Expert witnesses and expert evidence

An expert witness is required in civil proceedings when a court, whether composed of a judge alone or a judge and jury, cannot determine an issue of fact without additional technical expertise. When an expert is engaged by a party, they owe a duty foremost to the Court to provide an impartial professional opinion regarding the subject for which they were engaged.

Rule 53.03 of the *Rules of Civil Procedure* governs the submission of expert evidence in Ontario.

Contents of an expert report

Pursuant to sub-rule 53.03(2.1), an expert's report must contain:

1. The expert’s name, address and area of expertise.
2. The expert’s qualifications and employment and educational experiences in his or her area of expertise.
3. The instructions provided to the expert in relation to the proceeding.
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
5. The expert’s opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert’s own opinion within that range.
6. The expert’s reasons for his or her opinion, including, (i) a description of the factual assumptions on which the opinion is based; (ii) a description of any research conducted by the expert that led him or her to form the opinion; and (iii) a list of every document, if any, relied on by the expert in forming the opinion.
7. A statement signed by the expert certifying that the expert is satisfied as to the authenticity of every authority or other document or record referred to in the report, other than, (i) a document or record consisting of evidence or potential evidence in the action that the expert analysed or interpreted in the report, if the document or record was provided to the expert by or on behalf of the party intending to call the expert as a witness; (ii) an authority or other document or record cited by the expert in the report only because it was referenced in a report prepared by another expert witness in the action and the expert is commenting on the reference; and (iii) an authority or other document or record referred to in the report the authenticity of which the expert doubts.
8. Details of the doubts the expert has respecting the authenticity of an authority, document or record described in 7 (iii), and of any doubts the expert may have respecting the authenticity of an authority, document or record described in item 7 (i) or (ii).
9. An acknowledgement of expert’s duty signed by the expert.

For the purposes of an expert report, the following presumption regarding documents applies:

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An authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary.
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Expert's involvement -- medical claims

A duty of care is incumbent on all medical professionals toward patients in their care. This duty of care is well-established. It is, generally, to “conduct their practice in accordance with the conduct of a prudent and diligent doctor in the same circumstances” (Ter Neuzen, para. 33). A specialist is a person who holds her- or himself out as possessing a special degree of skill and knowledge (Ter Neuzen, para. 33). The duty of care is breached when the professional does not meet standard of care. An expert witness's role in medical negligence cases is to advise the Court with respect to the standard of care for the particular circumstances in which the medical professional and patient found themselves. A professional's conduct must be “judged in the light of the knowledge that ought ot have been reasonably possessed at the time of the alleged act of negligence” (Ter Neuzen, para. 34). A professional's knowledge must be assessed in the light of knowledge that she or he actually possessed at the time of the alleged negligence, or knowledge that she or he ought to have possessed at that time (Henry, para. 40). A medical professional is not negligence for acting “in accordance with a recognized and respectable practice of the profession” (Ter Neuzen, para. 38). If a practice is “'fraught with obvious risks' such that anyone is capable of finding it negligence”, a standard of practice may itself be negligent (Ter Neuzen, para. 41). If the standard of care is breached, the plaintiff's injury must have been caused by this breach of the standard of care. Expert evidence is required to establish breach of the standard of care and causation, and the failure to adduce adequate expert evidence on these points is fatal to a claim of medical negligence (Larman; *Liu v. Wong*, 2016 ONCA 366, para. 14).

Template expert certificate

- Expert certificate

Template expert briefs

- Expert witness brief - legal proceeding
- Expert witness brief - independent report

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