

## Dr. Robert Notkin - psychiatry

[Saunders and Royal & SunAlliance](#) Arbitration, 2007-06-20

Royal relied principally in its submissions upon an Insurer's examination by Dr. Notkin, a psychiatrist, which found that Mr. Saunders did not suffer any impairment that would prevent him from working at any occupation to which he was reasonably suited by reason of his education, training or experience. Dr. Notkin also took Mr. Saunders to task for being a poor historian and challenged the credibility of his account. The Insurer has also pointed to a variety of pre-accident conditions that it claims may have resulted in Mr. Saunders' current condition...

...As noted earlier, Royal filed some medical evidence, but at the hearing relied principally upon an insurer's examination by Dr. Notkin in its argument. Although I did not have the benefit of Dr. Notkin's direct testimony, his full report was filed as part of Royal's case.

Dr. Notkin concluded as to impairment:

While I have indicated that there is a possibility of a pain disorder from a psychological perspective, I cannot prove that one exists. I have also indicated that based on my documentation review, I have strong suspicions that there is evidence of symptom exaggeration in regard to litigation. Further, I have highlighted the presence of false imputation of symptoms, a form of Malingering.

Clearly, Dr. Notkin neither believes nor trusts any information that he received from Mr. Saunders. In his more charitable characterizations he refers to Mr. Saunders as an "inaccurate and unreliable historian."

Dr. Notkin continually uses comments such as "this is discrepant" or "inconsistent" when commenting on notations in the documents he examined. Some incidents commented on are clearly the normal variations in retelling a story after the passage of time, while others are simply puzzling. Indeed, I am at loss to understand how Mr. Saunders' credibility is brought into question by the number of lovers his mother may have had or not.

Dr. Notkin's report consists of some 77 pages, the most of which consists of comparisons of statements drawn from the records he was provided, with statements elicited in Dr. Notkin's interview with Mr. Saunders. Indeed, most of the "psychiatric report" involves such cross-examination on the record, combined with speculation about various "scenarios" hypothesized by Dr. Notkin on the basis of his prior experience.

While I accept that the credibility of a person in recounting subjective feelings and experiences to a psychiatrist is a relevant consideration, there is relatively little of Dr. Notkin's report that could actually be construed as an appropriate expert opinion on Mr. Saunders' psychiatric status.

An expert is not an advocate for one side or another. He or she is present for the benefit of the tribunal, not a particular party. This is true whether the report is merely filed, or whether the expert testifies in person. [See note 12 below.] Courts, including the Supreme Court, have spoken clearly as to the use of expert testimony:

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Note 12: See *Lurtz v. Duchesne* [2003] O.J. No. 1541

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The function of the expert witness is to provide for the jury or other trier of fact an expert's opinion as to the significance of, or the inference which may be drawn from, proved facts in a field in which the expert witness possesses special knowledge going beyond that of the trier of fact. The expert witness is permitted to give such opinions for the assistance of the jury. Where the question is one which falls within the knowledge and experience of the triers of fact, there is no need for expert evidence and an opinion will not be received. [See note 13 below.]

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Note 13: McIntyre J., speaking for the Supreme Court of Canada in *The Queen v. Beland and Phillips* (1987) 36, C.C.C. (3d) 481

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I have no hesitation in finding that the limited direct observations and measurements of Dr. Notkin could constitute the "proved facts" [See note 14 below.] required for the foundation of an expert opinion as identified by McIntyre J. in *Beland* (supra).

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Note 14: The only objective test actually administered was a "Mini Mental Status Exam" which is a test for dementia, something which was not at issue in this claim.

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I am not so willing to accept that Dr. Notkin's endless examination of previous statements and records in the search for inconsistencies is the proper role of an expert witness. Royal has able counsel in Ms. Brownlee, who is quite capable of pointing out any inconsistencies in testimony and to ask me to draw any appropriate inferences. Remarking on inconsistencies is not a specific psychiatric skill-set and Dr. Notkin has no particular expertise in the truth-seeking process that is not otherwise available to the tribunal...

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Whatever the merits of Dr. Notkin's actual views on Mr. Saunders' psychiatric condition, there is another element of the report that is disquieting: As noted earlier it stands totally at odds with the opinions of the treating physicians who have seen and examined Mr. Saunders over a considerable period of time. If Mr. Saunders was such a notoriously unreliable historian, I think it unlikely that skilled physicians would not have noticed the constant change in Mr. Saunders' background information.

Dr. Notkin's conclusions simply do not seem consistent with the balance of the materials submitted, nor with Mr. Saunders' evidence. Dr. Notkin's comment that "(F)rom a psychological perspective, this man has not been reporting psychological symptoms of significance" simply cannot be supported in the light of the medical records supplied on this motion, including the diagnosis of his own psychiatrist.

Notwithstanding the importance given to Dr. Notkin's report by Ms. Brownlee, the report appears to be tainted by the bias and the prejudice of the examiner and simply cannot be accepted as significantly credible evidence against disability.

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**Dutt and (Lloyd's) Non-Marine Underwriters** [+] Arbitration, 2000-10-02

Lloyd's submitted that Mr. Dutt's physical injuries from the accidents prompted the need for medical attention, and that his contact with doctors merely revealed (but did not cause) his ongoing psychiatric problems. Lloyd's relied upon Dr. Notkin's opinion that Mr. Dutt's current psychotic condition was not caused by the motor vehicle accidents.

Dr. Notkin had no satisfactory explanation for Mr. Dutt's apparent functioning in the year prior to the accidents. Dr. Notkin did not find it significant that Mr. Dutt had not sought medical treatment for his psychiatric condition in the year prior to the accidents. He speculated that Mr. Dutt may have become paranoid and distrustful of doctors and so withdrew from treatment. However, there is no basis for such speculation. On the contrary, the medical records indicate that Mr. Dutt did not hesitate to seek out medical attention and freely discussed his stress and depression with his doctors.

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**Allen and Wawanesa Mutual - Appeal** [+] Appeal, 2002-07-24

*D. Did the arbitrator err in her treatment of Dr. Notkin = s evidence?*

As noted above, Wawanesa called Dr. Notkin to testify at the hearing. The arbitrator devoted approximately two pages to describing and considering his evidence. She discounted his opinion on a number of grounds, including a finding that Dr. Notkin did not have a sufficient understanding of Mr. Allen = s essential tasks. In this regard, the arbitrator noted that Dr. Notkin did not have a copy of a job description that had been prepared with the assistance of Mr. Allen= s supervisor.

On appeal, Wawanesa complained that the arbitrator was not consistent in her treatment of expert evidence, because she accepted other expert opinions notwithstanding that the authors did not have the job description. However, reviewing the decision, it is apparent the arbitrator did not reject Dr. Notkin = s opinion on the basis of a single factor. She cited a number of reasons for

discounting the value of his opinion. In fact, the absence of the job description was only one point connected to a more general comment that the doctor did not explore the issue of essential tasks in sufficient detail. Whatever the merits of the comment that other experts did not have the job description, this fact is not sufficient to justify disturbing the arbitrator's decision to discount Dr. Notkin's opinion.

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[Safi v. Steele](#), 2009 CanLII 15887 (ON SC) — 2009-04-08

*The need for psychometric testing.*

[23] As noted by Dr. Cosico-De-Jesus and Regan, psychometric testing is usually done by psychometrists and interpreted by psychologists and not psychiatrists. The fact that Dr. Notkin administers such tests is unusual. Dr. Notkin admitted in cross-examination that he is not trained as a psychologist or as a psychometrist.

[24] Based on the opinions of Drs. Cosico-De-Jesus and Regan, Mr Safi's counsel argues that Dr. Notkin need not conduct any further testing and that he can rely on the results of the tests performed by Dr. Gow and that in any event, psychometric testing is not required in order to make a psychiatric diagnosis. Both Drs. Regan and Cosico-De-Jesus concede however that two or three year old test results may no longer be valid.

[25] After my review of the evidence, I am not persuaded that further psychometric testing, in and of itself, would be unnecessary, but I am satisfied by the evidence of Drs. Cosico-De-Jesus and Regan that any further prolonged assessment could result in serious harm to the Plaintiff especially since this testing would be completed on the very eve of trial.

[26] In arriving at this conclusion I was influenced by Dr. Notkin's refusal to disclose the names of the psychometric tests he proposed to administer to Mr. Safi. This refusal was based on his belief that Mr. Safi's counsel would use this information to prepare Mr. Safi for the testing and that the results would no longer be reliable. He further refused the offer of an undertaking by counsel not to share the information with Mr. Safi but only with his treating doctors to determine if the proposed tests were appropriate. Under no circumstances would he permit a videotaping of the assessment.

[27] He was candid in admitting that he approaches injured Plaintiffs with a great deal of suspicion. On cross-examination, he was referred to a paper he authored in September 2007 entitled "The Gold Standard IME" where he made a number of statements including this one: "Two-thirds of personal injury people are malingering". This belief may justify his wish to shroud his assessment techniques in secrecy.

[28] His answers on the length of the proposed assessment were vague; indicating that two days would be required with each day having a duration of between 3 and 5 hours. He admitted that since Mr. Safi appeared to be a very delicate man that he may need a very long time to be assessed including multiple days of assessments of no more than a few hours. He conceded that the first day would be devoted to testing, the exact nature of which he refuses to disclose.

[29] Dr. Notkin may have his own reasons for protecting the nature of the tests he administers but the Defendants must remember that they are asking the court to exercise its discretion in their favour. This requires a balancing of their right to defend their claim without subjecting the Plaintiff to further harm. Dr. Notkin's secrecy surrounding the nature of the tests to be performed and his evasive answers on the length of the proposed assessment fatally undermine the Defendants' request....

[36] Dr. Notkin's refusal to disclose the nature of the tests to be performed and his apparent belief that most Plaintiffs are malingerers do give a rise to a bona fide concern as to the reliability of his accounts of any statements made by Mr. Safi. It is apparent however that Dr. Notkin will not likely be involved. The Defendants have conceded that Dr. Notkin will not proceed with his examination of the Plaintiff under the limitations that I have already imposed.

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[Podleszanski v. Medley](#), 2007 CanLII 46714 (ON SC) — 2007-11-06

[19] Dr. Notkin, a psychiatrist was retained to conduct a psychiatric defence medical. The initial psychometric testing took almost 8 1/2 hours. The second day was five hours including breaks and the third day was 4 1/2 hours. On the third day, Mr. Podleszanski attended at the office with an articling student who remained in the patient waiting room. Mr. Podleszanski believed he was being mistreated by the psychiatrist and requested support. Mr. Podleszanski was very uncomfortable in this environment. It was his evidence that Dr. Notkin treated him differently on the third day when the student was in the waiting room. The length and type of psychiatric examination and testing conducted by Dr. Notkin of a person of Mr. Podleszanski's intellect and cultural background rendered Dr. Notkin's assessment to be of little value to the court.

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