

February 5, 2015

Court of Appeal Reaffirms Gatekeeping Function For Potential Experts

The Court of Appeal has affirmed the robust gatekeeping function to be exercised by trial courts in the admission of expert evidence (*Meady v. Greyhound*, 2015 ONCA 6).

In *Meady*, the plaintiffs sought to introduce expert evidence on the standard of care of a bus driver and police officers following an incident where a mentally ill individual (Mr. Davis) boarded a Greyhound bus and during the journey grabbed the steering wheel, causing the bus to crash into a ditch. One person was killed and numerous others were injured in the crash.

The plaintiffs sought to use expert evidence to advance the following theories:

1. the bus driver should have slowed down when the passenger approached the driver; and
2. the police officers who interacted with individual should not have allowed him to board the bus.

The trial judge rejected the proposed expert on the standard of care of the bus driver as unnecessary and going to the ultimate issue (i.e., was the bus driver negligent?). The proposed expert on police conduct was also excluded on the basis of necessity.

In upholding the trial judgment, the Court of Appeal noted that while the standard of care applicable to professionals typically requires expert evidence, expert evidence is not required for non-technical matters of which an ordinary person would have knowledge. Matters related to the exercise of police powers of investigation, arrest and detention and police interactions with the public falling short of coercion, were found to be part of the daily diet of judges of the Superior Court.

With respect both the bus driver and police officers, the trial judge did allow evidence on applicable policies and procedures in place at the time. This was treated as fact evidence, and not as opinion evidence going to whether the bus driver or police officers met the standard of care.

The Court of Appeal also stressed the need for deference to a trial judge's exercise of discretion with respect to excluding

expert evidence found to be unnecessary.

The Court of Appeal affirmation of the trial judge's discretion is also in line with recent Supreme Court direction to clamp down on unnecessary expert evidence (see *Masterpiece Inc. v. Alavida Lifestyles Inc.*, 2011 SCC 27)

- Research contributed by George White, 2014/2015 Fox Scholar