

# **Occupational Hygienist Society of Ireland Conference**

*Court Procedure for Expert Witnesses*

# Agenda

1. Introduction
2. The Role of the Expert Witness
3. Jargon and Technical Language
4. Qualifications and Experience
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# 1. Introduction

- Expert witnesses play key roles in explaining complex technical issues to judges
- *Bona Fide* duty to the Court
- Critical need for expert witness to communicate complex issues in a straight forward manner
- Educators to the Court
- Qualities of a good expert witness

## 2. The Role of the Expert Witness

- Overriding duty to the Court & duty to tell the truth and assist the Court
- Views of the expert witness will not necessarily be shared by the Court  
*(There may be more than one expert witness)*
- To give *Bona Fide* opinion evidence
- Do not assume that opinion will go unquestioned
- An expert witness is generally more apprehensive than a regular witness because it is their opinion, not their eyesight or hearing that is at issue

### 3. Jargon and Technical Language

- Overly complex jargon and technical language is often the biggest obstacle to the Court
- Expert witness should require the skills of clear, simple communication
- Clear distinction between fact and opinion when giving evidence
- Avoid the common flaw of using technical language to explain a technical term
- The greatest challenge presented to an expert witness in Court is the ability to convey the evidence surrounding an extremely complex area into understandable language

## 4. Qualifications and Experience

- An expert witness's experience must be proved
- It is necessary to set out the full extent of ones experience to the Court
- Keeping ones training up to date is important
- It is important to clearly outline ones qualifications and experience to prove to the Court that their opinion is reliable and trustworthy

## **5. What do lawyers need from Expert Witnesses?**

- Assist the lawyers in the preparation of the case
- Advising on the issues early on to avoid escalation of unnecessary costs
- Writing a clear and concise reports
- Handling cross-examination well
- Assisting in any settlement discussions

## 6. Expert Witnesses and the law of evidence

- A witness who is not an expert is not entitled to express an opinion but merely to give evidence of facts within his/her own knowledge
- An expert witness is entitled to express an opinion for the guidance of the Court of fact
- An expert witness must be in a position to stand over the opinion and show how it is arrived at
- An expert witness must be able to distinguish between matters, which can be stated with some degree of scientific certainty and those that are fundamentally based on judgement or intuition



## **7. Court Procedure**

- Basics
- Timing and appearance at the trial
- Swearing in under oath / Affirmation
- Parties of the action
- Practise and procedure of the trial process

## 8. Examination in Chief

- Only answer the question you are asked
- During the examination in chief, you cannot be asked "leading questions". These are questions that suggest the answer.

*For example, you cannot be asked "Did you see Mr. X cross the road?" but you may be asked "What did you see Mr. X do?"*

- Purpose of the examination in chief
- After the examination in chief, the solicitor or barrister for the other side will stand up and will ask you a series of questions. This is called the "cross-examination".

## 9. Cross Examination

- You may be asked questions designed to make you seem unreliable, mistaken, confused or untruthful as a witness. During the cross-examination, you may be asked leading questions
- At any time while you are in the witness box, the Judge may ask you questions or ask you to clarify certain matters
- If you knowingly make a false statement under oath, you may have committed the crime of "perjury" and you may be prosecuted
- The purpose of cross-examination is firstly to establish and advance the case and secondly to attack the other side's case

## 10. Anecdotes

**ATTORNEY:** Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

**EXPERT WITNESS:** Did you actually pass the bar exam?

**ATTORNEY:** Doctor, before you performed the autopsy, did you check for a pulse?

**WITNESS:** No.

**ATTORNEY:** Did you check for blood pressure?

**WITNESS:** No.

**ATTORNEY:** Did you check for breathing?

**WITNESS:** No.

**ATTORNEY:** So, then it is possible that the patient was alive when you began the autopsy?

**WITNESS:** No.

**ATTORNEY:** How can you be so sure, Doctor?

**WITNESS:** Because his brain was sitting on my desk in a jar.

**ATTORNEY:** I see, but could the patient have still been alive, nevertheless?

**WITNESS:** Yes, it is possible that he could have been alive and practicing law.

**For More Cross Examination Humour;**

<http://www.independent.co.uk/opinion/columnists/miles-kington/high-court-hangups-747313.html>

# 11. Conclusion

## 12. Mock Trial

## 13. Questions & Answers