



Litigation Support: Being an Effective Expert

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Today's Session

- Role of an expert
- How to
 - Qualify as an Expert
 - Write an Expert Report
 - Give Oral Testimony
- Some “Dos” and “Don'ts”
 - Attributes of an effective expert
 - Dangers of becoming an advocate
- Legal Privilege

Purpose of Expert Evidence

“The purpose of expert evidence is to assist the trier of fact by providing special knowledge that the ordinary person would not know.”

- *R. v. J.J.*, 2000 SCC 51

Role of an Expert Witness

“The special role of the expert witness is not to testify to the facts, but to provide an opinion based on the facts, to assist the [Court] to draw the appropriate inferences from the facts as found...”

- *R. v. Parrott*, 2001 SCC 3

Danger of Expert Witness

“There is a danger that expert evidence will be misused and will distort the fact-finding process.”

- *R. v. Mohan*, [1994] 2 SCR 9



Four criteria for the admissibility of expert evidence:

1. Necessary to assist the Trier of Fact
2. Relevant
3. Qualified
4. Absence of an exclusionary rule*

- *R v Mohan*, [1994] 2 SCR 9

How to: Qualify as an Expert

Relevant factors:

- Current and previous employment
- Education and Training
- Work experience
- Teaching experience
- Membership in professional organizations
- Licenses, certificates or other special courses/training
- Publications
- Court experience

A Credible Expert is

- Professional
- Courteous
- Candid
- Impartial
- Independent
- Unbiased



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Battle of the Experts



The “Dos”:

- Obtain clear instructions, preferably in writing
- State the facts or assumptions upon which your opinion is based
- Co-operate with the other expert
- Be clear when a particular question or issue falls outside your expertise
- Carefully track your costs and expenses

The “Don’ts”:

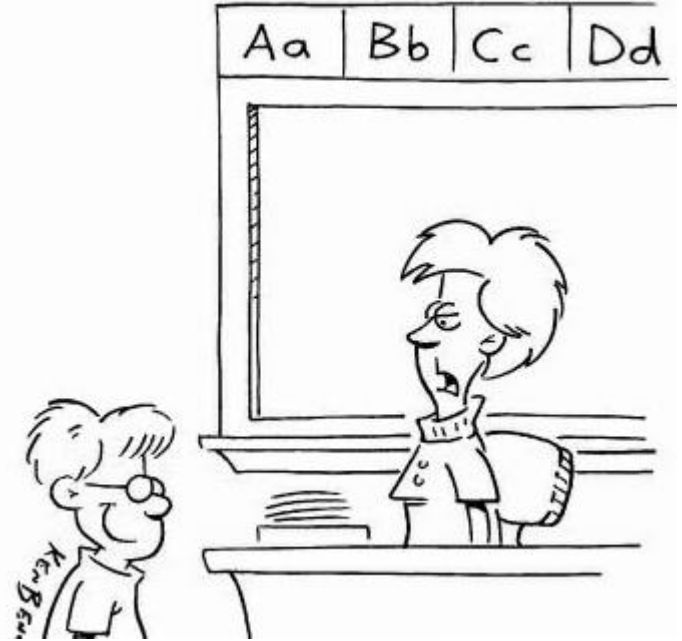
- Never assume the role of an advocate
- Never make it personal
- Do not give evidence or opinions as to what you would have done in similar circumstance
- Do not destroy evidence

How to: Write an Expert Report

- Be concise
- Use plain language
- Use visual aids
- Clearly state the facts and your assumptions
- Explain your methodology

How to: Oral Testimony

- Be prepared
- Be candid
- Use plain language
- Use visual aids



Nice work on your

Full Moon Project, Tommy.
But next time we could do without the
visual aid.

Professional Liability

Members of self-disciplined professions should remind themselves of their professional obligations / Codes of Conduct before:

- Providing their evidence to the Court; and
- Criticizing other experts' evidence.

Example:

Engineering and Geoscience Professions Act

- 44(1)** Any conduct of a professional member, licensee, permit holder, certificate holder or member-in-training that in the opinion of the Discipline Committee or the Appeal Board
- (c) harms or tends to harm the standing of the profession generally,
- whether or not that conduct is disgraceful or dishonourable, constitutes either unskilled practice of the profession or unprofessional conduct, whichever the Discipline Committee or the Appeal Board finds.

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Questions?