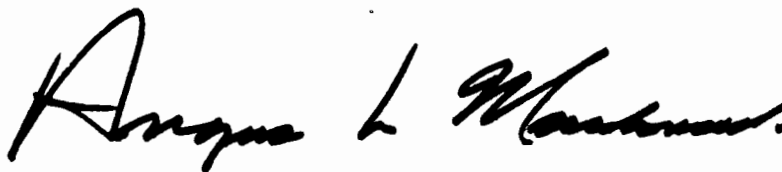




MACDONALD, J.A.:

These proceedings arise out of a fire loss to the home of the appellant, Cecil Lewis. The present application is by the respondent, the Royal Insurance Company of Canada, to have removed from the appeal book, the report of G.R. Forshner, Deputy Fire Marshall, dated April 28, 1988, which is now included in the appeal book filed by the appellant at Tab 1 of the volume entitled "Part II - Evidence - Exhibits - Volume I - pages 1-418". Mr. Forshner did not testify at the trial. Expert evidence, however, was called by the insurance company and it would appear that the Forshner report conflicts with such expert evidence. Mr. Forshner's report just happened to be included in Exhibit 1 which was a large booklet of exhibits. Only passing reference was made to the Forshner report during the course of the trial.

My original inclination was to grant the application. Upon reflection, however, I have now concluded not to do so, but rather to refer the application to the panel of this Court which will be hearing the appeal. I have adopted this approach primarily because applications to receive new evidence on appeal are invariably referred to the panel hearing the appeal and are not decided by the Chambers judge. Upon reflection, therefore, and for the sake of consistency, I think the same position should be followed in the reverse case, namely, where evidence is sought to be excluded. The application is, therefore, dismissed with costs in the cause.

A handwritten signature in black ink, appearing to read "Aron L. Macdonald". The signature is written in a cursive, flowing style.

J.A.