

FIVE TIPS TO BEING A GREAT EXPERT WITNESS

Presented by:

SLOAN H. MANDEL*

Partner, Thomson, Rogers

*Certified by the Law Society of Upper Canada as a
Specialist in Civil Litigation

416-868-3123

smandel@thomsonrogers.com



MCLEISH ORLANDO

OATLEY VIGMOND

THOMSON ROGERS

PERSONAL INJURY LAWYERS



"Mr. Bowman, would you please, in your own words, explain what happened just like we rehearsed?"

OVERVIEW: FACTORS RELEVANT TO THE RECEIPT OF EXPERT EVIDENCE

- Expert evidence should be the **independent** product of the expert
- An expert should **never** assume the role of **an advocate**
- An expert witness should **state the facts or assumptions** upon which his or her opinion is based
- An expert should **make it clear when** an issue falls **outside** his or her **expertise**
- If an expert's opinion is not properly researched because he or she considers there to be **insufficient data available**, then this must be **stated** and that his or her **opinion is provisional**.

Fraser v. Haujioka, [2008] O.J. No. 3277 (Sup.Ct.).

TIP #1: UNDERSTAND YOUR DUTY TO THE COURT

- Overview of the *Rules of Civil Procedure* (“Rules”) & Forms
- Defining an “Advocate”
- Consequences of Perceived Advocacy
- Avoid Appearing as an Advocate

TIP #2: ENSURE YOUR WRITTEN REPORT COMPLIES WITH RULE 53.03

- Overview of Rule 53.03(2.1)
- Areas of Ambiguity in Rule 53.03(2.1)
- Consequences for Non-Compliance with Rule 53.03(2.1)

TIP #3: USE LEGAL LANGUAGE

- Burden of Proof & Causation in Tort
- Burden of Proof & Causation in Accident Benefits
- Examples of “Helpful” and “Unhelpful” Legal Language

TIP #4: ENSURE THE REPORT IS COMPREHENSIVE

- Facts of Case
- Review of Records
- Four Corners Doctrine

TIP #5: BE COMFORTABLE IN THE WITNESS BOX

- Trial Briefings, Trial Briefings, Trial Briefings!
 - Expert's Duty & Legal Language
 - Theories & Themes
 - Facts
 - Other Expert Opinions
 - Authorities
 - Expert's Own Report & File
- Oral Testimony
 - Speak Slowly & Loudly
 - Look at the Trier of Fact
 - Speak in "English"
 - Be Responsive
 - Demonstrative Aids

CONCLUSION & THANK YOU

Please feel free to call or email with questions.

SLOAN H. MANDEL*

Partner, Thomson, Rogers

*Certified by the Law Society of Upper Canada as a Specialist in Civil Litigation

416-868-3123

smandel@thomsonrogers.com

**A special thanks to my partner, Deanna S. Gilbert, without whom I would not even know what PowerPoint was.*