



Litigation Support: Tips and Traps for Being an Expert Witness

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Outline



- Introduction to legal concepts
 - Role of the expert
 - Who can be an expert witness
 - Instructions, communications and draft reports
- Practical Considerations
 - Tips for being an effective expert
 - Traps to avoid
- Questions

Role of the Expert

- *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23
- Impartial, independent opinion
- Assist the trier of fact in forming a correct judgment

Qualification as an Expert

- 2-part test:
 - Threshold stage
 - Relevance
 - Necessity
 - No exclusionary rule
 - impartiality, independence and lack of bias
 - Reliability (novel science)
 - Gatekeeping stage (cost-benefit)



Instructions, Communications and Draft Reports

- Instructional letter from counsel
 - Clear questions (expert input?)
 - Likely will be produced
- *Moore v. Getahun*, 2015 ONCA 55
 - Counsel and experts can discuss drafts
 - Focus the evidence
 - Assist the Court
 - *BUT cannot alter the substance or conclusions*

Practical Considerations

- Things to keep in mind
 - You will be researched
 - Understand your role
 - Understand the process
 - Know if there is a competing expert



Practical Considerations (cont'd)



- Tips for being an effective expert
 - Know the facts relevant to your opinion
 - Technical facts and data
 - Understand your assumptions
 - New facts or information
 - Update to opinion
 - Clear, concise communication
 - Vet reports
 - Practice oral submissions
 - Briefing sessions for examinations
 - Mock cross-examination
 - Preparation is key

Practical Considerations (cont'd)

- Tips for being an effective expert
 - Know your audience
 - Court vs Expert Tribunal
 - Look for common ground with competing expert
 - Identify bad assumptions of competing expert
 - Present as respectful and reasonable
 - Warn counsel of potential surprises
 - Prior negative treatment of evidence
 - Inaccurate assumptions, missed consideration



Practical Considerations (cont'd)

- Traps to avoid
 - Perception of bias or partiality
 - Take on role of an advocate
 - Close relationship to a party
 - Don't proceed on bad instructions or assumptions
 - Tell counsel
 - The sooner the better
 - Scope creep
 - Commenting on areas beyond your expertise
 - Reduces your credibility

Questions?



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