

Expert Witnesses

Expert Basics

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Expert Witnesses Basics

An expert is someone qualified with special knowledge, skill, training, and experience, like an engineer or a doctor. An expert can express an opinion based on information that they have personally observed, or information that was provided by others.

For example, an expert in motor vehicle accident analysis could examine evidence showing the skid marks, and give the court an expert opinion about the speed of the cars involved in the accident.

An expert's job is to assist the Court. Experts are not to be advocates for either side. This is explained in **Part 11** of the Rules of Court, which deals with the evidence of experts. An expert's duty is to *assist the court* and not to be an advocate for any party.



Read the Rules

Part 11 Experts

An expert can help the Court draw conclusions from the facts. For example, with the skid mark expert above, the Court may be able to see the skid marks. However, the Court does not know how to conclude from the skid mark how fast the cars were going.

When Do I Need an Expert Witness?

It can be expensive to hire expert witnesses. However, sometimes it is necessary to hire an expert in order to prove part of your case. If your case turns on proving that a car was speeding, simply pointing to skid marks with no expert will probably not prove the point.

An expert is necessary when you need the Court to draw a conclusion that requires knowledge or expertise outside the knowledge and experience of an ordinary person.

You may need an expert to prove (or disprove) liability and damages.

- **Proving “liability”** means proving that the other side was at fault. In an accident, a skid mark expert could help prove liability. Or, if you are the defendant, you may need a skid mark expert to explain why the evidence suggests you were not speeding
- **Proving “damages”** means proving (or disproving) that a loss occurred. For example, you may need a doctor to explain your injuries and how they are expected to affect your life going forward

As it can be expensive to hire an expert, and it can cost you to *not* hire an expert if one is needed, getting legal advice on what, if any, expert evidence you need is a good idea. For help finding a lawyer, see [Get Help](#).

Who Can Act as an Expert Witness?

In order to act as an expert, the Court must accept that the witness has acquired special knowledge through study or experience on the subject at issue. Further, the individual must be unbiased (and appear unbiased). The expert cannot appear to favour one side or the other.

When considering if someone can act as an expert witness, the Court may ask:

- Have they given expert evidence before?
- Do they have any degree or certificate?
- Do they have professional qualifications?
- Are they members of professional associations related to the proposed evidence?

- Have they attended additional courses and seminars on the subject?
- Have they taught about the subject?
- Have they kept up with changes in the field?
- How long have they been involved with the subject at issue?
- How long have they worked in the field at issue?

It is not necessary for an expert to satisfy everything listed above. However, the judge must be satisfied that the witness has acquired enough special knowledge to help the Court.

Where to Find Expert Witnesses?

Finding an appropriate expert can take a while. When you think you may need expert evidence, it is a good idea to start your search right away. Do not reach out to just one individual. You will instead want to speak to a number of people to see who will be a good fit..

A good place to start is with an online search. You may also want to review the website of a professional organization in the field to see if it has a directory. Try to speak to as many people in the field as possible to get recommendations. You may also speak to people in related fields (for example, if you need evidence from a spinal surgeon, you might get recommendations from a chiropractor). Lawyers also may know experts.

Single Joint Expert

You and the other party can appoint a single joint expert (**Rule 11-3**).

You must settle certain issues before doing so (for example, the expert you agree to appoint; the issue the expert is being asked to resolve; the agreed facts or assumptions the expert is relying on to reach their opinion).



Read the Rules

Rule 11-3 Appointment of joint experts

Expert Report

To lead expert evidence at trial, you must have your expert prepare and share an expert report with the other parties. You can prepare two kinds of expert reports: an ordinary expert report, and a responding report.

- An **ordinary expert report** sets out the expert's opinion on a matter
- A **responding report** is a special kind of report that can be prepared only if the other side gives you an expert report. A responding report will be where an expert explains any problems or concerns with the other side's expert method

Deadlines

You must serve every other party a copy of an ordinary expert report **84 days (12 weeks)** before the start of the trial.

You must serve every other party a copy of any responding report **42 days (six weeks)** before the start of the trial.

Instruction Letter

Once you decide to hire an expert, you must provide a letter instructing the expert. This is a letter that sets out:

- When the matter is going to trial
- When the expert report must be delivered (ask for a draft at least a week before it is due)
 - Remember, ordinary reports must be **served** at least **84 days** before trial, and responding reports must be served at least **42 days** before trial
- What the expert will be paid
- What information the report is to be based on
- What questions you want the expert to answer

Setting out the information that the report is to be based on is crucially important. As a general rule, experts are not able to give evidence as to the facts of your case. They only explain what conclusions might be drawn from those facts.

This means that you have to prove the facts that the report is based on. In order to be able to do that, you need to be very clear as to what facts the expert assumed to be true. Make sure that you tell your expert to be clear as to what material and assumptions they relied on in coming to their conclusion. You will then have to make sure that those facts are proven on the evidence at trial. For more information on proving your case at trial, see **Evidence**.

Content of Expert Report

According to **Rule 11-6(1)** an expert report must set out:

- The expert's name, address and area of expertise
- The expert's qualifications and employment and educational experience in their area of expertise
- The instructions provided to the expert in relation to the proceeding
- The nature of the opinion being sought and the issues in the proceeding to which the opinion relates
- The expert's opinion respecting those issues
- The expert's reasons for their opinion, including
 - A description of the factual assumptions on which the opinion is based
 - A description of any research conducted by the expert that led them to form the opinion, and
 - A list of every document relied on by the expert in forming the opinion



Read the Rules

Rule 11-6(1) Requirements for report

Reviewing the Expert's Report

Before you serve the expert's report on the other side, you may (and should) carefully review it. If you do not like the evidence that the expert will give, you are not obliged to serve it. For this reason, you should ask that the expert provide you with a draft at least a week before the report must be served.

You should also make sure that the report followed your instructions. If the expert did not include any of the information listed in **Rule 11-6(1)** (listed above) you can ask them to prepare a new draft including that information.

You can also proofread the report, and let the expert know if you see any typos, or if any part is unclear. However, be aware that the other side can demand to see the entirety of the expert's file. This may include directions given by you. If it seems you are "coaching" the expert – that is, telling them what to say – this may hurt the value of their evidence.

When reviewing an expert report, remember it is not your job to tell the expert what to say.

Experts at Trial

If you serve an expert report, then the other side can challenge their report or qualifications to act as an expert. They can also require that they attend at trial to be cross-examined.

Similarly, if an expert report is served on you, you are able to challenge whether they should be accepted as an expert or cross-examine them on their report. For more information on cross-examination, see **Evidence**.

If you wish to cross-examine an expert or object to the expert's qualifications, you must serve notice:

- **To cross-examine an expert:** You must demand that the expert attend at trial for cross-examination **within 21 days of being served with the report**
- **To object to the expert's report or qualifications:** You must provide all other parties with notice of what you object to about the expert's report or qualifications by the **earlier of 21 days before trial or the Trial**

Management Conference. For more information see **Trial Management Conference**)

To lead expert evidence:

- **As soon as possible:** Search for possible experts. Talk to as many different options as you can
- **As soon as possible:** Retain the expert, and send them an instruction letter.
- **At least 91 days before trial:** Get the expert to provide a draft report. Review it, and ensure it followed your instructions. However, do not try to “coach” the expert’s evidence
- **84 days before trial:** Serve your ordinary expert report on all parties
- **At trial:** Ensure the expert is available to testify, if demanded by the other side

To respond to expert evidence

- **As soon as possible:** Search for possible experts to prepare responding reports
- **As soon as possible:** Retain any expert who will provide responding evidence
- **At least 84 days before trial:** Receive and review the other side’s expert report
- **21 days after receiving other side’s expert report:** Let the other side know if you want to cross examine their expert
- **At least 49 days before trial:** Get your expert to give you a draft of any responding report. Review it, and ensure it followed your instructions. However, do not try to “coach” the expert’s evidence
- **At least 42 days before trial:** Serve your any responding report on all parties
- **21 days before trial or at Trial Management Conference (whichever is earlier):** Give notice to all parties if you are going to object to the admissibility of the other side’s expert evidence