# EXPERT EVIDENCE
# IN THE SUPREME COURT OF BRITISH COLUMBIA
# or
# Can an Expert Find Happiness After Emil Anderson et al?

by Allan McDonell and Clayton Shultz1[*]

*"This court tries no criminals, but it sees and hears many appraisers."*i[1]

Opinion evidence offered by experts has recently become the source of concern to bench, bar, and the experts themselves. The admissibility of such evidence is now being routinely challenged, with the frequent result that all or part of the report is rejected. Unhappy consequences follow, including friction between client and lawyer when important evidence cannot be led as planned; fee disputes between expert and lawyer, and between lawyer and client are inevitable.

This article reviews the present law as it relates to production of experts' reports and to the presentation of evidence by an expert in the trial court. It also offers suggestions to both experts and counsel as to how to reduce the risk of an expert report being ruled inadmissible.

## A. WHAT IS AN EXPERT?

Tyrwhitt-Drake, L.J.S.C. answered as follows:

"From this it is clear that so long as a witness satisfies the court that he is skilled, the way in which he acquired his skill is immaterial. The test of expertness, so far as the law of evidence is concerned, is skill, and skill alone, in the field in which it is sought to have the witness' opinion. If the court is satisfied that the witness is sufficiently skilled in this respect for his opinion to be received, then his opinion is admissible.

The crux of the matter is the meaning to be attached to the word skilled. The *Shorter Oxford Dictionary* defines a skilled person as 'one having practical ability…having a good knowledge of the subject'; Partridge, in his etymological dictionary, *Origins*, defines skill 'as the ability to use one's judgment, especially in a particular art of science'; and Fowler, in *Modern English Usage*, ascribes the meaning having had the requisite training or practice.

These definitions are somewhat loose and inexact, perhaps. It is significant that the courts for the most part in the past have had recourse to the exactitude of Latin and used the word 'peritus'. But the rigidities of classical languages ought, I think, to be avoided in a branch of the law which must retain a certain fluidity if it is to apply to conditions as they obtain from time to time, I adopt, as a working definition of the term 'skilled person', one who has, by dint of training and practice, acquired a good knowledge of the science or art concerning which his opinion is sought, and the practical ability to use his judgment in that science.

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A university degree, particularly one from a professional faculty, presupposes a certain level of knowledge in the possessor thereof. But there is no special magic in such an adornment. It is to be noted that the learned professions will not admit a graduate to practice until he has, by the acquisition of a modicum of experience, enabled himself to demonstrate a certain degree of practical efficiency in his art. It is not necessary, for a person to give opinion evidence on a question of human physiology, that he be a doctor of medicine, provided that he can satisfy the court that his knowledge of the particular aspect of the subject under scrutiny is adequate. His being a graduate or not goes merely to weight, and does not affect the question of the admissibility of his evidence one way or another."ii[2]

## B. HISTORY

The current unease over expert evidence is not new. The Honourable John Pitt Taylor, writing in 1855, had this to say about the utility of expert or skilled (as he preferred to call it) evidence:

"Perhaps the testimony which least deserves credit with the jury is that of *skilled witnesses*. These gentlemen are usually required to speak, not as to facts but to opinions; and when this is the case, it is often quite surprising to see with that facility and to what extent their views can be made to correspond with the wishes or interests of the parties who call them. They do not, indeed willfully misrepresent what they think, but their judgments become so warped by regarding the subject in one point of view, that even when conscientiously disposed, they are incapable of expressing a candid opinion. To adopt the language of Lord Campbell;…'they come with such a bias on their minds to support the cause in which they are embarked that scarcely any weight should be given to their evidence.' (The Tracey Peerage Case (1843), 10 CL & Fin 191)"

What we now know as opinion evidence had been introduced in the British judiciary 73 years before Taylor's commentary.iii[3] It was then "…permitted only in cases where the subject matter in question was beyond the capabilities of inexperienced persons who could not form a correct judgment without such assistance".iv[4] In other words, the testimony had to be *essential* before being admissible.

Wigmore, commenting on the exclusion of evidence when the court "…assumes to intrude into the technical domain of the engineer, the physician, and other scientific professional men,…", goes on to say:

"…the subject is one in which certain and accurate results are difficult to reach and upon which most persons' opinions will be merely notional and conjectural, so that it is not worth while to listen to testimony at all. In other words, the court claims for the jury the exclusive privilege of guessing.

The whole story is of the past, impractical and ill founded, and is obnoxious to the modern principle of receiving whatever light can be thrown upon the issue by competent persons and then leaving their credit to the jury."v[5]

Sopinka and Lederman also wrote that the threshold test of "essentialness" has been, in modern times, replaced by a test of mere "helpfulness".vi[6]

## C. THE EVIDENCE ACT (BRITISH COLUMBIA)

The statutory provisions relating to the giving of expert evidence in civil proceedings is set out in Sections 10 to 12 of the *Evidence Act*vii[7], portions of which follow:

Evidence of Experts

10. (1) In this section and Sections 11 and 12 "proceeding" includes any judicial, quasi-judicial or administrative hearing or inquiry.

(2) A statement in writing setting out the opinion of an expert is admissible in evidence in a proceeding without proof of the expert's signature if a copy of the written statement is furnished to every party to the proceeding who is adverse in interest to the party tendering the statement at least 30 days before the statement is given in evidence…

(4) The assertion of qualifications as an expert in a written statement is proof of the qualifications.

(5) Where the written statement of an expert is given in evidence in a proceeding, any party to the proceeding may require the expert to be called as a witness.

Testimony of Experts

11. (1) No person shall given, within the scope of his expertise, evidence of his opinion in a proceeding unless a statement in writing of his onion and the facts on which the opinion is formed has been furnished, at least 30 days before the expert testifies, to every party who is adverse in interest to the party tendering the evidence of the expert.

(1.1) Notwithstanding subsection (1), the judge or other person presiding in a proceeding may, on application of a party or on his own initiative

(a) where no statements has been furnished, order that the expert may testify,

(b) where the statement was furnished less than 30 days before the expert is to testify, order that he may testify,

(c) order that the expert shall be allowed to testify where the statement is furnished within a time less than 30 days before he is to testify, and specify the time, or

(d) where it appears that a party will tender the evidence of an expert in the proceeding, order that a statement be furnished at a time earlier than 30 days before the expert is to testify and specify the time by which the statement shall be furnished…

12. Section 11 does not apply in proceedings to enforce a law in which punishment by fine, penalty or imprisonment may be imposed.

The statutory scheme is therefore straightforward: counsel have the option of putting into evidence a report served upon opposing parties at least 30 days previously without having to call the expert; or alternatively they can call the expert to express the opinions *viva voce*, provided opposing parties have received written notice 30 days before the evidence is given setting forth those opinions and the facts on which the opinions are formed.

## D. ADMISSIBILITY OF EXPERT EVIDENCE

In *Fisher v. The Queen*viii[8] the test for the admissibility for expert evidence was given as follows:

"…opinion evidence may not be given upon a subject matter within what may be described as the common stock of knowledge. Subject to these rules, the basic reasoning which runs through the authorities here and in England seems to be that expert opinion evidence will be admitted where it will be helpful to the jury in their deliberations and it will be excluded only where the jury can as easily draw the necessary inferences without it."

To similar effect is *R. v. Abbey*.ix[9]

In *Emil Anderson No. 2*x[10], Macdonald, J. of the Supreme Court of British Columbia applied the English Court of Appeal decision *R. v. Turner*xi[11] which held that "an expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience or knowledge of a judge or jury. If, on the proven facts, a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary". Macdonald, J. ruled that the reports of two experts proposed to be filed on behalf of the defendant were inadmissible because they were not "scientific" or "expert". Rather, they had, in effect, been asked to "judge" the merits of the plaintiff's claims in the action and His Lordship felt just as capable of doing that as the experts.

A similar situation was encountered by Spencer, J. in *Pax Management Ltd. et al v. Canadian Imperial Bank of Commerce at al.*xii[12] In that case, an accountant prepared a report giving his opinion on a variety of issues before the trial judge. First, certain parts of the report were inadmissible because they were deemed irrelevant, e.g. the early history of the plaintiff prior to the events before the court. Second, other parts were inadmissible because they were beyond the apparent expertise of the accountant. Third, still other parts were inadmissible because they trespassed on the province of the court. For example, the report stated that "…we believe he, Mr…., had a positive duty to warn them that the estimate may have been significantly incorrect". His Lordship emphasized that he would ignore facts recited in the report but not supported by other evidence.

In *Litwin v. Kiss*,xiii[13] Macdonald, J. permitted filing of a solicitor's expert report under Section 10 of the *Evidence Act*, but with two significant paragraphs of the reported excised. In Emil Anderson 2, His Lordship applied *Litwin v. Kiss* and edited the report of an expert engineer.

## E. HEARSAY EVIDENCE IN AN EXPERT'S REPORT

Experts do not ordinarily have first-hand knowledge of the matters which are in dispute in litigation. They must rely on documents, statements, and explanations given by representatives of the litigant. They are permitted to draw inferences from facts which are not within their personal knowledge.

In considering hearsay upon which experts have relied, the issue is the weight to be accorded to the opinion itself, not whether the particular information derived from hearsay is correct. When a land appraiser is giving evidence about the value of a lot, the issue is the weight to be given to his opinion about value. Thus, real estate appraisers are

permitted to solicit information about comparable land values from witnesses who are not being called, because the issue is not the truth of what those people told the appraiser, but rather the weight to be accorded to the appraiser's opinion about the value. In City of *St. John v. Irving Oil Co. Ltd.*,xiv[14] Ritchie, J. speaking for the court said that exclusion of an appraiser's evidence because of the hearsay rule would result in the proceedings taking on "…an endless character as each of the appraiser's informants whose views had contributed to the ultimate formation of his opinion would have to be individually cited". He went on to say that the:

"…truth at issue is the value of his opinion".

In the medical context, the principle was well expressed by the late Chief Justice Wilson:

"When the doctor relates in Court what his patient told him, he may be stating hearsay, but common sense in the Courts has long ago rejected the idea that his evidence may not be heard and has accepted the idea that it should be listened to, not because it proves by itself the truth of the thing stated by the patient to the doctor, but because it defines to an extent his area of exploration and, if confirmed by the doctor's objective observations, and by the patient's evidence given at the trial, may be convincing.xv[15]

## F. THE HYPOTHECTICAL QUESTION

Where an expert is giving an opinion based on facts not within his personal knowledge, it is necessary to put the question to him in a hypothetical context, even if evidence has already been led upon such facts. The justification for this was explained by the Supreme Court of Canada in *Bleta v. The Queen*.xvi[16]

"…it is because the opinion of an expert witness on such a question (the accused's defence of automatism) can serve only to confuse the issue, unless the proven facts upon which it is based have been clearly indicated to the jury, that the practice has grown up of requiring counsel, when seeking such an opinion, to state those facts in the form of a hypothetical question."

Or, as Sopinka and Lederman succinctly put it, "…if the expert lacks personal knowledge of the matters in issue, and if he is called on to give an opinion of certain disputed facts, evidence of which has been or will be led at trial, his opinion may be elicited only through the vehicle of a hypothetical question." xvii[17]

Learned opinion on the efficacy of the hypothetical opinion is no unanimous. Wigmore says:

"Its (the hypothetical question) abuses have become so obstructive and nauseous that no remedy short of extirpation will suffice. It is a logical necessity, but a practical incubus; and herelogic must be sacrificed. After all, law (in Mr. Justice [Oliver Wendell] Holmes phrase) is much more than logic. It is a strange irony that the hypothetical question, which is one of the few truly scientific features of the rules of evidence should have become that feature which does most to disgust men of science with the law of evidence.

The hypothetical question, misused by the clumsy, and abused by the clever, has in practice led to intolerable obstruction of the truth. In the first place, it has artificially clamped the mouth of the expert witness, so that his answer to a complex question may not express his actual opinion on the actual case. This is because the question may be so built up and contrived by counsel as to represent only a partisan conclusion. In the

second place, it has tended to mislead the jury as to the purport of actual expert opinion. This is due to the same reason. In the third place, it has tended to confuse the jury, so that its employment becomes a mere waste of time and a futile obstruction."xviii[18]

## G. SCOPE OF DIRECT EVIDENCE

An expert is certainly not disqualified from giving opnion evidence because he happens to have personal knowledge of the matters in issue.xix[19] Some counsel routinely qualify professionals as experts even where they would be called in any event because of their factual knowledge. Presumably the idea is to give greater weight to their evidence and to gain an advantage by filing a report containing their opinions in written form under Section 10 and giving their factual evidence *viva voce*. *Emil Anderson No.1* highlights what can become an insurmountable difficulty in distinguishing between opnions formed on the basis of personal observations and those formed on the basis of hearsay statements.

In any event, the practice insults the court's intelligence. There is no material difference between the statement "In my opinion, concrete should be applied in such circumstances" and "I ordered concrete applied in those circumstances because, in my 25 years of experience in this business, I've found it's helpful".

Counsel must choose between Sections 10 and 11 of the *Evidence Act*. Under Section 10, a written report is provided and, assuming the conditions of the section are met, the report or statement is merely notice of the evidence to be given. The evidence given *viva voce* by the expert then becomes the evidence.

Nonetheless, counsel often file the report as an exhibit under Section 10 and then have the expert give *viva voce* evidence expanding on the report. The party calling him thereby gets the best of both worlds: the report becomes evidence when marked as an exhibit and the jury hears the expert say what he would be entitled to say under Section 11 of the *Evidence Act* as if no report had been filed. This practice should be discouraged by *Pedersen v. Degelder*xx[20] where Bouck, J. held that an expert whose report was filed under Section 10 must confine his testimony to:

(a) explaining any apparent ambiguity that may exist in his written statement; or

(b) explaining any technical terms in the statement that may not be well understood by the average person.

*Pedersen* also holds that there is no provision in Section 10 for a court abridging the time for filling a written statement but that the 30 day time limit does not apply to an expert called by a defendant to reply to the expert evidence of the plaintiff. Nor do time limits apply to a plaintiff who calls an expert to rebut opinions given by an expert of the defendant. It is to be noted that neither Sections 10 or 11 expressly differentiate between primary and rebuttal reports.

## H. OPINIONS FROM LAY WITNESSES

The Supreme Court of Canada decided in *Gratt v. R.*xxi[21] that (there is) no reason in principle or in common sense why a lay witness should not be permitted to testify in the form of an opinion if, by doing so, he is able more accurately to express the facts he perceived".

In *Gratt*, police officers were permitted to express the opinion that the accused's ability to drive a motor vehicle was impaired by alcohol which, defence counsel had

argued, was an opinion which only an expert could give. This sometimes called the "compendious statement of facts" exception because , in expressing what may appear to be an opinion, the lay witness is really summarizing a number of independent observations such as "his eyes were bloodshot, he smelled of alcohol, he was unsteady on his feet, etc.". This exception also explains why experts with personal knowledge are permitted to express what might otherwise be opinion evidence.

## I. INADMISSIBLE EXPERT REPORTS

In *Sengbusch v. Priest*[xxii][22] McEachern, C.J.S.C. addressed the admissibility of a psychologist's report which constructed scenarios about what the judge described as "ordinary matters for disability and employment opportunities". His Lordship held the psychologist's report to be inadmissible because it was unnecessary and inappropriate to adduce pinion evidence about what he regarded as ordinary matters. His Lordship said:

> "Too often, as in this case, persons with special training or experience are retained to construct scenarios or advance arguments in the form of an opinion when, with proper assistance from counsel, the Court is able to analyze the evidence and reach a proper conclusion on commonplace problems such as suitability for employment or calculations in personal injury, family matters or other areas of litigation.…It is unnecessary, however, for experts to perform the Court's function or for counsel to adduce arguments in the guise of evidence.

In *Mazur v. Moody*[xxiii][23] the plaintiff claimed damages for personal injuries following a motor vehicle accident. After the first day of trial, the jury was given copies of various expert reports to take home and read in anticipation that the trial could conclude the following day. The trial judge, McEachern C.J.S.C., also took the reports home to read. The found that the report of a chartered accountant was "clearly inadmissible" and that the "…risk of prejudice from the incautious use of this information to be so serious and so irremedial that I felt constrained to discharge the jury". His Lordship found that the report was:

> "…an argument prepared after reviewing the plaintiff's income tax returns, the transcripts of his examination for discovery, the collective agreements and interviewing the plaintiff, the business agent of the union who was a witness, the union dispatcher, another employee of the union and a tax consultant, none of whom were witnesses. The chartered accountant reviewed the history of the plaintiff since his birth in 1945 and on the basis of all this he concluded that the plaintiff's loss of income to the date of trial was…"

## J. EMIL ANDERSON NO.1 AND 2

This case resulted in two interlocutory rulings which expand on the approach taken by McEachern, C.J.S.C. in *Sengbusch.* In *Emil Anderson* a consortium of tunnel drivers, of which Emil Anderson was the sponsor, won the contract to drive a portion of the Wolverine Tunnel which B.C. Rail was constructing into the North East coal fields. During construction, the consortium was partly under the supervision of a resident engineer and a field coordinator, both of whom were professional engineers. They were employed by a consultant to B.C. Rail. Following completion of the tunnel, the consortium presented claims which were not resolved and litigation ensued. Before the

trial began, counsel for the consortium objected to the filing of the report under Section 10 of the Evidence Act.

Macdonald, J. ruled the reports inadmissible on the following bases:

1. The admission of a report was not the proper way of introducing into evidence the testimony of the authors as to their personal knowledge.
2. Many opinions were expressed as to the proper interpretation of the contract between the parties and as to construction law generally; for example there was an exposition of the law of "constructive acceleration". This Lordship held that questions of law are for determination by the Court.
3. The report contained many inferences which had been drawn from facts which were proved. These inferences were then used to support the opinions expressed. His Lordship believed that it was for the Court to draw inferences from facts, not the experts in most situations.

   "Viewed in its totality, the report is more appropriate as argument than it is as evidence. It is argument prepared by engineers under legal direction, rather than by lawyers with the benefit of engineering advice…this is not the stage for hearing argument."
4. The report did not differentiate between facts within the personal knowledge of the authors and facts which had been reported to them. On this basis, counsel for the consortium had argued that it would be prejudicial to the consortium to permit the report to be received into evidence. If the report were regarded as notice under Section 11, there would be no prejudice to B.C.R. because any proper opinions could be given *viva voce*. On the other hand, admission of the report would prejudice the consortium by placing inadmissible evidence on the record.

Later in the trial, B.C. Rail sought to file three other expert reports under Section 10, two of which were prepared by Messrs. Codville and Dixon, engineers who had no direct knowledge of the job, and one by Mr. Brawner, an engineer who had been a consultant to the Railway during construction.

With respect to the Codville and Dixon reports, Macdonald, J. said that "each of those reports is essentially the view of its author on the validity and value of the numerous claims of the Plaintiff in this action. Therein lies the basic problem." He cited extensively from Sengbusch, closing with this excerpt:

"It is unnecessary for experts to perform the Court's function or for counsel to adduce arguments in the guise of evidence."

He continued:

"Those comments apply to both the Codville and the Dixon reports, and on those grounds alone I consider both of them to be inadmissible. Of necessity, an 'assessment' of the claims of the Plaintiff involves the interpretation of the contract in issue here and construction law generally. The general rule is that those are questions of law for determination by the Court…that objection can often be avoided by structuring the report around assumptions as to the meaning of the contract or the applicable legal principle."

## K. PRIVILEGE AND THE EXPERT

The umbrella of privilege extends, for some purposes, to an expert engaged by counsel for a matter to which privilege otherwise applies.xxiv[24] But the privilege is fragile and is easily lost in whole or in part.

*S. & K. Processors Ltd. v. Campbell Ave. Herring Producers Ltd.*xxv[25] holds that filing an expert's report does not waive the privilege attached to communications between counsel and the expert, and attached to notes of meetings and drafts of the worlding papers, merely by delivering a statement under Section 11. However, in *Vancouver Community College v. Phillips Barratt*,xxvi[26] the defendant had served a subpoena on the plaintiff's expert requiring him to produce all documents relating to the issues in the action. In written reasons referring to his earlier oral ruling, Finch, J. said that:

"…once an expert was called to the stand to testify he could be compelled, in accordance with the subpoena, to produce to counsel opposite all of his documents relevant to the substance of his opinion, or to his credibility. I held that calling the witness to testify was waiver of any privilege previously attaching to his paper, unless it could be shown that he continued to act, in some respect, as a purely confidential adviser."(at p.2)

Thus, experts who are engaged to assist in specific litigation enjoy privilege until called to give evidence, but this privilege is then lost, at least with respect to all activities incidental to the expression of their published professional opinions. It is not clear whether the expert retains some privilege with respect to some aspects of his assistance to counsel.

Experts, and counsel who retain them, are well advised to assume that no privilege applies to protect correspondence between them, nor to draft reports and the like, unless the expert's only function is to advise counsel and not to prepare opinion evidence for submission to the Court.

## L. WHAT STEPS SHOULD COUNSEL TAKE?

1. Counsel should consider whether the expert will truly add anything to the evidence that will otherwise be adduced. An engineer testifying that he would have performed the same procedures as were performed by a colleague with identical experience and training might do little to assist the court. Likewise, planting the plaintiff's evidence in the expert's mouth to give that evidence a veneer of respectability is a practice to be avoided. The merits of using the expert in a purely consultative capacity should be considered in order to obtain the freedom of his assistance with respect to matters in which privilege is arguable.
2. Counsel should inquire closely from the expert what he or she is actually expert in. The fact that an accountant is articulate, attractive, and competent, does not qualify him to offer guidance in matters in which he is no more familiar than the court. This is not to say that the expert cannot acquire knowledge through investigation specific to the particular case; it does say that the factual underpinnings of such new knowledge must be carefully presented.
3. The expert should be carefully instructed. Many professionals are invited to adopt a sort of co-counsel role; many adopt a co-counsel role without being invited.

There is nothing inherently wrong with that, except when the expert's opinions of the case begin to influence the factual and legal aspects in which he has no special ability.

4. Prior to serving the expert's report, instructing counsel should take possession of the expert's file to determine if it includes matters to which the instructing lawyer might wish to claim privilege. Examples could be notes of meetings concerning settlement parameters, correspondence between opposing counsel on a "without prejudice" basis, and notes of meetings with counsel on matters unconnected with the expert's opinion. Those items should be moved to a separate file; which file should be in counsel's possession (not the expert's) during the trial. A list of the contents should be prepared so counsel is ready to argue the privilege question.

5. The expert's report should be examined by counsel to ensure that the facts are capable of independent proof, and to determine the timing and nature of the necessary factual evidence.

## M. WHAT STEPS SHOULD THE EXPERT TAKE?

1. The expert should be honest with counsel as to the limitations on his own expertise and about colleagues who might be better able to assist. This consideration is particularly important when there are actual or *de facto* specialties within a profession.

2. As the work progresses, the expert should be conscious of the importance of his file. Although it should not become cluttered with extraneous material; draft reports, documents, papers or notes that support his final opinion, or any changes to that opinion along the way, must be preserved. For instance, the authors of this article believe that a "draft report" is one which is delivered to the client, to counsel, or both. A draft report is subject to influence by counsel and client, and the extent of that influence is a proper subject for cross-examination.

3. Care and restraint must be exercised in preparing the final report. As Wigmore says:

> "There may be two distinct subjects of testimony – premises, and inferences or conclusions: that the latter involves necessarily a consideration of the former, and the tribunal must be furnished with the means of rejecting the latter if upon consultation they determine to reject the former i.e. of distinguishing conclusions properly founded from conclusions improperly founded."xxvii[27]

The premises, or assumptions, must be segregated from the inferences or opinions. Each premise must be demonstrably referable to a specific conclusion – if it cannot be, then its inclusion in the report should be suspect. Opinions should be as brief and few in number as possible. Sometimes opinions build on one another. For example, if it is a fact that a large business is managed by its president and his brother, it is an opinion that the business lacks management depth. It is a consequential opinion that a lack in management depth results in decreased value. The first proposition belongs in the "fact" section; the other two are opinions or inferences.

A useful technique is to physically divide the report in two. Part "A" should start with a phrase such as:

> I have been instructed to prepare my opinion as to… on the assumption that the following facts are true.

Part "B" should start with something like:

If the foregoing assumed facts represent a complete summary of all material facts that are relevant to…then I have the following opinions as to…

4. Care must also be taken with the management of documents which are relevant to the opinion. The preferred procedure is for the expert to prepare a book or binder of those documents which provide the factual basis for this assumption. That binder is delivered to counsel before the report is served. After reviewing it, counsel either advises the expert of any relevant missing document or confirms to the expert that the documents and data are indeed those which the expert is to assume to be true and adequate to the purpose. The expert then relies on only one document – the letter from the instructing counsel. This procedure has the additional benefit of ensuring that relevant documents have been disclosed to the opposition.

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It is possible that some will find these procedures awkward and formal. In the authors' experience, however, the time spent in planning, preparation and self examination by experts, is among the most productive of activities in any given case. Lawyers and their experts might as well get used to the fact that, at least in this jurisdiction, strict application of the Evidence Act and surrounding law will be required by all judges some of the time and some judges all of the time.

i[1] Mahoney J. (as he then was) in Sheridan Warehousing Limited V.R. 83 DTC 5095; [1983] CTC 90 at 94.
ii[2] R. v. Bunnies (1964) 50 W.W.R. 422 at 424.
iii[3] Folkes v. Chadd (1782), 3 Doug. 157; (1782) 99 E.R. 589.
iv[4] Sopinka and Lederman, The Law of Evidence in Civil Cases, (1974) Butterworth & Co. (Canada) Ltd. Toronto 308.
v[5] 2 Wigmore, Evidence s662 (Chadbourne rev 1979).
vi[6] Sopinka 308.
vii[7] R.S.B.C. 1979, c.116.
viii[8] (1961) 130 C.C.C.1 at 19, (affirmed by S.C.C. at p.22).
ix[9] (1982) 2 S.C.R. 24 Dickson, J. (as he then was) at p.40.
x[10] Emil Anderson Construction Co. Ltd. v. British Columbia Railway Company, No.2. Unreported, Supreme Court of British Columbia, Vancouver Registry No. C842491, September 17, 1987.
xi[11] (1975) Q.B. 834.
xii[12] Unreported, Supreme Court of British Columbia, Vancouver Registry No. C845807, June 23, 1987.
xiii[13] (1985) 66 B.C.I.R. 337.
xiv[14] (1966) S.C.R. 581.
xv[15] Lenoard v. B.C. Hydro (1965) 49 D.L.R. (2d) 422 at 424)
xvi[16] (1964) S.C.R. 561 at 564.
xvii[17] Sopinka 314.
xviii[18] Wigmore s.686.
xix[19] Emil Anderson No.1 (1987) 15 B.C.I.R. (2d) 28 at 30.
xx[20] (1985) 62 B.C.I.R. 253.
xxi[21] (1982) 31 C.R. (3d) 289 at 306.
xxii[22] (1987) 14 B.C.I.R. (2d) 26.
xxiii[23] Unreported, Vancouver Registry No. BB31348, May 8, 1987.
xxiv[24] Susan Hosiery ltd. v. M.N.R. (1969) 2 ExC.R. 27 at 35.
xxv[25] (1983) 45 B.C.I.R. 218 (S.C.).
xxvi[26] Unreported, Supreme Court of British Columbia Action No. C850765, Vancouver Registry.
xxvii[27] Sigmore s.672.