

Citation: 2013 TCC 263
Date: 20130821
Docket: 2008-101(IT)G

BETWEEN:

WINSTON BLACKMORE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

RULING ON ADMISSABILITY OF EXPERT EVIDENCE

**(Edited from the transcript of rulings delivered orally
from the Bench with respect to the expert witnesses,
Dr. John Walsh on January 31, 2012,
Dr. Ryan Thomas Cragun on February 9, 2012, and
Dr. Randall Balmer February 29, 2012)**

Campbell J.

DR. JOHN WALSH:

[1] Before we begin I'm going to read into the record my conclusions and the reasons for those conclusions in respect to the qualifications of Dr. John Walsh regarding the *voir dire* which I heard yesterday.

[2] The question posed to me in yesterday's *voir dire* is whether this Court can accept the Appellant's witness, Dr. John Walsh, as an expert and, consequently, allow him to provide his testimony in the context of a qualified expert witness.

[3] The short answer to this issue is that I am allowing Dr. Walsh to give evidence as an expert, but I am setting strict parameters for the area where I have concluded that his expertise exists. Initially, I was inclined to completely reject Dr. Walsh's credentials as an expert in respect to the particular issues before this Court. However,

upon reflection, I am inclined to allow Dr. Walsh's testimony as an expert to assist me purely and strictly as it relates to doctrinal principles underlying and relevant to the Mormon religion as suggested by the Crown in her submissions. An extension of that conclusion is that I will not permit Dr. Walsh to provide opinion evidence on the daily lifestyle of the community of Bountiful.

[4] Now, I turn to the reasons for my conclusion.

[5] The Supreme Court of Canada in *R. v Mohan*, [1994] 2 SCR 9, set out four criteria that must be met if expert evidence is to be admissible. These are: (1) that the proposed expert is properly qualified; (2) relevance; (3) necessity in assisting the court; and (4) the absence of any exclusionary rule.

[6] The Crown's primary focus in objecting to Dr. Walsh being qualified as an expert witness was that he is, in fact, not a "properly qualified" expert.

[7] The basic premise from which I begin is the statement provided in *Mohan*, "the evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify." In other words, the specially acquired knowledge of an expert respecting a particular subject must be such that it will assist the trier of fact because the trier of fact, myself in this case, does not possess that specialized knowledge over that particular subject matter. It makes no difference how the proposed expert witness acquired that special knowledge. It can be through academic training, actual experience, participation in professional organizations, publications, teaching and lecturing, to name a few. The central focus for me is whether Dr. Walsh does, in fact, possess that specialized knowledge based on the qualifications he has offered to this Court during the *voir dire*.

[8] When Dr. Walsh was sworn as a witness, he described himself as an expert in religious studies, with a focus in the academic field of Mormon studies. Dr. Walsh was a certified accountant with 15 years in the business world. According to his CV, he obtained an MBA in 1995 from Brigham Young University and a second Master's Degree was obtained in the area of Jewish studies. His Ph.D. is from the Department of Theology at the University of Wales. However, the Crown pointed out that this degree was obtained from an educational institution that was amalgamated with another institution, several years after Dr. Walsh obtained his degree, to ensure the degree granting standards were being maintained. There was also some reference to this being a long-distance degree, being obtained while Dr. Walsh continued to reside in the United States. In cross-examination, a similar query arose with respect to his

Masters Degree in Jewish studies, which Dr. Walsh pointed out was not a correspondence degree, but was obtained through “distance education,” meaning, as I gathered from the evidence, that a minimal amount of time was actually spent on campus attending courses.

[9] Dr. Walsh's Ph.D. and his thesis focused on an examination of the ascension theology of the founding Mormon prophet, Joseph Smith, that is, on how salvation could be attained by achieving heavenly ascension.

[10] Dr. Walsh has only one published article, entitled *Are Jesus and Satan Brothers? A Short Exploration in Mormon Christology*. He has one self-published book entitled *Mormon Mysticism, Mythology and Magic*. The table of contents in this book is identical to the table of contents in his thesis. According to Dr. Walsh, the book's contents had been expanded, however, the subject matter remained the same. In addition, he has given only one lecture to graduate students, for which he did not receive compensation. He does not teach and further describes himself as a litigation consultant.

[11] Dr. Walsh has been qualified once in Canada as an expert in the recent British Columbia polygamy reference case. He was qualified in that case on the basis of providing expert evidence in respect of “purely doctrinal matters” and “normative practices” of the FLDS Church, and not on the day-to-day practices within the Church or, more specifically, the community of Bountiful.

[12] The Crown suggested that reference cases, being distinctly different from civil proceedings, may have employed relaxed rules concerning admissibility of expert evidence. However, whether the Crown is correct or not in these observations respecting the admission of expert evidence in the British Columbia reference case, I simply take note of the fact that Dr. Walsh was qualified as an expert. The decision to accept Dr. Walsh or reject him as an expert in the end is mine alone to make, based on the evidence before me, regardless of whether he has been qualified once or 100 times in other courts.

[13] Dr. Walsh's credentials are limited and I have no evidence before me that he has any specialized knowledge in respect to Bountiful. His Masters degree is in Jewish studies, his prior background is related to business activities, he has only one peer-reviewed publication, his book is self-published and appears to be closely aligned with the content of his Ph.D. thesis, he does not lecture or teach, he has no expertise as a sociologist, psychologist or anthropologist, he has no listed distinctions or awards, and his thesis and published article deal with subject matter that is

unrelated to the issues before me in these appeals. Dr. Walsh is, himself, a practicing Mormon since approximately 1990. His expertise appears to have also developed over 20 years of interviewing many individuals who are practicing Mormons. While Dr. Walsh may have gained expertise in the doctrine, history and practices of the Mormon faith, the evidence does not establish any expertise he may have in respect to the community of Bountiful. He admitted that he has never been to Bountiful and that any conclusions that he would be offering were based on information from telephone conversations with Mr. Blackmore, the examination for discovery materials and some other miscellaneous documentation. Hardly the “meat and potatoes” of expert evidence. His background and experience is in comparative religious studies, with a focus on Mormonism. This does not translate to an expertise in the day-to-day activities and how the Mormon faith is practiced in communities such as Bountiful.

[14] Although I am operating in a bit of a vacuum, as I am not privy at this point in time to the contents of Dr. Walsh's report, Crown counsel has suggested that he is venturing into areas and drawing conclusions in respect to the daily practices in Bountiful. In doing so, he would potentially be drawing factual conclusions from telephone conversations with Mr. Blackmore, as well as several documents. The broad issue before me is whether Mr. Blackmore is a member of a community that is a congregation as defined in subsection 143(4) of the *Income Tax Act*. My concern is that Dr. Walsh may be attempting in his report to draw conclusions without an expertise basis respecting the very issue which is for this Court to decide after hearing and weighing all of the evidence. Overall, even though I am admitting him as an expert, albeit on a limited basis, I do have concerns about his qualifications and I conclude that he is unlikely to be able to assist me with the very matters that go to the heart of the issue and those are, to name a few, the United Effort Plan, the United Effort Plan Trust, the term “tithing,” the declaration of trust or consecration. None of these terms are the focus of his thesis, his publications or his expertise.

[15] The Crown also touched briefly on the issue of personal bias on the part of Dr. Walsh, in that he is a practicing Mormon and lacks the essential objectivity that is generally expected of those individuals offered as expert witnesses. Based on my conclusions, I do not feel the need to address those concerns in my remarks except to state that, in restricting his expert evidence to testimony respecting the history, principles and doctrine of Mormonism, I believe any resultant bias on the part of Dr. Walsh in respect to the issues before me has been eliminated or at least limited in scope.

[16] In summary, I am allowing the admission of Dr. Walsh's evidence as an expert, but limited to testimony in respect of the doctrines, history and principles of the Mormon faith, which evidence, I am hopeful, will assist me as the trier of fact in this specialized area. I believe that, as the trier of fact, it may be beneficial for me to hear evidence respecting the broader underlying principles of the Mormon faith. However, according to Mr. Blackmore's testimony, there is a connection between the Bountiful community and the mainstream Mormon faith. Consequently, Dr. Walsh's testimony may be of some assistance to me but, at the end of the day, considering the totality of the evidence, I will determine the amount of weight to be accorded to his evidence.

DR. RYAN THOMAS CRAGUN:

[17] Let the record show, then, that I am delivering reasons in respect to the *voir dire* of Dr. Cragun, which we concluded after two days on yesterday's date.

[18] This is the second *voir dire* held in these appeals in respect to the admissibility of proposed expert evidence. I must decide if the report of the Respondent's witness, Dr. Ryan Cragun, is admissible and, in addition, whether he can provide his testimony respecting that report as an expert witness.

[19] My conclusion is that I am prepared to accept Dr. Cragun as an expert witness, however, I am again, as I did with Dr. Walsh, setting parameters within which he may provide that expert testimony.

[20] The Respondent has tendered this witness as being an expert in respect to broad areas of expertise. These areas include: (1) the scientific field of sociology of religion, with a sub-specialty in Mormonism, that would enable him to provide expert testimony respecting the various entities existing under the umbrella of Mormonism; (2) as a sociologist with a specialty in religion, to provide expert testimony respecting the practices and traditions of members of the Hutterite Brethren Church, or Hutterite colonies generally; and (3) expert testimony respecting the community of Bountiful, together with resulting comparisons and conclusions between lifestyles and work relationships of the Hutterite colonies and the community of Bountiful.

[21] The Appellant opposes the admissibility of Dr. Cragun's report based on all four of the criteria as set out in the Supreme Court of Canada decision in *Mohan*.

[22] Those criteria that must be established before proposed expert evidence will be admissible are: (1) relevance of the evidence; (2) necessity in assisting the Court; (3)

absence of any exclusionary rule; and (4) that the proposed expert is properly qualified.

[23] Dr. Cragun is presently employed as an assistant professor of sociology at the University of Tampa, and has been employed at this university since obtaining his Ph.D. in 2007. His Bachelor of Arts degree was obtained from the University of Utah, with a specialty in psychology. Both his M.A. and Ph.D. degrees were in sociology and obtained from the University of Cincinnati with a focus on religion. He testified that he enrolled in any course related to religion that the university offered, including a philosophy course on religion and psychology and anthropology courses on religion. He explained his focus, the sociology of religion, as encompassing an understanding of the history and belief systems of religion generally. His specialty in the broader discipline of religion reflects the fact that degrees in Mormonism are not available. Dr. Cragun grew up in a devout Mormon family as a practicing member of the LDS Church, more commonly referred to as the mainstream church. He served as a Mormon missionary in Costa Rica for a two-year period. Although he ceased membership in the church in 2002, and formally resigned in 2004, he has maintained an interest in Mormonism throughout his life and, at the age of 35 years, testified that he has devoted the last 14 years to study and research on Mormonism.

[24] Much of the two-day *voir dire* was spent, both in direct and cross-examination, on taking Dr. Cragun through a considerable list of peer-reviewed articles, books, book chapters, non-peer-reviewed publications, book reviews, lectures and presentations, conference papers and presentations, as well as his grants, awards, service for professional organizations and consulting and public appearances.

[25] While nothing in his CV suggests an expertise in respect of Hutterites or Bountiful, he clearly has an established specialty in Mormonism. Although many of his articles did not directly deal with tenets of the Mormon religion, his work required a particular depth of knowledge of the religion well beyond that of this Court. He has numerous peer-reviewed articles listed on his CV. In his direct examination, Dr. Cragun testified that he has participated in the review of publications in the *Journal for the Scientific Study of Religion* close to 20 times. He described this journal as being the top-ranked sociology of religion journal in the world. It does not appear that he would be asked to participate in such peer reviews unless he possessed a broad and encompassing knowledge of the history, principles, beliefs and doctrines of religions generally, including Mormonism.

[26] Returning to the *Mohan* criteria, I conclude that evidence which he may be able to provide respecting the history, doctrine and principles of Mormonism meets

the requirements of relevancy and necessity. There is clearly a connection between such evidence and the issue before this Court. In addition, both parties to these appeals have drawn the Court's attention to the connection between the Bountiful community and the FLDS. I suspect it will assist me because it should provide relevant background information.

[27] At various points in his direct examination, Dr. Cragun addressed the specialized knowledge he possesses in respect to the FLDS and mainstream LDS branches. At pages 1637 and 1638 of the transcript he states the following:

... Three of my book chapters examined the FLDS, sometimes in comparison to the LDS but to examine the FLDS, the two of my journal articles look at them as well. So I spend a considerable amount of time looking at the FLDS. I've been to Colorado City and I've interviewed several people who are members of the FLDS Church, former members of the FLDS Church. I've read a substantial amount of literature, books, a few articles; there aren't many on them. Plenty of newspaper articles. I have an ongoing kind of e-mail alert, when anything about the FLDS comes up. I'm very cognizant of what's going on there. And interviewed a number of people who are very familiar with the FLDS as well. So it is probably not as much as a specialty area as the mainstream LDS church, but certainly an area where I have spent a great deal of time becoming an expert.

Dr. Cragun goes on to state that he has also interviewed former members of the FLDS who were expelled by Warren Jeffs.

[28] Again, at page 1639 of the transcript, he makes clear the fact that both the LDS and FLDS branches are within his specialty of Mormonism. He has published journal articles on the FLDS, two of which have been peer-reviewed, at least three book chapters on the FLDS which have been editorially reviewed, and presented numerous conference papers referencing the FLDS.

[29] In response to the Respondent Counsel's query: "Are you familiar with the principles, practices and beliefs of the mainstream LDS Church?" his response, at page 1644 of the transcript was, "Intimately so." And in response to a similar question respecting the FLDS, his response was in the affirmative. He has visited FLDS communities in Utah, including the communities of Colorado City and Hilldale. Again, at page 1647, he confirms his familiarity with the history of both the FLDS and mainstream LDS churches.

[30] However, beyond the FLDS and LDS branches, I am not prepared to permit Dr. Cragun to testify as an expert. At page 1644 of the transcript, he himself appears

to limit his expertise to these branches in the following exchange that occurred in direct examination:

Q And are you familiar with the principles, practices and beliefs of the FLDS church?

A Yes. Specifically the FLDS, I would say yes. If we go into the broader community of Mormon fundamentalists, which isn't exactly what you asked, those can vary a lot. So it would be very hard to pin those down.

Q Right.

A So, I would be more reticent to say that I know everybody's beliefs because they can vary so much.

Q Because they're independent.

A Yes, they're independent.

[31] In respect to Dr. Cragun's qualifications, which I have outlined briefly, I conclude that he meets this criteria in respect to testimony, which I anticipate that he can provide, respecting the doctrines, history, principles and beliefs of the FLDS and LDS organizations falling within the umbrella of Mormonism. Based on his qualifications, which are more varied and extensive than those of Dr. Walsh, I am permitting testimony by Dr. Cragun in respect of some of the critical aspects essential to the issues before me, including such areas as consecration, tithing and property ownership, as those areas relate to the general FLDS and LDS branches. However, Dr. Cragun will not be permitted to provide expert testimony respecting the lifestyle of Hutterite colonies or of Bountiful, or to draw comparisons between them. Dr. Cragun has no more expertise in the Bountiful community than that of Dr. Walsh and, in fact, he may have less because Dr. Walsh conducted a telephone interview with Mr. Blackmore. Other than this factor, it appears from the evidence adduced in the *voir dire* that Dr. Cragun had access to and reviewed the same materials as Dr. Walsh. For similar reasons as I enumerated in my reasons for Dr. Walsh, I conclude that Dr. Cragun has demonstrated no expertise in the Bountiful community. Also, I have come to the same conclusion in respect to admitting him as an expert for the Hutterite faith. His CV contains nothing in the way of courses or studies in this area, and it does not appear that any of his articles or publications or lectures were in respect to the Hutterites, even in a general sense.

[32] One can hardly claim to be an expert in any area by reading a book from a leading authority on the topic after one has been engaged to produce a report. A visit

to a Hutterite community, subsequent to the production of his report, even without prompting by the Respondent, must be excluded from my consideration in reaching the conclusion I have in respect to the admissibility of a report that was already in existence at the time of the visit.

[33] I am also of the opinion, at this point, that I may be able to take judicial notice, if necessary, of the book referred to by Dr. Cragun, being Hostetler's *Hutterite Society*. Although Dr. Cragun's testimony respecting the contents of this book, and particularly in light of his background in religion, might be of assistance, that does not elevate such testimony to expert evidence. Based on the evidence, I reject the Respondent's submission that Dr. Cragun possesses an expertise in Hutterites because he has an expertise in the area of religion and Mormonism. This alone cannot give him the credentials essential to classifying him as such an expert, and reading a leading book on Hutterites does little to assist either.

[34] In respect to the fourth and final criteria for admissibility, the Appellant submitted that two exclusionary rules applied to Dr. Cragun's evidence: (1) that he became an advocate; and (2) the prejudicial effect of his proposed evidence outweighs its probative value. With respect to the second submission, because I have limited the areas where Dr. Cragun can give expert testimony, I believe that the probative value far outweighs any potential prejudicial effect in these appeals. In respect to Appellant Counsel's advocacy submissions, as I understand that position, she is suggesting that Dr. Cragun may have been influenced by the Crown, based on an exchange of e-mails and notes, to produce a product that is not independent and unbiased and, in addition, that he may have ventured from the area of opinion into the area of expressions respecting conclusions based on law. However, I viewed Dr. Cragun's evidence during the *voir dire* to be straightforward and candid. He expressed his viewpoint in an objective and impartial manner. Although he had given expert evidence only once in a custody dispute in the U.S. courts, this was his first attempt at producing a written report for a court. He admitted to several drafts which he incorrectly approached from an academic viewpoint. From the oral and documentary evidence before me, I conclude that he was not improperly influenced in his final work product and, consequently, that he did not assume the role of advocate on behalf of the Crown.

[35] Finally, I will permit Dr. Cragun to give evidence in respect to Dr. Walsh's report, but only to the extent of those portions of that report that would be included within the parameters which I established in respect to Dr. Walsh's expertise. And in respect to any conclusions that Dr. Cragun may have attempted to draw in his report regarding the purpose or scope of section 143 of the *Income Tax Act*, or of the

intention of the Canadian Parliament in enacting that section, those will not be admissible as an area of his expertise. I should note, as well, that although Respondent Counsel referred to the Hutterite communities as the “gold standard,” and I assume by that she meant in respect to an interpretation of section 143, the provision makes no specific reference to this group and a reading of the section implies that it will apply to any community that can bring itself within the requirements and conditions set out in that section.

[36] In summary, I am allowing Dr. Cragun to provide his testimony as an expert witness with respect to the areas of his specialties, the sociology of religion and Mormonism. Specifically, his testimony will be limited to evidence regarding the history, doctrine, belief systems, practices and principles of Mormonism. I have also determined that Dr. Cragun has specific expertise in the FLDS and LDS branches and, consequently, will be permitted to testify on such areas as consecration, tithing and property ownership, as those areas relate to the FLDS and LDS.

[37] However, I am not permitting him to provide expert evidence respecting the Hutterite colonies and faith, or the community of Bountiful, or to draw comparisons in respect of these. Nor will Dr. Cragun be permitted to offer evidence as to the scope of, and intent behind, section 143 of the *Income Tax Act*. I will permit him to critique Dr. Walsh's report insofar as it is limited to those portions of that report which would fall within the parameters of my ruling on Dr. Walsh.

DR. RANDALL BALMER:

[38] Let the record show that I am delivering my reasons in the two-day *voir dire* that I had respecting the qualifications of Dr. Randall Balmer.

[39] The Respondent is seeking to have Dr. Randall Balmer qualified as an expert in American religious history, with specialized knowledge of “polity,” as that concept is applied to and relates to American religious organizations, including Mormon religious organizations. According to the Respondent's submissions, the inclusion of Mormon religious organizations from the perspective of American religious history would necessarily encompass testimony relating to fundamentalist Mormon tradition, history, practices and beliefs.

[40] Appellant Counsel in his submissions conceded that Dr. Balmer is an expert in the area of (1) American religious history, and (2) polity as it applies to American religious organizations. However, the Appellant took exception to Dr. Balmer's proposed expertise with respect to the following:

- (1) the extent to which Dr. Balmer's expertise in American religious history and polity touches on fundamentalist Mormonism and particularly the Bountiful group because the Appellant argues this is outside the scope of his expertise;
- (2) Dr. Balmer's expertise relates to religion in the United States and cannot be extended to Canada where Bountiful is situated; and
- (3) Dr. Balmer's alleged conclusions with respect to section 143 should not be permitted.

[41] My short answer is that I intend to have Dr. Balmer qualified as an expert in American religious history, with a specialty knowledge in the area of polity of American religious organizations, including Mormon religious organizations and their traditions, history, principles and beliefs.

[42] In arriving at this conclusion I do not see the Appellant and Respondent as being that far apart on the parameters of Dr. Balmer's expertise and qualifications and, in fact, they may be “splitting hairs.” I make this observation, of course, without the benefit of having the report before me. While everyone else in this Court is aware of the contents of this report, unfortunately I am not, and this, I believe, leaves me at a distinct disadvantage.

[43] My perception, based on Dr. Balmer's testimony, is that he is operating from an entirely different perspective of the term “fundamentalist” and “fundamentalist groups” than both the Appellant and Respondent. At pages 2403 and 2404 of the transcript, in response to counsel's question asking Dr. Balmer to explain “fundamentalist group,” that are no longer identified with the mainstream church, he responded as follows:

A. Well, first of all, the term “fundamentalist” has to be understood in its historical context, and it's routinely misused quite a bit. The term “fundamentalism” came from a series of pamphlets that were written and published between 1910 and 1915 called “The Fundamentals”, and they were a response to what their authors believed was the drift towards Protestant liberalism in mainline Protestant denominations in the United States. It's from this series of pamphlets that we derive the term “fundamentalist”. So the term “fundamentalist” has a specific historical context.

Now, it is certainly the case that the term “fundamentalism” as applied to religion has been applied much more broadly over the last, what, say, seven or eight decades, nine decades, since the publication of “The Fundamentals” to encompass, for example, Hindu fundamentalists, particularly the practice of suttee, Jewish fundamentalist, those who want to blow up the Dome of the Rock in order to rebuild the Jewish temple in Jerusalem. Certainly Muslim fundamentalists with the various associations with terrorism and so forth. I would even claim that there is such a thing as Buddhist fundamentalists.

But the term properly belongs to this series of pamphlets published between 1910 and 1915 that articulated the very conservative understanding of Protestant orthodoxy. In the case we're talking about, the term “fundamentalist Mormonism”, or “fundamentalist Mormons”, has been applied to those groups that persist in the practice of polygamy in defiance of, in contradiction to the teachings of the Church of Jesus Christ of Latter-Day Saints.

[44] These remarks indicate that the terms “fundamentalism” and “fundamentalist” have a specialized meaning within religious studies. Dr. Balmer will be able to add “context,” as those are applied to the terms “fundamentalist Mormonism” and “fundamentalist Mormons.” While these comments were not pursued to any great extent by either the Appellant or the Respondent, I suspect that Dr. Balmer's approach from the polity perspective will provide the Court with an alternate appreciation and understanding of these terms.

[45] The reference to the origin in these pamphlets offers a different perspective on the term “fundamentalist” than I have heard previously in these proceedings, because Dr. Balmer appears to be applying the term broadly to many religious groups and not specifically to Mormons. It is important, therefore, for me to hear such evidence from the historical perspective of an acknowledged scholar in the field of American religious history and polity. I heard entirely different perspectives from two other experts, but because the issues touch on areas where I have no experience or knowledge to bring to the table, Dr. Balmer's assistance in the religious history and polity, including the foundational and structural aspect of fundamental Mormon groups, will add another dimension to the other expert evidence.

[46] Dr. Balmer is not being offered as an expert in fundamental Mormonism or fundamentalist Mormon groups. His expertise is from the perspective of a religious historian who possesses specialized knowledge in the polity of religious organizations. Dr. Balmer testified that he possesses both professional and personal knowledge of the three different types of polity which he identified.

[47] Because Dr. Balmer is an acknowledged expert in American religious history, as conceded by the Appellant, it is logical that he would by necessity possess a basic knowledge and understanding of Mormonism, including “fundamentalist Mormonism.” He clearly indicated that Mormonism is an indigenous American religion or, in other words, it emerges in the context of American religious history, clearly his area of expertise. In addition, he has published and lectured specifically in the areas of Mormonism and polity. He has been an invited guest speaker at Brigham Young University, a lecturer at the Tanner Lectures for the Mormon History Association and the moderator of a panel on Mormonism and politics in America.

[48] Dr. Balmer has no specific “on-the-ground” knowledge of daily life in Bountiful, any more than the other two experts had. However, the Respondent is not attempting to have him qualified as an expert in this regard. Any evidence he gives respecting Bountiful will be from the perspective of an historical religious account together with perspective of the polity of Mormonism and fundamentalist Mormonism, including their traditions, practices and beliefs. It is from this perspective of history and polity that Dr. Balmer's evidence must focus. As I understand the term “polity,” such evidence will address such topics as the relevance of ex-communication, succession, and polygamous practices, but without reference to the day-to-day practices in Bountiful for which Dr. Balmer possesses little direct knowledge.

[49] With respect to the Appellant's remaining arguments, I believe that Dr. Balmer's expertise is not confined geographically to the United States. Although his primary focus may be the United States, he did state that his field encompasses Canada and Mexico.

[50] Both Appellant and Respondent Counsel have agreed that any conclusions by Dr. Balmer respecting section 143 of the *Income Tax Act* are to be ignored. If Dr. Balmer has made conclusions in his report, other than those respecting section 143, he is doing so in his capacity as an expert applying his expertise and knowledge. This is not unlike any other expert who arrives at specific conclusions utilizing their particular expertise and applying that to the facts. As the ultimate trier of fact, I am no more obligated to accept Dr. Balmer's conclusions than I would be that of any other expert appearing before me. I go back to the reason why experts may be required in the first place, and that is to assist the trier of fact in areas where that individual cannot reasonably be expected to possess the necessary knowledge and experience in that particular area in order to come to an informed decision. It is the information, knowledge, expertise and methods employed by the expert in reaching his conclusions that are useful to the trier of fact. Depending upon the

weight to be assigned, the trier of fact may fully adopt or reject or accept portions of those expert conclusions.

[51] Dr. Balmer meets all the *Mohan* criteria, which I have reviewed in detail in my reasons respecting the prior two experts. His testimony, respecting Mormon history and polity, is clearly connected to and relevant to the issues before me. He brings a different perspective to the Court than the prior experts. Where his expertise is in American religious history and encompasses polity, this must include Mormonism given that Mormonism is an indigenous religion to North America. The probative value of all of this outweighs any potential prejudice.

[52] In addition, Dr. Balmer's testimony is outside my experience and knowledge as the trier of fact in these appeals, and in this respect it is necessary to assist me in dealing with the issues before me.

[53] I also conclude that Dr. Balmer is properly qualified. He has an M.A. and Ph.D. in the area of American religious history from Princeton University. He is a tenured professor at Columbia where he has been teaching for 27 years. He is about to accept the prestigious position of Chair of the Department of Religion at Dartmouth. He teaches religious history at both Columbia and Dartmouth, including a course in Mormonism. He has taught at 4 or 5 of the 8 Ivy League universities in the United States, again in the area of religious history. He has authored 13 books and 54 peer-reviewed articles, published 45 op-ed pieces and 25 encyclopedia articles, and authored 5 forwards and prefaces in American religious history, including coverage of the Joseph Smith period. He has published in the area of Mormonism and polity. He has been qualified as an expert in the United States on 4 prior occasions. He is consulted regularly by a wide range of multi-media outlets including ABC, NBC, CBC, CNN, BBC, CBS and PBS, to name a few.

[54] Finally, I see no exclusionary rule that applies to exclude Dr. Balmer's evidence.

[55] In summary, all of the *Mohan* criteria respecting the admissibility of Dr. Balmer's expert evidence have been met. Dr. Balmer will be permitted to provide his evidence as an expert in American religious history with specialty knowledge in polity, which is understood as the foundations and structures to religious organizations, and I note this is by concession of the Appellant. Further, Dr. Balmer brings a new perspective to the terms "fundamentalist" and "fundamentalism" as those terms are applied to fundamentalist Mormons and to the history, beliefs, practices and traditions of Mormonism.

[56] And that concludes my reasons with respect to the *voir dire* of the last two days.

Signed at Summerside, Prince Edward Island, this 21st day of August 2013.

“Diane Campbell”

Campbell J

CITATION: 2013 TCC 263

COURT FILE NO.: 2008-101(IT)G

STYLE OF CAUSE: WINSTON BLACKMORE AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATES OF HEARING: January 23, 24, 25, 26, 30, 31,
February 1, 2, 6, 7, 8, 9, 10, 27, 28, 29,
March 1, 2, and May 2, 3, 4, 2012

REASONS FOR RULING BY: The Honourable Justice Diane Campbell

APPEARANCES:

Counsel for the Appellant: David R. Davies/Natasha S. Reid
Counsel for the Respondent: Lynn M. Burch/David Everett/Selena Sit

COUNSEL OF RECORD:

For the Appellant:

Name: David R. Davies

Firm: Thorsteinssons
Vancouver, British Columbia

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada