CITATION: Denman v. Radovanovic, 2022 ONSC 4401
COURT FILE NO.: CV-17-574151
DATE: 20220727

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MICHAEL DENMAN, ANDREA DENMAN, OLIVIA DENMAN and ISABEL DENMAN	)	*Sloan H. Mandel, Aleks Mladenovic and Deanna Gilbert,* for the Plaintiffs
Plaintiffs	)	
IVAN RADOVANOVIC, VITOR MENDES PEREIRA, LEE-ANN SLATER, RONIT AGID, KAREL TER BRUGGE, JOHNNY HO YIN WONG, JOHN DOE #1, JOHN DOE #2, and JOHN DOE #3	)	*Darryl A. Cruz and Adam Goldenberg,* for the Defendants
Defendants	)	**HEARD: July 18, 2022**

RULING ON ADMISSIBILITY OF DR. REDEKOP

J.E. FERGUSON J.

[1] I heard a motion to exclude Dr. Redekop from testifying on the basis of bias. I granted the motion. There was a voir dire conducted on his qualifications held on June 20, 2022 following which, I received submissions and made the order. These are the reasons behind the order.

THE LAW

[2] "Expert opinion evidence can be a key element in the search for truth, but it may also pose special danger." For that reason, the courts have progressively tightened the rules of admissibility and enhanced the trial judge's gatekeeping role. The courts stress that an expert's lack of impartiality may otherwise result in egregious miscarriages of justice.[1]

[3] The trial judge must protect the integrity of the process by ensuring that the expert does not overstep acceptable boundaries when giving evidence. This includes ensuring that the expert's testimony continues to be independent in the sense that the expert does not become an advocate by the party by whom the expert was retained.[2]

[4] The court's discretion to exclude prejudicial evidence is an ongoing one that continues throughout the trial. The court retains discretion to exclude expert evidence even after initially admitting it if prejudice emerges in the trial that was not apparent at the time of admission.[3]

[5] In *White Burgess*, the Supreme Court of Canada stated:

> Expert witnesses have a special duty to the court to provide fair, objective and non-partisan assistance…
>
> …The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her…[4]

[6] These principles have also been codified under rule 4.1.01 of the *Rules of Civil Procedure*, which provides:

> (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,
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> (a) to provide opinion evidence that is fair, objective, and non-partisan;
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> (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
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> (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.
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> (2) The duty under subrule (1) prevails over any obligation owed

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[1] *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras. 1, 12, 20 (CanLII), 2015 2 SCR ("*White Burgess*").
[2] *Bruff-Murphy v. Gunawardena* 2017 ONCA 502 at para 66 (CanLII) leave to appeal dismissed. ("*Bruff-Murphy*")
[3] *Parliament v. Conley*, 2021 ONCA 261 at paras. 45, 47 ("*Parliament*").
[4] *White Burgess*, supra. at paras 2, 10, and 32

by the expert to the party by whom or on whose behalf he or she is engaged.[5]

[7] The test for the admissibility of expert evidence was initially set out by the Supreme Court of Canada in *R. v. Mohan*[6], in which the court described a four-prong analysis:

(a) Relevance;

(b) Necessity in assisting the trier of fact;

(c) The absence of any exclusionary rule; and

(d) A properly qualified expert.

[8] The Supreme Court of Canada subsequently expanded the test; however, whereby the analysis is now divided into two steps. At the first step, the court applies the *Mohan* criteria, otherwise known as the "threshold requirements of admissibility." At the second discretionary gatekeeping step, the court balances the potential risks and benefits of admitting the evidence.[7]

[9] In most of the leading cases on the admissibility of expert evidence, the issue of admissibility is decided at the time the evidence is proffered and the expert witness' qualification is required by a party. The Ontario Court of Appeal has confirmed: "To the extent that this is possible, it should be the norm."[8]

[10] During the qualifications stage, the expert is expected to attest to his awareness of and willingness to comply with the duty owed to the court. As stated by the Supreme Court of Canada:

> Once the expert attests or testifies on oath to this effect, the burden is on the party opposing the admission of the evidence to show that there is a realistic concern that the expert's evidence should not be received because the expert is unable and/or unwilling to comply with that duty. If the opponent does so, the burden to establish on a balance of probabilities this aspect of the admissibility threshold remains on the party proposing to call the evidence. If this is not done, the evidence, or those parts of it that are tainted by lack of independence or impartiality, should be excluded…[9]

[11] In *Morris et al. v. Prince et al:* "As the trial judge, I must avoid the temptation to take the path of least resistance and rule the evidence admissible subject only to the weight to be afforded to such evidence."[10]

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[5] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 at r. 4.1.01 (the Rules).
[6] *R. v. Mohan*, 1994 CanLII 80 (SCC).
[7] *White Burgess, supra* at paras. 23-24; *R. v. Bingley*, 2017 SCC 12 at para. 14 (CanLII), [2017] 1 S.C.R. 170 ("*Bingley*").
[8] *Bruff-Murphy, supra* at para. 60 leave to (appeal dis'd).
[9] *White Burgess, supra* at para 48
[10] *Morris et al. v. Prince et al.*, 2022 ONSC 1291 at para. 10 (CanLII) ("*Morris*")

[12] In *White Burgess*[11], the Supreme Court of Canada also reviewed whether/when evidence of bias goes to admissibility versus weight:

> In my view, expert witnesses have a duty to the court to give fair, objective and non-partisan opinion evidence. They must be aware of this duty and able and willing to carry it out. If they do not meet this threshold requirement, their evidence should not be admitted. Once this threshold is met, however, concerns about an expert witness's (*sic*) independence or impartiality should be considered as part of the overall weighing of the costs and benefits of admitting the evidence…
>
> …I would hold that an expert's lack of independence and impartiality goes to the admissibility of the evidence in addition to being considered in relation to the weight to be given to the evidence if admitted…

[13] In *Wise v. Abbott Laboratories, Limited*[12], the court cited a list of 14 factors that may be considered when ascertaining bias and impartiality. These include:

(a) the nature of the stated expertise or special knowledge;

(b) statements publicly or in publications regarding the prosecution itself or evidencing philosophical hostility toward particular subjects;

(c) a history of retainer exclusively or nearly so by the prosecution or the defence;

(d) long association with one lawyer or party;

(e) personal involvement or association with a party;

(f) whether a significant percentage of the expert's income is derived from court appearances;

(g) the size of the fee for work performed or a fee contingent on the result in the case;

(h) lack of a report, a grossly incomplete report, modification or withdrawal of a report without reasonable explanation, a report replete with advocacy and argument;

(i) performance in other cases indicating lack of objectivity and impartiality;

(j) a history of successful attacks on the witness's (*sic*) evidence;

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[11] *White Burgess, supra*, 2015 SCC 23 at paras 10, 45

[12] *Wise v. Abbott Laboratories, Limited*, 2016 ONSC 7275 at para. 70 (CanLII) ("*Wise*").

(k) unexplained differing opinions on near identical subject matter in various court appearances or reports;

(l) departure from, as opposed to adherence to, any governing ethical guidelines, codes or protocols respecting the expert witness's (*sic*) field of expertise;

(m) inaccessibility prior to trial to the opposing party, follow through on instructions designed to achieve a desired result, shoddy experimental work, persistent failure to recognize other explanations or a range of opinion, lack of disclosure respecting the basis for the opinion or procedures undertaken, operating beyond the field of stated expertise, unstated assumptions, work or searches not performed reasonably related to the issue at hand, unsubstantiated opinions, improperly unqualified statements, unclear or no demarcation between fact and opinion, unauthorized breach of the spirit of a witness exclusion order; and

(n) expressed conclusions or opinions which do not remotely relate to the available factual foundation or prevailing special knowledge.

[14] Mr. Mandel submitted that paras (c) (d) (e) (h) (i) (k) (m) and (n) are at play here. I agree.

[15] In *Leckie v. Chaiton*, I dealt with the issue of bias by the manner in which the expert gave his evidence, stating:

> I agree that throughout the course of his testimony, Dr. Rubin acted more as an advocate rather than an impartial expert whose duty is to the court. I agree that during cross-examination, he was argumentative, repeatedly asked questions instead of answering them and, at one point, was forced to acknowledge that he was stepping outside of his role as an expert.
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> ...
>
> Dr. Rubin also substantially changed his evidence on re-examination to try to repair the damage done to the plaintiffs' case...
>
> I agree that Dr. Rubin took on the role of an advocate, rather than a neutral expert whose duty is to the court and that he held Dr. Chaiton to a standard considerably higher than that which he acknowledged applies to himself and other physicians.[13]

[16] In *Parliament v. Conley*, the Ontario Court of Appeal ordered a new trial following the dismissal of a medical malpractice action. At trial, the impartiality of two experts retained by the defendant physicians had been called into question.[14]

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[13] *Leckie v. Chaiton*, 2021 ONSC 7770 at paras. 70, 72, 74 (CanLII).
[14] *Parliament supra*

[17] In that case, the impartiality of the first expert ("Dr. Fleming") was addressed at the outset of trial and Dr. Fleming was precluded from testifying altogether. This ruling was not appealed. The trial judge had reviewed Dr. Fleming's reports and found that they included credibility assessments, inaccuracies and methodological flaws, and lacked objectivity. As summarized by the Ontario Court of Appeal:

> ...Dr. Fleming accepted the evidence of the respondent doctors and rejected the evidence of the appellants without explanation, and she was unwilling or unable to recognize or acknowledge this preference. She made improper fact-finding and credibility assessments and acted as both judge and jury...The trial judge concluded that Dr. Fleming lacked independence, rendering her incapable of providing an impartial opinion and refused to admit her evidence.[15]

[18] In that case, the impartiality of the second expert ("Dr. Bruce") was not addressed until after Dr. Bruce had testified. It was argued that during his testimony, Dr. Bruce strayed from impartiality. The trial judge not only permitted the evidence to stand, but there was no warning provided to the jury about the problems inherent with the testimony. The Ontario Court of Appeal stated:

> ...The credibility and reliability of Ms. York and the two doctors were central issues for the jury to decide.
>
> ...Dr. Bruce exceeded his role as an expert when he opined on the credibility and reliability of the doctors and Ms. York, for example observing that Ms. York was untruthful and could not remember accurately....
>
> Second, the expression of an opinion as to the credibility of witnesses is also a breach of the expert's duty to be independent. Dr. Bruce acknowledged in his evidence that in rendering his opinion on standard of care, he disregarded Ms. York's evidence and assumed that the doctors' evidence was credible and reliable. I do not accept the respondents' argument that all Dr. Bruce was doing was making assumptions as the questions put to him asked him to do. As the extracts above indicate -- particularly "it's conceivable because that's what happened" -- it is clear that in some critical instances he was giving evidence about what actually happened, based on his view of the credibility of the witnesses. His testimony extended well beyond expressing opinions based on hypothetical facts he was asked to assume. For these reasons, this evidence was not admissible and to the extent his testimony opined on the credibility of the witnesses, it should have been excluded. These circumstances called for the trial judge to exercise her gatekeeping role and her residual discretion to exclude this evidence.[16]

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[15] *Ibid* at para 28

[16] *Ibid.* at paras. 49, 51-52.

[19] In *Thornhill v. Chong*, the impartiality of the defendant physician's expert ("Dr. Stern") was not questioned at the outset of trial but, following his testimony, submissions were made regarding the weight to which his opinion should be afforded in light of the manner in which he gave his evidence. The court ultimately placed "no reliance" upon Dr. Stern's opinion, stating:

> Dr. Stern was obviously a partisan witness. For example, Dr. Stern testified that he was satisfied, based on Dr. Chong's chart, that he regularly and thoroughly assessed the bump/lump. It was obvious on cross-examination that the chart could not support what he had said....
>
> Dr. Stern accepted that it was appropriate for a physician to make a diagnosis based on history and risk factors and then to relate the physical findings back to the diagnosis. The approach was demonstrated in Dr. Stern's evidence when he testified why Dr. Chong was not required to include a soft tissue tumour as a potential explanation for Ms. Thornhill's bump on the initial visit. Dr. Stern said that Dr. Chong's initial diagnosis of RSI was a reasonable exercise of judgment because it fit the clinical picture of Ms. Thornhill who had fibromyalgia, issues with function, a repetitive strain injury and a radial nerve entrapment, all of which go hand in hand with decreased ability to perform her job. So, repetitive strain injury can support a diagnosis of repetitive strain injury. The reasoning is circular and conclusory. The approach is antithetical to the concept of a physician formulating differential diagnoses for a condition. Dr. Stern ignored the fact that in his consultation report Dr. Chong wrote of an extensor bump and area of inflammation, which he said was difficult to diagnose using standard nerve conduction studies, and left it at that.
>
> Dr. Stern's conclusory approach was also demonstrated in his insistence that Dr. Chong's diagnosis of RSD was a reasonable exercise of clinical judgment. The cross-examination demonstrated that Dr. Chong did not document what criteria led him to the diagnosis at the time he made it. Nevertheless, Dr. Stern defended the diagnosis and scoured the chart for justification of the diagnosis. An essential criterion is ruling out other conditions. Dr. Stern said that Dr. Chong had reasonably ruled out other conditions. He never explained what, in his opinion, Dr. Chong did to do that.[17]

[20] In *Lane v. Kock* the expert was permitted to testify but was given strict limitations by the trial judge given the apprehension of bias. Two of the concerns the court had regarding the expert's impartiality included inflammatory language used in his reports and his "cherry-picking" medical summary, whereby the court noted:

> "...In commenting on these reports, he highlighted portions that he thought were favourable to the plaintiff's cases (*sic*) and left out portions that he thought were otherwise..."[18]

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[17] *Thornhill v. Chong*, 2016 ONSC 6353 at paras. 278-280, 283 (CanLII).

[18] *Lane v. Kock*, 2015 ONSC 28 at paras. 12, 19 (CanLII).

[21] In *Morris*, the court felt that the defence expert was shrouding himself in a cloak of bias by drawing to the attention of the reader of his report only those facts favourable to the position of the party that retained him. Applying the "acid test" as set out in *White Burgess*, the judge could not conclude that the defence expert would have had the same opinion had he been retained by the plaintiff. As such the court exercised its gatekeeper function and declared the evidence of the defence expert to be inadmissible at the voir dire stage.[19]

[22] In the medical malpractice matter of *Boone v. O'Kelly*, the court excluded the evidence of the defendants' physiatry expert ("Dr. Burns"). The issues with Dr. Burns' evidence included:

> He proffered a new opinion at trial that was revised from the opinion in his written report, which revision was not based upon any new information.
>
> (i) Notably, the court was critical of Dr. Burns' attempts to justify his new opinion, stating: "Dr. Burns' answer is part of his persistent tendency to distinguish an answer previously given" and "This pattern of dogmatically sticking to an answer until getting caught in a verifiable contradiction started early in trial."
>
> He reviewed and relied upon the chronology sent to him by counsel rather than the source documentation and, as such, did not review the entirety of the medical records.
>
> He never asked to review the complete file before rendering his opinion.[20]

[23] The court concluded regarding the admissibility of Dr. Burns' evidence:

> I cannot conclude that Dr. Burns was intentionally biased. Given that his opinion is based, in large part, on documents that the defendants' counsel selected and sent to him, I find that there is an inherent bias, from the beginning, in Dr. Burns' opinion and evidence. Dr. Burns did not recognize the problem with the approach taken: he failed to adopt his standard practice; and he did not seek out any additional information that could have enhanced the reliability of his opinion. In the end, Dr. Burns either misinterpreted or misrepresented key documents and simply assumed the validity of assessments performed by other professionals.
>
> ...
>
> I conclude that I am unable to give Dr. Burns' opinion evidence any weight and see no purpose in admitting it. Dr. Burns' evidence is excluded in its entirety.[21]

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[19] *Morris*, *supra*. at paras 2, 22, 29

[20] *Boone v. O'Kelly*, 2020 ONSC 6932 at paras. 28-29, 32-33, 41, 43 (CanLII) (*"Boone"*).

[21] *Ibid.* at paras. 92, 94.

[24] Impartiality is a question of fact. Ultimately, the court is required to undertake a specific factual inquiry. As stated by the Supreme Court of Canada: "A proposed expert witness who is unable or unwilling to comply with [the duty to the court] is not qualified to give expert opinion evidence and should not be permitted to do so."[22]

[25] The Supreme Court of Canada concluded that "exclusion at the threshold stage of the analysis should occur only in very clear cases in which the proposed expert is unable or unwilling to provide the court with fair, objective and non-partisan evidence. [23]" That clearly happened in this case.

[26] Dr. Redekop is a vascular neurosurgeon (since 1993) and interventional neuroradiologist (since 1998).

[27] He signed the Acknowledgement of Expert's Duty form on September 20, 2019, which sets out his responsibility to answer the questions put to him by a party involved in the action; to answer them truthfully, objectively and in a nonpartisan and unbiased way. He testified that he is to limit his answers to areas to which his expertise relates and that his obligation is to the court and not to any party. He did not feel that he has any conflict of interest in providing an opinion in this case.

[28] Other than professional interactions with the three defendant physicians, he has no personal relationship with them. He describes himself as a professional friend to them. They interact at professional meetings and primarily conferences. He takes it as a compliment that Dr. Ter Brugge described him as a friend, but he sees himself as a peer/colleague.

[29] He has co-authored some articles/papers with Dr. Ter Brugge whom he believes was the first interventional neuroradiologist at Toronto Western Hospital ("TWH").

[30] He knows the plaintiff's expert Dr. Findlay quite well – Dr. Findlay is a neurosurgeon but not an interventional neuroradiologist.

[31] He took the evidence of Mrs. Andrea Denman into account in writing his reports but agrees that he did not reference it in his reports.

[32] He has been an expert witness previously, probably in the range of 75 to 100 cases, many of which relate to medical/legal litigation. He has provided opinions for both plaintiffs and defendants but not in medical malpractice cases where he provides opinions regarding the defendant physicians only.

[33] In cross-examination he provided the following evidence:

(i) he is to provide an opinion that is fair, objective and nonpartisan;

(ii) he has an obligation to be impartial, which means that he does not make credibility findings;

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[22] *White Burgess supra* at para 2
[23] *White Burgess ibid*

(iii) to the extent that he makes credibility findings he understands that he has gone beyond the scope, role, and permissible function of an expert witness;

(iv) with respect to his involvement in a particular study, research paper, medical/legal reports, he agrees that he should voluntarily disclose potential conflicts of interest and potential biases;

(v) he voluntarily would disclose any assumptions on which his opinion is based in his reports;

(vi) his relationship with Dr. Ter Brugge is professional;

(vii) he did not expressly include a comment in his reports that he had a prior relationship (friendship, professional or otherwise) with Dr. Ter Brugge;

(viii) Dr. Ter Brugge is a former teacher, professional friend and he also has collaborated with him professionally in co-authoring research papers. He agrees that he did not put that in his reports, but said that it is implicit in his CV;

(ix) the degree to which he has refused to testify on behalf of plaintiffs in medical malpractice proceedings has received prior judicial scrutiny;

(x) in *O'Connor*, 2018 BCSC 886 the court had to deal with the submission that he was unwilling to provide opinions to those who bring malpractice cases against physicians. The court allowed him to testify because the judge found his opinion to be based upon facts consistent with those the judge accepted;

(xi) he agreed that the longer someone's life expectancy, the greater the risk of a future spontaneous bleed. Mr. Denman had a shorter life expectancy than the plaintiff (16-year old) in *O'Connor*. He also agreed that in *O'Connor* the AVM was small, and that Mr. Denman's AVM was not small. He agreed that he stated in *O'Connor* the following: "it's not a decision ever about do you treat it or not treat it. You have to first ask is it necessary to treat it now." He agrees that he did not put that statement in any of his reports in the Denman case;

(xii) he agreed that he has never testified that a physician failed to meet the standard of care. He has often testified about physicians meeting the standard of care. He agreed that his evidence should be consistent in the proceedings where he is testifying about standards of care;

(xiii) he agreed that if he is testifying for a physician who is recommending treatment his role should be the same in a case where a physician is suggesting no treatment. The same basic principles apply to both situations;

(xiv) he currently has four active cases for the CMPA. He believes that he has one case on behalf of plaintiffs suing their physicians but confirmed that he is not providing a standard of care opinion in that case;

(xv) he agreed that "there could be lots of reasons why it's appropriate to defer treatment to a later time. For instance, you may only have 10 years of work life expectancy and family who relies on (that patient) to provide for them". He agreed that he has not included anything "like that" in his reports;

(xvi) he agrees that in the AVM cases where there is a decision to treat or not treat that the physician and patient have to consider the risk of intervention and weigh that risk against the risk of conservative management and whether a bleed is likely to result in a significant disability or not;

(xvii) in his August 26, 2021 report he states that he tells his patients that if they have a spontaneous bleed in the future, then there is a 50% risk of serious permanent neurological deficit or death. In *O'Connor*, he put that risk at 10%. He testified that the percentages are different because one comes from his experiences and the other from the literature. (He had some nonsensical explanation about this);

(xviii) the risk without treatment is around 2% annually whereas he used 2 to 4% in his Denman report;

(xix) he agrees that he did not indicate in his Denman reports what the lifetime risk of bleed was without treatment. He agreed that there is a difference between 2% and 4%. He would not agree that his reports were slanted in favour of the defence in both cases;

(xx) he agreed that part of the important discussion he would have with a patient, is whether those treatments are now or never, but maybe later which is not included in any of his reports;

(xxi) he agreed that he has an obligation to provide opinion evidence that is fair, objective and nonpartisan and stated that he would do the same for the Denmans as he would for defendant physicians; (note that he turned down the request to provide an opinion for the Denmans);

(xxii) email correspondence sent from Mr. Mandel and responded to by Dr. Redekop was made an exhibit. In it, Mr. Mandel was asking Dr. Redekop if he would be prepared to provide expert opinion on behalf of the family in a medical malpractice case involving embolization therapy and surgical resection of an AVM (this case). The answer from Dr. Redekop was "No". Dr. Redekop agreed however subsequently, to provide an opinion regarding the defendant physicians. He agreed that his practice is to provide opinions on AVMs for his colleagues but not for plaintiffs;

(xxiii) he agreed that he did not have Dr. Radovanovic's adverse outcome rate of 25% when he wrote about outcome rates nor were they produced to him;

(xxiv) he agreed that he had received and reviewed Mrs. Denman's examination for discovery transcript and that he did not refer to it in any of his reports. He considered it in forming his opinion;

(xxv) he agreed that he assumed that there was greater discussion between the doctors and the Denmans than that which was charted. In making these assumptions he has relied on the defence evidence of general/standard practice. He agreed that he has assumed the content of the discussion was greater than that charted and that he has assumed that the content met the standard of care. It is his opinion from what he reviewed that the physicians had thoroughly discussed the matter with the Denmans;

(xxvi) he agreed that in deciding to undergo surgery a patient would want to know the risk numbers in deciding to proceed or not and that he has not included his opinion about that in his reports. In none of his reports has he provided cumulative treatment risk or range of risk.

[34] I agree with Mr. Mandel's submissions and will summarize those points at this juncture.

(i) using *White Burgess,* the issue and admissibility is to be decided at the time the evidence is proffered. Candidly, I tried to initially defer it to the closing submissions but was convinced otherwise by the caselaw and submissions provided by Mr. Mandel. The trial judge must avoid the temptation to take the path of least resistance and rule the evidence admissible, subject only to weight;

(ii) biased evidence should be excluded in both judge and jury trials;

(iii) the expression of an opinion as to the credibility of a witness is a breach of the expert's duty to be independent. In this case, Dr. Redekop assumed that the defendant physician's evidence was credible and reliable;

(iv) Dr. Redekop was willing to provide an opinion regarding Dr. Ter Brugge his friend, teacher, co-collaborator, someone with whom he has written research papers, given presentations – none of which was disclosed in the face of the acknowledgment of a duty of transparency;

(v) he does not testify for plaintiffs in medical malpractice matters involving standard of care.

(vi) The risk of bleed without treatment is 10% in the literature. Dr. Redekop tells his patients 50% which Mr. Mandel suggested was a "pick and choose" opinion to come to a conclusion which supports his AVM colleague physicians.

(vii) I agree that the content of Dr. Redekop's reports is profoundly inadequate. He also assumed his conclusions and accepted the self-professed standard of care practice evidence from the defendant physicians, as reliable and credible.

(viii) Dr. Redekop was not impartial. He was unable and unwilling to comply with his duty to the court.

(ix) As set out above in paragraphs 13 and 14, Dr. Redekop violated 8 of the factors.

[35] I excluded Dr. Redekop from testifying as a result of bias. This is the first time I have done this with an expert since being appointed in 2004.

Jane E Ferguson J.

J.E. Ferguson J.

Released: July 27, 2022

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Plaintiff

-and-

IVAN RADOVANOVIC, VITOR MENDES PEREIRA, LEE-ANN SLATER, RONIT AGID, KAREL TER BRUGGE, JOHNNY HO YIN WONG, JOHN DOE #1, JOHN DOE #2, and JOHN DOE #3

Defendants

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