

THE EXPERT WITNESS

Outline of Remarks

Mr. Justice R.J. Bauman

(i) Introduction

(ii) Appropriateness of Expert Evidence

- *R. v. Abbey* [1982] 2 S.C.R. 24
- *Sengbusch v. Priest* (1987) 14 B.C.L.R. (2d) (S.C.)
- *Dawes v. Jajcaj* [1995] B.C.J. No. 2366 (S.C.)
- *Morlacci v. British Columbia* [1994] B.C.J. No. 3301 (S.C.) and [1997] B.C.J. No. 2045
- *R. v. Mohan* [1994] 2 S.C.R. 9

(iii) Do's and Don'ts

- The ultimate issue doctrine
- Sopinka, *The Expert: A Practitioner's Guide* (1995) Vol. Title II
- *Cogar Estate v. Central Mountain Air Services* [1990] B.C.W.L.D. 1416 (S.C.) 72 B.C.L.R. (2d) 293 (C.A.)
- *Emil Anderson Construction Co. Ltd. v. B.C. Railway Company* (1987) 17 B.C.L.R. (2d) 357 (S.C.)
- *Quintette Coal Mine Ltd. v. Bone Valley Resource Services Ltd.* (1988) 29 B.C.L.R. 127 (S.C.)
 - He may give evidence of the proper method to be adopted in assessing a delay and acceleration claim as a matter of industry practice, and may testify to any exceptions to that method which ought in his opinion to be

made for the purposes of this case.

- He may express his opinion about the sort of effect that is generally caused the delay of one branch of a construction project upon other related branches of the same project, where that is beyond the common experience of the court.
- He may give factual evidence about construction techniques and practice based upon his knowledge and experience.
- He may interpret, in the form of an opinion, the requirements of a technical drawing or specification, but he may not give an opinion which amounts to a legal interpretation of the contract in issue.
- Where rival experts have presented or are expected to present differing opinions, he may descend to argument to show why his opinion should be accepted in preference to the others', but the argument should be restricted to the technical reasons why he says his opinion is preferable.
- He may not make conclusive findings of fact on issues disputed between the parties, but he may state certain facts as the hypothesis upon which he reaches an opinion or refer to matters which are already put in evidence. In each case he should make clear what hypotheses or evidence he relies upon. It will be for the court to decide eventually whether that hypothesis is made out or whether the appropriate facts are found from that evidence.
- He may not assess the value or justifiability of the plaintiff's claim.
- He may not assign blame to any party, but he may give his opinion as to cause and effect.

Per Spencer J. at pages 129 and 130.

(iv) Games Witnesses Play

Andrew Roman, Effective Advocacy Before Administrative Tribunals, Chapter 16