

EXPERTISE AND EXPERT WITNESS SERVICES COURSE

6th, 13th and 20th May 2022, 9.00am – 4.00pm

THE EXPERT CURRICULUM VITAE, DECLARATIONS, BUSINESS OPPORTUNITIES & OTHER ASPECTS

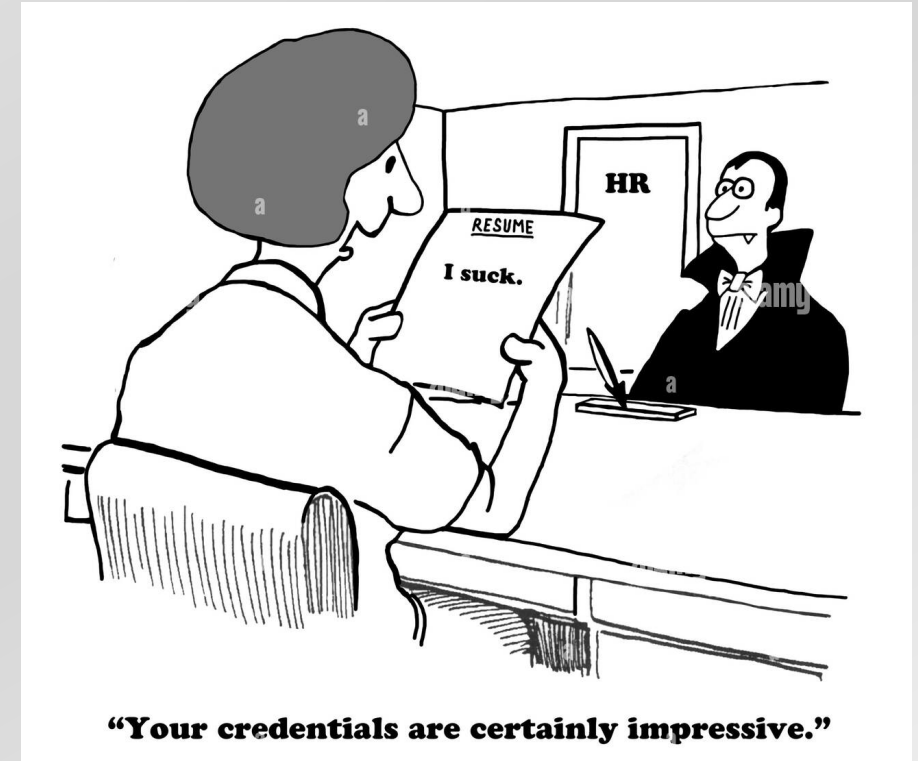
Presented by: Peter O'Malley, FCI Arb, RIBA, RIAI

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DEFINITION OF AN EXPERT WITNESS

- Defined as “a person with the status of an authority (in a subject) by reason of special skill, training or knowledge.”
- Where the key word is “special”, being “better, greater or otherwise different from what is usual.”
- Therefore the primary purpose of your curriculum vitae is to inform the court of your ‘specialist skill, training or knowledge.’
- It should be restricted to comprise of only information that will assist the court.



Always be conscious of your primary role which is to assist the court

CONSIDER YOUR CURRICULUM VITAE CAREFULLY

Before preparing your CV, you should consider your experience and expertise at the time of the instruction, and ask yourself:

- Is this a role I can fulfil?
- Does my specialist skill, training or knowledge match the requirements of the case?
- How can I prepare my CV so that the court readily understands my suitability for the role?
- Are there any weaknesses in my specialist skill, training or knowledge that would preclude me from taking instruction?
- Do I have the time to commit to providing assistance?



The CV should be 'tailored' to communicate your suitability as an expert witness

THE 'MODEL' CURRICULUM VITAE

- Your CV is never standard and should always be amended to address the subject case.
- Your CV should state your name, the parties names, the court under which case is being heard, the claim reference, and include:
 - Qualifications and training, together with dates.
 - Professional memberships.
 - Accreditations and certification.
 - Current employment and position.
 - Professional responsibilities.
 - Specialist areas.
 - Publications, articles & academic papers as relevant.



Always check for relevance and accuracy, if its not relevant take it out

HAZARDS AND PITFALLS

Common errors:

- The CV lacks relevance or expertise.
- A professional report but with a weak CV.
- Includes unnecessary exaggeration.
- Includes unnecessary embellishment.

Remember:

- The other party will closely examine your CV.
- Have no doubt that any lack of credibility in your CV will be exploited.
- Your CV is a valid topic for cross-examination.
- The cross-examination may begin with your CV.
- Any weakness in your CV is likely to colour the evidential value of your report.



Your CV must be accurate, concise and without embellishment

THE DO'S AND DON'TS

Purpose

- Appropriate experience
- Convey a familiarity with expert duties
- Confirms appropriate training for the role
- Awareness of professional Code of Conduct
- Sets limits of expertise

Relevance to the role

- Qualifications, dated
- Training, dated
- Accreditations, dated
- Certifications, dated
- Current or relevant past positions
- Professional responsibilities

Must assist the court

- Not a job application
- No irrelevant employment or case history
- No embellishment
- No out of date information
- No appendices
- No hobbies or interests

Always remember, it has been said that:

- “Cross-examination is beyond any doubt the greatest legal engine ever invented for the discovery of truth.”

John Henry Wigmore – American lawyer & legal scholar

Ensure that your CV is robust enough to withstand a forensic cross-examination

THE HARSH REALITY

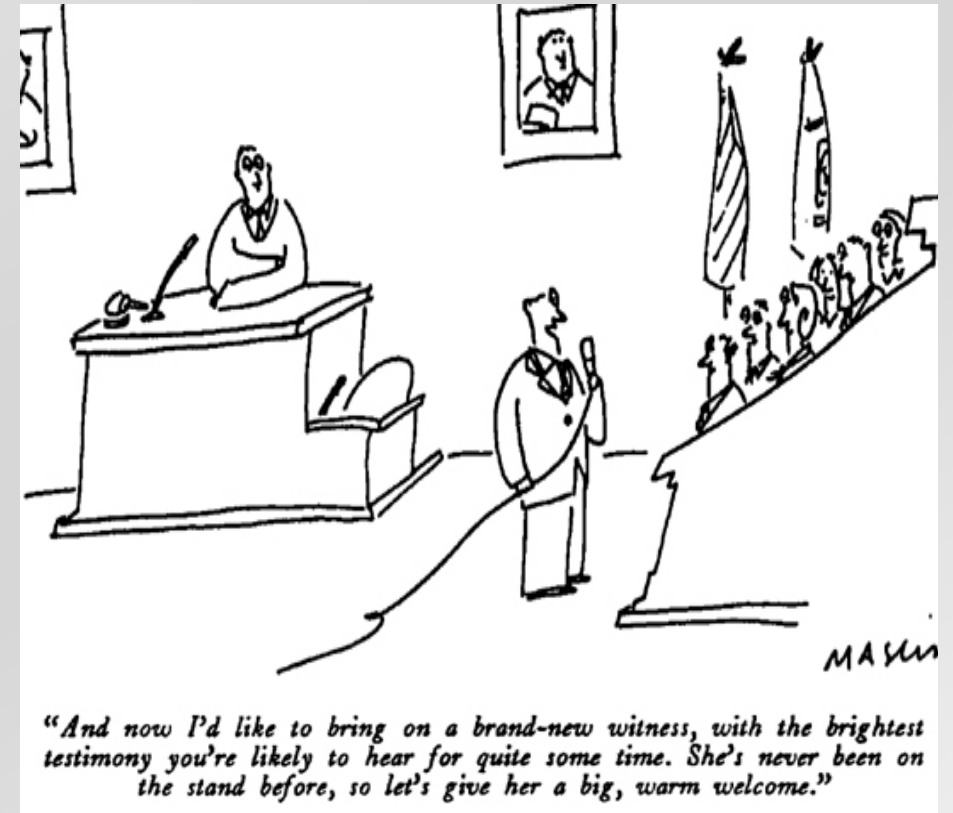
Architectural expert sacked from Grenfell inquiry

Earlier this week John Priestley of John Priestley Associates was unveiled as the expert charged with investigating the 'architectural design' of the tower's controversial refurbishment and had been asked to carry out a detailed examination of the building works undertaken between 2014 and 2016.

But his appointment on Wednesday was quickly overshadowed after the Architects Registration Board launched an investigation into Priestley's potential misuse of the title 'architect'. Despite numerous references to 'architects' on his website, including the statement 'John Priestley is a UK registered and Chartered Architect', it emerged he had not been on the ARB register for the last eight years.

The ARB told the AJ it had acted 'in response to concerns raised with us regarding potential misuse of the title "architect"'. Following the receipt of information that Priestley is not currently registered with the ARB, the inquiry has withdrawn his instruction as an expert witness.'

Architects Journal - 22 June 2018



Always check that the information in your CV and any other collateral is up to date

DECLARATION OF DUTIES

- Use the 'Declaration of duties' to frame and place your expert witness report in context.
- Re-confirm your instructions and any constraints placed upon you, or in which you had to work, for example lack of access to covered up work.
- Identify the limitations of your expert report - it is better that you take the opportunity to point these out, rather than have them pointed out by someone else.
- State where you have had any assistance, including any internal assistance within your office.



Use the 'Declaration of duties' to frame and to limit the extent of your expert report

DECLARATION OF INDEPENDENCE

- Independence – the state of not being dependent on someone or something.
- It is not just in fact, but it is also in perception.
- Repeat expert witness work from the same client could be perceived as diluting your independence.
- In the case of *McKillen v Tynan* [2020] IEHC 189 the Court commented that both experts had described the reason for their evidence as being "*for the purposes of supporting*" the Applicant's claim - a fact which the Court described as being "*not a good start in terms of independence*".



Any dilution of your independence will cast doubt upon the credibility of your report

DECLARATION OF INDEPENDENCE

- Order 39, rule 57 of the Rules of the Superior Courts, as amended in 2016, states: “(1) It is the duty of an expert to assist the court as to matters within his or her field of expertise. This duty overrides any obligation to any party paying the fee of the expert.”
- This duty of independence is often misunderstood or ignored by expert witnesses. In almost every English speaking country, there are scores of judgments decrying the failure of experts to act in an independent manner.
- The expert report must now contain a statement acknowledging this duty.

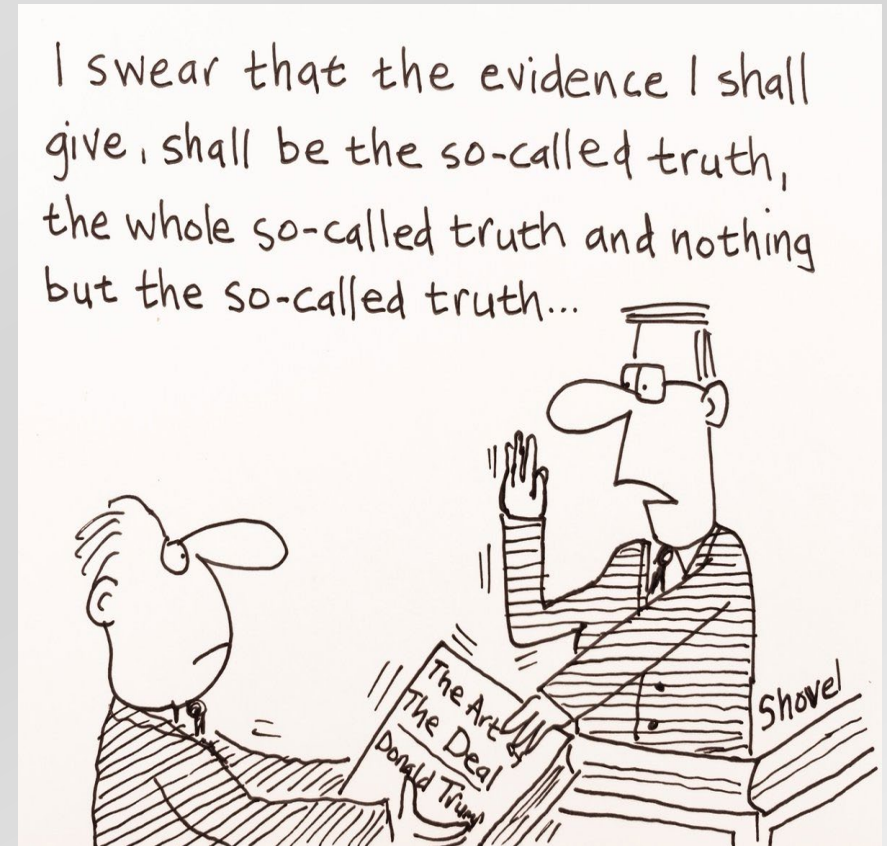


'After many months of reflection, I have decided not to be financially independent, or to live elsewhere ...'

Always have a healthy awareness of the necessity to uphold your independence

DECLARATION OF TRUTH

- A statement of truth confirms that the party believes the facts stated in the document are true and accurate.
- England & Wales Civil Procedure Rules – 01.10.2020
'I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.'



This declaration confirms that you believe your expert report to be honest and true

DECLARATION OF TRUTH

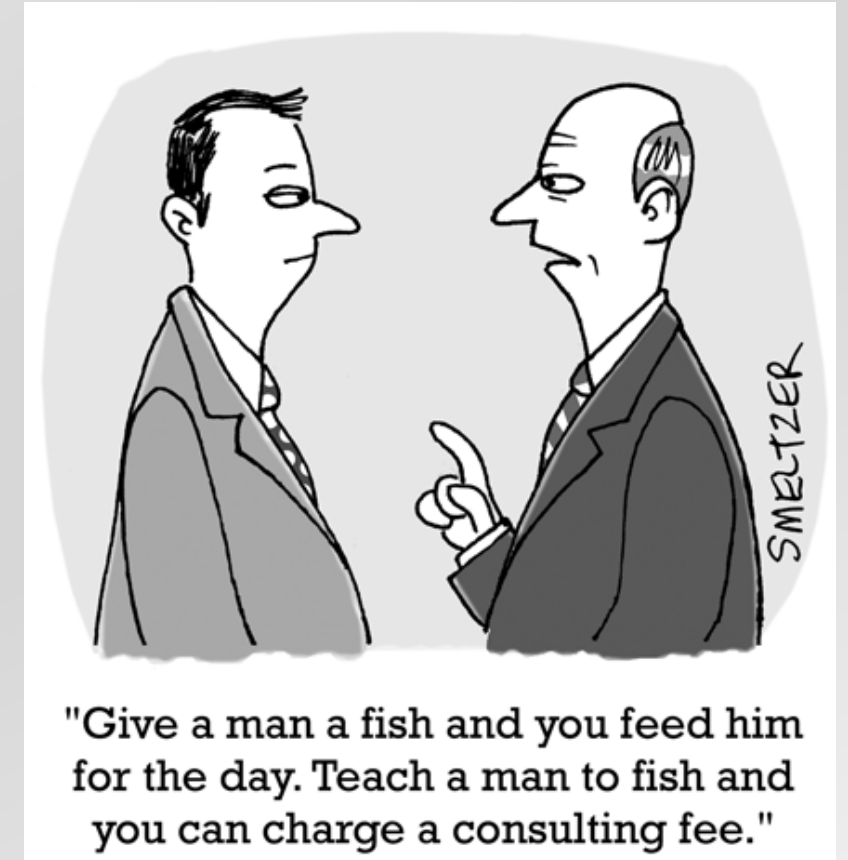
- The Courts ruled in *Liverpool Victoria Insurance Co. Ltd v Zafar* [2019] EWCA Civ 392, that any expert witness who is found to be either dishonest or reckless as to the truthfulness of their reports should be sentenced to immediate imprisonment for one year.
- This development is consistent with the continuing process of professionalisation of the expert witness industry, and the trust and reliance that the courts place on the experts who write reports. Consider that your Declaration of Truth elevates your evidence to that of an affidavit or statutory declaration.
- Although not a requirement (yet) in Ireland, declarations of truth are now becoming more common place.



It is likely that in time Ireland will reflect the position of England and Wales

BUSINESS OPPORTUNITIES

- The majority of architects are by definition generalists, where an involvement in expert witness work offers the opportunity of being a specialist.
- It is not unusual for architects to develop specialist skills where their potential is not fully realised, expert witness work can provide an opportunity for personal growth.
- Expert witness work is 'counter cyclical' and can be promoted as a service that attracts premium fees.
- The benefits of specialism can be marketed as a stand-alone service separate to other architectural services.
- An expert witness specialism provides an opportunity to market in areas that would otherwise be beyond reach.



Acting as an expert witness can enhance your professional profile

COMMERCIAL ASPECTS

- Avoid simply quoting an 'hourly rate', seek to have sensible empathy and adopt a commercial appreciation.
- Provide a 'cost estimate' based on the material you have seen at an early stage, don't let fee doubt fester.
- Always keep a resource record of time you have expended against specific tasks, use it to evidence the fees that you will charge – it is a necessary discipline.
- Consider identifying individual tasks in compiling your fee proposal, so for tasks A to E the range of fee is likely to be between X and Y plus VAT.
- You can consider a 'not to exceed fee' but leave room to amend your fee if the brief expands, beware of scope creep.



Develop a standard fee agreement template that you can adapt to each case

CONTINUING PROFESSIONAL DEVELOPMENT

- For many being an expert witness is the start of the journey into other areas of professional development.
- Involvement with RIAI policy committees, in particular the Contract Liaison Group and the Contract Drafting Group to develop 'best practice' contracts and guidance.
- Expert witness work is often the introduction into the broader specialism of construction law.
- Expert witness work enables you to develop a reputation and standing in the legal community.
- For many, expert witness work provides a route into Alternative Dispute Resolution (ADR) as promoted by the standard RIAI forms of contract.



Expert witness work can provide the platform for development in construction law

CONTINUING PROFESSIONAL DEVELOPMENT

- Many past RIAI Presidents have established ADR practices, Arthur Hickey, Toal O'Muire, Tony Reddy, Joan O'Connor, David Keane, Brian O'Connell, John O'Reilly, Wilfrid Cantwell and Padraig Murray
- There are a number of post-graduate courses available to further develop your skills including courses at:
 - Trinity College Dublin
 - The Law Society
 - University College Dublin
 - Chartered Institute of Arbitrators
 - University of Salford
 - Robert Gordon University
 - Kings College London



Expert witness work, always interesting and rewarding may be just the beginning

THANK YOU

Presented by: Peter O'Malley, FCI Arb, RIBA, RIAI

The Royal Institute of the Architects of Ireland