

# expert update

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## Is rough enough good enough?

*The Secretary to the Department of Infrastructure v Williamstown Bay and River Cruises Pty Ltd [2011] VSC 191*

*For an expert opinion... to be persuasive, it must bear some relationship to the primary facts of the case, as eventually found on the basis of the evidence tendered by the parties.*

The task of a forensic accountant often involves working with substandard financial information to express expert opinions regarding complex financial issues. When faced with less than ideal information, it can be a matter of doing the best job possible with the documents available, stating clearly when assumptions are necessary. But can deficient information lead to a state of garbage-in/garbage-out?

This case relates an application of the Department of Infrastructure (“DOI”) for leave to appeal a decision of VCAT on the basis (among other matters) that VCAT erred in its finding that financial statements of a water taxi business were fundamentally reliable, because there was no evidence that they were fundamentally unreliable.

Before VCAT, water taxi business Williamstown Bay & River Cruises Pty Ltd (“WBRC”), sought compensation from the DOI for losses arising from the compulsory acquisition of a sub-lease for part of South Wharf and the loss of its mooring rights on the Yarra River. The application succeeded and the DOI was ordered to pay compensation assessed at \$1.08 million.

The accounting expert engaged by WBRC prepared cash flows relying on financial information of the business and discussions with the business owner. In the VCAT hearing, the veracity of the financial information that had been relied on was questioned and a number of inconsistencies were identified in the information. The financial statements were not audited and the expert could not vouch for their accuracy. Also, the owner of the business was unable to verify the accuracy, as his financial accountant had prepared the information.

VCAT accepted that, while the primary financial statements were not wholly reliable, the anomalies and errors did not compel the conclusion that the accounts were fundamentally unreliable. The DOI sought leave of the Supreme Court to appeal VCAT’s finding and the assessment of compensation with reference to valuations based on the substandard information.

The Supreme Court commented that:

*For an expert opinion as to the value of a business to be persuasive, it must bear some relationship to the primary facts of the case, as eventually found on the basis of the evidence tendered by the parties. There may be conflicts in that evidence. That was the case here in respect of the financial statements. It was for VCAT, as the trier of fact, to resolve conflicts and to identify the*

*relevant financial features of the business for the purposes of valuation. Unless the relevant financial features of the business, as either assumed or deposed to by the expert, bear some relationship with those identified by VCAT, the expert valuation opinion will be too remote from the business identified to be of any use. As the learned author of Cross on Evidence explains the “basis rule” provides that an expert opinion is not admissible unless evidence has been or will be admitted, whether from the expert or from some other source, which is capable of supporting findings of primary fact sufficiently like the factual assumptions on which the opinion is based to render the opinion of value. In R v Ryan, the Court of Appeal described as basic the proposition that an opinion without any evidentiary basis is inadmissible.*

Regarding WBRC’s information, the Supreme Court found that:

*...with the tax returns, financial statements and the statements of the director and accountant accompanying each of them, there was before VCAT evidentiary material capable, if used correctly, of providing a basis for a valuation opinion. Care was required in using such evidence but there was no error of law in the sense that there was no evidence of the fundamental or antecedent facts on which the valuation opinions were expressed.*

Accordingly, this aspect of the DOI’s appeal was dismissed.

## Comments

Ideally, the financial information made available to an expert should be sufficiently reliable. In many instances, however, conflicting information is unavoidable. In these instances, the expert engaged should specify which documents have been relied on and why, or provide more than one view where the scenarios may differ depending on the particular documents relied on.

If it is shown that financial information of a business is deficient or that an expert’s assumptions bear little resemblance to the actual position, the expert’s evidence may be given little weight by the Court.



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