give evidence in the proposed area(s), including the number of times and whether the previous evidence was contested;
- whether the witness has not been qualified to give evidence in the proposed area(s) and if so, the reason(s) why; and
- whether previous caselaw or legal texts have identified the contested area as a proper area for expert evidence and if so, who might give the evidence.

[63] The conclusion with respect to the permitted scope of the qualification is set out at para. 65:

[65] Where problems arise is when the officer goes beyond his main sources of information, what he has learned on the street in his police and community work, and gets into areas of medicine, pharmacology, toxicology and addictionology. To use Ms. Carrasco's terms, his knowledge base is his dealings with heroin users. The problems arise when he goes beyond his knowledge base. I am not persuaded he has sufficient experience to be qualified to give evidence in these areas. No doubt there have been some references to areas of toxicology, medicine, pharmacology and addictionology of heroin as well as other controlled substances at the workshops. However, listening to a lecture for some unspecified period of time at a workshop that dealt with the contested areas does not qualify the witness as an expert.

- [7] The Crown's position is that Mr. Mak is highly and properly qualified for the opinions sought. In response to Mr. Ali's submission, the Crown cites *R. v. Mills*, 2019 ONCA 940 [Mills], at para. 52:
- [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.
- [8] Having due regard for all the foregoing, I am satisfied that Mr. Mak is amply qualified as presented, to give opinion evidence in the four enumerated areas. *Mills* is dispositive of Mr. Ali's argument that Mr. Mak's lack of formal education and a professional designation are fatal. This is too narrow a view of expertise, and clearly not one endorsed by the courts. Mr. Mak's expertise has been acquired principally through extensive on-the-job experience and training, and I am satisfied that such is more than sufficient to qualify him as an expert for the purpose of giving evidence in the areas identified by Crown. "Bernard 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/23/24/2023BCSC2422.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-ali-2023-bcsc-2422>

Prepared on 27 October 2026 · Esheria