

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN: S.C. No. 00-A0174
TRANS NORTH TURBO AIR LIMITED
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN
DEFENDANTS

AND BETWEEN: S.C. No. 00-A0226
ROBERT BRIAN CAMERON
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN
DEFENDANTS

AND BETWEEN: S.C. No. 00-A0211
ALMON LANDAIR LTD.
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN
DEFENDANTS

AND BETWEEN: S.C. No. 00-A0212
SUMMIT AIR CHARTERS LTD.
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN

DEFENDANTS

R. PATRICK SAUL and
DARRYL G. PANKRATZ

Appearing for Trans North Turbo Air Limited
and Robert Brian Cameron

PETER CHOMICKI, Q.C.

Appearing for Almon Landair Ltd. and
Summit Air Charters Ltd.

RICK B. DAVISON, Q.C. and
BRUCE CHURCHILL-SMITH

Appearing for the defendants

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): I should give my reasons on the application that was made yesterday morning. I understand we are all hooked up, so it will not be long. North 60 Petro objects to four aspects of certain experts to be called by the plaintiff, Trans North Turbo Air, as follows:

1. Appendix A to the report of Mr. Ronald McKeown, dated February 28, 2002, being a video cassette;
2. Appendix A to the rebuttal report of Mr. Ronald McKeown, dated March 29, 2002, being a video cassette;
3. The report of Mr. James A. White, Western Fire Centre Inc., dated March 1, 2002, also listed as Appendix 2 to the report of Mr. Dean Bundy; and
4. Appendix 1 to the report of Mr. Dean Bundy, undated, being photographs taken during testing by Western Fire Centre Inc.

[2] Mr. Churchill-Smith, on behalf of North 60 Petro, proposes that the objections be heard after the evidence in-chief and cross-examination is completed for each of

the experts set out. He then proposes that five specific areas or grounds of objection be heard. North 60 Petro states that the plaintiff experts have failed to take into account the following:

- a) environmental conditions, including snow and ambient temperature;
- b) the position and size of bolt and nut;
- c) the composition and construction of the roof;
- d) the actual procedure of the cutting operation;
- e) the specific features of the roof.

[3] I should explain that one of the issues in this case is whether the use of a cutting torch caused the fire which destroyed Hanger C at the Whitehorse Airport on January 18, 1999. In order to raise the objections to the expert evidence, North 60 Petro must come within the requirements of Rules 40A(13) and (14), which are as follows:

(13) A party who receives a written statement under sub rule(2) or (3) shall notify the party delivering the statement of any objection to the admissibility of the evidence that the party receiving the statement intends to raise at trial.

(14) No objection under sub rule(13) of which reasonable notice could have been given, but was not, shall be permitted at trial unless the court otherwise orders.

[4] The affidavit of Matthew Heemskerk, filed May 14, 2002, indicates the following:

1. The reports were delivered to North 60 Petro counsel at the end of February 2002, with the exception of the Rebuttal Report of Mr. Ronald McKeown;
2. The first mention of objections by North 60 was in a telephone

conversation on April 22, 2002, between counsel;

3. Mr. Saul, on behalf of Trans North Turbo Air, faxed a letter dated April 23, 2002, to Mr. Davison and Mr. Churchill-Smith on behalf of North 60 Petro, objecting to the lateness of Notice of Objection and requesting details of the objection;
4. Mr. Saul acknowledged that in the telephone conversation of April 22, 2002, he was advised of the objection that the proposed evidence was inflammatory;
5. By fax, dated April 24, 2002, Mr. Pankratz, on behalf of Trans North Turbo Air, again requested details of the objection;
6. By fax, dated April 26, 2002, Mr. Davison, for North 60 Petro, wrote that he took the position that he had complied with the rules, both as to reasonable notice and the nature of the objection;
7. The trial was to have commenced on May 2, 2002, but actually started on May 6, 2002;
8. The exact objection of North 60 Petro to the Plaintiff's experts was not given to the plaintiffs until May 14, 2002, when I required counsel to file written briefs.

[5] It is my view that reasonable notice could have been given in these circumstances because counsel for North 60 Petro had the subject matter objected to in the plaintiff's expert reports for approximately seven weeks before raising an objection verbally on April 22, 2002. I am not prepared to exercise my discretion under Rule 40A(14) to waive the reasonable notice for two reasons:

1. The notice period in these circumstances from April 22 to May 2, was not a reasonable notice period to allow Trans North Air to rectify the objections to their expert evidence;
2. The actual notice of the details of the objection was not communicated until May 14, 2002.

I read Rule 40A(13), and specifically the words: "any objection to the admissibility of the evidence", to require something more than stating baldly that an objection will be taken. It requires the detail ultimately provided to counsel on May 14, 2002. The application to object to the expert evidence set out is dismissed. This does not prevent North 60 Petro from objecting to the qualifications of the experts and cross-examining them on their expertise before I qualify the experts. The Court always has the discretion to rule that expert evidence is not admissible under the factors set out in *R. v. Mohan*, [1994] 2 S.C.R. 9, 89 C.C.C. (3d) 402, 29 C.R. (4th) 243. Further, in extreme cases, admissibility may be denied where the probative value is outweighed by the prejudicial effect in terms of the fairness and integrity of the proceedings. However, in the normal course, it will be a question of weight, which can be determined after hearing all the evidence in the trial.

VEALE J.