



2015 Year in Review

- Social Science Evidence -

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2015 Year in Review: Social Scientific Evidence

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This publication catalogues references to survey and other social scientific evidence in Canadian legal and regulatory proceedings as well as in expert literature. It excludes matters where social scientific evidence assisted in pre-trial settlement, or was filed but a decision is still outstanding.

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Expert Literature on Survey Evidence

1. The Moron in a Hurry: A Creature of Law or Science? ¹ *Annual Review of Civil Litigation –2015*

The 15th edition of the authoritative Annual Review of Civil Litigation 2015 featured Dr. Ruth Corbin's article "The Moron in a Hurry: A Creature of Law or Science?". Regularly cited by appellate courts across the country, including the Supreme Court of Canada, the *Annual Review of Civil Litigation* has provided leading edge coverage of new developments in Canadian law for almost two decades.

To access the full article, click [here](#).

2. CorbinPartners Handbook on Preference Claim Substantiation – October 2015 ²

The *CorbinPartners Handbook on Preference Claim Substantiation* is a brief guide with helpful advice on preparing comparative advertising claims using survey evidence. The Handbook aims to provide guidelines that will ensure evidence meets litigation standards. With a focus on achieving a defensible level of reliability, dealing with key issues of validity and ensuring relevant results, the guide is a reference point for the design, validation and communication of comparative advertising claims.

To access the guide, click [here](#).

¹ Corbin, Ruth M. (2015). The Moron in a Hurry: A Creature of Law of Science? In T. L. Archibald and R. S. Echlin (Eds.), *Annual Review of Civil Litigation 2015* (pp.43-65). Toronto: Carswell.

² CorbinPartners Inc. (2015). CorbinPartners Handbook on Preference Claim www.corbinpartners.com; Accessed Online February 23, 2016.



Applications of Social Science Evidence in Legal Proceedings

3. Results of Commissioner Initiated Investigation into Bell's Relevant Ads Program, 2015 CanLII 33261 (PCC), April 7, 2015

In August 2013, Bell announced its Relevant Ads Program (RAP), whereby the telecommunications company would employ “customers’ network usage and account information to enable the serving of targeted ads”. The announcement prompted an “unprecedented number of complaints” from the public to the Office of the Privacy Commissioner of Canada (OPC). In light of these complaints, the OPC commenced a Commissioner Initiated Complaint to “consider the breadth of privacy issues surrounding the RAP. The Commissioner’s investigation found Bell, by offering an “opt-out” as opposed to an “opt-in” option, failed to obtain adequate consent from consumers for the program. The Commission found that due to the breadth and sensitivity of information collected by Bell through RAP, an opt-in option was essential for consumers (but might not be in all cases for similar programs). The investigation also found that upon receiving a customer’s opt-out request, Bell ceased offering targeted “relevant” ads but “continued to track the customer and segment the customer’s profile, in case the customer was to change his or her mind in the future, and opt back in to the program.”

In its defence, Bell submitted survey evidence concluding that Canadian consumers believed opt-out consent “appropriate” for the RAP program. The OPC determined, amongst other issues, that survey respondents in this case would not have known of all the circumstances and legal context surrounding RAP, and the survey could not be representative of “reasonable expectations” of consumers in this instance. The OPC appointed a survey professional to evaluate the survey submitted by Bell and found that it was of “low validity” as a result of numerous issues with the survey itself, including: “(i) “framing” questions were demonstrably leading, likely inflating later responses in favour of Bell’s propositions; (ii) certain terminology critical to the interpretation of results was ambiguous; and (iii) several of the questions were multi-barrelled and/or unduly complex” leading the expert to conclude that Bell’s evidence drawn from the survey was not “scientifically supported” [90]³.

Citing the low level of validity of Bell’s survey, the OPC noted the evidence did not support the “reasonable expectations” of Bell’s customers. The OPC ultimately recommended that Bell use opt-in consent in its targeted advertising program to address privacy issues surrounding RAP. Following this recommendation, Bell withdrew the RAP program and deleted all existing customer information related to it. It also informed the OPC that any future programs similar to RAP would feature an opt-in consent from customers.

³ A number in brackets, found throughout this text, is a citation referring to a paragraph number in the original decision document.



4. *Pfizer Products Inc. v. Canadian Generic Pharmaceutical Association*, 2015 FC 493 (Federal Court Decisions); April 20, 2015

This case was an appeal of a 2013 Trademarks Opposition Board decision which refused Pfizer Products Inc.'s trademark application of the Viagra Tablet Design, based on its belief the Mark was not distinctive. In making this decision the Board considered evidence of marketing and sales of Viagra, as well as "evidence from physicians and pharmacists regarding patients' perceptions of the Mark" [16]. Distinctiveness of the Mark with relation to pharmacists was also considered.

The Trademarks Opposition Board had previously considered the admissibility of an expert survey relating to pharmacists' recognition of the mark in 2002 [18] and found the evidence not relevant to the assessment of distinctiveness of the design. The Board concluded that pharmacists rely on other means, besides colour and shape, to distinguish pharmaceuticals and that the mark was not distinctive amongst pharmacists [20]. Furthermore, the survey submitted was relevant to market conditions in 2002, and the Court found it was no longer relevant to the marketplace in 2006 - including the introduction of several "look-alike counterfeit Viagra" tablets, a reduction of marketing efforts for Viagra by Pfizer, and the "demographics of pharmacists changed during this time period" [56]. The Court decided on Appeal that the survey evidence remained inadmissible for the same reasons as the TMOB decision in 2006. The appeal was dismissed.

5. *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382 (CanLII); May 27, 2015

This decision was based on two class actions brought in the 1980s and continuing into the late 1990s against Canadian cigarette companies Imperial Tobacco Canada Ltd. (ITL), JTI Macdonald Corp. (JTM), and Rothmans Benson & Hedges Inc. (RBH) where the Plaintiffs involved in the class action were seeking moral and punitive damages.

Survey evidence was relied upon heavily throughout this case, as was the research and opinion of several survey experts, in establishing evidence of both the public's (and Plaintiff's) and Defendants' knowledge of the danger of harm to the health of consumers that tobacco products posed, and whether or not the Defendants: manufactured, marketed and sold a product that was dangerous and harmful to the health of consumers; knew (and as of what date) of the risks and dangers associated with the use of their products; and so forth. Survey evidence was used in establishing a timeline for when the public and the Defendant companies would have become aware of the dangers cigarettes posed to their health, and what their duties were in relation to this knowledge. Internal company surveys used for marketing purposes by the Defendants were found to be significant factors in determining the Defendants' knowledge of the public's perception of the safety of cigarette consumption, although, as noted by the Court, this was not the original intent of the surveys.



The Court decided in favour of the Plaintiffs, ordering the Defendants to pay moral and punitive damages in accordance with each of the many claims being made by the Plaintiffs.

6. *Canadian Union of Public Employees, Local 1767 v BC Assessment Authority, 2015 CanLII 40716 (BC LA); July 9, 2015*

In October 2010, the BC Assessment Authority adopted a Workplace Attire Policy for all employees in the head and field offices, province-wide. Prior to the 2010 implementation of the policy, there was no collective agreement provision on workplace attire; however, documents from 2009 did make reference to a dress code which noted that employee office attire should be consistent with a business office environment [18]. At least two employees testified that they found while in the field they were more successful with clients, who seemed more comfortable, if they were dressed more casually; and another testified that during the warmer summer months, the office attire was dictated by the weather. Casual dress was more common in less urban offices, and some offices notably had more formal dress expectations [27-29]. Grievances with changing dress code policy post-implementation of the 2010 code were the basis for several inter-office and organization discussions, as well as union grievances. The main focus of these grievances was the Kelowna office of the BC Assessment Authority. Upon a recent change of office location, management thought the move was a "logical opportunity to introduce attire expectations aligned with Metro Vancouver expectations" [51].

In arbitration between the Union and the BC Assessment Authority, several surveys were introduced to ascertain customer satisfaction levels based on the personal appearance of employees. Despite this evidence, the Union argued the Workplace Attire Policy introduced by BC Assessment Authority could not permit local managers to "impose blanket restrictions prohibiting" certain articles of clothing; it also established there were no customer complaints submitted nor were there any customer satisfaction surveys or "other objective evidence" to support the restrictions on attire [101-103].

The Union also argued restricting blue jeans and shorts was an "unreasonable unilateral employer rule unsupported by objective evidence rationally linking it to a business objective"[105] and that "even if the evidence establishes a rationale connection between the rule and a legitimate business interest, the impact on the employees' personal freedom outweighs the employer's interest" [106]. The employer countered that it had a right to establish reasonable workplace attire rules, and that all parties involved agreed a certain "level of professionalism must be portrayed", however, not all employees might be aware of appropriate attire [107].

In making their decision, the arbitrators cited the 2015 customer satisfaction survey's failure to address employee attire, thereby offering no assistance to support decisions regarding the impact of employee dress on the professionalism and reputation of the BC Assessment Authority. The arbitrator rescinded the



permanent attire restrictions as implemented in the Kelowna offices, stating that there was no evidence these clothing items in any way threatened the employer's image [127].

7. *Eclectic Edge Inc v. Gildan Apparel (Canada) LP, 2015 FC 1332 (CanLII); December 1, 2015*

In 2013, the Registrar of Trademarks refused four applications by Eclectic Edge Inc. to register the trademarks "valentine" and "secret" in association with women's clothing, undergarments and lingerie [the Valentine Secret marks]. The trademarks were opposed by Gildan Apparel (Canada) LP on the basis of reasonable likelihood of confusion with its own registered trademark "SECRET" (and numerous other trademarks containing the word SECRET) which had been used in Canada for over 40 years in relation to women's clothing products including hosiery and intimate apparel.

In 2015, Eclectic appealed this decision. Both Eclectic and Gildan filed new evidence, with Eclectic arguing that the Registrar's decision "on the issue of likelihood of confusion was incorrect in view of...new evidence showing that the word 'secret' is in widespread usage in the women's clothing and undergarments market", and that Gildan could not therefore claim exclusivity.

Eclectic's evidence on appeal consisted of three affidavits containing information on the state of the registrar and the state of the marketplace. It introduced search results for the word "secret" in web trademark searches, as well as in the Canadian trademarks registrar, in common law sources, and in Canadian official business name registers. Evidence submitted in support of Eclectic's case that aimed to highlight registered domain names containing the word "secret" was found to be irrelevant as some of these websites were inaccessible to Canadians (either because the site was under constructions or in a foreign language, for example), while others were irrelevant in topic. The Court noted the existence of these websites was not enough to establish that they were in fact "accessed or known by Canadians" [57]. One affidavit submitted by Eclectic in the appeal included web searches on popular Internet search engines including Google, Bing, and Yahoo where various terms were used to "find websites relating to women's clothing and undergarments, cosmetics, and retail services relating to the goods where "secret" appears in a significant way" [63]. While these searches uncovered a number of websites, the Court noted the evidence failed to "confirm that the entities identified in the search results operated in Canada or sold products to Canadians" or if Canadians had visited the sites or were accessed by Canadian consumers [88].

The Court found that evidence submitted by Eclectic on Appeal was not "sufficient and probative enough to materially affect the Registrar's decisions" when taken into account with additional evidence.



Others Uses of Social Science Evidence by Regulatory Agencies and Judicial Inquiries

The following are examples of social science evidence for investigations for regulatory committees or investigative review boards:

8. Mystery Shopping for Investment Advice: Insights into advisory practices and the investor experience in Ontario; September 17, 2015

Canada's largest investment regulators - the Ontario Securities Commission (OSC), the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA)-- conducted an extensive mystery shopping study to determine whether "any specific regulatory measures are needed to improve the quality of investment advice and the client experience in their interactions with advisors in the securities sector".

The joint committees hired a marketing company to conduct mystery shops with undercover shoppers posing as potential investors at more than 100 investment firms across Ontario. The mystery shopping approach was chosen as it allowed the joint committee to observe "first-hand a retail investor's experiences when interacting with an advisor and to assess the business and sales practices of the advisor" (pp. 9). Mystery shopping is used by security regulators worldwide to collect information on retail investor experiences "to support future policy development and inform regulatory compliance programs" (pp. 12).

The study found that only 63 per cent of advisors met compliance expectations, and 37 per cent of advisors failed to meet regulatory expectations (pp.8). However, the study concluded that 84 per cent of mystery shopping experiences were generally positive.

Mystery shopping offered "a line of sight into the advice process through the eyes of potential investors. By taking this perspective, we could see how investors participate in the advice process, how they understand it, and what their expectations are when they get advice. We were also able to reflect on how those experiences and their understanding and impressions correspond with regulatory expectations" (pp. 7).



9. Report on the National Survey on the Accessibility of Potential Polling Locations for the 42nd General Election; September 28, 2015 ⁴

A 2010 decision by the Canadian Human Rights Tribunal required Elections Canada to amend its approach to polling accessibility. A national survey was undertaken to assist Elections Canada in making polling stations accessible and barrier-free. A consultation group was mandated to make recommendations for implementing the Tribunal's requirement. Thirty-five (35) criteria (15 being mandatory) were established in order for a polling location to be considered accessible. This evaluation marked the first time Elections Canada "applied a universal approach to assessing such a wide range of criteria to determine the accessibility of potential polling locations across the country" (pp.5).

On-site evaluations were conducted at every potential polling location, with a total of 28,301 locations evaluated across Canada ahead of the 42nd general election. According to the results, 96 percent of polling stations across the country meet the 15 required accessibility criteria. Results of the survey permit Elections Canada to now inform electors about accessibility of polling stations, posted on the Elections Canada website.

10. Family Lawyers Association Submit Social Science Evidence to Independent Review of Motherisk ⁵

In December 2015, a retired Court of Appeal judge concluded an Independent Review of Motherisk, the drug and alcohol hair-testing facility at the Hospital for Sick Children in Toronto. She found that the laboratory, which had been heavily relied upon for test results in criminal and child protection proceedings for more than a decade, did not meet internationally recognized forensic standards. The judge stated the findings, namely the facility's flawed hair-testing evidence, had "serious implications for the fairness of child protection and criminal cases" and that criminal and child protection proceedings where results from the Motherisk laboratory were relied upon warranted further review.

Prior to the conclusion of the Review, the Family Lawyers Association compiled in-depth interviews and surveys of 55 family lawyers to be submitted to the judicial review. The submission included the findings that hair testing was used in almost all child protection cases in Ontario where there was any suspicion of parental drug use, results of which were a "very significant factor" in returning children to their families or a Court's decision to remove a child from a home.

⁴ Elections Canada (2015). *Report on the National Survey on the Accessibility of Potential Polling Stations for the 42nd General Election*. Retrieved from http://www.elections.ca/vot/spe/appl/pdf/appl_e.pdf

⁵ Mendelson, R. (2015, April 3). Family Lawyers sound alarm on Motherisk. *Toronto Star*, Accessed Online February 3, 2016.



Noted Absence of Social Science Evidence

11. *Virgin Enterprises Limited v City Water International Inc.*, 2015 TMOB 19 (CanLII); January 30, 2015

In 2006, City Water International (the Applicant) filed to register the trademark VIRGIN WATER, for proposed use with goods such as water coolers, water filtration systems, and coffee and services related to these goods. In 2012, Virgin Enterprises Ltd. opposed the registration. While legal onus rests with the Applicant to prove their application “complies with the requirements of the Act”, there is also evidential burden on the Opponent to prove the “facts alleged to support each ground of opposition.”

The Opponent in this case is the Virgin Group of companies, established by Sir Richard Branson in the U.K. in the 1970s, holder of a trademark bearing the “Virgin” name and collectively known as the “Virgin Marks” (these applications and registrations span 150 countries and 45 classes of goods and services) [20-21] ⁶. Also submitted into evidence by the Opponent were domain names and social media sites, with the Virgin Group owning over 4,500 domain names incorporating the Virgin name [37]. The Virgin Group sells and distributes drinks in retail locations across the world, including former Virgin Café and store locations in Canada; as well as having soda products bearing the Virgin name—which were sold in Canada until 2001 [41-43].

The Opponents’ evidence included surveys conducted in relation to the Virgin Group, where the brand has “been consistently ranked in the top 10 of the most successful, innovative, admired and respected brands by independent survey companies” [71]. However, “none of the surveys referenced...appear to relate to Canada” [71]. While the Opponent’s witness was able to provide sales and advertising figures, “she has not provided any Canadian breakdown, nor has she provided a breakdown by trademark, industry, goods or services. In addition, the survey evidence which has been provided is all based upon international, rather than Canadian data” [75] the Court noted, in addition to all other evidence being in reference to other jurisdictions, and not related to Canada.

The Court later noted “the benefit of a Canadian specific consumer survey in this case could well have shed some light on the Canadian public’s perception of the Opponent and its perception of the extent or reach of its business operations in Canada” [125]. The Court refused Virgin Group’s opposition, finding its evidence weaker than the Applicant’s. The evidence put forward by the Opponent in the case was ultimately deemed “insufficient” [8].

⁶ The Court began its formal decision by referencing several landmark Canadian trademark cases, specifically *Mattel, Inc v 3894207 Canada Inc* (2006) 49 CPR (4th) in which the Supreme Court of Canada found that the trademark BARBIE’S & Design “when used in association with ‘restaurant services, takeout services, catering and banquet services’ would be likely to be confusing with Mattel Inc.’s trademark BARBIE, which was found to be famous in Canada for ‘dolls and doll accessories’. The Supreme Court found that it would not.” [2]



12. *F5 Networks, Inc. v F12 Networks Inc.*, 2015 TMOB 44 (CanLII); March 17, 2015

F5 Networks Inc. opposed the registration of the trademarks “F12 Networks & Design” and “F12 & Design” by the Applicant, F12 Networks Inc. The applications were made based on proposed use of the trademarks in Canada in association with Information Technology consulting services, and the sale, installation and maintenance of computer networks and wireless networks, amongst others. The Opponent challenged the registration of the trademarks, alleging confusion with their own trademarks and tradename.

The presiding Board member found a lack of overall marketplace evidence in support of this case. Stating, “I am unable to draw any meaningful inferences concerning the state of the marketplace... In this regard, the Applicant omitted to provide the particulars of the applications/registrations identified in the partial search results, which in any case appear to be mostly abandoned, cancelled, or expunged trade-marks. Moreover, the mere fact that the Applicant was able to find trade-marks that include the letter “F” or the number “5” or “12” on the register, associated with any goods or services, does not allow me to draw any conclusions regarding the commonality or the distinctiveness of trade-marks with dominant features similar to those of the Opponent and of the Applicant for computer network related goods and services in the marketplace” [55-56]. The TMOB also found an inability of the Applicant to show a reasonable likelihood of confusion between the Marks and the trademarks F5 and F5 & Design. The hearing officer further added that “had the Applicant been able to provide reliable state of the register and/or state of the marketplace evidence showing extensive third party use of trade-marks with similar dominant features for computer network related goods and services, my conclusion might have been different” [66].

The Opponent was ultimately successful, and the applications were refused.

13. *McGregor Industries Inc. v Brooks Sports Inc.*, 2015 TMOB 110 (CanLII), June 18, 2015

An application was filed in 2012 by McGregor Industries Inc. opposing the registration of the trademark RUN HAPPY by applicant Brook Sports Inc., covering various goods including but not limited to shoes, socks, athletic footwear, shirts, pants, and T-shirts. This application was based on use of the mark in Canada since 2000, and use and registration of the mark in the U.S. The Opponent, McGregor, opposed the application based on the likelihood of confusion between the mark and one or more of its own “Happy Foot” trademarks, previously registered in Canada in association with socks and other goods. The Board member found that the inherent distinctiveness of the Applicant’s mark was about the same or moderate in comparison to the Opponent’s trademarks, as the Applicants provided no evidence the mark had been used and become known to any extent in Canada. In comparison, the Opponent’s mark was used and had become known to “a significant extent in Canada” [33]. The Opponent’s claims were supported by an Affidavit, which the TMOB Board Member noted was at times supported by “personal opinion” and not evidence, for example, of “market share or some sort of independent consumer survey”. Despite the absence of this social scientific evidence, the Board Member favoured the Opponent on account of its ability to show inherent and acquired distinctiveness [41-45].



The Board Member also considered the length of the time the trademarks were in use as well as the nature of the goods and services and the nature of the trade in which the marks were being registered, and finally the degree of resemblance “between the trademarks in appearance ...in the ideas suggested by them” [48]. The Board member found that the Applicant was not able to show a reasonable likelihood of confusion between its marks and that of the Opponent.

14. *Canadian Tire Corporation, Limited v Western Steel and Tube Ltd.*, 2015 TMOB 149 (CanLII); August 31, 2015

In 2009, Western Steel and Tube Ltd (Western), a supplier of loading and utility ramps, applied for a distinguishing guise covering the design of an arched ramp for use in association with ladders, loading ramps, and utility ramps; based on its use of the "distinguishing guise since January 2004" [2]. The Opponent, Canadian Tire Corporation Ltd., opposed the application based on the Distinguishing Guise not being distinctive because it "does not serve to identify the source of Goods" and because "it is not registrable since it is functional" [5].

In attempting to determine whether the Distinguishing Guise was necessarily distinctive, the Board noted an absence of survey evidence or affidavits from actual purchasers of the product. Nor was there any direct evidence from "consumers which would provide any assistance as to ascertaining how consumers perceive the Distinguishing Guise" [48]. The Board found that the Applicant was unable to clearly establish that a "significant number of consumers relate the Distinguishing Guise to a single source as opposed to a functional and utilitarian ramp" [54].

The Board found in favour of Canadian Tire, based on the Opponent's grounds of opposition--namely, that the evidence does not "support the conclusion that consumers understand the Distinguishing Guise as a trademark and indicates a single source of the Goods" and on the basis that the Distinguishing Guise is "primarily functional in nature" [6].

15. *Constellation Brands Inc. v. Domaines Pinnacle Inc.*, 2015 FC 1083; September 16, 2015

In a request for an appeal of a decision rendered by the Trademarks Opposition Board in favour of Constellation Brands Inc.'s trademarks and those of Domaines Pinnacle Inc. (namely the word and design mark for DOMAINE PINNACLE & DESIGN), the Applicants (Constellations Brands Inc.) argued the Board erred "in fact and law with respect to the test of confusion" in their original judgement [2]. The Court concluded in the original TMOB decision that the Respondent was able to show there was no reasonable likelihood of confusion, although the Respondent and Applicants' products (specifically wines and ciders) "travel through the same, or overlapping channels of trade and both belong to the same industry" [11]. However, the Board's original analysis concluded the "inherent distinctiveness of the trade-marks at issue [were]...relatively weak" [15]. The Court noted affidavits submitted in the Appeal by the Applicants amounted to materials that did not "represent the average consumer in Canada. This is not a scientific



survey as those discussed by Justice Rothstein at...Masterpiece” [35]. Lack of scientific survey evidence, although noted, did not prevent the Court from siding with the Applicants and granting an Appeal and second review by the TMOB of the original case materials.

16. Navsun Holdings Ltd. V Sadhu Singh Hamdard Trust, 2015 TMOB 214 (CanLII); November 30, 2015.

Sadhu Singh Hamdard Trust filed an application to register the trademark AJIT in association with publications and newspapers. The Applicant, located in Punjab, India, claimed use of the mark since 1968. The Examination Section of the Canadian Intellectual Property Office (CIPO) objected to the application as it found it to be confusing with four pending applications. The Applicant informed CIPO those applications were “voluntarily withdrawn” [2]. Navsun Holdings Ltd (the owner of the marks mentioned by CIPO) objected to the application in 2012 [3].

The Opponent filed evidence stating the Applicant did not use the mark in Canada as early as 1968 and that the Applicant was not “entitled to use the applied-for mark AJIT in Canada [in] view of the opponent’s use of the same mark in Canada” [6]. The Opponent also alleged the Applicant could not register the mark because of its own prior use of the same mark and that the mark itself was not “distinctive of the applicant’s printed publications and newspapers in view of the opponent’s use of the same mark in association with newspapers” [8]. The Opponent’s affidavit evidence stated Navsun Holdings published a free weekly newspaper, “THE AJIT”, in Canada since 1993 and has operated a website, www.ajitweekly.com, since 1998 which published an online version of the newspaper. The website also carries radio programming from India. Their website traffic varies from 14,000 to 38,000 visits per month and weekly printing of the Ajit Weekly is approximately 11,000 per week in Vancouver and 13,000 in Toronto. The Applicant’s evidence included subscription numbers for the Jalandhar, India-based Ajit newspaper, which in 1968 had four annual subscribers in Canada; and six annual subscribers for the period between 2002-2010.

The Court cited a 2014 Federal Court judgment in a case concerning the Ajit Weekly, where Sadhu (the current applicant) accused Navsun Holdings (the current opponent) of “copyright infringement, passing-off, and making false statements about Sadhu’s publication the *Ajit Weekly*. None of Sadhu’s claims succeeded” [43]. The Judge found the current Court decision and Federal Court decision had similarities as “the Court made findings of fact comparable to the finding of fact that I have made in this opposition...” [43].

In that Federal Court judgment, the judge noted the “Plaintiff’s evidence falls short of demonstrating reputation in the Defendant’s geographic region. There is no survey or other independent reputable evidence before me to find that the Ajit Daily has commercial goodwill in Canada or is famous in Canada” [43].

The Court rejected the Application by Sadhu Singh Hamdard Trust.

