

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Plaintiff

- and -

Defendant

PLAINTIFF'S STATEMENT OF LAW

**VOLUME 4
ADMISSIBILITY AND QUALIFICATION OF EXPERT EVIDENCE**

PART I - OVERVIEW:

1. Expert or opinion evidence is *prima facie* inadmissible unless it meets four specified criteria known as the Mohan criteria. It must be relevant, necessary to assist the trier of fact, not be subject to any exclusionary rule and be delivered by a properly qualified expert.
2. Applying those criteria, the Ontario Court of Appeal in *R. v. Abbey* set out a two-stage process for determining whether and to what extent an expert's testimony is admissible:

Stage One:

Pre-conditions to admissibility of the evidence must be established; if they

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* As of the November, 2017 release date, this Statement of Law has been updated by TVA

are not, the proposed expert may not testify. Those are:

1. The proposed opinion must relate to a subject matter that is properly the subject of expert opinion evidence;
2. The evidence is logically relevant;
3. The expert is qualified in that subject matter; and
4. There is no exclusionary rule respecting the testimony.

Stage Two:

Determine if the proffered evidence is sufficiently beneficial to the trial process to warrant its admission. This requires a cost-benefit analysis that is the trial judge's gatekeeper role. The components are:

1. Legal relevance, i.e. is it sufficiently probative to justify its admission;
2. Reliability of subject matter, methodology used to arrive at the opinion, the expert's expertise, and impartiality and objectivity;
3. Assessment of whether it is worthy of being heard by the jury, (not whether it should be acted upon);
4. Assessment of its cost in terms of
 - a) Time, prejudice and potential for confusion;
 - b) Necessity to a proper adjudication.

**** END OF SAMPLE ****

The remainder of this statement of law contains written submission on this issue and is written like the law portion of a factum.

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