

# FIVE TIPS TO BEING A GREAT EXPERT WITNESS

Presented by:

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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.**

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