Reznek, Lawrence Raphael, Psychiatrist

Sharma v Stewart, 2017 ONSC 4333 (CanLII), <http://canlii.ca/t/h50xw

[31] Second, there was the fact that Plaintiff's counsel sought to cross-examine Dr. Rezneck on findings made about his reports in previous cases. I ruled that cross-examining an expert about judicial findings in previous cases where that expert had testified was not within the scope of proper cross-examination. The argument on this ruling, and the consideration of the cases that counsel for the Plaintiff filed consumed a couple of hours of court time. Raising this issue unnecessarily lengthened the trial time, and it should also be considered in a minor way in assessing the costs.

Alladina v. Calvo, 2014 ONSC 2550 (CanLII), http://canlii.ca/t/g6rl6

[2] The Plaintiff opposes the motion. The Plaintiff acknowledges that the Defendants are entitled to a medical assessment by a psychiatrist, but submits that the court should order (i) the medical assessment be conducted by a psychiatrist other than Dr. Reznek due to bias, a reasonable apprehension of bias or a finding that Dr. Reznek is not professionally competent; (ii) in the alternative, if Dr. Reznek conducts the medical assessment, that it be videotaped; and (iii) in the further alternative, if Dr. Reznek conducts the medical assessment, that it be audiotaped.

[3] The motion was initially argued on October 17, 2013, but was adjourned during the hearing to November 4, 2013 so that counsel could address further legal argument arising from the hearing and the late filing of the Plaintiff's factum. On November 4, 2013, counsel for Dr. Reznek appeared and the court granted a further adjournment to April 23, 2014 to permit (i) Dr. Reznek to file an affidavit, (ii) the parties to file further affidavit material if required, and (iii) any out-of-court examinations or cross-examinations.

[4] For the reasons I discuss below, I grant the motion. Regardless of the applicable test, *i.e.* whether the Plaintiff must satisfy the court that Dr. Reznek cannot conduct a defence medical assessment due to bias, a reasonable apprehension of bias or lack of competence on the basis of (i) a "balance of probabilities" test (as the Plaintiff submits), (ii) a "substantial and compelling reasons" test (as the Defendants

submit should be at least the minimum standard), or (iii) even a higher threshold, the evidence does not support that finding.

[8] Rather, the Plaintiff submits that Dr. Reznek cannot conduct the defence medical examination because the evidence establishes, on the balance of probabilities, that Dr. Reznek (i) is biased in favour of defendants or defendant insurance companies, (ii) is subject to a reasonable apprehension of bias because of his methodology, past judicial commentary, and his affidavit and transcript evidence, or (iii) is not competent to conduct the defence medical assessment. Alternatively, the Plaintiff submits that the evidence supports a finding that if Dr. Reznek is permitted to conduct a defence medical examination, it should be videotaped or in the further alternative, audiotaped.

[71] Judicial comments that Dr. Reznek (i) conducted a "superficial" examination, (ii) had an "opinion on this issue [which] is without factual foundation", (iii) based his opinion on "speculative outcomes and a limited and selective review of the available reports" or took a "textbook approach", (iv) was "ignoring evidence" or "cherry picking facts", or (v) "generalized too much" do not demonstrate lack of competence or reasonable apprehension of bias to exclude Dr. Reznek from conducting an assessment. On Farrell's own evidence, Dr. Reznek's testimony is considered in 66 Westlaw reported cases. It is not surprising that on occasion, including the examples cited by Farrell, Dr. Reznek's opinion has not been accepted by a court or tribunal. However, none of the judicial comments reflects a lack of competence to conduct a medical assessment, but rather only that the court or tribunal accepted another expert's opinion due to a particular flaw found by the court to have arisen in a particular opinion of Dr. Reznek.

[72] Similarly, comments that "Dr. Reznek's evidence had a flavor of advocacy" or "smacks of partiality" or was not "balanced" do not establish on a balance of probabilities test (let alone substantial and compelling reasons) that Dr. Reznek is biased (or can reasonably be seen as biased) in favour of defendants. An expert is required to be objective before the court, and the court can properly criticize an expert who does not acknowledge any weaknesses which the court believes ought to have been acknowledged. However, "overzealous" advocacy for a position set out in a report does not demonstrate that a defendant's expert is biased against a plaintiff, just as it would not demonstrate that a plaintiff's expert is biased against a defendant.

[108] Further, in the present case there is no evidence of any complaint to the College of Physicians and Surgeons of Ontario, no evidence of professional misconduct, and no evidence that Dr. Reznek caused harm to any patient.

B. Evidence related to objectivity

[110] With respect to objectivity, the Plaintiff relies on Dr. Reznek's evidence on cross-examination that he can be "overzealous" in "advocating" for his position, as a basis for the court to find a reasonable apprehension of bias in favour of defence insurance companies.

[111] I have addressed this issue at paragraphs 98 to 102 above with respect to the same statement in Dr. Reznek's affidavit, and at paragraphs 72 to 76 with respect to limited judicial commentary about Dr. Reznek being an "advocate". I rely on those paragraphs and conclude that Dr. Reznek's evidence on cross-examination establishes that he recognizes his role as an independent expert. While Dr. Reznek fairly and candidly acknowledges that his occasional "zealous" belief in the correctness of his opinion may give the impression of advocacy for a party, he properly understands his role to the court and the litigation process.

[120] For the above reasons, the evidentiary record does not support the Plaintiff's submissions that the court ought to exclude Dr. Reznek on the basis of competence or objectivity. Whether considered under the test of "balance of probabilities" or "substantial and compelling reasons", the Plaintiff has not established a concern of lack of competence, or reasonable apprehension of bias (let alone bias) to support such relief.

[125] For the above reasons, I grant the motion and order that the Plaintiff attend for a defence medical assessment to be conducted by Dr. Reznek without videotaping or audiotaping. I fix costs in favour of the Defendants in the amount of $7,290.40, not inclusive of taxes and disbursements, which is the amount sought by the Defendants and is reasonable given the multiple motion records and factums filed, the importance of the issues, the length of the hearing, attendance at cross-examinations, and the research required to prepare the submissions. I also award costs in the amount of $4,000 inclusive of taxes and disbursements to Dr. Reznek, whose counsel prepared affidavit material, participated at the cross-examinations, and made submissions before the court. All cost orders are to be paid by the Plaintiff to the Defendants and Dr. Reznek respectively within 30 days of this order.

D.B. and Economical Mutual **[+]** Arbitration, 2013-10-02

Dr. Lawrie Reznek was qualified as an expert in psychiatry. He commented on the dangers inherent in the DSM which has definitions of psychiatric impairments based on subjective symptoms. He emphasized the importance of exercising good clinical judgment. In his opinion, it is wise to exercise caution when taking a patient's history as it is subjective. It is important to observe whether a patient has flat affect or walks in an animated way and responds to humour. None of the psychiatric tests can

substitute for clinical judgment. One of the dangers is that of over reporting which can give a distorted picture so that clinical judgment must be exercised to make a diagnosis; that is perception, expertise and training come into play.

Dr. Reznek testified that he asked D.B. open-ended questions in order to obtain spontaneous complaints. D.B.'s mood was not down or flat. She behaved appropriately and became tearful when talking about her losses. She had normal levels of distress which do not necessarily characterize a mental disorder as people are expected to grieve for their losses. Dr. Reznek applied the Falstein Mini Mental State Examination to D.B. It tests not only for mood but also for word-finding problems. This test took 5 to 10 minutes. According to Dr. Reznek, D.B. displayed no cognitive abnormalities. If patients are depressed, all their cognitive functions are affected. They concentrate poorly and have memory problems.

Dr. Reznek characterized Post Traumatic Stress Disorder (PTSD) as extreme intense, protracted distress which is over diagnosed in psychiatry by being applied to much milder symptoms. As part of his clinical assessment, his assistant knocked on the door. Hyperarousal is a feature of PTSD with an exaggerated startle response and D.B. was not startled by the knocking.

Although the Beck inventories showed a severe range of depression, Dr. Reznek testified that lists should not be applied in a mechanical way but rather, the psychologist should exercise clinical judgment from impressions gathered. He applauded Dr. D. Becker for not slavishly adhering to the results of the tests. According to Dr. Reznek, D.B. had pain and emotional distress with an expectable reaction to her loss of a level of functioning but she was not suffering from a psychiatric impairment. D.B. was overweight prior to the accident. In his opinion, D.B. gained 90 pounds as she was not able to be active after fracturing her right ankle. Dr. Reznek was not able to perceive any diagnosable disorder based on what D.B. told him. He concluded that she had no mental/behavioural disorder and did not meet the definition for catastrophic impairment. Dr. Reznek agreed that he had no problems believing D.B. and he had no suspicions of malingering.

Dr. Reznek admitted there had been no discussion with D.B. about physical symptoms associated with her being in a vehicle. D.B. had extreme mobility issues and consequent sadness about the loss of her leg and ability to do things. She started crying when she talked about how the accident had changed her life. Dr. Reznek was asked whether her weight gain could also be seen as a response to sadness and as a functional expression of depression. In his opinion, the weight gain was not a symptom of depression. It was attributable to inactivity. Also, she could not sleep due to shooting pains which were waking her up so her sleeping difficulties should not be seen as a symptom of depression.

Dr. Reznek conferenced with Ms. Freedman, but not Dr. Paitich, about the discrepancies in their findings. In his opinion, her findings should be restricted to physical findings and her findings about domains of functioning were of a mild disorder not generated by a psychiatric disorder but rather were the result of a physical impairment. In Dr. Reznek's opinion, D.B.'s limitations have their source in her physical disabilities. Dr. Reznek gave her a 0% WPI rating for mental and behavioural disorders.

.... Dr. D. Becker questioned the clinical significance of Dr. Reznek's observation that D.B. was able to smile and laugh. It would be expected that D.B. would still be able to laugh and enjoy some things even if she had a moderate/major depressive disorder. Also, one must take into consideration the power differential. D.B. knows that it is polite to laugh at doctor's jokes. Although Dr. Reznek commented that she did not have anhedonia, a loss of pleasure, he does not specify how he came to that conclusion. Dr. D. Becker concluded from both her assessment and psychometric measures that D.B. suffered from anhedonia. In Dr. D. Becker's opinion, Dr. Reznek's test with the door knocking is not an accepted method for testing for PTSD. D.B. was wheelchair bound. Of course she did not jump. It could be expected that with her daily opioids her responses would be sedated. It was also pointed out that D.B. may have become desensitized to such noises after being in hospital for months at a time.

... I prefer the testimony, reports and ratings provided by Dr. D. Becker to those provided by Dr. Reznek. Dr. Reznek relied on such improvisations as having his assistant knock on the door to test for PTSD. He ignored the findings of his colleague, an occupational therapist, and he generalized too much with the result that he arrived at conclusions which were not reasonable.

Beader v. Evans, 2012 ONSC 5781 (CanLII), <http://canlii.ca/t/ftjn8

Expert Evidence re Psychological and Cognitive Impairments

[108] The four witnesses who gave evidence on the psychiatric/psychological effects of the accident were . Abrams, Dr. Steiner, Dr. Reznick and Dr. Park.

[109] Apart from the family physicians/treating doctors, two psychiatrists Dr. Abrams and Dr. Reznick gave expert evidence relevant to whether the Plaintiff suffers from a permanent serious impairment of an important psychological function.

Dr. Reznick: October 1, 2008

[110] Dr. Reznick's evidence was extremely important to the defence because it was the only evidence before this Court to the effect that she is not suffering

from any clinical psychiatric condition and because it was contrary to the evidence of the Plaintiff, her family, Lois Lane, Dr. Steiner, Dr. Park and Dr. Abrams.

[111] Dr. Reznick opined that the Plaintiff was malingering when he saw her in 2008 based on psychological [validity] tests he administered personally, characteristics he said she exhibited during the interview, and his reviews of reports of others who were not called to give evidence. [I did not allow Dr. Sapienza to give evidence in part because Dr. Sapienza's raw test data was unavailable.]

[112] Dr. Abrams, the other psychiatrist who gave evidence, said that generally psychiatrists do not do psychological testing. Psychologists do. In determining whether a patient is malingering, psychiatrists do apply the DSM IV. Unlike Dr. Abrams, Dr. Reznick did not refer to the DSM IV test for malingering nor did he apply it.

[113] Contrary to the evidence of Dr. Abrams and Dr. Kagal, Dr. Reznick suggested that psychiatrists frequently do validity tests and that they should have done validity testing on the Plaintiff.

[114] Although the test results he said he obtained were abnormal, Dr. Reznick did not attribute her poor test results to difficulties in concentration or English language difficulties. He did not ask her whether she had such difficulties.

[115] Ms Cantor suggested in cross-examination that Dr. Reznick may have overstated the poorness of her results on the Folstein test to support his conclusion that she was exaggerating her symptoms.

[116] Dr. Reznick referred specifically to taking her pulse rate when she was talking about the accident. He emphasized that that was an "objective" test. He used the fact that her pulse rate did not markedly increase in concluding she was exaggerating. In cross-examination he acknowledged that the pulse rate test was a test of his own design, not recognized as valid in the research. When he was unable to provide evidence that others considered it a legitimate test, he said "I don't know why others don't use this as a test. To me they aren't being smart enough."

[117] Dr. Reznick referred in evidence to certain questions contained in a psychological malingering test he did not personally administer. Since he did not have the raw test data of the psychologist who did, he could not know how the Plaintiff responded or would have responded to the questions he quoted.

[118] He did not explain how or why a "malingerer" would retrain so she could find work despite an ongoing lawsuit. He said "more credit to her that she's managed to get unstuck from something that she got caught in and has then gone on to be as functional as she can be.. I haven't seen her subsequently so I can't comment on … whether she has stopped exaggerating her symptoms." In other words, although he

opined that she was malingering in 2008, he could not comment on whether she was malingering in 2012.

[119] Dr. Reznick saw the Plaintiff for about an hour and a half in 2008. He said that he didn't see objective evidence that she was suffering from severe pain. In effect, he said she appeared to be enjoying his interview. He made a note every time she smiled (5-10x) during the interview. Despite acknowledging that she knew he was conducting a psychiatric assessment on behalf of the Defendant, and that he wrote elsewhere in his report that she was guarded and it was hard to establish rapport, he maintained that she was genuinely laughing at his jokes about being the baby in the family and meeting her husband on the street.

[120] He looked for major depression, adjustment disorders, post-traumatic stress disorder and pain disorder, and concluded that she didn't fulfill the diagnostic criteria for any of them.

[121] Under the DSM IV, a diagnosis of depression requires fulfilment of at least five of the DSM IV criteria.

[122] Dr. Reznick said when he examined her, several were present, including sleep disturbance and fatigue, reduced appetite, weight gain. He didn't feel she had inappropriate feelings of guilt because he felt her guilt feelings were appropriate.

[123] He noted she had occasional thoughts that others would be better off if she were dead but did not take that to be an indicator of depression.

[124] He did not note a diminished ability to think or concentrate.

[125] In reaching his conclusion she was not clinically depressed, he mentioned that she has the capacity to enjoy things like going out, socializing, time with her husband, playing with her children. He did not find a depressed mood for most of the day. He discounted the evidence of her son Pavle, describing his mother as "really depressed," "like someone drained all the energy out of her." He said she did not have a loss of joy.

[126] He found no foreshortened sense of future, despite the fact that he quoted her as saying, "I dream I have a car accident and I'm dead." He said "a dream is a dream." He had found no flashbacks "when she was awake."

[127] He did not diagnose a pain disorder because he didn't think she was expressing an emotional event as physical symptoms. He said she may have had some pain but in his view it did not reach a threshold level for a psychiatric diagnosis.

[128] He did not diagnose an adjustment disorder, a disturbance of mood or anxiety more than would be expected in the circumstances.

[129] He did not diagnose a post-traumatic stress disorder.

[130] Dr. Reznick appears to have erred in using information taken from Exhibit 29 that she was able to enjoy spending time with her husband, going for walks, paying with her children and socializing together. After reviewing Exhibit 29, I conclude that in the interview, she made those comments in relation to her pre-accident state. The note appears on p. 3, after her reference to meeting her husband, before her reasons for leaving Serbia, before mention of the accident on page 4, and before "current" on pages 5-7. I reject Dr. Reznick's evidence in cross-examination that his note about "enjoying spending time with her husband, socializing" related to her post-accident state because he used the word "enjoy" in the present tense.

[131] Since he concluded she was not suffering from any psychiatric disorder, he inferred that she had no disability and no psychiatric problem. She was not suffering from any psychiatric impairment and was not disabled from pursuing any career of her choice.

[132] It is worth noting that Dr. Reznick saw her once in 2008, before the hot oil injury, before her re-training, before she attempted to work fulltime after that retraining, before Dr. Park's letter dated May 17, 2011 to the effect that she should not work more than 25 hours a week.

[133] He did do a subsequent paper review.

[134] In short, I reject Dr. Reznick's conclusions on depression that were based on an apparently incorrect assumption, unsupported by the other evidence, including his own notes, that after the accident, she enjoyed socializing, spending time with her husband, etc.

[135] His description of his observations of the Plaintiff was at odds with most of the rest of the evidence. The woman described by Dr. Reznick at his interview was not the woman described by Mr. Beader, Pavle Beader, Dr. Park, Dr. Abrams, Lois Lane, Dr. Steiner, or any of her other employers or contacts after the accident. His observations as to her demeanour during the interview were at odds with her evidence, the observations of her family and of every other doctor who gave evidence.

Dr. Abrams: January 18, 2010

[136] Counsel for the Plaintiff called Dr. Abrams, like Dr. Reznick, a psychiatrist. Dr. Abrams saw the Plaintiff for 1-1/2-2 hours on January 18, 2010.

[137] Dr. Abrams disagreed with Dr. Reznick's conclusions that the Plaintiff was malingering, in part because he was using a methodology/psychological testing not usually administered by psychiatrists. Dr. Abrams said that she used the DSM IV criteria of malingering, as other psychiatrists do. Applying those criteria, she did not find the Plaintiff to be malingering. The criteria were as follows: 1. Medico-legal context; 2. Discrepancy between the patient's complaint and objective findings; 3. Evidence of a discrepancy between what was recorded and the findings; 4. Lack of

cooperation with medical treatment providers or prescribed medical treatments; 5. Anti-social personality disorder. Although there was an ongoing lawsuit, Dr. Abrams found no discrepancy between the Plaintiff's complaints and presentation and her objective findings. The history she gave was consistent. Her cognitive testing was in keeping with what she reported and what Dr. Abrams observed. She had seen many different psychiatrists, psychologists, had had psychological treatment, various psycho-therapies and various biological treatments, multiple anti-depressants, etc. She had been cooperative with her treatment providers and compliant with medical treatments. The Plaintiff didn't have the personality of someone who would take advantage. She denied many symptoms/was not over-endorsing them. She appeared to be making a strong effort. For example, when asked to do so, she was able to recite the months backward.

[163] In determining whether or not the Plaintiff suffered a serious, permanent impairment of an important psychological function, I have not accepted the opinion of Dr. Reznick that she was malingering and that she was not suffering from any clinically diagnosable psychiatric condition.

Worrall v. Walter, 2009 CanLII 597 (ON SC), <http://canlii.ca/t/22497

[2] In support of his position that the defence medical examination should be videotaped, the plaintiff advances two reasons:

(a) This defence medical examination is a psychiatric assessment. Relying on earlier written comments made by Dr. Reznek on the issue of potentially videotaping any psychiatric assessment he were to undertake, the plaintiff raises the concern that Dr. Reznek may have a potential defence bias which, if so, could only adequately be addressed by a complete audio-videotape of that assessment.

(b) The plaintiff has issues with memory and concentration which dictate that an audio-videotape be available to the plaintiff to assist with any required response to the expected written report of the assessment by Dr. Reznek.

[3] The defendant submits that the concern of a potential defence bias by Dr. Reznek is without foundation. The defence further argues that it is unfair to make a videotape of the defence psychiatric assessment which would then be available to the plaintiff when the same opportunity is not afforded to the defence of any psychiatric assessment prepared at the instance of the plaintiff.

Analysis

[4] Section 105 of the *Courts of Justice Act* provides that the court may order parties to undergo a physical or mental examination by one or more practitioners, where the physical or mental condition of a party is in question.

[5] Rule 33.03 of the *Rules of Civil Procedure* states that a court may, on motion, determine any dispute relating to the scope of an examination.

[6] The leading case on this issue is *Bellamy v. Johnson*, [1992] O.J. No. 864 (C.A.) This decision stands for the following:

(a) In addition to the statutory jurisdiction, the court has the inherent jurisdiction to set terms and conditions relating to the manner in which the medical examination is to be conducted, including a condition relating to the recording of the examination (paras. 8 and 9);

(b) In deciding whether to permit the examination to be recorded, the court must consider the potential impact of that recording on:

(i) the opposing party's ability to learn the case it has to meet by obtaining an effective medical evaluation;

(ii) the likelihood of achieving a reasonable pre-trial settlement; and

(iii) the fairness and effectiveness of the trial (para. 17);

(c) Each application to permit the recording of the examination will depend on its own facts (para. 21).

[7] The onus is on the plaintiff to provide substantial and compelling reasons why the defence medical examination should be recorded: *Sousa v. Akulu*, [2006] O.J. 3061 para. 19. This is particularly so as the defence would not have the same opportunity with respect to any of the examinations or assessments produced at the instance of the plaintiff.

Dr. Reznek's Possible Defence Bias

[8] In support of his position that Dr. Reznek may have a possible defence bias, the plaintiff points to the August 22, 2006 letter written by Dr. Reznek on an unrelated matter in response to a request to videotape the psychiatric assessment which he was to conduct in that case. Dr. Reznek, in that letter, had this to say:

…the use of videotaping defence medical examination is singularly unfair. There is no commensurate demand for the assessments made on behalf of the plaintiff to be videotaped. Thus, assessors for the plaintiff have access to what I observe and can critique my conclusions, whereas I don't have the benefit of accessing what they observe, in order to critique theirs. This is manifestly unfair, and creates an imbalance in the evidence presented to court.

…experience with videotaping such interviews has taught me that I am going to have to err on the side of interpretations of the client's presentation that favour the plaintiff. This is because anything on the videotape that might remotely suggest disability will potentially be interpreted this way by a jury. This will seriously undermine my credibility on the witness stand if I conclude the plaintiff is not disabled. The process of videotaping forces me, therefore, to conclude in favour of the plaintiff.

For these reasons then, I am against videotaping such interviews.

[9] This letter by Dr. Reznek was considered by Sproat J. in the unreported October 3, 2006 decision of *McNorton v. Schuett* in which the court was also faced with the request to have videotaped the assessment proposed to be conducted by Dr. Reznek. The court had this to say on the Dr. Reznek letter:

…I read his comment…as indicating that he would somehow provide the court with a different opinion if he was being videotaped than if he was not being videotaped. That causes me some concern…I am sufficiently concerned…that if Dr. Reznek is the person who is going to conduct the examination, then I think it should be videotaped (see pp. 9 and 11).

[10] Templeton J. in her handwritten endorsement of June 4, 2008 in *Griggs v. Young*, court file 42793 at London, on the issue that a proposed assessment by Dr. Reznek be videotaped, and with respect to his letter of August 22, 2006, wrote as follows:

…Dr. Reznek's words speak for themselves unless and until withdrawn or amended formally…Dr. Reznek appears to be concerned about the process of litigation and the impact of his opinion upon one party or the other. Concerns of this ilk as expressed by Dr. Reznek do not enhance any degree of comfort with respect to the objectivity of this particular assessment…my comments above underline an overriding concern which may negatively impact the fairness and effectiveness of the trial for both parties.

[11] Counsel for the defendant brought to my attention a recent letter of November 21, 2008, addressed to her by Dr. Reznek. In that letter he seeks to clarify his earlier views on this issue. He now states, in part, as follows:

…I was not saying that I would be giving a different opinion if a case were videotaped. I have never given an opinion in any case other than the one that I have arrived at by my objective assessment of the case, even when videotaping was done…What I was saying in my discussion of the dangers of videotaping interviews is that there is a pressure created by the fact that a videotape has the capacity to distort a clinical presentation to have one's opinion conform to how the patient appeared on segments of the videotape, rather than how the patient appeared at clinical interview. I was saying that there was a great potential for the videotape to be used in a distorted way, creating a pressure to give an opinion other than the one objectively arrived at during the interview process…I was not saying that I would…give a different opinion from the one I would have arrived at had the video not been used…

I have always exercised great care to remain objective in all my assessments, medicolegal, or otherwise. I would never give an opinion I would not have given had an assessment not been videotaped. At most, I am guilty here of a poor choice of words, but that is all.

[12] Based on these clarifying comments, in my view, Dr. Reznek has shone an adequate explanatory light on his earlier unfortunate comments. I am now satisfied that Dr. Reznek would not be predisposed to a compromised sense of objectivity were he to conduct a defence psychiatric assessment.

Frazer v. Haukioja, 2008 CanLII 42207 (ON SC), http://canlii.ca/t/20hfp

[145] The cross examination of Dr. Reznek brought his objectivity into the limelight. It began with a review of the doctor's stated aspiration to assist the court with objective and impartial evidence but in the context of a practice profile that he admits involves about 80% of his medical legal work being done for defendants and that involves "more like 25%" of his professional time being devoted to medical legal matters from which he earns "probably twice as much income" as he does from his clinical practice.

[146] That an expert is paid for services rendered in a case is not, of itself, a concern but the profile elicited from Dr. Reznek is a red flag, the sight of which focuses the court's attention upon the need for impartiality to be demonstrated in the evidence the proposed to give. The demonstration of that impartiality was found wanting.

[147] Dr. Reznek agreed that Grant told him that he was shocked to learn that Dr. Haukioja may have altered medical records and that he did not call Grant to warn him that he was walking on a talar fracture.

[148] He agreed that those shocks would certainly have contributed to the distress Grant felt around that time. He agreed too with the proposition that Grant suffers from the deepest sense of injustice at the hands of Dr. Haukioja and that, in Grant's mind, it is Dr. Haukioja who has hurt him and Dr. Reznek agreed that is a genuinely held view for Grant.

[149] Grant told Dr. Reznek about the delay in Grant finding out that he had a right talus fracture; that he was told it was "OK" to return to work, that he later found out he had a serious fracture, that he had dreams about beating up Dr. Haukioja and that he felt that Dr. Haukioja had lied to him and had sent him back to work knowing of the right ankle and back fractures.

[150] None of these admissions appear anywhere in the almost 100 pages that make up the 5 reports that Dr. Reznek has written about this case or in his evidence in chief at trial.

[151] Dr. Reznek agreed that it is "true" that "there is no real analysis of the alleged malpractice" in his reports. He also agreed that by stating a diagnosis of major depression and by limiting it to matters arising only directly from the accident, he was able to conclude that Grant's depression had been caused by the accident (as opposed to the alleged malpractice following after the accident).

[152] Dr. Reznek's notes record that Grant told the doctor that "Dr. Haukioja had many opportunities to correct his mistakes, to tell him but he never did"

[153] Dr. Reznek agreed that it is "fair to say" that Grant had anxiety about the way he felt that he had been treated by Dr. Haukioja. Dr. Reznek said that "I would say a justifiable sense of anger" and of injustice. He added that the words that Grant spoke were not spoken in anger but with a sense of zeal to indicate that he had been wronged.

[154] Cherry picking facts that support a diagnosis that just happens to support the cause of the client that retained the expert and failing to include the facts that hurt the cause, whether those latter facts are capable of explanation and elimination in the course of the development of the expert's analysis and opinion or not smacks of partiality.

[155] Dr. Reznek's evidence in chief appeared to be balanced, to be thoroughly and professionally developed. Appearances can be deceiving. This

evidence has been shown not to be in tune with either the spirit or the letter of the applicable rules. In the result, this evidence is of precious little help to the court.

[156] Cross examination on Dr. Reznek's evidence turned this case around. The many contributing causes for Grant's anxiety have been demonstrated to include several that are inextricably interwoven with Dr. Haukioja's professional relationship with Grant and the extent that Grant perceives that the doctor has let him down and caused him pain and discomfort and disability thereby.

[157] Doctors Sadavoy and Reznek share the view that Grant's psychiatric disorder is serious and disabling. Both endorse treatment options but neither predicts early, lasting or meaningful success in returning Grant thereby to what had been the norm for Grant.

[158] By ignoring the alleged malpractice, Dr. Reznek gave up his opportunity to address the nature and significance of the doctor patient relationship, its breakdown and the implications therefrom to the decline in Grant's mental health and his ability to cope and to function. His evidence in cross examination clearly supports the conclusion that Dr. Haukioja's conduct materially contributed to Grant's psychiatric illness. Further, Dr. Reznek stopped short of saying that any of the contributing factors associated with Dr. Haukioja's conduct played a de minimus role, individually or collectively in producing Grant's disability.

Singer v. Corporation of the City of Hamilton, 2007 CanLII 46251 (ON SC), http://canlii.ca/t/1tgrn

[53] Dr. William Sulis gave evidence for the plaintiff and Dr. Lawrie Reznek for the defence. Where their opinions differ, I accept the evidence of Dr. Sulis for the following reasons.

[54] Dr. Sulis has been seeing Margaret since October 25, 1999. He has been able to interview and observe her. I am satisfied that his evidence is based on the notes and records made as well as his independent recollection for which he has no notes. For example, Dr. Sulis felt that there was every likelihood that Margaret's symptoms were greater than she was reporting.

[55] Dr. Reznek, on the other hand, never met Margaret. I find he cannot appreciate what the lady is like. He has taken a text book approach to assessing her condition basing his opinion on documents provided to him.

[56] Dr. Sulis is qualified to express expert opinions on geriatric psychiatry whereas Dr. Reznek, a psychiatrist, is less qualified to express opinions in the field of geriatric psychiatry. I allowed him to express opinions on geriatric psychiatry, however, his evidence was subject to weight. I give more weight to the evidence of Dr. Sulis.

Landolfi v. Fargione, 2006 CanLII 9692 (ON CA), <http://canlii.ca/t/1mxnd

[112] However, in connection with the contested issue of whether Landolfi sustained a brain injury in the accident, the trial judge failed to review the defence medical evidence supportive of malingering in any meaningful way. Moreover, those comments that the trial judge did make concerning the defence medical evidence on this issue focused on the testimonial weaknesses of the evidence and minimized its value. The trial judge stated:

Both Dr. Feinstein and Dr. Hanick explained why the reports of Dr. Nicholson and Dr. Reznek fail to find that Frank Landolfi had suffered a mild traumatic brain injury. They pointed out the unreliability of the tests. They pointed out the failure to look at everything and to conduct sophisticated imaging tests.

. . . . .

In cross-examination, both Dr. Nicholson ... and Dr. Reznek ... both conceded in cross-examination that Mr. Landolfi may have suffered a mild traumatic brain injury.

. . . . .

Dr. Reznek and Dr. Nicholson both said that Mr. Landolfi was malingering. They base their opinion on tests and their interviews.

(Emphasis added)

[113] In contrast, the trial judge reviewed in some detail the opinions of Landolfi's experts that a traumatic brain insult resulted from the collision. He also commented favourably on the evidence of Landolfi's early return to work following the accident and his diligent work ethic, and he stressed that the evidence of Landolfi's experts indicated that Landolfi did not fit the profile of a malingerer. He instructed the jury:

Doctors Moro, Feinstein and Hanick all said he was not malingering. They said the tests used by Doctors Nicholson and Reznek were unreliable. That you must look at

the entire picture and that Mr. Landolfi does not fit the profile of a malingerer. His life, as he led it, does not fit the profile of a malingerer.

(Emphasis added)

[114] The trial judge's instruction to the jury on the evidence of malingering in relation to the severity of Landolfi's neck injury suffered from the same defects. Of the defence evidence relevant [page795] to this injury, the trial judge commented only on Dr. Hunter's testimony. Having said merely that the jury should consider Dr. Hunter's evidence and that Dr. Hunter offered the opinion that Landolfi was malingering and gave an "Academy Award performance", the trial judge observed:

In evaluating Dr. Hunter's evidence you should consider that he did not read all of Dr. Moro's notes. You should consider that he did not look into the reasons why Mr. Landolfi retired or why he left the social club.

(Emphasis added)

[115] Subsequently, the trial judge continued in a similar fashion:

You must consider all of the experts' evidence, the Doctors Moro, Feinstein, Hanick, Ogilvie-Harris, Nicholson, Reznek, Hunter and Mr. Smith ... The same evidence and factors must be considered by you on malingering as you considered to determine if he was malingering on the traumatic brain injury.

Doctors Moro, Feinstein, Hanick and Ogilvie-Harris they all say that Mr. Landolfi has chronic pain, both psychiatric and physical. They all say that each aggravates the other. They all say that Mr. Landolfi is not malingering and they have explanations as to why Doctors Nicholson, Reznek and Hunter were wrong when they say Mr. Landolfi was malingering.

(Emphasis added)

[116] Defence counsel objected to the trial judge's instructions on malingering, asserting that the trial judge failed to outline for the jury the conclusions on malingering reached by the defence medical experts and the basis for those conclusions. The trial judge did not recharge the jury on this issue.

[117] Instead, based on objections to the charge by plaintiffs' counsel, the trial judge indicated in his recharge that Dr. Nicholson (one of the defence medical experts) had

not testified that Landolfi was a malingerer and that Dr. Reznek (another defence medical expert) based his original opinion of Landolfi's malingering on an inaccurate factual assumption related to Dr. Moro's notes.

[118] Both of these clarifying instructions were accurate and, in that sense, unobjectionable. However, given the limited and negative content of the trial judge's original charge concerning the defence medical evidence and the absence of a correcting instruction on the defence evidence of malingering, they reinforced the impression that the defence evidence of malingering was of limited worth. Moreover, the defence evidence of malingering consisted only of the video surveillance evidence, which the trial judge excluded, and the opinion evidence of the medical experts. The exclusion of the video evidence thus heightened the need for the requisite correcting instruction.

Thangarasa and Gore Mutual - 2 [+] Arbitration, 2005-04-01, Reg 403/96. Interim Order

Dr. Laurie Reznek, a psychiatrist, also examined Mr. Thangarasa on behalf of the Insurer. Dr. Reznek, who has written on topics as diverse as the nature of disease, the epistemology of mental illness, and the philosophy of psychiatry, examined Mr. Thangarasa for about an hour, including the time spent on rudimentary testing. He also reviewed two reports B those of Dr. Freedman, noted above, and a physiatrist report by Dr. John. He had no other reports to consider, apart from the referral letter from Seiden, the company brokering his services. [See note 8 below.]

* * * * * * * * * *

Note 8: The report was written under the letterhead of Seiden Health Management Inc., a company that Dr. Reznek testified arranges such consultations for him.

* * * * * * * * * *

As part of the assessment, Dr. Reznek administered the Mini Mental Status Exam, which he indicated was a screen for dementia. He also administered some simple counting, memory, and drawing tests. The total duration of testing was less than one half hour.

On the basis of such simple screening tests and his interview with Mr. Thangarasa, Dr. Reznek found that "Mr. Thangarasa does not suffer from any accident-related impairment at the present time." He also negated any psychological impairment.

While I accept that Mr. Thangarasa may well not be demented, nor suffering from frontal lobe syndrome, I am loathe to accept the remainder of Dr. Reznek's testimony on cognitive [See note 9 below.] impairment, based as it is on speculative outcomes [See note 10 below.], and a very limited and selective review of the available reports**.** Although psychiatric impairments such as depression and post-traumatic stress have been identified at various stages in Mr. Thangarasa's history, they do not appear to be at the core of his dysfunction. Consequently, Dr.Reznek's finding that on August 21, 2000 Mr. Thangarasa was neither clinically depressed nor subject to post-traumatic stress, even if reliable, sheds little light on Mr. Thangarasa's ability to carry on in employment.

* * * * * * * * * *

Note 9: Dr. Reznek, in testimony, conceded that his expertise was not in psychological testing or psychovocational testing and he would defer to psychologists with expertise in those areas.

McMichael and Belair Insurance **[+]** Arbitration, 2005-03-02

Mr. McMichael submits that he meets the criteria for catastrophic impairment set out in paragraphs (f) and/or (g) above. Belair disputes that position. In support of his contention, Mr. McMichael relied upon the opinions of Dr. Ouchterlony, Dr. Berry, Dr. Bhalerao and others. Belair relied upon the CAT DAC assessment, the opinion of Dr. Reznek discussed earlier, as well as the evidence of Dr. Ameis who testified about the methodology followed by the CAT DAC.

Based on a review of all the evidence related to this issue, I find that Mr. McMichael is catastrophically impaired as a result of injuries sustained in the accident.

I have already found that Mr. McMichael's addiction to crack cocaine is as a result of the accident. The evidence supports the conclusion that prior to the accident Mr. McMichael was in good health, was gainfully employed, active in his family, and his community. He was a high functioning individual.

The contrary view on this issue is based almost entirely on Dr. Reznek's opinion. Dr. Reznek's opinion on this issue is without factual foundation and I disregard it for the reasons set out above. [See note 14 below.]

* * * * * * * * * *

Note 14: Dr. Ameis, informed by Dr. Reznek's views, also supported Belair's theory of the case. However, his view is based on a misreading of a report of Dr. Rosenblat, and a too easy acceptance of Dr. Reznek's suppositions. See Note 17 below.

Mizzi v. Hopkins, 2003 CanLII 52145 (ON CA), http://canlii.ca/t/79tr

[21] Strong reliance was placed by the defence on the trial testimony of Dr. Reznek, a psychiatrist who assessed the appellant on behalf of the respondents for two hours on one occasion in May 2000. He testified that while he could not wholly exclude the possibility that the appellant suffered a mild traumatic head injury in the accident, if there was a head injury it was "very, very mild". He based that opinion on the symptoms exhibited by the appellant in the hospital emergency department immediately after the accident and on his own testing and observations of her. In particular, in his view, the emergency department records indicated that the appellant was then fully conscious and orientated, her brain was functioning normally, there was no evidence of a significant period of post-traumatic amnesia or depressed consciousness, and testing generated no evidence of organic brain injury (that is, objectively detectable brain damage). Dr. Reznek's own testing and observations of the appellant indicated no evidence of depression, anxiety, a manic illness, psychotic symptoms, cognitive deficits (including deficits in short-term memory, concentration or verbal comprehension), or symptoms of post- traumatic stress disorder.

[22] On cross-examination, Dr. Reznek acknowledged that the appellant's description of her gaps in memory immediately following the accident was consistent with symptoms of post-traumatic amnesia. He also confirmed that the appellant had a "fairly fragile personality structure" before the accident, which caused her to be easily stressed by events, in turn leading to anxiety and depression in reaction to the stress. In his view, the appellant's behaviour after the accident did not suggest malingering but, rather, a genuine -- and for her -- a usual reaction to stress.

Grape and Liberty Mutual - 2 [+] Arbitration, 2001-07-20, Reg 672.

Final Decision

Dr. Lawrie Reznek, a psychiatrist, assessed Mr. Graper for Liberty Mutual on June 26, 2000. He concluded that Mr. Graper had made a complete recovery from a moderate traumatic brain injury. He found no evidence of psychiatric pathology, including depression or post-traumatic stress disorder. He identified no deficits in cognition, concentration or memory. He concluded that Mr. Graper's principal barriers to recovery are pain and fatigue. He believed the fatigue resulted from his mild to

moderate sleep apnea, which also causes headaches, and the pain from narcotics dependence, which results in rebound headaches. Dr. Reznek concluded that Mr. Graper did not suffer from any substantial inability to work as a music and math teacher or to engage in his activities of daily living.

Dr. Reznek's report was based on a one-hour interview with Mr. Graper. He did no testing, and his examination of Mr. Graper was superficial. Dr. Reznek reviewed certain documents, but it is not clear whether he was provided with the entire file. The most significant shortcoming of his report is his failure to respond to the reports of Dr. Brooks, Ms. Fennell and especially the thorough and detailed reports of pain specialist, Dr. Gardner-Nix. Dr. Reznek is not a neurologist, pain specialist, or headache specialist. He gave no reason for concluding that Mr. Graper's headaches were induced by sleep apnea or medication, rather than by his head injury. I place no weight on this report.

Hearn and Allianz Insurance [+] Arbitration, 1999-08-17, Reg 776/93.

Final Decision

Allianz relies heavily on the evidence of Dr. L. Reznek, a psychiatrist, who examined Mrs. Hearn at its request in early 1998. In his March 8, 1998 report, Dr. Reznek concluded that Mrs. Hearn was probably suffering from an Adjustment Disorder, although he had some doubts about this. He felt that her symptoms of anxiety and depression had developed in response to the accident. However, noting that "Mrs. Hearn reacts in an extreme fashion when faced with a problem," he indicated that Mrs. Hearn might have a premorbid histrionic personality disorder. He did not think, however, that Mrs. Hearn was substantially disabled from performing the essential duties of employment as an administrative assistant or an equivalent job for which she had been trained.

Briefly put, Dr. Reznek felt that Mrs. Hearn was not honest with him regarding her pre-accident history, was exaggerating her complaints, was play-acting at being mentally ill, was not "objectively" depressed, was not in pain (based on his observations of her during the interview) and was endeavouring to manipulate him into believing that she was disabled as a result of the accident. Dr. Reznek felt that Mrs. Hearn should start back at work with supervision, the hours of work to increase

depending on her response. He speculated that it was not "unreasonable to expect Mrs. Hearn to return to full time duties within a month."

At the hearing, however, Dr. Reznek testified that after receiving further medical documentation, he could no longer conclude that Mrs. Hearn was suffering from an adjustment disorder, but rather was suffering from a long standing histrionic personality disorder which had been diagnosed as far back as 1976 by another psychiatrist, Dr. E.J. Rzadki. Mrs. Hearn had seen Dr. Rzadki when she was hospitalized for six days due to anxiety and depression as a result of marital disharmony.

Dr. Reznek, however, did not feel that Mrs. Hearn's frequent sobbing was intended to manipulate him into thinking she was depressed but was rather a feature of her personality. He testified that "I am not saying that the emotion is faked. I think it is part of her personality." He further stated:

> It is the nature of a histrionic personality to show exaggerated displays of emotion when there are stresses and of course the accident has been a stress, however, her response to it is not a function of the stress itself but a function of her personality . . . I'm not saying her whole presentation is the result of a deliberate attempt to set out to fool everybody. She has a personality disorder and this leads her to manipulate the situation . . . I would say that she has a personality disorder which pre-dated the accident and that the accident provided her with an occasion, with an opportunity, to satisfy her needs and it would be wrong to see the accident as causing the consequences, that the accident simply provides the opportunity for somebody to enter into a sick role and get the attention that they need. Providing an opportunity is not the same as causing.

It is clear from Mrs. Hearn's extensive medical records that she had a long history of physical and emotional complaints prior to this accident. I accept Dr. Stewart's characterization of Mrs. Hearn as someone who "wears her emotions on her coat sleeve." I find that Mrs. Hearn reacts emotionally to stressors. However, prior to this accident, notwithstanding her numerous complaints to her family doctor, I accept that Mrs. Hearn was able to function quite well.

In 1980 and 1981, Mrs. Hearn was employed by Revenue Canada. Although anxiety and insomnia complaints amongst others are noted by Dr. Peck in his clinical records, a contemporaneous letter from Mrs. Hearn's District Manager indicates that she "performed the full duties of the position in a fully satisfactory manner." The next year, a letter from D.A. MacDonald Handling Systems Limited states that Mrs. Hearn performed her clerk/typist duties in a satisfactory manner and was "found to be a responsible and conscientious employee." That same year Mrs. Hearn was in an accident in which her car was hit from behind. There appears to be little in the way of significant after-effects and I decipher a note of Dr. Peck to read that there was no work time lost. The next year Mrs. Hearn is noted to have had problems sleeping while attending a word processing course. Nonetheless, she achieved an 85% average in her five business and word processing courses.

Despite spraining her ankle in 1984, Mrs. Hearn was able to "satisfactorily" continue her position with the City of Toronto as well as successfully complete a Secretarial Fundamentals Program (with Honours) at Humber College.

From 1984 to 1991, Mrs. Hearn worked through G.O. Temp services as a temporary secretary with the provincial government, despite complaining during this period of insomnia, fatigue, poor eating and feeling down. During this period, she dislocated her patella in 1984, her father committed suicide in 1986 and she fell down the stairs in 1989.

In 1995, Mrs. Hearn was employed with Universal and with Donuts Etc. From the summer of 1995 to the beginning of 1996, she was a volunteer with a training group for persons with disabilities. From February 1996 through to May 31, 1996, she was enrolled as a full-time student with Peel in a comprehensive training programme in "Office Systems for the Administrative Professional." She graduated from the 450 hour programme with a typing speed of 59 words per minute and an accuracy of 99%.

Mrs. Hearn was able to successfully complete this course, even though she had injured her shoulder in December 1995 and was involved in a claim against The Bay.

Further, Mrs. Hearn was able to continue functioning despite her epileptic condition. Notes by Dr. Stewart made prior to this accident indicate that she was "perfectly healthy" (November 1984), "works as a secretary and leads a perfectly normal life" (December 1984), and "wants to be on less medication so that she can be alert for

her job" (November 1990). Indeed, even during the time of her 1976 hospitalization, Mrs. Hearn continued to be employed in a clerical/ reception position with a machine tool and die company which she held from February 1975 to November 1977. The General Manager notes in November 1977 that Mrs. Hearn was "a very independent and reliable Employee," her services being terminated due to the company's bankruptcy.

In light of this history, I find it difficult to accept Dr. Reznek's evidence, based in large part on a single two-and-a half-hour interview, conducted more than two years after this accident, that Mrs. Hearn's presentation was merely a continuation of her pre-accident personality to play the sick role in order to reap financial and emotional benefits. Given Dr. Reznek's present diagnosis, I cannot fathom why Mrs. Hearn did not take advantage for either emotional or financial reasons to equally "play out" and "exaggerate" the consequences of her epileptic condition, her dislocated patella, her prior rear-end motor vehicle accident, her father's suicide, her slip and fall at The Bay, or any of the other problems that life had presented.

Rather, I accept the evidence of Dr. Stewart, who saw Mrs. Hearn on several occasions both before and after this accident, who testified that he found the Applicant to be markedly different afterwards, a change he related to this accident. Dr. Stewart further testified that Mrs. Hearn's presentation was not an act, but rather totally unconscious and unwilled. Dr. Reznek's presentation contrasted that of both Dr. Stewart and Dr. Reynolds, both extremely qualified experts who, nonetheless, presented their evidence in a modest manner, acknowledging weaknesses in their evidence in terms of the limits of their expertise and one's ability to assess objectively disability and who adeptly managed that difficult balance between the gentlemanly sympathy of a treating doctor and the detached objectivity of an expert.

Dr. Reznek, however, acknowledged little restriction on his opinion. He ignored the fact that he only saw Mrs. Hearn once, for a limited meeting, long after this accident. He failed to acknowledge any concern one might have in determining whether another person is in pain merely by observation (especially in the absence of any physical examination). He felt qualified to render opinions in areas such as fibromyalgia, in which he had no expertise other than reading up on the subject. Nonetheless, he considered the evidence supporting his conclusion to be "overwhelming." To a certain extent this was possible by ignoring evidence contrary

to his position such as Dr. Stewart's opportunity to observe Mrs. Hearn both before and after this accident and the sleep study conducted by Dr. A. Blackman (no relation to this arbitrator). Dr. Blackman concluded in November 1998 that the overnight study at the Sleep Disorders Clinic on November 4, 1998, showed findings of "difficulty initiating and maintaining sleep, with a severe alpha-EEG arousal disturbance . . . commonly associated with complaints of light and unrefreshing sleep, diffuse myalgia and daytime fatigue," which was an important factor upon which Dr. Reynold's based his opinion.

It was manifestly obvious that Mrs. Hearn's presentation to Dr. Reznek was exaggerated. Dr. Reznek notes that Mrs. Hearn responded to his question as to how many legs a cow has with the answer: "two!" Dr. Reznek's sole explanation for this ludicrous response is manipulation. Dr. Heusser, however, indicated another explanation was a desperate cry for help. To me, an at least equally compelling explanation is a lack of respect for the examination. Dr.Reznek in fact notes in his report Mrs. Hearn's plea to her husband to stop the examination, with the cry "Stop them, Gord. Stop them, Gord. He's asking me a whole lot of damn fool questions."

Dr. Heusser prepared a second DAC report after assessing Mrs. Hearn on four separate days in April 1998. She appears to have had most of the extensive medical documentation filed in this matter, including Dr. Peck's clinical notes from July 1977 through to September 1996 and the 1976 hospital admission records noted above.

Like Dr. Reznek, Dr. Heusser noted significant inconsistencies in Mrs. Hearn's account of her history and that she was "surprisingly vague about well learned details" such as her age. Mrs. Hearn "acknowledged no history of pre-accident psychological or psychiatric difficulties," despite a litany of clinical notes dealing with pre-accident marital and family difficulties, anxiety, distress related to her father's death, stress, poor sleep and eating. She likewise noted Mrs. Hearn's childlike manner of speaking. Dr. Heusser, like Dr. Reznek, found that "no concentration difficulties were apparent on testing." Unlike Dr. Reznek, Dr. Heusser did not feel qualified to comment on the cause of Mrs. Hearn's complaints of memory problems.