

CANADA / JUDGMENT

Zhang v. Srott

2025 BCSC 714

COURT

Supreme Court of British Columbia

DECIDED

16 April 2025

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

2025 BCSC 714 Zhang v. Srott

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Srott,

2025 BCSC 714

Date: 20250416

Docket: M1911201

Registry: Vancouver

Between:

Ruo Peng Zhang

Plaintiff

And

Jan Srott and Coquitlam Taxi (1977) Ltd.

Defendants

Before: Associate Judge Robinson

Reasons for Judgment

Counsel for the Plaintiff:

P. Pawa

Counsel for the Defendants:

C. Hope

Place and Date of Hearing:

Vancouver, B.C.

March 28, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 16, 2025

INTRODUCTION

- [1] The Defendants bring this application wherein they seek an order, pursuant to R. 7-6 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 to compel the Plaintiff's attendance at an independent vocational assessment with Dr. Colleen Quee Newell on August 27, 2025. In addition, the Defendant seeks the usual, associated terms requiring the Plaintiff to respond to questions put to him by Dr. Quee Newell, as well as costs of this application.

BACKGROUND

- [2] Very briefly, this application arises in the context of litigation resulting from a motor vehicle accident which occurred on June 5, 2018 in Richmond, British Columbia. The seriousness of the accident is not disputed. There was substantial damage to both vehicles involved, and the Plaintiff was transported from the accident scene by ambulance.
- [3] The Plaintiff is 43 years old. At the time of the accident, he was employed as a delivery driver and earned an annual income of approximately \$85,000. He has not worked since the accident - a span of nearly 7 years. He contends that he has been unable to work as a consequence of the physical and psychological injuries sustained in the accident. Accordingly, it can be reasonably inferred that the Plaintiff will be seeking substantial damages at trial for both past loss of income and well as loss of future earning capacity.
- [4] The Plaintiff was examined for discovery more than four years ago, on December 14, 2020. This matter had been scheduled for trial to begin on June 24, 2024 for twelve days. However, the trial was adjourned. The parties have tentatively agreed to reschedule the trial to begin on a date in September 2027. Accordingly, there is no imminent deadline for the exchange of expert reports.
- [5] To this point, the Plaintiff has attended two independent assessments at the behest of the Defendants. Specifically, he was assessed by Dr. Morgan, a Psychiatrist, on January 18, 2022 and by Mr. Ralph Cheesman, a Functional Capacity Evaluator on January 5, 2022. It is not known whether Dr. Morgan has produced a report. However, a portion of Mr. Cheesman's report was put forward in this application and relied upon by the Defendant.

LAW

[6] The Court's discretion to order a party's attendance at an independent examination is not in question. The discretion arises pursuant R. 7-6 (1) which provides:

If the physical or mental condition of a person is in issue in an action, the court may order that the person submit to examination by a medical practitioner or other qualified person, and if the court makes an order under this subrule, the court may also make

- (a) an order respecting any expenses connected with the examination, and
- (b) an order that the result of the examination be put in writing and that copies be made available to interested parties of record.

[7] The rule has two related objectives. First, it serves to place the litigants on an equal footing with respect to expert evidence. The law recognizes that a plaintiff has an advantage in litigation in being able to arrange and gather expert evidence in furtherance of the position she/he intends to advance at trial. On the other hand, a defendant's ability to do the same is dependent on the plaintiff's cooperation. Second, the rule may ensure that the trial judge is provided with a more complete evidentiary foundation for the issues she or he is ultimately asked to determine: *Stainer v. ICBC*, 2001 BCCA 133 at para. 13-15; *Hamilton v. Pavlova*, 2010 BCSC 493 at para. 10-16; and *Tran v. Abbott*, 2018 BCCA 365 at para. 32.

[8] The fact that the Plaintiff has attended prior independent assessments at the behest of the Defendant is not a barrier to a further independent assessment. Nor is a subsequent assessment subject to a different or higher threshold. Any doubt that may have existed in this regard was addressed by the Court in *Tran*.

[9] Ultimately, the issue to be determined by the Court on an application under R. 7-6 is whether an examination is necessary to place the Defendant on an equal footing with the Plaintiff. In resolving that issue, several principles emerge from the authorities:

- a) First, an examination is not necessary and should not be ordered where the proposed examiner lacks the qualifications to address a live issue: *Tran* at para. 37;
- b) Second, an application under R. 7-6 must be supported by evidence as to necessity. There are a number of forms that evidence may take, but should indicate that the opinion(s) sought are not within the expertise of a prior examiner. Ideally, this evidence should be provided directly by the proposed examiner who is claiming to have the requisite expertise or from a prior examiner who denies the requisite expertise to provide the opinion(s) sought: *Hunter v. Martell*, 2021 BCSC 1962 at para. 6; *Brown v. McNabb*, 2021 BCSC 2621 at para. 6-9; and *Baxter v. Shelton*, 2017 BCSC 953 at para. 16-17;

- c) Third, while a report arising from a prior examination may be helpful on an application for a subsequent examination under R. 7-6, an applicant is not required to prematurely disclose expert opinions as a precondition to an examination by different examiner: *Brown* at para. 19 and *Ferguson v. Guthrie*, 2022 BCSC 1111 at para. 40;
- d) Fourth, an examination should not be ordered where the "sole purpose" of the examination is to obtain a report or opinion to duplicate the opinion or another expert previously obtained: *Anderson v. Steffen*, 2021 BCSC 252 at para. 34;
- e) Fifth, the fact that the subsequent examination may overlap with a prior examination is not a barrier to the application provided that the Court is satisfied that there are at least some questions that could not have been addressed in the prior examination: *Anderson* at para. 34. However, the greater the overlap, the greater the obligation of the applicant to establish necessity for the subsequent examination: *Bowden v. Lund*, 2023 BCSC 869 at para. 5(g);
- f) Sixth, the fact that a proposed examiner may have different qualifications or may employ different methodologies when compared to prior examiners is not a sufficient basis on which to conclude that there will be no overlap or duplication among the resulting opinion(s): *Anderson* at para. 58;
- g) Seventh, the objective of the rule does not necessarily entitle a defendant to "match" the evidence of the plaintiff "expert for expert" or "report for report": *Baxter* at para. 11. As a corollary this principle, I would add that the fact that a plaintiff may not have sought an opinion from an expert in a specific subject area should not prejudice the rights of a defendant to seek an opinion in that subject area; and
- h) Eighth, as an exercise of discretion, considerations or proportionality are relevant. Reference to the amount involved, the importance of the issues, and the complexity of the litigation are relevant, albeit not determinative factors: *Parent v. Krystal*, 2021 BCSC 988 at para. 14-15.

[10] Having set out those principles, I turn to apply them to the present case.

DISCUSSION

- [11] At the outset, the qualifications of Dr. Quee Newell to undertake a vocational assessment and to provide an expert opinion in this litigation are not disputed.
- [12] Rather, the Plaintiff opposes the orders sought on the basis that the evidence is insufficient to establish that a vocational assessment is necessary. In taking that position, the Plaintiff submits that he has already undergone an examination by a Psychiatrist and a Functional Capacity Evaluation. In respect of the former, the Plaintiff points to the absence of any evidence which discloses that Dr. Morgan, or for that matter cannot, provide opinions that are sufficiently different from the opinion(s) that Dr. Quee Newell will be asked to provide.

- [13] The Plaintiff submits that the Defendants' failure to provide either Dr. Morgan's report, a summary of Dr. Morgan's qualifications, or a copy of the instruction letter sent to Dr. Morgan as part of his retainer by the Defendants, has created an evidentiary vacuum in which it is impossible to conclude or infer that the opinions sought from Dr. Quee Newell are not within the expertise of Dr. Morgan.
- [14] Meanwhile, the Defendants have asked the Court to accept that Dr. Morgan's assessment was directed at providing opinions concerning the diagnosis and prognosis related to the Plaintiffs psychological injuries and mental status. In doing so, the Defendants have not directly addressed the fact that there is no evidence as to what opinions Dr. Morgan was asked to provide or what opinions have been provided as part of any as yet unserved report.
- [15] Instead, the Defendants place primary reliance on the portion of Mr. Cheesman's report which is in evidence. Therein, Mr. Cheesman opines:

Mr. Zhang is capable of many of the functional demands of his former work as a UPS deliver driver

Mr. Zhang did not present with features suggesting difficulty operating a vehicle during warehousing delivery duties and I do not believe the operation of a vehicle is problematic for him

Mr. Zhang possess the strength capacity to perform a large majority of delivery functions (sic)

- [16] Notwithstanding the foregoing, Mr. Cheesman allows for the possibility that the Plaintiff may require accommodations to allow him to return to his former employment. In that eventuality, Mr. Cheesman states:

Should Mr. Zhang not have a position to return to at UPS I suggest that he be assessed by a vocational rehabilitation consultant to identify alternate work opportunities [emphasis added]

- [17] The Defendants also point to a letter from Dr. Quee Newell wherein she describes the area of her expertise and the opinions she regards as being within her qualifications to provide. She writes:

The purpose of a vocational assessment is to determine an individual's potential for employment and focuses on an analysis of the individual's education, training and employment experience, as well as results of vocational testing tests typically administered during a vocational assessment include measures of general intellectual capacity, occupational aptitudes academic achievement and occupational interests.

These tests require graduate-level training in psychological testing and are not performed by physicians, surgeons, psychiatrists, or occupational therapists.

Vocational test results, along with an in-depth interview, a transferable skills analysis and occupational and labour market research, are used as a basis for opinions related to the client's suitability for employment within specific occupations and/or eligibility for specific education or training programs. The previously mentioned medical experts do not have the training or expertise to undertake this type of assessment.

I do not conduct physical testing during a vocational assessment, and I do not provide a medical diagnosis or prognosis [emphasis added]

- [18] In my view, the foregoing constitutes a sufficient evidentiary basis on which to establish the necessity of a vocational assessment by Dr. Quee Newell.
- [19] While it may have been preferable to have evidence concerning the opinion(s) or anticipated opinion(s) or Dr. Morgan, the absence of that evidence is not fatal to this application. Without evidence, the Court can fairly infer that, as a Psychiatrist, Dr. Morgan will provide a medical opinion pertaining to the Plaintiff's psychological and psychiatric injuries. The Court can similarly infer that Dr. Morgan is unlikely to offer any opinions based on "labour market research".
- [20] Comparatively, the opinion(s) expected of Dr. Quee Newell will focus on employment opportunities available to the Plaintiff or opportunities for which he may become qualified. These opinions may be helpful in ascertaining the Plaintiff's losses and in addressing issues that may arise concerning the Plaintiff's past or future mitigation opportunities. These are not areas in which a Psychiatrist would be expected to have expertise sufficient to provide an admissible opinion.
- [21] Dr. Quee Newell may provide opinions regarding the Plaintiff's residual earning capacity from a perspective that a Psychiatrist would not be expected to possess and will be able to form those opinions using tests and methodology that are outside the expertise of a Psychiatrist.
- [22] Insofar as Mr. Cheesman is concerned, he candidly and expressly acknowledges his inability to provide opinions that would be sought from Dr. Quee Newell. His view is that a report from a vocational assessment would be "helpful".
- [23] While Mr. Cheesman will address and provide an opinion regarding the Plaintiff's functional limitations, he is, by his own admission, unable to provide an admissible opinion concerning alternative employment options for which the Plaintiff is or may become qualified. Such an opinion is likely to be relevant in an assessment of the Plaintiff's claim for loss of capacity.
- [24] Accordingly, while the evidence on this application was imperfect, it is nevertheless sufficient to meet the threshold of necessity. Dr. Quee Newell's opinion(s), if obtained and admitted as evidence at the trial of this matter, is likely to assist the trier of fact assess the Plaintiff's losses.

[25] In reaching this conclusion, I am mindful of the fact that certain of her opinions may overlap with the opinions of Dr. Morgan and/or Mr. Cheesman. The extent of that overlap is impossible to determine without having an opportunity to review any of the reports on which the Defendants may rely. In the circumstances, the preferred approach is to defer to the trial judge who will be better positioned to determine the extent of overlap or duplication. As stated by Skolrood, J. (as he then was), in *Irvine v. Bradley*, unreported, Vancouver Registry M172655 (BCSC), 22 February 2019:

A trial judge is in the best position to determine the overlap and redundancy of reports, having been provided with an opportunity to review the reports in their entirety.

[26] Finally, while not determinative of this application, I am satisfied that the interests of proportionality are served by granting this application. The Plaintiff has not worked in nearly seven years. It is conceivable that he will take the position at trial that he is permanently disabled from working in the future. Having regard for his rate of remuneration as of the date of the accident, he will likely be seeking significant damages. In the circumstances, the Defendants must be afforded an opportunity to address that claim with evidence.

CONCLUSION

[27] In summary, the application of the Defendants is granted and the Plaintiff is ordered to attend at the office of Dr. Quee Newell and submit to a vocational assessment/evaluation on August 27, 2025. As part of that assessment, the Plaintiff is ordered to cooperate in the assessment by responding to questions put to him by Dr. Quee Newell for the purpose of allowing Dr. Quee Newell to form opinions regarding the Plaintiff's career options as they now exist or as they may arise in the future.

[28] Following the assessment, the Defendants will reimburse the Plaintiff for all reasonable expenses associated with his attendance at the office of Dr. Quee Newell.

[29] As the Defendants were entirely successful on this application, they shall have costs, in any event of the cause, payable at the conclusion of this matter.

"Associate Judge Robinson"

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/25/07/2025BCSC0714.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/zhang-v-srott-2025>

Prepared on 24 October 2026 · Esheria