

SUPERIOR COURT OF JUSTICE

B E T W E E N :

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SUSAN DUMENCU et al

Plaintiff

- against -

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ATHERLEY ARMS HOTEL et al

Defendants

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RULING ON VOIR DIRE

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BEFORE THE HONOURABLE MR. JUSTICE P. HOWDEN  
on Wednesday November 18, 2009  
at NEWMARKET, Ontario

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APPEARANCES

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B. MacFarlane

Counsel for the Plaintiff

D. Reisler

Counsel for the Defendants

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R U L I N G O N V O I R D I R E

Howden, P. (Orally):

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My findings on this issue, having considered the evidence and what counsel have said, follow the factors in *Mohan*.

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Mr. Summerville I find to be a well qualified trainer and resource person regarding security issues in various venues and types of establishments and that includes bars such as the one we are dealing with. The extent of his experience goes to weight, and the jury can weigh the matters Mr. Reisler will no doubt bring out. His evidence is relevant to the standard of care and industry practices and choices regarding security. His evidence is not subject to any exclusionary rule, and to the extent the *Peterson* case deals with a similar issue as the Court of Appeal has said admissibility of expert evidence is on a case by case basis and is not subject to rulings in other cases.

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As to necessity; in my view it is necessary for the jury to hear Mr. Summerville's evidence to know what the reasonable choices and modes of providing security were for operators at bars in 2004.

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Paraphrasing Justice Jarvis in *Mellanby and Chapple* at paragraph 47, the standard is reasonableness in all the circumstances. The bar in that case had a duty, he ruled, to protect patrons. And whether

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adequate security practices were followed is a subject to which Mr. Summerville's evidence will assist and without which the jury may lack some of the knowledge necessary to its task in this case. It will of course be subject to cross-examination and weight that the jury may or may not attach to it.

So I'm ruling that Mr. Summerville may testify. Of course you'll have to qualify him in front of the jury and that's it.

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