

Expert Evidence for Civil Cases in Australia, England, Scotland, Northern Ireland, Canada, and South Africa: Examples and Ethical Challenges

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Do Courts Appreciate the Power of Statistical Evidence?

One party claims damages from a second party, or demands particular actions.

- “If anticoagulants had been administered sooner, my client would not have died.”
- “This drug damaged the sight of my patient.”
- How long will this person live?
Cancer, neurological injury.
- Association of vioxx with cardiovascular events: no evidence that vioxx increased the risk?

Expert witness reports usually for court, not instructing solicitor.

Expert reports: > 200

Court appearances: 4

Truth, whole truth, nothing but the truth.

Social level: need for more statisticians.

Effective communication of statistical concepts.

Fair rate for fees.

Who 'owns' an expert witness?

Australia 'There is no property in a witness of fact' . . .
'The mere fact that a potential witness has given a statement to one side . . . she is not prevented from telling . . . information she has provided'

Canada (BC) 'There is no property in a witness, and a lawyer may properly seek information from any potential witness, whether or not the witness is under subpoena.'

England & Wales, N. Ireland No property in a witness of fact and opinion: pressure . . . not to liaise . . . constitute "improper interference"

Scotland Property in a witness: documents remain privileged, not disclosable even by the expert.

South Africa Property in a witness. 'Both' expert teams were instructed by plaintiff's solicitors.

Australia Reports are exchanged, questions asked, 'hot tub' joint reports written. All writing disclosed.

England & Wales Reports are exchanged, questions asked, joint reports written. Examples.

Ireland Require the exchange of experts' reports prior to the hearing, but . . .

Scotland 'an expert appearing in the Scottish courts owes no greater duty to the court over and above those of any other witness under oath. Once an expert is in the witness box, his evidence will depend purely upon what is asked.'

Example: supervised discussion!

Usually very impressive on side instructing me.

Dublin I had to help cross-examining barrister find articles;
he was inadequately briefed

Durban Cross-examining barrister was hopelessly lost

London 1 I was too inflexible

London 2 Anti-epileptic drug: very impressive grasp of range of
science

Melbourne Three long days preparation, two barristers

General Medical Counsel One very hostile; amusing for me, not for
previous witness

Giving evidence is effectively teaching a judge by indirect questioning.

Dublin Very good: I was able to read transcripts of relevant other witness's oral evidence.

Appreciated 'log-logistic accelerated life regression model'

Durban Fine, though got bored

London Looked to me to assess paediatrician
Symbolic logic, or algebra, showed incoherence of judgement

Melbourne Fine: asked questions, discussed.

... can't buy me colleagues

More statisticians as experts → more justice ?

Please consider accepting instructions !

Fees

- University of Warwick
 - is a charity, so I have to buy out my time, with overheads
 - guidance is five times hourly rate
(220 days per year, 37.5 hours per week)
 - provides professional indemnity
- Legal aid: Scotland has guidance on hourly rates; approval in advance.
- Pro bono: advised to charge for one hour.

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