

Note #2: Expert Witness Work - Excellent and Interesting

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When I'm asked what is the most interesting work I do as a consultant in my many years at Rockflow Resources, and I respond that it's my work acting as an expert witness, I usually get one of two reactions: either a look of horror, or "well, that sounds interesting".



For those of you who are fully aware of the role and responsibilities of an expert witness, you may well be asking yourself, "Is this guy mad?", "Is he a masochist?", in fact I ask myself those things all the time and I've come to the conclusion that the answer is no to both.

At this point, for those of you who would respond with "Well, that sounds interesting", I need to explain what the role entails. Expert witnesses are used by disputing parties to give a professional opinion to the court or tribunal. Depending on how they are engaged, an expert's duty is to give complete and objective information to the tribunal to allow them to reach a conclusion and decision on the technical merits of a case.

At Rockflow Resources we have an established track record acting as experts and giving the highest standard of professional opinion.

Now, it's not easy work; its challenging and all consuming, cases can last over one to two years, or more. Over that period the experts are expected to write their initial report, then usually a rejoinder, then possibly prepare a presentation to give immediately prior to their cross-examination; all the while helping their legal counsel understand the technical issues of the case as counsel prepare their cross-examination of the other side's experts.

It requires total focus; other projects need to be completed and wrapped up. The decks need to be cleared and made ready for engagement.

So, where's the Buzz? Well the enjoyment comes through the challenge of being given information and formulating a technically robust and well supported opinion from it. Making sense of the information, forming an opinion and being able to express that opinion in a clear and concise way. Tribunal and court dead-lines are hard indeed, and the expert is a small cog in the huge machine which is running at its own inexorable pace. The expert's deliverable is his/her reports which need to be produced in a timely manner.

There is an art in writing your report which makes it totally different from anything you may have written in the past for senior management or your peers.

Three very important aspects to consider and bear in mind are:



Audience

Your target audience are very well-educated people, whether lawyers or members of the tribunal; they are steeped in legal knowledge but they are not experts in your field – you are the expert. They look to you to give them a report which is clear, well written, logically laid out, concise, with the minimum of unnecessary technical terms. Writing a report of this type

requires a good grasp of the language and a logical and well-ordered mind.

Content

Assuming your report meets all the above criteria, it's absolutely essential that you keep in mind that every word (and I mean every word) will be read, examined and considered, particularly by the other side's experts and lawyers. They will be on the hunt for material to use during your cross-examination to discredit you in the eyes of the tribunal; to cast doubt on your professional experience and judgment. Unsubstantiated statements can be used against you, so cross-reference relevant information with all the necessary exhibits and supporting material to reinforce your professional opinion.

Relevance

Stick to your subject matter... there may be experts from a number of disciplines and although it's important to read their reports to get an overview of all the technical issues of the dispute, you are not being asked to form a view on matters outside your area of expertise. If you do express such views then you will leave yourself open and exposed when being cross examined.

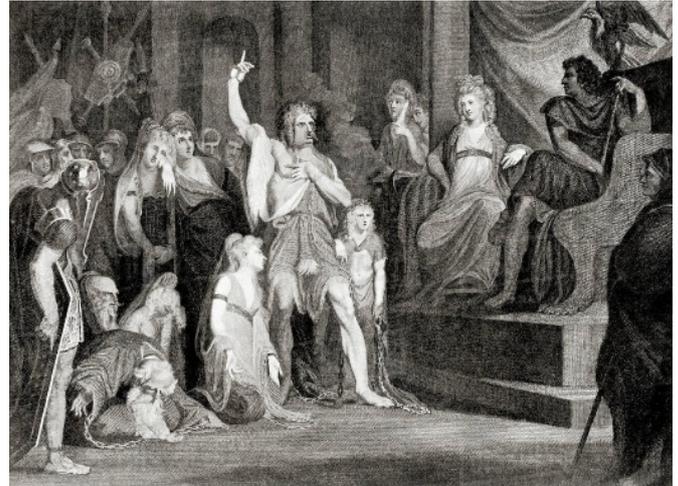
So, once you've written and submitted your reports; be under no illusion; your views will be challenged and it's important to prepare for that. Which is where I come to my next point:

The Cross-Examination

This often seems like the inexorable conclusion of one's efforts as an expert, it is the end result of all that time spent writing, it is also the rock on which the expert's ship can come to grief. There is no means of escape, the only advice is: preparation, preparation and more preparation.

Reread your report and that of the other side, reread the statement of claim and defence; identify all the points of criticism and prepare a response for each. Make yourself familiar with all the technical issues raised on your report and those of the other side's expert.

A cross-examination may last a couple of hours, or



be spread across an entire day; it all depends on how crucial your opinion is to the case. Once you're in the hot seat, it's easy to lose perspective and start to believe that your inquisitor (sorry cross-examiner) are experts themselves; if well prepared they can give an impression of deep knowledge of the subject – they project their voice and have a certain presence and gravitas, however, they are not the expert – you are. If I had to give any advice for someone about to go through this experience it would be:

- Stay calm, breathe deeply
- Listen (very) carefully to the question
- Answer clearly and concisely and don't be afraid to offer the tribunal additional info if you genuinely feel it will help their understanding

Your cross examination is an exercise to attempt to find weaknesses in your reports and to bring these to the attention of the tribunal. They will try and cast doubt on your professional opinion. A successful cross examination where one is able to answer and address all the points clearly, concisely and with authority, gives an exhilarating adrenaline rush once complete.

So finally, for those of you who would look in horror once I explain what my most interesting work is: being an expert witness is clearly not for you; its horses for courses; what's one man's poison is another man's medicine.