WITNESSES

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VOLUME 1

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Ferguson v. Ranger Oil Ltd.,[202] except that rather than creating a specific exception to the hearsay rule, it determined that the principled approach to hearsay developed in cases like *R. v. Khan*[203] and *R. v. Smith*[204] could provide guidance in this area as well. The parties were attempting to settle a land compensation dispute and when the negotiations hit an impasse, they proceeded before a provincial board in order to have the amounts fixed. The range of compensation depended upon a multitude of different factors and thus one of the parties called an expert to testify as to "patterns of dealings" of this type. His evidence was based upon interviews and lease agreements compiled from landowners who had previously settled claims. None of these persons were called as witnesses and the leases themselves were not put before the court.

Nevertheless, the Court of Appeal determined that the evidence of the expert was properly admitted. In its view, where an expert's "expertise" is based upon hearsay it can be admitted if the evidence upon which it is based is reasonably necessary and reliable. "Reasonably necessary" was defined as required to avoid proceedings which would take on "an endless character" if countless number of witnesses were called.[205] As to reliability, the court considered that the data upon which the opinion was based consisted of "hard data" documents that the expert had personally examined, and in doing so, had followed professional practice. The party seeking to exclude the evidence had every opportunity to attack the accuracy and validity of the data upon which the expert relied but never chose to do so.

It thus appears that there are two very distinct types of facts that may be used by an expert in formulating an opinion. The first, to adopt the distinction drawn by Lawton L.J. in *R. v. Turner*,[206] are those that form part of the expert's judgmental expertise. These are not facts that are concerned with the specific case before the court but are general facts and data, a knowledge of which forms part of the training and expertise of the expert. They are to be found in such things as textbooks, articles, writings and reports prepared for the profession generally and with which an expert in the particular field involved may be expected to be familiar and which he or she may be expected to consult in the preparation of an opinion. Indeed, absence of such knowledge or consultation may be grounds for attacking the weight to be accorded to the opinion.

The second are "primary facts," that is to say, the particular facts of the specific case before the court. Since the opinion, however expert and credible it may be in itself, depends upon establishing the truth of the hypothesis on which it is based, these facts must be found by the jury to exist before the expert opinion evidence is relevant for *its* inference-drawing process. The primary facts therefore

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[202] (1997), 7 C.P.C. (4th) 230 (Alta. C.A.).
[203] (1990), 59 C.C.C. (3d) 92 (S.C.C.).
[204] (1992), 75 C.C.C. (3d) 257 (S.C.C.).
[205] Relying upon the statements of Ritchie J. in *St. John (City) v. Irving Oil Co.* (1966), 58 D.L.R. (2d) 404 at 414 (S.C.C.).
[206] (1975), 60 Cr. App. R. 80 (Eng. Q.B.).