

Personal Injury Claims And Radiologists Opinion Evidence

X-rays, CT Scans, Bone Scan and MRI's are routinely used in the diagnosis of traumatic injury and accordingly the findings of these diagnostic tests are frequently used at trial by personal injury lawyers.

Strictly speaking, however, the findings of radiologists interpreting the raw data generated by these tests are opinions and opinion evidence needs to comply with the Rules of Court to be admissible. If an MRI shows a traumatic injury it is not good enough to show up at trial with only the radiologists consultation report in hand. If you want the Court to rely on the radiologists findings of injury the reports need to be served in compliance with Rule 40A (Rule 40A is being overhauled in July 2010 and you [can click here to read my previous article discussing this](#)) Reasons for judgement were released today by the BC Supreme Court showing this legal principle in action.

In today's case ([Wittich v. Bob](#)) the Plaintiff was injured in a 2004 BC Car Crash near Merritt, BC. She sued for her injuries seeking up to some \$800,000 in damages. She claimed various accident related injuries including a herniated disc at C5-6. In support of this claim two CT Scan Reports were entered into evidence, the first taken before the crash and the second after the crash. The later scan was "interpreted by the radiologist as showing....a c56 level ...herniated disc".

The radiologist's consultation report did not comply with Rule 40A. Accordingly the report was only admitted for the fact that the diagnosis was made but not for the truth of the opinion. Ultimately the court did not make a finding that the herniated disc was caused by the car crash. Madam Justice Bruce summarized and applied the law to the facts of this case as follows:

[143] Of particular concern is the plaintiff's failure to call any medical opinion evidence to support a finding that she suffered a herniated disc at C5-6 during the accident. As part of Dr. Grist's clinical records, Mrs. Wittich entered two CT scan reports; one taken prior to the collision and one taken shortly thereafter. While the later scan was interpreted by the radiologist as showing a change from disc degeneration at the C5-6 level to a herniated disc that was impinging on the nerves of the spinal canal, this evidence cannot be regarded as expert medical opinion. These reports do not comply with Rule 40 and contain no indication of the radiologist's qualifications and expertise to make these findings. Thus they are only admissible for the fact that this diagnosis was made and not for the truth of their contents.

[144] Moreover, even if I were to accept these reports as expert opinion evidence, there is the cogent evidence of Dr. Maloon, an orthopaedic surgeon, which supports a contrary finding as to the existence of a disc herniation. Dr. Maloon provided a detailed explanation for his conclusion that Mrs. Wittich did not suffer from a herniated disc, which included factors related to his physical examination of Mrs. Wittich and the symptoms she presented with at the time of his examination and interview. Dr. Maloon was qualified as an expert in the field of orthopaedic surgery and qualified to give opinion evidence as to the existence, cause and prognosis of spinal cord injuries. His evidence was thoroughly tested in cross examination and held up to scrutiny. In my view, it would be in the most unusual circumstances that the court would prefer the radiologist's report to the evidence to that of Dr. Maloon and I find there are no such circumstances in this case. There is no evidence of the radiologist's qualifications or expertise and no explanation of the reasons underlying his diagnosis.

[145] As a consequence, I find there is really no medical evidence before the court that Mrs. Wittich suffered any injuries to her neck apart from soft tissue complaints. In this regard, it was Dr. Maloon's evidence that she likely experienced such injuries in the accident, but he was unable to specify which tissues (muscles, ligaments, or facet joints) were damaged based on Mrs. Wittich's subjective reporting of vague pain symptoms.

The Plaintiff's claim was largely dismissed and damages of just over \$30,000 were awarded. This case serves as a reminder that if the findings of a radiologist make up an important part of your personal injury case the evidence has to be served in compliance with the rules governing expert opinion evidence.

