

The Use of Expert Witnesses in the Civil Litigation Process

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Presented by:

Maureen McCartney-Cameron

Jensen Shawa Solomon Duguid Hawkes LLP

Calgary, Alberta

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“The bomb will never go off, and I speak as an expert in explosives.”

-Admiral William D. Leahy, on the Manhattan Project, 1945

“If excessive smoking actually plays a role in the production of lung cancer, it seems to be a minor one.”

-Dr. W. C. Heuper, U.S. National Cancer Institute, 1954

OVERVIEW OF THE ROLE OF EXPERTS IN CIVIL LITIGATION

Given that legal disputes arise in countless different ways, involving many different subject areas, civil litigation requires the assistance of experts. Simply put, most lawyers, while expert in the litigation process, are not expert in the fields of medicine, engineering, statistics etc. Thus, experts must be engaged in order to assist lawyers, and the Court, in understanding the subject matter of a given dispute. This is the case even though, as is suggested at the top of this paper, experts can, on occasion, “get it wrong”.

The use of expert evidence within litigation is not limitless, however. Instead, it is permitted only if it provides the Court with “information that is likely to lie outside the common knowledge and experience of the jury”.¹ This was emphasized by the British Courts in the 1975 case of *R. v. Turner*, in which it was held that, “if, on the proven facts, a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary.” This rule arose from a concern that judges or jurors might be in danger of regarding evidence given in “scientific jargon” by someone with impressive qualifications as somehow more reliable than their own common sense.²

Nevertheless, expert evidence is necessary and even invaluable where, because of the “technical nature of the facts,” the judge or jury could not otherwise formulate a theory or inference necessary to resolve the case.³

¹ *Folkes v. Chadd*, (1782) 3 Doug KB 157.

² As cited in “Legal Issues Surrounding the Admissibility of Exert Psychological and Psychiatric Testimony,” Andres M. Colman and R.D. Mackay: <http://www.le.ac.uk/psychology/amc/legaissu.pdf>.

³ *R. v. Abbey* (1982), [1982] 2 S.C.R. 24.