

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Al-Rassi, 2013 NSSC 211

Date: 20130703

Docket: CRH 396767

Registry: Halifax

Between:

Her Majesty the Queen

v.

Adnan Al-Rassi

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Restriction on publication: Section 486.4 of the *Criminal Code of Canada*

Judge: The Honourable Justice Peter P. Rosinski

Heard: June 18, 2013 in Halifax, Nova Scotia

Subject: *Expert opinion evidence in criminal cases -
Hypnopompic hallucinations - R. v. Mohan [1994] 2
SCR 9*

Summary: Accused is a male registered massage therapist. The complainant says that towards the end of the massage, she agreed to an “organ” or abdominal massage. When she opened her eyes the accused was masturbating and had ejaculated onto her abdomen.

The Defence argues that at the end of the massage, the complainant was in a near sleep or sleep state which, when waking, can cause unreliable perceptions or hypnopompic hallucinations. It argues that her sincere, but mistaken perception in that regard can be explained

by the proposed expert opinion evidence.

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Issue: Should the proposed expert, Dr. Brad Kelln, be permitted to give the proposed expert opinion evidence?

Result: On assessment of the *Mohan* factors the evidence is not admissible – Dr. Kelln is not a properly qualified expert; the proposed expert opinion is not “necessary”, to ensure the jury does not come to an wrong conclusion; and the probative value of the expert opinion is substantially outweighed by its prejudicial effect.

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