

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *J.D. v. Chandra*,
2014 BCSC 1107

Date: 20140213
Docket: M094259
Registry: Vancouver

Between:

J.D.

Plaintiff

And

Daniel Subhas Chandra

Defendant

- and -

Docket: M110495
Registry: Vancouver

Between:

J.D.

Plaintiff

And

Lauren Collier

Defendant

Before: The Honourable Madam Justice Griffin

Oral Ruling

In Chambers

Counsel for the Plaintiff:

Paul G. Kent-Snowsell
Perminder Tung

Counsel for the Defendants:

Lyle G. Harris, Q.C.

Place and Date of Hearing:

Vancouver, B.C.
February 12-13, 2014

Place and Date of Ruling:

Vancouver, B.C.
February 13, 2014

[1] **THE COURT:** The defendants seek to call expert opinion evidence from Gary W. Nix who has a doctorate in special education.

[2] Dr. Nix has, for approximately 50 years, worked in the area of education of special needs students, including the hearing impaired. In that capacity, he has served on the undergraduate admissions committee for the faculty of education at the University of British Columbia (UBC) and earlier in his career on admissions committees at other universities for programs related to the education of hearing impaired students or students with special needs.

[3] The opinions that the defendants seek to call from Dr. Nix have to do with the requirements for admission into medical school at UBC and other Canadian universities; and whether or not, based on the plaintiff's transcripts and medical records relied upon by Dr. Nix, the plaintiff would have been able to qualify for admission into medical school but for the accidents which are the subject of this lawsuit.

[4] The first motor vehicle accident at issue here happened on February 18, 2006 when the plaintiff was in grade 12, her last year of high school. Part of the theory of the plaintiff's claim is that the injuries she suffered in the accident subsequently affected her grades in university and but for the accident she would have been able to pursue her dream to qualify for medical school at UBC.

[5] The plaintiff called no evidence as to the requirements for admission into medical school at UBC. However, the plaintiff has now agreed to admit for the truth of its contents the UBC medical school admission requirements and statistics regarding UBC medical school admissions in 2011 relied on by Dr. Nix in his report. These are found at Appendix D to his report, the first 15 pages.

[6] Dr. Nix has reviewed the plaintiff's school transcripts prior to and post the accident and some medical records. He performed no assessment of the plaintiff.

[7] The plaintiff points out that Dr. Nix has no experience in assessing the requirements for medical school. The defendants argue that in his evidence relating

to his qualifications Dr. Nix testified that the process for admitting students to university programs or speech and hearing programs is no different than for other faculties and that evaluating the transcripts is the same.

[8] The plaintiff argues that the evidence Dr. Nix purports to give is not expert opinion evidence, and the court itself and any lay person is well able to review school transcripts and draw any necessary inferences from the transcripts.

[9] Dr. Nix's proposed expert opinion is in the form of a report dated March 18, 2012.

[10] I found much of his proposed evidence to be similar to that of an accountant's mathematical evidence. Much of it is simply a summary of facts presented in an illustrative way, not an opinion. Like an accountant's report, while the court is able to do the math for itself it, it can often assist the court to have someone familiar with mathematical calculations such as an accountant present the figures in a way that is relevant for the court.

[11] While Dr. Nix's opinion evidence is on the borderline of being unnecessary, I have determined that Dr. Nix does have the qualifications to summarize the plaintiff's transcripts and to consider and compare these marks with the requirements for admission into medical school at UBC, assuming the medical school requirements are as set out in the attachment to his report which has now been admitted. Much the same as an accountant may assist the court by "doing the math", I conclude that Dr. Nix can assist the court by compiling and comparing the plaintiff's pre-accident and post-accident grades and the admitted requirements for UBC medical school.

[12] Given the facts as to the plaintiff's transcripts and of the UBC medical school admission requirements have been admitted, Dr. Nix's evidence can also be easily tested and challenged if he has made mistakes in his review of these documents.

[13] To the extent some opinion evidence is found in Dr. Nix's review of the transcripts, it does not go much beyond a familiarity with educational marking and an appreciation of UBC educational practices or any university related jargon. As a

long-standing member of the faculty at UBC, Dr. Nix does have the qualifications to give these limited opinions on matters which may be beyond the court's appreciation.

[14] While the probative value of the evidence is not great, I see no prejudicial effect if the evidence of Dr. Nix is limited in this way to the analysis of the plaintiff's transcripts and medical school admission requirements. Given that his own experience relates to the education faculty and not to the medical school, in the end his evidence might not be given much weight. But since there is no jury in this case I am not concerned that undue weight might be given to Dr. Nix's opinion or that it could end up misleading the court.

[15] Nevertheless, some of Dr. Nix's opinions as set out in his report, in my view, go beyond what he is qualified to give. I find that Dr. Nix does not have the qualifications to give broader opinions as to what would have happened with the plaintiff but for the accident, to assess her credibility, or to give opinions based on the medical evidence. He is not permitted to give opinions in these areas. In this regard, some of his conclusions in his report might not be easily disentangled from his review and reliance on the medical records and it will be up to the cross-examination to illustrate this.

[16] To the extent that portions of his report clearly do tread on ground which I have concluded is inadmissible, I have taken a pen and struck through those portions of a copy of his report. I propose marking a new copy of his report as the exhibit when he is called to give evidence.

[17] As well, Dr. Nix's experience in assessing the requirements for admission into a program at other Canadian universities other than UBC is only remotely relevant. He relies on admissions criteria for other university medical school programs. As I understand it, there is no expectation that the defendant will call evidence to prove the underlying facts of these other university medical school requirements. Nevertheless, the defendant has not closed its case and may seek to prove these facts in some other way and so I will allow Dr. Nix's evidence in this regard as well.

[18] This means Dr. Nix's evidence regarding the medical school requirements of the University of Alberta, the University of Saskatchewan, the University of Manitoba, and the University of Toronto is admissible except for his conclusory opinion in each case in which he states that the plaintiff would not have gained admission to these programs even in the absence of the February 2006 motor vehicle accident. His conclusion in this regard is prejudicial and he is not qualified to give an opinion which is, in part, based on his assessment of medical evidence and his view that the plaintiff's injuries did not have an impact on her studies.

[19] I propose handing to you now a copy of the report and I will just direct you to the passages that I have found ought to be struck out as inadmissible:

- at page 3, from line 1 down to line 7, ending in the phrase, "... dislike of mathematics";
- the paragraph at page 3 that begins at line 10 is struck out except for the first sentence;
- the third full paragraph on page 3 beginning, "Given that her injuries..." is struck out, as well as the following paragraph beginning at line 31;
- at page 5, the third full paragraph beginning at line 16 and the rest of that page is not admitted;
- continuing on to the top of page 6, the continuing paragraph beginning at line 1 and the first full paragraph ending at line 9 are also not admitted;
- at page 10, line 18 the words following the word "Program" are not admitted;
- at page 11, line 1 the words following the word "Program" are not admitted, continuing to the end of that sentence;
- likewise, at page 11, line 39 the words after "Program" are not admitted;
- at page 12, line 26, the words after "program" are struck out;

- at page 12, the paragraph under the heading “Conclusions” is not admitted;
- at page 13, the top three paragraphs are not admitted;
- also at page 13, the paragraph beginning at line 18, only the first sentence is admitted and not the sentence beginning, “It is my opinion...”;
- also at page 13, the paragraph beginning at line 26 and the following paragraph ending at line 36 are not admitted;
- at page 14, the last paragraph above “Facts and Assumptions”, which paragraph begins at line 8 is not admitted.

[20] What I would propose is that the report that is currently at Tab 2 of Exhibit 11 be taken out and we mark the redacted report as the next exhibit.

[21] MR. HARRIS: I'm just attempt – just digesting your ruling in the context of Dr. Nix's arrival and the brief time I will have with him to advise him of the ruling. Is it fair to say that the question of whether or not the plaintiff would have been a candidate to enter law [sic] school stands and the second question would that have been altered by the accidents does not stand? Is that a fair summary of what you've done?

[22] THE COURT: You have my ruling. I do not want to summarize it. I have struck out the portions I have struck out, so ...

[23] MR. HARRIS: All right. Well, moving along then, My Lady, just given that your ruling based on -- should question number 2 be struck on page 1?

[24] THE COURT: Well, that is -- in my view, there is no need to. It is a question put to him.

[25] MR. HARRIS: Yes.

[26] THE COURT: The question is whether the answer in the report is struck or not and I do not think the fact he was asked the question needs to be struck.

[27] MR. HARRIS: Now, just in the brief time I'm going to have with Dr. Nix to advise him of the ruling, I am going to do my best to tell him what things he can say and what he can't say for purposes of cross-examination.

[28] THE COURT: Well, you know, cross-examination can open the door.

[29] MR. HARRIS: Yes.

[30] THE COURT: Since you're not intending to ask him any questions in chief, I think you are right. It is fair to tell him some of it has been eliminated.

[31] MR. HARRIS: Yes.

[32] THE COURT: But I do not know how far you have to go.

[33] MR. HARRIS: I don't -- I'm just trying to -- I'm just trying to weigh those things in my mind, My Lady, because I just don't want him to -- to tread on some ground that you've obviously declared as inadmissible and I think I should just, at least, attempt to caution him in that regard. So I'll do my best.

“S.A. Griffin, J.”

The Honourable Madam Justice Susan A. Griffin