CITATION: Wei v Ontario, 2025 ONSC 3580
COURT FILE NO.: CV-21-2674
DATE: 20250630

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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Betty Wei and Lawrence Vanderklei, Plaintiffs

AND:

Her Majesty the Queen in Right of Ontario, Brian Mills, Anatol Monid, John Doe, and Jane Doe, Defendants

BEFORE: Justice Ranjan K. Agarwal

COUNSEL: Mitchell Wine, for the plaintiffs (responding parties)

Shahana Kar, for the defendants (moving parties)

HEARD: June 14, 2025

ENDORSEMENT

I. INTRODUCTION

[1] The plaintiffs invested in Syndicated Mortgage Investments. They allege that FSCO and its senior officers failed to properly regulate these investments, causing them and other investors to lose tens of millions of dollars. The plaintiffs claim that the defendants action were in bad faith. As a result, they need leave from the court to start this class action.

[2] The plaintiffs rely on reports from two experts: William Vasiliou, a former Ministry of Finance employee, and Ronald Butler, an experienced mortgage broker. The defendants move to strike or exclude these reports on several grounds: relevancy, proper qualifications, bias, and other admissibility grounds. The plaintiffs argue that

these are all issues that can go to the evidence's weight, but the affidavits shouldn't be excluded.

[3] I agree with the defendants. For the reasons discussed below, I endorse an order striking Mr. Vasiliou's affidavit and paragraphs 7, 49, 50, 57, 69, 79, 80 and 82 of Mr. Butler's affidavit.

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II. BACKGROUND

A. Facts

[4] In July 2021, the plaintiffs started this class action on behalf of investors who'd acquired syndicated mortgage investments marketed by Tier 1 Transaction Advisory Services Inc. The plaintiffs allege that FSCO and the individual defendants, who were senior executives at FSCO at the time, failed to properly regulate Tier 1, and the SMI market more broadly.

[5] Under the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, s 17(2), claims related to the tort of misfeasance in public office, or a tort based on bad faith are deemed to be stayed, and may proceed only with leave of the court. The plaintiffs move for leave to proceed with this claim. If granted leave, they intend to move for an order certifying this action as a class proceeding.

[6] In support of their leave motion, the plaintiffs served expert's reports from Mr. Vasiliou and Mr. Butler in December 2021. The defendants served a motion to strike

Mr. Vasiliou's affidavit and parts of Mr. Butler's affidavit. In response to the motion, the plaintiffs delivered further affidavits from Mr. Vasiliou and Mr. Butler. These affidavits dealt with some of the formal deficiencies under the *Rules of Civil Procedure*, r 53.03. The defendants cross-examined Mr. Vasiliou and Mr. Butler in December 2024.

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B. Law

1. Leave to start a bad faith claim

[7] The leave requirement applies to claims against the Crown and Crown employees where the cause of action is the tort of misfeasance in public office or a tort "based on bad faith". See *CLPA*, s 17(1). The plaintiffs have pleaded misfeasance in public office, negligence, and misconduct by public authority.

[8] To succeed on their misfeasance claim, the plaintiffs must show:

(a) the individual defendants were public officials exercising public functions at the relevant time;

(b) the individual defendants deliberately engaged in an unlawful act in their public capacity;

(c) the individuals defendants were aware both that their conduct was unlawful and that it was likely to harm the plaintiffs;

(d) the individual defendants' tortious conduct was the legal cause of the plaintiffs' injuries; and

(e) the injuries suffered are compensable in tort law.

See *Ontario (AG) v Clark*, 2021 SCC 18, at para 22; *Meekis v Ontario*, 2021 ONCA 534, at para 73. Given that misfeasance is specifically enumerated in section 17(1), the plaintiffs obviously need leave to prosecute this cause of action.

[9] To succeed in negligence, the plaintiffs must show:

(a) the defendants owed them a duty of care;

(b) the defendants' behaviour breached the standard of care;

(c) the plaintiffs sustained damage; and

(d) the damage was caused, in fact and in law, by the defendants' breach.

See *Mustapha v Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 SCR 114, at para 3. Bad faith isn't an enumerated element of the tort of negligence. So, on its face, the plaintiffs don't need leave to advance this claim.

[10] But the *CLPA* immunizes the Crown and its employees from liability in negligence for regulatory decisions made in good faith. See *CLPA*, s 11(2). The immunity doesn't apply to negligence claims where it's alleged that the regulatory decision was "so reckless or irresponsible that it amounts to 'bad faith' or an absence of good

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faith." See S Mathai and B Kettles, *The Annotated Ontario Crown Liability and Proceedings Act, 2019* (Thomson Reuters Canada: Toronto, 2024), at 80-81. Thus, to overcome the statutory immunity, the plaintiffs likely have to show bad faith, which in turn means they need leave under section 17(1). See Mathai and Kettles, at 131-2.

[11] The tort of misconduct by a public authority also likely engages section 17(1). In oral submissions, the defendants submitted that there's no tort of misconduct by a public authority. That's not quite right. In *Paradis Honey Ltd. v Canada*, 2015 FCA 89, Justice Stratas, in obiter, suggested that courts could grant relief where a public authority acts (a) unacceptably or indefensibly in accordance with public law principles, and (b) where, as a matter of discretion, a damages remedy against a public authority is appropriate. If this tort exists in Ontario law, it's likely a tort based in bad faith. In any event, the plaintiffs haven't suggested that they can prosecute either this claim or the negligence claim without leave.

[12] The court shall not grant leave unless it's satisfied that,

(a) the proceeding is being brought in good faith; and

(b) there's a reasonable possibility that the claim would be resolved in the claimant's favour.

See *CLPA*, s 17(7).

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[13] This screening mechanism is a meaningful but low merits-based threshold that prevents meritless cases from proceeding. See *AC v Ontario*, 2024 ONSC 3913, at para 11; *Yadeta v Peel (Municipality) Police Service Board*, 2024 ONCA 341, at para 9.

2. Rules of evidence

[14] Evidence on a motion may be given by affidavit unless a statute or the rules of court provide otherwise. See *Rules of Civil Procedure*, r 39.01(1).

[15] There are four threshold requirements that the proponent of the evidence must establish for proposed expert opinion evidence to be admissible: (a) relevance; (b) necessity in assisting the trier of fact; (c) absence of an exclusionary rule; and (d) a properly qualified expert. See *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23, at para 19.

[16] The court may strike out or expunge all or part of an affidavit, with or without leave to amend, on the ground that the affidavit,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court.

See *Rules of Civil Procedure*, r 25.11; *McPeake v Barber*, 2024 ONSC 3909, at para 12.

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III. ANALYSIS AND DISPOSITION

[17] The defendants raise four issues with the plaintiffs' expert's reports:

(a) the evidence is irrelevant to the issue on the leave motion;

(b) Mr. Butler isn't qualified to give opinion evidence;

(c) Mr. Vasiliou and Mr. Butler aren't independent or impartial; and

(d) their affidavits contain inadmissible legal argument, speculation, and hearsay evidence.

[18] On this motion, the defendants move to strike the plaintiffs' expert's reports under rule 25.11. But, more precisely, this motion is a voir dire on the admissibility of the opinion evidence. The plaintiffs have the burden of establishing its admissibility. See *White Burgess*, at para 48.

A. Issue #1: is the evidence irrelevant to whether leave should be granted?

[19] The defendants argue that Mr. Vasiliou's affidavit and the impugned parts of Mr. Butler's affidavit are irrelevant to the issue in dispute on the leave motion (i.e., whether there's a reasonable possibility that the plaintiffs' misfeasance or bad faith tort claims will be resolved in their favour). According to the defendants, the opinions are about whether FSCO staff met the standard of care of a reasonable regulator, which isn't an issue on the leave motion.

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[20] The plaintiffs respond that the court should admit the affidavits because of the "heavy burden" on them to satisfy the leave test. Under the *CLPA*, there's no pre-motion discovery of the defendants and the plaintiffs can't examine any other witnesses.

[21] As I discuss below, I disagree with the defendants. They cast the witnesses' evidence too narrowly. This evidence is relevant to whether the plaintiffs have a reasonable chance of proving that the defendants acted in bad faith.

1. Law

[22] Only evidence that is relevant is receivable. See *R v Candir*, 2009 ONCA 915, at para 46.

[23] To determine whether evidence is relevant, a judge must decide whether, as a matter of human experience and logic, the existence of a particular fact, directly or indirectly, makes the existence of a fact more probable than it would be otherwise. See *Candir*, at para 48. The threshold for relevance isn't high. It's enough that the evidence has some tendency to advance the proposition of fact for which it is offered. See *R v J(JL)*, 2000 SCC 51, at para 47.

[24] It doesn't matter whether the evidence is being adduced orally or by affidavit—irrelevant evidence isn't admissible. See, e.g., *Sierra Club Canada v Ontario (Ministry of Natural Resources and Ministry of Transportation)*, 2011 ONSC 4086, at para 19 (Div Ct).

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[25] This general rule dovetails with the threshold requirements for admissibility of expert opinion evidence, which, of course, must be relevant. See *White Burgess*, at para 23.

2. Facts

i. Mr. Vasiliou's affidavit

[26] Mr. Vasiliou's affidavit is 64 pages, and 141 paragraphs long:

- in paragraph 75, Mr. Vasiliou describes the nature of the opinion sought from him: "to provide my opinion with respect to the legal claims made against the Defendants in paragraphs 192 to 218 of the proposed Statement of Claim"
- paragraphs 1-9 describe his qualifications
- paragraphs 10-19 describe the statutory and regulatory framework, including his recollection about why the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, SO 2006, c 29, replaced the *Mortgage Brokers Act*, RSO 1990, c M.39 (para 13), and his opinion about the similarities between the two statutes (para 14)
- paragraph 20 is a list of the documents relied on by him in forming his opinion

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- paragraphs 22-72 details syndicated mortgages, the SMI market, the facts underlying the action, his opinion about misstatements in Tier 1's disclosure, a history of related litigation, and a summary of publicly-available information

- paragraphs 73-98 is a discussion of the allegations in the statement of claim, but reordered chronologically

- paragraphs 99-138 is his opinion—that the defendants failed to carry out "their duties in a reasonably competent manner" nor "exhibited good faith"

- paragraphs 139-141 states his understanding of his duties to the court

[27] Though the defendants only challenge Mr. Vasiliou's opinion as irrelevant, they move to strike the entire affidavit because, absent the impugned paragraphs, the rest of the affidavit is rendered irrelevant.

ii. Mr. Butler's affidavit

[28] Mr. Butler's affidavit is 19 pages and 84 paragraphs long. The defendants challenge only some of these paragraphs as irrelevant:

- in paragraphs 49 and 50, Mr. Butler opines that FSCO should've known about the risks of syndicated mortgages starting in 2004 and intervened to prevent the sales of SMIs

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- in paragraph 57, he opines that "problematic appraisals and opinions of value were not a secret to anyone with reasonable familiarity with the mortgage industry and SMIs"

- in paragraphs 79, 80, and 82, he opines that a reasonable audit would have disclosed the problems with SMIs, and that Tier 1 and other companies didn't have an arm's length relationship with promoters

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3. Analysis and Disposition

[29] I'm satisfied that this evidence is relevant. The plaintiffs intend to argue that the court should infer that the defendants deliberately and knowingly engaged in unlawful acts, or that their actions were so reckless and irresponsible that they amounted to bad faith. At the leave stage, they need to show that there's a reasonable possibility that the claim can be resolved in their favour.

[30] This evidence is problematic for other reasons, which I discuss below. But it meets the relevancy threshold. The evidence is intended to show that the defendants were reckless. In contrast, the defendants characterize this evidence too narrowly. It's not merely about whether "FSCO staff met the standard of care of a reasonable regulator".

[31] For example, if I accept Mr. Vasiliou's opinion that the defendants were incompetent, it might lead me to conclude, along with other evidence, that the plaintiffs have a

reasonable or realistic chance of success of proving recklessness to the point that I should infer bad faith. Similarly, if I accept Mr. Butler's opinion that problems in the SMI market were well-known and easily discoverable but FSCO did nothing, it might lead to the same conclusion.

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[32] This evidence has "some tendency" to advance the proposition of fact for which it's offered: that the plaintiffs have a reasonable chance of proving that the defendants actions were reckless and irresponsible to the point that they were acting in bad faith. As a result, I decline to strike the affidavits on relevancy grounds.

B. Issue #2: is Mr. Butler qualified to give opinion evidence?

[33] The defendants argue that though Mr. Butler is an experienced mortgage broker, he's not qualified to give opinion evidence about the regulation of mortgage brokers. The plaintiffs respond that Mr. Butler has "special knowledge" beyond the "trier of fact", so that's all that's needed to qualify him as an expert.

[34] As I discuss below, that's not really the issue. The question is whether Mr. Butler has the requisite qualifications to testify on the particular subject matter at issue, which is the regulation of mortgage brokerages and brokers. He doesn't. As a result, his opinion evidence is inadmissible. The remainder of his affidavit is fact evidence, and thus admissible.

1. Law

[35] In addition to relevance, another threshold criteria for the admissibility of expert opinion evidence is a properly qualified expert. See *White Burgess*, at para 19. The expert must possess special knowledge and experience going beyond that of the trier of fact. The admissibility of such evidence doesn't depend on how the expert's special knowledge and experience was acquired so long as the witness is sufficiently experienced in the subject matter in issue. See *R v Marquard*, [1993] 4 SCR 223, at 243; *The Russia Federation v Luxtona Limited*, 2019 ONSC 4503, at para 19.

[36] There's a distinction between a witness who has the knowledge and expertise in a particular subject matter, whose evidence also bears upon a related area of expertise of which the witness has a working knowledge, and a generalist who's more knowledgeable than an ordinary trier of fact but lacks a sufficient degree of knowledge, skill, or experience in the particular subject matter at issue. See *Johnson v Milton (Town)*, 2008 ONCA 440, at para 49. The latter's evidence is inadmissible.

2. Facts

[37] Mr. Butler is a licensed mortgage broker, with 20 years experience. He has operated his own mortgage brokerage since 2011, and he worked for another broker from 1996 to 2011. He has a BA from Simon Fraser University. He's a charter member of the Mortgage Professionals Canada, which offers the Accredited Mortgage

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Professional of Canada designation. Mr. Butler has spoken at several mortgage broker meetings and conferences.

[38] On cross-examination, Mr. Butler acknowledged that:

- he's never worked as a regulator or conducted a regulatory investigation
- he doesn't know what requirements regulators must satisfy during inspections or audits, or when proceeding with disciplinary actions or preparing a case for a court hearing
- he's not an appraiser, accountant, or auditor

3. Analysis and Disposition

[39] Mr. Butler isn't properly qualified to provide opinion evidence to this court on the regulation of SMIs or whether FSCO staff's conduct was reasonable.

[40] To begin, Mr. Butler never states the nature of the opinion sought by the plaintiffs as required by the *Rules of Civil Procedure*, r 53.03(2.1). So it's difficult to determine whether he's qualified to give an opinion, whatever it may be.

[41] That said, he does provide an opinion on whether FSCO should've known about the risks of syndicated mortgages, and that audits would have disclosed problems with SMIs.

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[42] I don't see how he can give that opinion based on his qualifications as a mortgage broker. As the defendants submitted, someone who's practiced law for 20 years isn't, on that basis alone, qualified to give an opinion on how the Law Society of Ontario identifies risks in the marketplace or conducts its audits.

[43] So too here. Mr. Butler hasn't introduced any evidence that shows he has experience or qualifications in FSCO's identification of risk, the issuance of regulatory orders, how FSCO conducts audit, or the types of issues identified by audits. As he admits, he has no work experience in this area. He has no education or training in this area. He's never published articles or papers on the subject, and his speaking engagements don't appear to touch on this area.

[44] As a result, I endorse an order striking out the impugned paragraphs of Mr. Butler's affidavit on the grounds that he fails to meet the threshold requirement for expert opinion evidence.

[45] The plaintiffs suggested that I might grant them leave to amend if I struck the affidavits out for failure to comply with the *Rules of Civil Procedure*, r 53.03(1). If this were only about the technical issue of stating the nature of the opinion, I might do so. But given Mr. Butler's evidence, he's only qualified to give expert opinion evidence on how mortgages are brokered, which isn't relevant to the issues on the leave motion.

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C. Issue #3: are Mr. Vasiliou and Mr. Butler impartial witnesses?

[46] The defendants argue that Mr. Vasiliou or Mr. Butler, on cross-examination, disclosed that they're not impartial witnesses who can give the court an unbiased opinion. The plaintiffs respond that merely having a strong opinion doesn't disqualify either Mr. Vasiliou or Mr. Butler, especially given that they've acknowledged their duties to the court.

[47] Though I've struck out parts of Mr. Butler's affidavit because of his lack of qualifications, I discuss whether he's impartial if I'm wrong on that issue.

[48] I find that both witnesses have impeached their duties, and can't give the court unbiased opinions. As a result, Mr. Vasiliou's affidavit is struck. I would have also struck the impugned sections of Mr. Butler's affidavit on this ground.

1. Law

[49] Expert witnesses owe a duty to the court to be fair, objective, and non-partisan. Expert witnesses have a duty to assist the court that overrides their obligation to the party calling them. If a witness is unable or unwilling to fulfill that duty, they don't qualify to perform the role of an expert and should be excluded. See *White Burgess*, at para 46.

[50] Once the expert attests or testifies on oath that they recognize and accept their duties (as here), the burden is on the party opposing the admission of the evidence to show

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that there's a realistic concern that the expert's evidence shouldn't be received, because the expert is unable 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 isn't done, the evidence, or those parts of it that are tainted by a lack of independence or impartiality, should be excluded. See *White Burgess*, at para 48.

[51] An expert who, in their proposed evidence or otherwise, assumes the role of an advocate for a party is clearly unwilling or unable to carry out the primary duty to the court. But 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. Anything less than clear unwillingness or inability to do so shouldn't lead to exclusion, but be taken into account in the overall weighing of costs and benefits of receiving the evidence. See *White Burgess*, at para 49.

2. Facts

[52] Mr. Butler and Mr. Vasiliou have a long history with SMIs.

[53] Mr. Butler has knowledge of all of the "various syndicated mortgage operators in Ontario who engaged in bad practices and harmed investors, whether it's Tier 1, whether it's Titan, or whether it's Fortress." He was an expert witness in *Barkley v Tier 1 Capital Management Inc.*, 2022 ONSC 175, where the plaintiffs were granted default

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judgment against two SMI promoters. On cross-examination in this case, he deposed that he told FSCO officials about the abuse by SMI promoters. He also testified that he's taken "calls from people in tears that their money has been stolen from them, that their life savings have been decimated…."

[54] Mr. Butler has strong views about FSCO and its employees: "so occasionally in our meetings, we reminisce about the awful malfeasance of the regulator and the evildoings of the criminals who were running these operations."

[55] Mr. Vasiliou first became involved with Tier 1 in 2016, when David Franklin, a lawyer, contacted him about Fortress Real Developments Inc., another SMI. His involvement was multifaceted:

- he gave Mr. Franklin advice about investigating the case
- he reviewed documents and underwriting for both Tier 1 and Fortress
- he was interviewed by the OPP, and gave them all the documentation
- he met with the RCMP and their lawyer
- he met with Grant Thornton, the trustee, and their lawyer to address their findings

[56] In *Fortress Real Developments Inc. v Franklin*, 2018 ONSC 296, Fortress sued Franklin for defamation. Fortress sought to lead expert evidence from Mr. Vasiliou that,

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among other things, FSCO acted improperly in failing to shut Fortress down. Justice Diamond struck out Mr. Vasiliou's affidavit for several reasons:

- Franklin and Mr. Vasiliou, along with Krista Zingel, "worked together as a 'team' to determine, in their own minds, that Fortress was a criminal organization that was defrauding the public" (at para 40)
- Vasiliou went to the RCMP with Franklin in 2016 to complain about Fortress (at para 42)
- Vasiliou volunteered to give opinion evidence in that proceeding (at para 42)

[57] Here, Mr. Vasiliou disclosed that he's not being paid to give expert evidence. Instead, he's volunteering "to assist the innocent investors in those mortgages in obtaining recovery of their losses."

[58] On cross-examination, Mr. Butler became argumentative with the defendants' lawyer. He called the lawyer's questions "ridiculous" and "pointless". He refused to answer questions even though his lawyer didn't object. And, finally, he insulted the lawyer:

> I'm not going to respond to anymore of these ridiculous questions about key versus dates. It's absolutely ridiculous. Like- [...] This is a bunch of—this is simply some kind of strange—it's pointless. I mean, I have valid evidence to provide. I have valid experience in this matter. And I understand it's the nature of your profession to go down rabbit holes about dates and minutia, but I don't—I'm not even going to continue to—I'm going to reject questions of this—of this nature about these key dates. I'm not going to answer them. It's just too stupid.

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3. Analysis and Disposition

[59] Both witnesses have recognized and accepted their duty to the court. But there's a realistic concern that they're unable or unwilling to comply with that duty. The plaintiffs have failed to rebut this concern.

[60] For Mr. Butler, his long involvement with SMIs alone doesn't disqualify him. The existence of some interest or a relationship doesn't automatically render the evidence of the proposed expert inadmissible. But Mr. Butler's strong views about FSCO and its officers, and his conduct on the cross-examination, show that he's assumed the role of an advocate for the class. He holds the view that FSCO's leadership, including presumably the two individual defendants, are criminals and evildoers. He's already concluded that they've conducted malfeasance. And, during his cross-examination, he entered the fray. To call a lawyer's questions ridiculous, pointless, and stupid is an insult to the lawyer. It suggests that the lawyer's questions are partisan rather than aimed at the court's truth-seeking function.

[61] For Mr. Vasiliou, his long involvement with SMIs is disqualifying. He's not a dispassionate observer of the industry. Instead, after discovering alleged wrongdoing, he's been instrumental in building a case against market participants, including FSCO. He was part of class counsel's "team" in the Fortress case. He's tried to engage the police to take action. Though most of his ire seems directed to Fortress, he's pre-

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determined that the class members are "innocent" and deserving of recovery. He's here to help them, not the court. That's a bias that can't be displaced.

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D. Issue #4: do the affidavits contain other inadmissible evidence?

[62] The defendants submit that several paragraphs of Mr. Vasiliou's and Mr. Butler's affidavit contain evidence that violates other admissibility rules: inadmissible legal argument, speculation, and hearsay evidence.

1. Law

[63] An affidavit shall be confined to the statement of facts within the personal knowledge of the deponent or to other evidence that the deponent could give if testifying as a witness in court, except where these rules provide otherwise. See *Rules of Civil Procedure*, r 4.06(2).

[64] As a result, statements that speculate about facts that are outside the scope of the deponent's information or knowledge are impermissible in an affidavit. See *Lockridge v Director, Ministry of the Environment*, 2012 ONSC 2316, at paras 118-122.

[65] Similarly, statements that contain legal and factual argument that belong in a factum are inadmissible. See *Tran v 863195 Ontario Limited*, 2024 ONSC 5423, at para 16.

[66] Though hearsay evidence is admissible on a motion, the source of the information and the fact of the belief have to be specified. See *Rules of Civil Procedure*, r 39.01(4). This rule is not merely technical—it's an exception to the rule against hearsay

evidence, and must be followed to ensure the integrity of the evidence. See *Badar v Danish*, 2024 ONSC 3942, at para 12.

[67] Finally, expert evidence on domestic law is rarely, if ever, admissible as expert opinion evidence. See *R v Comeau*, 2018 SCC 15, at para 40.

2. Analysis and Disposition

[68] If I'm wrong about Mr. Butler's qualifications or either witnesses' independence, I make the following findings about the specific paragraphs of their affidavits:

Evidence	**Disposition**
Mr. Butler, para 7: "In my view, the Act provides licensed brokerages, brokers and agents with a guideline of our duties and responsibilities."	This paragraph is struck. Mr. Butler is giving opinion evidence about the scope of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*
Mr. Butler, para 69: "I understand from Wine and believe that advice of this nature is not independent and, therefore, cannot be relied upon to provide an investor with the normal protections provided by ILA."	This paragraph is struck. Mr. Butler is giving hearsay evidence from the plaintiffs' lawyer on a contentious issue.

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Evidence	**Disposition**
Mr. Vasiliou, paras 90, 115, 126-129, 131, 135, and 138	For each of these paragraphs, the defence argues that Mr. Vasiliou is speculating. For example, in paragraph 90, he deposes: "This was presumably why six months earlier in October 2015, FSCO had published on its website the document entitled Checklist on Detecting and Preventing Mortgage Fraud", based on facts stated in the prior paragraphs. These paragraphs would be admissible if I hadn't struck his affidavit. Mr. Vasiliou is drawing inferences from the facts stated in the earlier paragraphs. That's the very nature of opinion evidence. He's not speculating.
Mr. Vasiliou, paras 23, 79(f)-(h), (m), 80-82, 86-88, 111, 118, 131, 134, 136-138	The defendants argue that these paragraphs contain egregious examples of hearsay evidence where Mr. Vasiliou hasn't specified the source of his information. I disagree. Though many of these paragraphs are inelegantly drafted, it's clear that Mr. Vasiliou is relying on documents, his own understanding, or Class Counsel's information. These paragraphs would be admissible if I hadn't struck his affidavit.
Mr. Vasiliou, paras 102, 132-33	The defendants submit that Mr. Vasiliou is opining on the ultimate issue—whether the defendants acted in bad faith. I agree. Mr. Vasiliou is going farther than offering an opinion on the regulatory scheme, or whether the defendants' actions were reckless. He's opining on the issue that the trial judge must decide. These paragraphs are struck.

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Evidence	**Disposition**
Mr. Vasiliou, paras 81(c)(iv), 133	Mr. Vasiliou states that Olympia Trust was doing business unlawfully. The defendants argue that he's opining on Olympia Trust's conduct, which is outside the scope of his expertise. I agree. In footnote 24, Mr. Vasiliou makes a legal argument about how Olympia Trust operated offside the *Loan and Trust Corporations Act*, RSO 1990, c L.25. These paragraphs are struck.

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IV. COSTS

[69] The parties agree that there shall be no costs of this motion.

V. CONCLUSION

[70] For expert witnesses to provide helpful evidence to the court, they're testimony must meet certain basic threshold requirements. Here, Mr. Vasiliou and Mr. Butler have treaded on their impartiality by advocating for the class. Though they're entitled to hold these beliefs, and support the class in other ways, they can't also provide the court with unbiased evidence. Moreover, Mr. Butler's long experience as a mortgage broker doesn't qualify him to opine on how mortgage brokers are regulated.

[71] To ensure that there's no confusion about Mr. Butler's evidence, the parties shall ensure that only the admissible parts of his affidavit or cross-examination transcript are cited in their factum and oral submissions.

Agarwal J

Date: June 30, 2025

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