

When Relevant Science Is Excluded: A Question of Evidential Justice

A Constitutional Analysis

1. Introduction

A court exists to determine disputes by reference to evidence. That proposition is elementary.

It follows that where material evidence is excluded, the integrity of the determination depends upon whether such exclusion can be justified.

This paper addresses a narrow but important question:

Where underlying scientific evidence is directly relevant to the issues in dispute, can it lawfully and justly be excluded from judicial consideration?

2. The Function of the Court

The function of the court is not to assume facts. It is to determine them.

That function is discharged through:

- the admission of relevant evidence
- the testing of that evidence

- and the application of legal principles to established facts

The exclusion of evidence is therefore not neutral. It is determinative.

3. Relevance as the Governing Principle

The admissibility of evidence is governed by relevance and that principle admits of no controversy.

Where scientific matters underpin:

- the legality of conduct
- the justification for state action
- or the causation of alleged harm

the underlying science is not collateral. It is foundational.

To exclude it is not to refine the issues, but to remove the basis upon which those issues are to be determined.

4. Category-Based Exclusion

Concern arises where evidence is excluded not by reference to relevance, but by reference to category.

If a class of material, such as underlying scientific evidence is treated as inadmissible irrespective of its direct bearing on the issues before the court, the process is inverted.

The question ceases to be:

Is this evidence relevant?

It becomes:

Is this evidence permitted?

That is not an evidential test. It is a restriction.

5. Fairness and the Right to Be Heard

The right to a fair hearing is not satisfied by form alone. It requires substance.

Where a party's case depends upon:

- the validity of scientific assumptions
- the interpretation of scientific data
- or the consequences of scientific conclusions

that party must be permitted to address those matters.

If one side proceeds upon scientific premises which the other is prevented from examining or challenging, the balance is altered.

The process may remain orderly. It is not however, in substance, equal.

6. Judicial Economy

It may be said that courts are not equipped to adjudicate complex scientific disputes.

That is correct, but incomplete.

Courts routinely determine matters involving technical and expert evidence.

They do so by:

- controlling scope
- admitting relevant expert material
- and confining the issues to those necessary for determination

Judicial economy permits management. It does not justify exclusion of material necessary to determine the case.

7. The Constitutional Dimension

The issue is not confined to case management. It engages constitutional principle.

If relevant evidence is excluded:

- the factual foundation of the case is constrained
- the legal analysis proceeds on untested assumptions
- and the outcome is shaped by the absence of material which may have been decisive

In such circumstances, the court determines the dispute within a bounded evidential frame. That frame may be incomplete.

8. The Central Proposition

The proposition advanced is straightforward:

Where underlying science is relevant to the issues before the court, it cannot justly be excluded from evidential consideration.

This is not a submission that all scientific material must be admitted.

It is a submission that: relevance governs admissibility and relevance must be assessed by reference to the issues in dispute - Not by categorical exclusion.

9. Conclusion

The legitimacy of judicial determination depends upon confidence that:

- relevant evidence has been considered
- competing positions have been tested
- and conclusions have been reached on a proper evidential foundation

Where relevant scientific material is excluded, that confidence is placed in question.

The process may remain procedurally regular. Its substantive integrity is diminished however.

Final Observation

A court does not preserve its authority by limiting the evidence it is prepared to hear.

It preserves it by ensuring that relevant evidence is admitted, tested and weighed.

If that principle is displaced, the issue is not scientific. It is very much constitutional.

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19 March 2026