COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMERCIAL LAW AND LABOUR DIVISION
Claim No. 2022/COM/lab/00054

B E T W E E N:
MAURICE JOHNSON

Claimant

AND

BAHAMAS WASTE LIMITED

Defendant

Before:	The Honourable Mr. Justice Loren Klein
Appearances:	Murrio Ducille KC and Krysta Mason-Smith for the Claimant
	Lakeisha Hanna and Viola Major for the Defendant
Date of Hearing:	1 July 2024

RULING

KLEIN, J.

Evidence—Hearsay evidence—Document produced by Computer—Application to admit computer generated call logs—Evidence Act 1996—s.61(4) Certificate—Whether statutory conditions complied with—Court's discretion to control evidence—Alleged prejudice by late application—Exercise of the court's discretion to admit evidence—Costs of the Application

INTRODUCTION

1. By Notice of Application filed 17 June 2024 ("the Application") the defendant applied for leave to admit into evidence a computer-generated call log in the trial of an action by the claimant for wrongful dismissal. The issue arose during the course of the trial on the 5 June 2024 when the claimant objected to the defendant's attempt to introduce the evidence during the examination-in-chief of its final witness. Leave was granted for the defendant to file an application for that purpose and for the parties to make submissions, and the trial was adjourned pending the hearing.

2. The Notice relies on ss. 4, 58(1) and 62 (4) of the *Evidence Act 1996* ("the Act") and was accompanied by a Certificate filed pursuant to s. 61(4) of the Act. The claimant opposes the application, principally on the grounds that it would be prejudicial at this stage of the trial to admit the evidence.

Background

3. It is only necessary to provide a brief summary of the claim out of which this application arises for the purpose of this Ruling. The defendant is a company which provides garbage pick-up and disposal services for subscribing customers. The claimant was employed by the defendant company as a driver in November of 2006. In November of 2019, he was summarily dismissed, allegedly for gross insubordination and insolence. He filed a specially indorsed Writ on 27 October 2022 claiming wrongful dismissal and breach of contract and seeking special and general damages.

4. Pursuant to the company's policy, drivers are required to call into the defendant's control centre to report all stops on their itinerary for that shift, i.e, when they leave the premises, arrival at a customer's location, departure from that location, and so on until they return to the yard at the end of their shift. These calls are recorded by a computerized global position system (GPS) that generates a call log for each driver. The call log in question relates to the claimant's shift for 5 November 2019, and the fact in issue is whether he called in at all of his stops.

The Legal Framework

5. The main basis of the application is section 61 of the Act, which sets out the conditions that must be satisfied prior to the admission of any statement contained in a document produced by a computer as evidence of any fact. It provides:

> "61. (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.
>
> (2) The said conditions are —
>
> (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;
>
> (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
>
> (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of subsection (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period;

(b) by different computers operating in succession over that period;

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this Act as constituting a single computer; and references in this Act to a computer shall be construed accordingly.

(4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this Act —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those

activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(6) Subject to subsection (3), "computer" means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process."

6. Section 62 of the Act sets out supplementary provisions regulating the admission into evidence of documents pursuant to ss. 58, 60 or 61. Several of the relevant provisions are as follows:

62(1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 58, 60 or 61 it may, subject to any rules of court, be proved by the production of that document (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 58, 60 or 61, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and content of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 58, 59, 60 or 61 regard shall be had to all the circumstances from which any inference can be drawn as to the accuracy or otherwise of the statement ….

(5) If any person in a certificate tendered in evidence in civil proceedings by virtue of subsection 61 wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both."

7. In **Keith and Lakeitra Moss v Commissioner of Police et al [2020/CLE/gen/000627**], I had opportunity to consider briefly the legislative history of s. 61 [at para. 8] and commented as follows:

"Section 61 is one of several sections of the Act which provide for certain categories of what would otherwise be hearsay to be admitted subject to compliance with certain statutory conditions. For example, s. 58 deals with

> admissibility of out-of-court statements; s. 60 with admissibility of official records; and s. 61 with admissibility of statements produced by computers (although, as explained below, certain kinds of computer evidence may constitute real and not hearsay evidence). These provisions roughly correspond to what were ss. 2, 4, 5 of the Civil Evidence Act, 1968, of England, and which were imported into the Rules of the Supreme Court 1978 ("R.S.C 1978") as procedural conditions to be met for adducing such evidence via Order 38, rr. 21, 21 and 23, which corresponded to ss. 2,4, 5 of the 1968 Act.)"

The Defendant's Submissions

8. The defendant submits that the call-log emanating from the defendant's GPS system should be admitted into evidence on a number of grounds. First, it is contended that the evidence ought to be considered as real evidence, which does not come within the hearsay exception. For this proposition, reliance is placed on **Stephen Stubbs and Dion Minnis v The Commissioner of Police SCCiv App No. 168 of 2012**, where the Court of Appeal had to consider whether coordinates found in a GPS system were hearsay and fell within the exceptions under s. 39 of the Act. John JA (as he then was) accepted the Crown's submissions that the evidence was real evidence, based on the UK Court of Appeal's decision in **R v John Eric Spilby (1990) 91 Cr. App. R 186,** where that Court held that printouts of a telephone conversation made automatically by a computerized machine were real evidence, stating as follows:

> "Information recorded on a computer without that information having passed through a human mind amounted to real evidence and was accordingly outside the scope of sections 68 and 69 of the Police and Criminal Evidence Act 1984. Those sections, read together, applied to documentary evidence produced by a computer where the printout depended for its content on information typed in by a human being, because that human intervention rendered the evidence thus produced hearsay. Applying the maxim *omnia praesumuntur rite esse acta*, in the absence of evidence to the contrary, the courts would presume that the computer which produced the printout in question was in order at the material time."

9. The defendant contends further that, even if the Court is not persuaded that the log constitutes real evidence, the evidence should be admitted on the grounds that it is relevant to a fact in issue (s. 4 of the Act) and admissible under s. 58(1). That section provides as follows:

> "58. (1) Subject to this Section and to rules of court, in any civil proceedings hearsay evidence not falling within section 39, shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, whether the person alleged to have made the statement is called as a witness or not."

10. Regarding the procedure for admitting documents produced by a computer, the defendant acknowledged that it has to comply with the provisions of s. 61 of the Act. But it submits that this has now been done by the filing of a Certificate under s. 61(4), which is one of the ways of complying with the criteria for the admission of computer evidence. The defendant further relies on a passage in **R v Shepard [1993] 1 WLR 102** [at 108], in which the House of Lords considered similar issues relating to the admissibility of computer records. Lord Griffiths stated:

> "I cannot however accept the next step in the defendant's argument which is that oral evidence is only acceptable if given by a person who is qualified to sign the certificate. The defendant does not go so far as to submit that evidence must be given by a computer expert but insists that it must be someone who has responsibility for the operation of the computer.
>
> Proof that the computer is reliable can be provided in two ways. Either by calling oral evidence or by tendering a written certificate in accordance with the terms of paragraph 8 of Schedule 3, subject to the power of the judge to require oral evidence. It is understandable that if a certificate is to be relied upon it should show on its face that it is signed by a person who from their job description can confidently be expected to be in a position to give reliable evidence about the operation of the computer…
>
> Documents produced by computers are an increasingly common feature of all businesses and more and more people are becoming familiar with their uses and operation. Computers vary immensely in their complexity and in the operations which they perform. The nature of the evidence to discharge the burden of showing that there has been no improper use of the computer and that it was operating properly will inevitably vary from case to case. The evidence must be tailored to suit the needs of the case. I suspect that it will very rarely be necessary to call an expert and that in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly."

11. The defendant's final argument is that the court should exercise its discretion to admit the evidence because (i) the claimant would not be embarrassed or prejudiced by doing so, and (ii) as the call log is material to the matter, it would be unjust not to allow it.

12. As to the first limb, the defendant submits that the call log was disclosed in discovery and included in both the main Bundle of Agreed and Non-Agreed Documents ("the Bundle") filed 12 April 2024 and the supplementary Bundle filed 13 May 2024. Further, evidence relative to the call log is contained in the witness statement of ED (the defendant's human resources manager), which was filed 24 April 2024.

13. The defendant accepts that the certificate was filed late but contends that it is a material piece of evidence and it would be unjust to exclude it. They further draw attention to the fact that the CPR does not contain the provisions found in the RSC with respect to the giving of notice to the other party of an intention to rely on hearsay evidence, including evidence derived from a computer.

14. In this regard, they cite the UK Court of Appeal's decision in **Morris v Statford-on-Avon RDC** [1973] 1 WLR 1059. There, that Court held that the exercise of a judge's discretion at a trial for personal injury, some five years after the incident, on an application made without any advance notice and after the examination in chief of a witness for a statement made by him some nine

months after the event to be admitted, was a proper exercise of discretion as no prejudice or injustice had been caused to the plaintiff by reason of the admission of the statement. In delivering the Court's decision, Megaw LJ said [at 1064]:

> "…However, it is right that careful consideration should always be given, on an application of this sort, to matters such as those that were stressed before us by counsel for the Plaintiffs; for example, that the statement was taken as a proof of evidence and that it was not closely contemporary with the time of the accident but was taken some nine months later. Those are matters which of course go to weight; but they can also be relevant on the question of a decision as to the exercise of discretion. Another matter which in my judgment must always be carefully watched, when an application of this sort is made under the Civil Evidence Act 1968 without proper notices having been given, is for the judge to make sure that the other party will not be materially prejudiced or embarrassed, then the judge should either refuse to allow the document to be admitted or, in his discretion, allow it on terms, such as an adjournment at the cost of the party seeking to put in the statement."

The Claimant's Submissions

15. As mentioned, during trial on the 5 June 2024, the claimant objected to the attempt of the defendant to admit the call log into evidence by ED, on the grounds that she was not the maker of the document, or the individual who downloaded the document from the computer, and did not play any role in its production. Further, ED herself confirmed in her testimony that at the material time XC was the Ground Traffic Controller for the company and managed the GPS system. The court upheld the objection to the document being entered into evidence through ED. Thus, the first objection the claimant makes to the application by the defendant is that the Court has already determined the issue.

16. Next, the claimant contends that the defendant has not complied with the directions of the Court given in respect of the Application and instead made a different application than the one foreshadowed during trial. In this regard, it is submitted that leave was sought to file a Notice to call XC as a witness, and that the application should have been filed and served no later than 14 June 2024. Instead, the Application filed was not to call XC, but to adduce the evidence on the basis of a s. 61 Certificate made by an information technologist familiar with the system, and in any event it was not filed until the 17 June and served on counsel for the claimant on 18 June.

17. The claimant complains that the Application is way too late and that any application should have been made at the pre-trial review, which was conducted on 6 May 2024. In this regard, para. 13 of the Case Management Order provided that: "*There will be a Pre-Trial Review on 6th May 2024 at 10:00 a.m. in the forenoon <u>and any interlocutory applications will be heard on this date</u>*." [Claimant's emphasis]. Reference is also made to CPR 11.3, which provides that as far as is practicable, "*…all applications relating to a pending proceeding must be listed for hearing at a case management conference or pre-trial review*."

18. The next point taken by the claimant is that to allow the call log in at this stage would be highly prejudicial to his case and create unfairness, and therefore it would not be a proper exercise of the court's discretion to admit it. Reference was made to part 25 of the CPR speaking to the Court's duty to actively manage case, which includes, among many others powers and duties given to the court, "(i) *ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or hearing of any relevant application*;…". [Claimant's emphasis] With respect to the issue of prejudice, counsel for the claimant contends that the application comes at a point when the defendant has closed its case and heard the claimant's entire case.

19. Further, it is contended that counsel for the defendant had ample opportunities to give notice of its intention to rely on a Certificate, and that this ought to have been included in either the defendant's list of documents that was ordered served by 15 March 2024 or the Bundle that was ordered served by 29 March 2024. Furthermore, it is submitted that the defendant could have indicated its intention to make an application when it submitted its Supplemental List of Documents under letter dated 24 April 2024, which repeated the call log (as a page was missing from the original document in the main Bundle), but this was not done. This prompted the claimant to state that:

> "…[O]bviously, the 'certificate' in question did not exist at the time of the compilation of the supplemental bundle which, we submit, is a further reason to exclude it on the grounds that it is highly likely to be a recent fabrication in a desperate attempt to controvert the Claimant's evidence after the door for doing so had long been closed shut."

20. Finally, the claimant contends that even if the court were to accept the certificate as satisfying s.61 (4) technical requirements, the evidence does not comply with ss. 60, 61 and 62 of the Act.

DISCUSSION AND ANALYSIS

21. In addition to its general case management powers, the court has extensive powers to control the evidence before it in a trial. This power is to be found in the provisions of the Act (ss. 168-170), the Rules (RSC Ord. 38, Ord. 31A r. 18(2)(k), CPR 29) and the inherent jurisdiction of the court to manage its process. In particular, the CPR enlarges the court's power deal with cases justly and proportionately and specifically empowers the court to:

> "…control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the—(a) issues on which it requires evidence; and (b) way in which any matter is to be proved."

22. There is no dispute as to the powers of the court in this regard and the only issue is whether the Court should exercise its discretion to admit the evidence. As mentioned, the evidence in dispute is a computer-generated call log. Admissibility of documentary evidence generated by a

computer is contingent on the satisfaction of several technical conditions set out in 61(2) as aforementioned. In **R v Shephard** (*supra*), Lord Griffiths, referring to the corresponding section of the UK Act, explained:

> "The object of section 69 of the Act is clear enough. It requires anyone who wishes to introduce computer evidence to produce evidence that will establish that it is safe to rely on the documents produced by the computer. Such a duty cannot be discharged without evidence by the application of the presumption that the computer is working correctly expressed in the maxim *omnia praesumuntur rite esse acta* as appears to be suggested in some cases."

Admissibility

23. The Certificate was made by CJ, an IT technician employed with Micronet, who was the technician responsible for the monthly maintenance of the servers and computers of the defendant. He states that he is familiar with the GPS system and was there when it was installed. He states further that the call log was produced by the computer during a period over which it was regularly used to store and process information on the GPS tracing system, and that the call log is derived from the information supplied to the computer in the ordinary course of the computers' operation of the GPS tracking system and its recording of calls made within the system. Further, he indicated that the server which stores the information is in a locked caged located in the computer room of the defendant, and the computer room itself is fully secured and always locked. The Certificate also provided that on 5 November 2019, the date in question, the computer and server were operating properly.

24. I am satisfied that the Certificate complies with s. 61(4) of the Act by identifying the manner in which the call log was produced and giving the relevant details of the devices involved in its production. Further, it was signed by XC, who held a responsible position in relation to the operation of the computer and indicated that it was working properly. It has therefore met the technical statutory conditions for admissibility and in my view is sufficient to prove the authenticity and reliability of the document produced by the computer. The suggestion that the Certificate, because it was adduced late, was a likely "*recent fabrication*" is completely without foundation and unmeritorious. As has been noted, the Act imposes a severe penalty for submitting a false statement in a certificate.

25. In any event, I would have been prepared to hold that the call log qualified as real evidence, as based on the evidence before the court it was automatically recorded and generated by the computer without human intervention.

26. The claimant also objected on the grounds that the application was improperly made under s. 58, and that the certificate/application does not comply with the provisions of s. 60, 61 and 62 of the Act. These objections were not developed, however, and the nature of the alleged non-compliance was never made clear. As mentioned, I was satisfied that it met the requirements of s. 61(4). With respect to s. 58, I will simply note that it is a provision of general application providing

for the admissibility of hearsay evidence not falling within section 39, and the admissibility of computer evidence does not come with the s. 39 exceptions.

27. I do not think anything turns on the complaint that the defendant did not strictly comply with the directions as to filing and serving the Application, as the claimant did not seek any sanctions for non-compliance. Further, the fact that the defendant decided to file a s. 61(4) certificate as opposed to calling oral evidence to satisfy the s. 61 criteria is neither here nor there. It was open to the defendant to choose which procedure to follow where the statute provides alternative ways of satisfying statutory conditions.

Exercise of the Court's discretion

28. However, this does not answer the question of whether the Court should exercise its discretion to admit the evidence. As indicated, the first "preliminary" objection taken by the claimant is that the issue was ruled on.

29. This is obviously misconceived. The Court's upholding of the objection by counsel for the claimant to the call log being entered by ED was on the basis that, by her own evidence, she indicated that she did not hold a responsible position relative to the computer and GPS system from which the call logs were derived and could not therefore satisfy the statutory conditions to ensure such evidence was authentic. There were no findings made on the admissibility of the document itself and, in fact, it is plain that the application by the defendant and the adducing of the certificate were intended to meet the statutory conditions.

30. As to the question of lateness and prejudice, I am also not persuaded that any prejudice or unfairness will be caused to the claimant. Firstly, as mentioned, the call log was disclosed in the defendant's list of documents and included in the main and supplemental Bundles. The fact that the defendant thought it necessary to replicate the call log in the supplemental bundle to supply a missing page by itself should have alerted the claimant that it was a document on which the defendant intended to place some reliance. The call log was also discussed in the witness statement of ED. Thus, this is not a case where a party is seeking to spring a document on the other side. The call log was always a part of the documentary evidence tendered as part of the defendant's documents.

31. I would also point out that the claimant's contention that counsel for the defendant should have given notice of her intention to rely on the document and that the proper time to make any application was at the pre-trial review rings hollow and is a double edge sword. The claimant equally had an opportunity to raise any evidential objections or issues at the pre-trial review. He did not. In any event, Ord. 38, r. 28(1)(a) specifically grants the court a discretion to allow hearsay documentary evidence (including computer evidence) to be admitted notwithstanding that the notice provisions have not been complied with. The lack of notice does not affect admissibility, although it might attract costs or other sanctions.

32. In exercising my discretion, I have also borne in mind, as said in **Morris v Statford-on-Avon RDC,** that a central concern of the Court is "*to make sure that the other party will not be materially prejudiced or embarrassed*" by the admission of the evidence. In the circumstances of

this case, I do not perceive that there will be any prejudice to the claimant by the admission of the call log. For one, all the call log purports to show is the number of calls made by the claimant over the period in question (5 November 2019). The claimant accepts that he did not call in on every occasion, but says he suspected his radio had been tampered with and "*it kept shutting down on its own*" (para 12) and this is "*why I had issues calling in*" (para.13). Then at para. 15 he states:

> "Prior to my termination the requirement for Packer Truck Drivers to call in over the radio system as well as the installation of Global Positioning Systems ("GPS") into the Packer Trucks was a fairly new system that the Defendant implemented. I accept that I complained of the sensibility of calling in at every stop when the tracker could confirm the exact co-ordinates of each Packer Truck assigned to each Packer Truck Driver. [….] When the system was first implemented, I accept that I did not call in at every stop and was suspended for a short time for my failure to do so, however, upon my return I complied with all that was required of me despite my views."

The claimant's acknowledgement that he did not always call in all his stops is repeated at para. 18 of the Statement of Claim.

33. Thus, the claimant can hardly claim to be caught by surprise by the issue of the call log. Whether or not he complied with the defendant's policy in respect of the call-in procedures has always been a central issue in this case. It was addressed in his statement of claim, witness statement and oral evidence, and counsel for the claimant had every opportunity to deal with this issue during the evidence led at trial. I therefore reject the contention that the claimant is in any way prejudiced or embarrassed by this document. Further, as pointed out by the defendant, even if the document is admitted, it is up to the court to decide what weight (if any) is to be given to it, as applies to all hearsay evidence (see 62(3) of the Act).

34. There is one general comment I would make before leaving this matter, and it is this. The CPR will not yield the expected dividends in saving time and expense in trials and promoting the proportionate use of judicial resources though the efficient deployment and use of evidence unless and until parties cooperate in their approach to the preparation of documentary evidence for trial. This could be done by counsel agreeing that the majority of documents are admissible as evidence of the facts in them.

35. In the current case, the Bundle of Documents included 76 documents, and only 16 were agreed. No reasons were given for not agreeing the documents and there was little perceived basis why there should have been any objection to the many documents that were not agreed. The tendency to not agree evidence simply because it might appear to be unfavourable to a parties' case, notwithstanding that the evidence satisfies all the criteria of relevance, admissibility and authenticity, is a relic of long-gone days. A case should be fought with all of the relevant evidence on the table without the need for the court to perform the complex and time-consuming exercise of meticulously considering each document and the parties' submissions to determine admissibility.

36. In this regard, the note in the current UK Chancery Guide with respect to documentary evidence for trial is quite instructive. It provides as follows:

> "12.68: The Court will normally expect parties to agree that the documents, or at any rate, the majority of them, may be treated as evidence of the facts stated in them. A party not willing to agree should, when the trial bundles are lodged, write a letter to the court, with a copy to the other parties, stating that it is not willing to agree and explaining why."

That is eminently a good practice and, although such a requirement is not to be found in our Rules or any directions, there is no reason why this should not be the approach to the preparation of trial bundles containing documentary evidence for the court.

37. This is in keeping with the modern approach to the use of evidence in civil proceedings, in which the emphasis is on ensuring that all relevant evidence is capable of being adduced, subject to considerations of reliability and weight. In **Ventouris v. Mountain** (No. 2) [1992] 3 All ER 414, Balcombe J. said:

> "…the modern tendency in civil proceedings is to admit all relevant evidence, and the judge should be trusted to give only proper weight to evidence which is not the best evidence."

I would register my full agreement with this view.

CONCLUSION & DISPOSITION

38. For the foregoing reasons, I would exercise my discretion to admit the call log into evidence.

39. The defendant sought an order that the costs of this application be costs in the cause. In my view, having regard to the fact that the application was made at the 11th hour and necessitated the adjournment of the trial, I do not think that is the proper Order to make. I will therefore award costs of the application to the claimant, which I will summarily assess after hearing from counsel.

Klein J.

24 February 2025.