

# How Expert Opinions Fit into Civil Trials

EVERYBODY HAS AN opinion. However, not all opinions are admissible, and even those that are admissible are not immune from attack. This handbook focuses on expert opinions for use in civil litigation. Where duly qualified, experts overcome the common law rule against opinion evidence: experts give opinions that assist the court in making a decision in respect of a specific issue.

Why do lawyers require expert opinions? Because of case analysis, lawyers know what they have to prove—sometimes, they have to explain facts proved by lay witnesses; often, they have to prove whether or not a course of behaviour met a standard of care. This is where experts come in.

Experts can:

- explain complicated facts
- establish the standard of care
- compare different conclusions
- help the court decide which conclusion is best

Judges are prone to admonish lawyers about the use of experts. “There are too many experts,” they say. “You

require too many days of trial. Experts add to the high cost of litigation.” The same judges, however, complain that they cannot make a decision without the input from an expert the lawyers did not call as a witness.

How do courts reconcile the competing demands to reduce cost yet improve quality? This is referred to as the “gatekeeper function,” as trial judges balance the risk and reward involved with any given expert. They have to consider the following questions: is the increased time and cost justified by the assistance given to the court? Does the lawyer require an expert to establish an element required by case analysis? Will the judge agree to allow this expert to give this opinion? Trial lawyers have to prepare their cases to succeed, and this means that they must predict how a trial judge is going to rule on this risk-reward balance. Does the lawyer require an expert to establish an element required by case analysis? Will the judge agree to allow this expert to give this opinion?