

The Medical Expert as a Servant of the Court

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Background

The role of expert medical reports in the delivery of justice is to report to the Court on matters which are not ordinarily or fully understandable to the finder of fact.

It is our responsibility to assist the Court by providing reports and evidence which is impartial, comprehensive and clear.

Unknown Unknowns

The finder of fact needs to know what he knows
he needs to know

AND he also needs to know what he does not
know he needs to know from your area of
expertise

SO instructions or Court orders instructing
experts may not explicitly elicit all you have to say
about a matter within your area of expertise

The veneer of the adversarial
process of the Court can obscure
this role

Over 45 years Courts in civil jurisdictions have been moving from using adversarial experts towards the appointment of single experts with a mechanism for peer review or consultation.

This has been most evident so far in jurisdictions involving children and families - the Children's Courts and the Family Court

Procedures such as 'hot-tubbing' represent a possible transitional stage in personal injury cases

Industrialization?

The industrialization of medicolegal reportage poses significant threats to 'experts' which can all can diminish our ability to assist the finder of fact.

They include:

- impartiality
- narrowness
- incomprehensibility

Impartiality

Threats include:

- personal bias
- party and judicial perception
- perceived procedural unfairness

Comprehensiveness

‘Any other matter which the expert regards as relevant’

Our brief is as broad as the limitations set out in our instructions

Threats include:

- superficial inquiry
- lack of initiative
- haste.

Clarity

Threats include:

- poor appreciation of what the finder of fact may not know it is possible to know
- poorly structured reports
- use of jargon
- poor linkage of findings to opinions