



Case Commentary: *The Owners, Strata Plan LMS 1685 v. Cressey Development Corporation, et al.* 2001 B.C.S.C. 1739: Interrogatories, Expert Opinion and the Obligation of the Recipient to Properly Respond.

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Interrogatories are written questions that are available for parties to an action to use as a pre-trial tool to narrow and focus the issues in the action, reduce the length and expense of trial and eliminate the element of surprise at trial.

Interrogatories are often useful in complex construction matters for obtaining complex or extensive background information, which might not lend itself well to oral discovery. On this point, Master Bolton in *Roitman v. Chan* (1994), 99 B.C.L.R. (2d) 182 stated:

“...issues involving extensive research, such as precise chronologies or exhaustive lists, would seem to be more appropriate for the more expansive time frame permitted by interrogatories than for a more confrontational, time pressured examination for discovery.”

Madame Justice Baker’s comments in *Tse-Ching v. Wesbild Holdings Ltd.* (1994), 98 B.C.L.R. (2d) 92 provide a useful starting guideline for determining the scope of interrogatories:

- “1. Interrogatories must be relevant to a matter in issue in the action.
2. Interrogatories are not to be in the nature of cross-examination.
3. Interrogatories should not include a demand for discovery of documents.



4. Interrogatories should not duplicate particulars.
5. Interrogatories should not be used to obtain the names of witnesses.
6. Interrogatories are narrower in scope than examinations for discovery.
7. The purpose of Interrogatories is to enable the party delivering them to obtain admissions of fact in order to establish his case and to provide a foundation upon which cross-examination can proceed when examinations for discovery are held.
8. Interrogatories are only one means of discovery. The court may permit the party interrogated to defer its response until other discovery processes have been completed, including examinations for discovery.”

A limitation not mentioned by Madame Justice Baker in *Tse-Ching* pertains to eliciting expert opinion through interrogatories. The recent decision in *The Owners, Strata Plan LMS 1685 v. Cressey Development Corporation, et al.* 2001 B.C.S.C. 1739, provides a useful commentary on the limits of interrogatories in relation to expert evidence in a construction case and the duties on a recipient to respond properly.

The action in *Cressey* related to a “leaky condo” of considerable size with significant deficiencies. The defendant contractor, *Cressey*, sought an order obligating the plaintiff *Strata Corporation* to make further answers to Interrogatories. *Cressey* had issued 70 Interrogatories, most of which were subdivided into several questions seeking detailed responses. The plaintiff, through its President had answered a number of the questions and declined to answer others primarily on the basis that “they could not be answered from personal knowledge or reasonable inquiry except by having regard to expert evidence”. Also, several of the Interrogatories asked sought information pertaining to the location of deficiencies throughout the building. In response to these questions, the plaintiff simply made reference to an expert report previously delivered by the plaintiff.



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The Court in *Cressey* started with the proposition that “an interrogatory may not include a question which can only be answered by consulting an expert and by repeating the expert’s opinion”. However, the Court then went on to expand upon the application of this principle by quoting from Master Joyce in *United Properties Ltd. v. Degelder Construction Co.* (1995), 14 B.C.L.R. (3d) 327 (S.C.):

“I am of the view, however, that **the court must have a proper basis for coming to the conclusion that the interrogatory cannot be answered without reliance on an expert opinion.** There may be cases where, from the nature of the pleadings and the nature of the interrogatory itself, it is obvious that no answer could be made except by reliance on an expert opinion. In that circumstance I do not think the witness ought to be required to provide an affidavit stating the plain and obvious. In other cases it may not be so clear that the interrogatory could not be answered except by reliance on expert evidence. In that case I do not think it sufficient that counsel for the party who declines to answer the interrogatory merely state that position in submissions to the court. Rather, in that case I think it is incumbent on the witness to provide a response deposing that he cannot answer the question from personal knowledge or after reasonable enquiry except by having regard to expert evidence. [emphasis added]”

Applying these principles, it was held that it was not proper for the plaintiff to simply decline to answer on the basis that certain of the Interrogatories could not be answered without reliance on expert opinion. It was necessary for the plaintiff to provide a detailed response as to why that was the case.

Further, with respect to responses where the plaintiff simply made reference to its expert report, the court held that it was not sufficient to refer the defendants to other sources for potential answers. The plaintiff would have to provide responsive answers