

UQ Climate Change Research Network workshop on being an expert witness

University of Queensland (UQ) – 3 November 2025

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WORKSHOP AGENDA

1. **Aims of workshop** – developing practical skills and knowledge for being an expert witness in climate (and other) litigation.
2. **Lessons from public lecture** with:
 - The Honourable Fleur Kingham
 - Associate Professor Nina Lansbury
 - Professor Ove Hoegh-Guldberg
 - Professor Hugh Possingham
 - Associate Professor Nicholas Osborne
3. **What is an expert witness and when are they required?** (Appendix 1)
4. **Why would I agree to be an expert witness?**
5. **Major courts and tribunals in Queensland & typical courtroom layout.**
6. **Typical process of giving evidence as an expert witness:**
 - (a) Initial contact from lawyer to check on availability, fees, etc.
 - (b) Formal letter of instructions setting out duty of an expert, factual questions the expert is asked to address, process for preparing report & giving evidence, etc.
 - (c) Preparation: site visit, read relevant documents, conferences with lawyers, etc.
 - (d) Either:
 - (i) Individual report (see Appendix 4); or
 - (ii) Joint expert meeting / expert conclave followed by joint report setting out areas of agreement and disagreement, potentially followed by individual report setting out
 - (e) Oral evidence at trial (may be done individually or concurrently with other experts):
 - (i) Evidence-in-chief (oath/affirmation, swear/affirm truth of your joint report, individual report, etc);
 - (ii) Cross-examination; and
 - (iii) Re-examination.

7. Some stories, practical lessons, and hard knocks from selected past cases:

- (a) [Khyber case](#) ([Mackenzie v Minister for Natural Resources, Mines and Water \[2006\] QLC 57](#) at [57]-[59]) – successful preparation & presentation of expert evidence.
- (b) [Donnybrook Sand Mine case](#) ([CSR Ltd v Caboolture Shire Council & Ors \[2001\] QPEC 013](#); [2001] QPELR 398) – the importance of a good letter of instructions & careful preparation of experts.
- (c) [Brown v Forestry Tasmania \(No 4\) \[2006\] FCA 1729](#) at [117]-[125] — dangers of “peer review”.
- (d) [Paradise Dam case](#) ([Wide Bay Conservation Council Inc v Burnett Water Pty Ltd \(No 8\) \[2011\] FCA 175](#) at [160]-[162]) – communications with experts – lawyers need to protect experts & their independence.
- (e) [Adani Mine case](#) ([Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors \[2015\] QLC 48](#)) – e.g. of climate litigation – judges are human beings – managing grief & reconciling big losses

8. What makes a good expert witness? (Appendix 5)

- (a) Highly knowledgeable & qualified.
- (b) Confident (where appropriate) and well justified opinions.
- (c) Able to explain complex concepts clearly & simply to non-experts (i.e. the court).
- (d) Dynamic - able to answer questions clearly and explain their reasoning.
- (e) Independent & trustworthy (*not* an advocate for a cause or party).
- (f) A patient and considerate teacher & communicator (explaining complex issues to the court clearly).
- (g) Engaged with the detailed facts of the case (e.g. site visit, across documents, etc).
- (h) Not naïve yet able to engage with opposing experts fairly & professionally.
- (i) A friendly demeanour (not arrogant and aloof).

9. What should you expect from lawyers & what should you refuse to do? (Appendix 2)

- (a) A clear letter of instructions telling you what factual questions you are asked to answer and explaining the formal requirements for your report (e.g. a declaration at the end of the report, etc) and process of giving evidence.
- (b) Preparation, conferences & reviewing draft reports: lawyers cannot “coach” a witness (i.e. suggest the answers they should give to substantive questions) but can properly direct them on relevance & legal issues (e.g. *Makita*), plus request clearer explanations if part of an expert’s evidence is unclear or difficult to follow.

10. How do lawyers challenge and undermine expert witnesses' evidence (and how can you guard against this happening to you)?

- (a) Attack the independence of expert (relatively rare in practice).
- (b) Undermine the assumptions & reasoning process of the expert leading to the conclusions reached (see Appendix 3 – *Makita* principles). (very common)

11. Conclusions and key take-away messages:

- (a) Your goal (and duty) as an expert witness is to assist the court to answer the questions in relation to your field of expertise (but also don't be naïve that other experts and others are honest or aiming to find the "truth" – many are driven by money, ego, and other factors).
- (b) Think of yourself as a patient teacher and communicator: look for clear and simple ways to explain logically complex concepts and conclusions to someone who does not have your expertise & knowledge (i.e. the judge), including using good visual aids (e.g. in a good map).
- (c) If you prepare well and honestly try to help the court, you can have confidence of doing a good job.
- (d) Remember that helping the court includes not letting the court be misled by lawyers and other experts who try to sow confusion. Be well prepared, across the details of the case, and stand up for yourself against lawyers and other experts who try to sow confusion and create doubt.
- (e) Guard your independence. You are not a "hired gun". Look for the right answer, including matters that are unfavourable to the party calling you as a witness.

APPENDIXES

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Appendix 1: What is “expert evidence”?

“Evidence” is the information that courts and tribunals¹ use to make findings of fact in disputes. It can be given orally to the court by witnesses or contained in documents (e.g. photographs, reports, etc) or other things (e.g. a knife tendered in evidence as a murder weapon).

There are rules that limit what evidence may be presented in court proceedings. The primary reason for these rules is to protect the integrity of the legal decision-making process by ensuring, as much as possible and to the extent reasonable in the circumstances, that the court decides a case based on credible and reliable information.

One of the most important rules of evidence in environmental cases concerns expert evidence (also called “opinion evidence”). Under this rule:

- Normal (lay) witnesses in court proceedings are generally only permitted to give evidence of what they saw, heard, touched or smelt (i.e. things that they directly perceived with their own senses). They are generally not allowed to give their opinions, except where it relates to something of common experience (e.g. the speed a car was travelling at, etc).
- Expert witnesses are allowed to give their opinions on matters within their field of expertise. That is, expert witnesses can express their professional judgment, view or estimate based on facts within their field of expertise, not merely facts that they have directly observed.

An “expert witness” is someone who possesses peculiar skill where the subject matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without such assistance. Expertise is required to give an opinion when the subject matter of inquiry partakes of the nature of a science as to require a course of previous habit or study in order to the attainment of a knowledge about it;² however, the categories of expert evidence are unlimited and there are many fields in which an expert’s skill does not derive from scholastic studies but by practical training and experience.³ Put another way, expertise consists of a body of knowledge and/or skills based upon experience or training which concerns a subject which is of such a nature that it can be grasped and commented upon in an informed way only by a person with training and/or experience extending beyond that possessed by the average person.⁴

Examples of expert witnesses and the types of evidence they might give include:

- A psychologist to give evidence of a person’s mental state at a particular time.
- A medical doctor to give evidence of whether an injury was life threatening.
- A traffic engineer to give evidence about road design for a development.
- A botanist to identify particular plant species or regional ecosystems on a site.
- A GIS expert or spatial scientist to identify changes in vegetation cover at a site based on satellite imagery and historic aerial photographs.
- An environmental chemist or toxicologist to identify a contaminant released from a factory into a watercourse.
- A police officer with specialised knowledge with respect to the causes of motor vehicle collisions to identify the cause of a collision.⁵

Court cases involving environmental disputes often involve multiple expert witnesses on different topics.

¹ For brevity, for the remainder of these notes, I will refer to courts and tribunals as simply, “courts.”

² *Clark v Ryan* (1960) 103 CLR 486 at 491 (Dixon CJ)

³ *R v CL Lam, Truong, Duong and VT Lam* [2001] QCA 279 at [80]-[81] (Thomas JA with whom McPherson JA and Chesterman J agreed), a case involving fraud of Jupiters Casino where an expert in a card game gave evidence explaining what was happening in video recordings tendered to prove the fraud.

⁴ Gillies, “Opinion evidence” (1986) 60 ALJ 597 at 602.

⁵ *R v Mackenzie* [2016] QCA 277 at [38] (Gotterson JA with whom McMurdo P and Atkinson J agreed).

Appendix 2: What can lawyers ethically do to prepare a witness (including an expert)?

Extract from Justice John Griffiths (2014), “Some Ethical Issues for Legal Practitioners”⁶

...

(b) Witness preparation

(i) *When does ethical preparation become unethical coaching?*

17. There is a fine line between legitimate witness preparation and unethical coaching of a witness. Despite the difficulty of drawing that line, the courts insist upon its maintenance. Whether or not preparation amounts to unethical coaching is necessarily fact specific and involves matters of degree.

18. In *Re Equiticorp Finance Ltd* (1992) 27 NSWLR 391, Young J emphasised that the interests of justice require “very severe limits” being placed on legal practitioners in preparing a witness to give evidence. There is no difficulty with a witness conferring with his or her lawyer, or the lawyer or the party calling the witness, and receiving proper advice regarding preparation for and the giving of evidence. Indeed, that practice is to be encouraged because, if it works properly, it will assist in the due administration of justice by limiting evidence to issues which are genuinely in dispute and save court time. Young J said at 395 of *Equiticorp* that such advice may include:

- advice that the witness should refresh his or her memory from contemporaneous documents;
- calling the witness’ attention to points which might arise in cross examination;
- describing the court layout and likely procedure;
- directing the witness’ attention to points in his or her evidence which appear to be contradictory or incredulous;
- reminding the witness to bring all relevant documents to court;
- advising witnesses as to the manner of answering questions, along the lines of advising that, in cross examination, listen carefully to the question, be directly responsive to the question and try to be as concise as possible; and
- giving advice as to appropriate dress and grooming (apparently matters of particular concern to his Honour).

19. Young J correctly emphasised the core requirement that solicitors should not advise a witness as to how particular questions should be answered (other than that the question should be answered truthfully) or suggest words which the witness should use.

⁶ Available at <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-griffiths/griffiths-j-20140304>. See also the discussion in *New Aim Pty Ltd v Leung* [2022] FCA 722 at [45]-[78].

20. In a case decided on the other side of Australia, Martin CJ described the difference between legitimate proofing a witness and impermissible coaching in the following terms in *Majinski v State of Western Australia* [2013] WASCA 10 at [32]:

Questioning of the witness moves beyond “proofing” to impermissible “coaching” when the witness’ true recollection of events is supplanted by another version suggested by the interviewer or other party, whether by repetitive reading of a statement to the point where their testimony is mere regurgitation or by otherwise influencing the witness... A solicitor or counsel should not advise a witness as to how to answer a question... By way of example, in *Day v Perisher Blue Pty Ltd* the defendant’s solicitors prepared an extensive document for the defendant outlining “possible areas of questioning (to be passed onto the prospective witnesses)” and included suggestions as to appropriate responses which would be in line with the defendant’s case. This conduct, alongside the holding of a pre-trial conference by the practitioner in which multiple witnesses jointly discussed evidence to be given at trial, was held to seriously undermine the trial and “tainted” the defendant’s case.

21. Some experienced practitioners provide prospective witnesses with written guidance notes on preparing and giving evidence. I think this is a good idea. It provides the witness with a clear statement of relevant matters (which they can review at convenient times) and minimises the risks of any misunderstanding. The sorts of matters which could be covered in such a document include:

- the overarching requirement that witnesses must give truthful evidence at all times, even if they think that this could be prejudicial to themselves or the overall case. Very often a witness’ perception of what is prejudicial is misguided. Few things impress a court more than a witness who candidly admits to error and does not shy away from frankly answering questions which expose seemingly adverse matters;
- the duty to provide responsive answers to questions. It should be made clear, however, that this does not preclude the witness saying in appropriate circumstances that he or she cannot remember or does not know. Emphasise the undesirability of the witness effectively taking over the role of counsel from the witness box by giving non-responsive answers to questions or seizing on a particular question to advance what the witness regards to be his or her case by proffering more by way of answer than is strictly required;
- the desirability of providing concise answers to questions and avoiding the danger of trying to anticipate where a cross examination is heading: like cricket, every ball/question should be dealt with on its merits;
- encouraging the witness not to be afraid to ask the cross-examiner to repeat or rephrase a question which the witness does not understand. It is critical that the witness fully understand a question before a response is given. A brief pause before answering a question will not only provide the witness with an opportunity to assess whether they properly understand the question but will also provide counsel with an opportunity to object to the question before it is answered;
- encouraging the witness to familiarise themselves with their affidavit or witness statement before the hearing. It is also generally proper for a witness who has prepared a statement contemporaneously with, or soon after, an incident in respect of which he or she is asked to give evidence to review that statement prior to giving evidence ...;
- providing advice on the fact that the witness could be compelled to produce any documents brought into the witness box by the witness and to which he or she refers, including a copy of their affidavit or witness statement, particularly if it contains handwritten annotations or musings;
- if the witness gives an answer and subsequently considers that the answer is incomplete or requires elaboration, advise them to raise the matter with the cross-examiner and/or

the Court and seek permission to give further evidence on the relevant topic. Even if leave is not granted, the witness will have conveyed the need for the issue to be raised in re-examination;

- explaining the need to give evidence in direct and not indirect speech, a practice which does not come easily to many witnesses who frequently start their answers with “I (or someone else) would have said...” or “I would have done...”. A few concrete examples should highlight the distinction. By the same token if the witness is asked to say what they or someone else said on a particular occasion and they do not have a clear recollection of the precise words, they should say so and then indicate their best recollection of the thrust of what was said;
- providing a brief description of the choice between giving evidence on oath or affirmation and the layout of the court, including the location of the witness box in relation to the bench and bar table and the desirability of the witness seating themselves in a way which enables them to achieve some eye contact with the judge, bearing in mind that it is the judge to whom the evidence is primarily directed, not the cross examiner;
- reassure the witness that if there is likely to be a lengthy cross-examination he or she should not feel inhibited about asking the judge for a brief adjournment if their concentration is suffering or for more personal reasons;
- reminding the witness of the prohibition on them discussing their evidence with other prospective witnesses in the proceeding [other than other expert witnesses in the proceeding, such as when ordered to conduct a joint expert meeting] and also describe the constraint upon any communication with legal advisers while the witness is under cross-examination;
- also remind the witness that they must never look to their legal team for any prompts or assistance by way of body language or gestures while they are giving evidence, all lawyers should remain sphinx-like during the giving of oral evidence, as well as when an oath or affirmation is being administered;
- describe the process of re-examination, which attracts many of the principles described above, while also stating that the witness should not be alarmed or draw any inference if there is no re-examination; and
- above all, urge the witness to remain as calm and collected as possible and that the potentially unpleasant experience of giving evidence will soon be over!

...

Appendix 3: The fundamental importance of expert witnesses clearly setting out the factual basis of their opinion and reasoning (*Makita* principles)

Expert witnesses must clearly identify the factual basis of their opinion and their reasoning process in reaching their opinion and conclusions. In *Makita (Australia) Pty Ltd v Sprowles* [2001] NSWCA 305; (2001) 52 NSWLR 705 (*Makita*), Heydon JA said at [64]:

The basal principle is that what an expert gives is an opinion based on facts. Because of that, the expert must either prove by admissible means the facts on which the opinion is based, or state explicitly the assumptions as to fact on which the opinion is based. If other admissible evidence establishes that the matters assumed are “sufficiently like” the matters established “to render the opinion of the expert of any value”, even though they may not correspond “with complete precision”, the opinion will be admissible and material One of the reasons why the facts proved must correlate to some degree with those assumed is that the expert's conclusion must have some rational relationship with the facts proved.

The principles stated by Heydon JA in *Makita* have been applied many times by subsequent courts.⁷ They aim to prevent “blackbox reasoning” and quackery by experts that is inscrutable as it is based on their “opinion” & status as an expert and is unsupported by established or verifiable facts.

To apply the *Makita* principles in practice:

- The expert’s opinions must be limited to their field of expertise.
- The factual basis of the expert’s opinion must be established through admissible evidence unless admitted or unchallenged by the opposing party.
- So far as an expert’s opinion is based on facts they have observed, they must identify and prove those facts.
- If an expert is unable to establish the existence of facts relevant to their opinion, they may make assumptions in forming their opinion but those assumptions must be clearly identified in their report.
- For an expert report and expert opinion to be admissible in evidence, any assumptions the expert makes must be sufficiently like the matters established by admissible evidence, even though they may not correspond with complete precision. One of the reasons why the facts proved must correlate to some degree with those assumed is that an expert’s conclusions must have some rational relationship with the facts proved.
- Where an expert refers to or relies on a number of documents provided to them or obtained by them for the purpose of forming their opinion, those documents should be listed in their report in an introductory section setting out “Documents referred to in forming opinion” or a similar heading.
- To clearly explain an expert’s reasoning process, it may assist if they set it out in a “Methodology” section before presenting their results and opinions.

⁷ eg. *Greer v Greer* [2021] QCA 143 at [73]-[75] & [77] (Bond JA with whom Sofronoff P & Wilson J agreed).

Appendix 4: Typical court requirements for expert evidence (UCPR extracts)

[The following extracts of rules 429F, 429G, 429A and 429J of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR) (which are also reflected in Schedule 1C (Code of Conduct) of the UCPR) are typical requirements and protections for individual and joint expert reports and evidence in civil proceedings in Queensland (note: footnote to scientific literature added)]

429F Duty of expert

- (1) The expert has a duty to assist the court.
- (2) The expert—
 - (a) is not an advocate for a party to the proceeding; and
 - (b) must not accept instructions from any person to adopt or reject a particular opinion.

...

- (5) The expert's duties under this rule override any obligation the expert may have to—
 - (a) any party to the proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

...

429H Requirements for report

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The report must include the following information—
 - (a) the expert's qualifications;
 - (b) all material facts [and assumptions], whether written or oral, on which the report is based;
 - (c) the expert's reasons for each opinion expressed in the report;
 - (d) references to any literature⁸ or other material relied on by the expert to prepare the report;
 - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
 - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
 - (h) a summary of the conclusions reached by the expert;
 - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

 - *insufficient research*
 - *insufficient data*
- (4) The expert must confirm in the report that—

⁸ Experts can rely on "scientific literature" (i.e. information in authoritative scientific publications or statements by organisations, public authorities or persons regarded by experts in a field as having knowledge and expertise in the relevant area, including tables and statistical material on which experts ordinarily rely); however, this exception does not extend to proving primary facts or data peculiar to the particular case upon which an expert opinion is based: *PQ v Australian Red Cross Society* [1992] 1 VR 19 at 34-36 per McGarvie J.

- (a) the expert has read, and agrees to be bound by, the code of conduct [provided in Schedule 1C (Code of Conduct) of the UCPR]; and
- (b) the factual matters stated in the report are, as far as the expert knows, true; and
- (c) the expert has made all inquiries considered appropriate; and
- (d) the opinions stated in the report are genuinely held by the expert; and
- (e) the report contains reference to all matters the expert considers significant; and
- (f) the expert understands the expert’s duty to the court and has complied with the duty.

...

428 Directions about experts’ conferences and joint reports

- (1) The court may, at any time, direct that 2 or more experts who are to give evidence in a proceeding—
 - (a) hold a conference in which they identify, and attempt to resolve, any disagreement between them; and
 - (b) jointly prepare a report about the conference (a *joint report*) that states—
 - (i) the matters, if any, on which the experts agree; and
 - (ii) the matters, if any, on which the experts disagree and the reasons for any disagreement. ...

...

429A Experts’ conference and joint report

- (1) In holding the conference and preparing the joint report, the experts—
 - (a) must exercise independent judgement; and
 - (b) must endeavour to reach an agreement on any matter on which they disagree; and
 - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
- (2) Unless the court directs otherwise, the experts must—
 - (a) hold the conference in the absence of the parties or their agents; and
 - (b) prepare the joint report without reference to, or instructions from, the parties or their agents.
- (3) The experts must give the joint report to the parties—
 - (a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or
 - (b) otherwise—as soon as practicable after the conference has concluded.

...

429J Immunity

The expert has the same protection and immunity for the contents of a report disclosed under this part as the expert could claim if the contents of the report were given orally in the proceeding. [i.e. an expert witness can’t be sued for defamation, etc]

...

In addition to these requirements, the following are recommendations for formatting an expert report:

- Use 12-point type and at least 2cm page margins;
- Number each paragraph of the report;
- Number all pages, including attachments and annexes, continuously from the first page to the last page (including any coverpage to the report so that the physical and electronic page numbers are the same).⁹

⁹ This is important for clarity of communications in court where multiple people (the judge, expert witness and lawyers) may discuss the report while looking at their own versions of it. It is much, much easier for everyone, particularly in large documents with multiple attachments, if all pages are clearly and consecutively numbered.

Appendix 5: What makes a good expert witness?

[Extracts from 4 publications, edited for relevance and ethical considerations for giving expert evidence in Australia]

A. Extracts from Clint Townsend (2020) “What Makes Your Expert Witness the Best Witness? Social Science Research on Credibility and Influence Points the Way” 22(284) *National Law Review*¹⁰

Credibility is the foundational element that enables experts to successfully persuade [courts], and it has been the subject of social scientific research for decades. ... This article discusses some of the social science research on credibility [of expert witnesses].

Knowledge [and ability to explain complex concepts clearly & simply]

... The domain of knowledge coalesces educational credentials, publications, and experience, each of which make an expert look great on paper. But knowledge is also a product of clarity in explanations, moderate assertiveness, and familiarity with the intricacies of the case. These latter factors serve to distinguish a good expert from a great one. ...

Experts may look great on paper yet fail in front of the [court]. An expert may be the preeminent expert in a given field, but if they cannot clearly explain the concepts to the [court], their persuasive power is lost. When an expert folds on cross-examination and fails to assert counterpoints, the jurors [or judge] often believe the opposing counselors have “beaten” the expert and discount [their] testimony.

Not all experts take the time to ensure they can convey their knowledge. ... these experts lose credibility when they cannot command the facts ...

The best way for expert witnesses to showcase the extent of their qualified knowledge is to act as teachers for the [court but without being arrogant or condescending]. Experts should be consistent and coherent as they enlighten the [court] on a concept, they should demonstrate reasonable confidence in their own conclusions and opinions, and exhibit case-specific knowledge to complement their topical knowledge.

Trustworthiness

Trustworthiness is a characteristic that is crucial to [a court’s] decisions as to whether to believe or dismiss expert testimony. ... the extent to which [judges] trust their testimony is tied to a number of factors.

For one, the above described perception of expertise is likely associated with perceived trustworthiness, as these factors tend to be quite interrelated. An expert who embodies a patient and considerate teacher is likely to be perceived as quite trustworthy.

Second, an expert’s demeanor on the stand influences [judge’s] evaluation of her trustworthiness. There are nonverbal cues that are traditionally thought to be indicative of honesty or dishonesty. For example, one study found that an expert witness’ ability to maintain eye contact with both the attorneys and jurors was predictive of credibility ratings.

¹⁰ Available at <https://www.natlawreview.com/article/what-makes-your-expert-witness-best-witness-social-science-research-credibility-and>

Third, [the evidence of experts who are perceived as “hired guns” will more readily be rejected].

Dynamism

The ability of a witness to exude charisma and dynamism [can be] important. Many experts are asked to expound upon complex and arcane concepts which are difficult for [judges] to comprehend. In these instances, [judges] rely on heuristic cues like credibility to guide their evaluation of the testimony. An expert witness may endear themselves to a [judge] by using simple terms or metaphors, by integrating demonstratives, and by remaining patient and steadfast during cross examination.

In essence, an effective expert is not perceived as merely a trustworthy intellect, but as someone who is considerate enough to take the time to convey their knowledge in ways the audience can understand. For example, [judges and] jurors may understand very little of the testimony from technical jargon-heavy experts, but their dynamism, coupled with a display of their deep passion for and mastery of the subject matter, will frequently carry the day.

Likability

Finally, there is the rather broad question of whether an expert is likable. It is indeed rare that a knowledgeable, trustworthy, and dynamic witness will be unlikable, but most lawyers have encountered at least one arrogant or rude expert. ...

Many [lawyers] have experienced a sinking feeling while watching [judges or] jurors react negatively to an expert who offers a sarcastic response during cross examination. [Judges and] Jurors [may] assess the likability of witnesses based upon their friendliness; the level of respect they show to the parties, the jury, and the court; their ability to use informal language, and the various nonverbal behaviors they exhibit, like eye contact and vocal inflection.

B. Extracts from Bruce Burk (2022) “9 Personal Qualities You Should Look for in an Expert Witness”¹¹

Confidence

Confidence matters. ... A confident expert sends a message that they believe their opinion and that means the judge or jury should as well. An expert who is not confident about their opinion can send a message that the judge or the jury should have reason to doubt what they are saying which may cause them to look to the other side’s expert. ...

Attention to Detail

In litigation, details matter. Whether you looking at a long list of medical records or a compilation of complex engineering schematics or patents, expert witnesses need to have a high level of attention to detail. The failure to exercise high attention to detail can result in the expert being crushed in a cross examination for failure to take the proper time to examine the facts before rendering an opinion. One of the most common ways to undercut the opinion of an expert witness is to point out all the things that were not done or not reviewed in rendering the opinion.

¹¹ Available at <https://www.expertinstitute.com/resources/insights/9-personal-qualities-you-should-look-for-in-an-expert-witness/>

Trustworthiness

Expert witnesses need to convince others that their opinions can be relied upon. Trustworthiness begins with appearance. Expert witnesses should be properly and professionally dressed for their appearance in court or at a deposition. Expert witnesses should speak with confidence and should be attentive when rendering their opinion. Trustworthiness also means that they are not willing to ignore facts that are unfavorable to the side that hired them. Reputation matters when we are speaking about trustworthiness and experts should avoid rendering ill-formed opinions that could damage their credibility.

Experience

All expert witnesses should have a detailed *curriculum vitae* that outlines their educational background as well as any licenses, publications, speaking events, and honors that the expert has received. ... While relevant professional experience is always a requirement in an effective expert, additional experience with public speaking, teaching, or other interpersonal activities can indicate that a potential expert will likely be a strong choice in a testifying role.

Effective Communication

Expert witnesses need to be good communicators. This means that they have to be comfortable using the technical language that is common within their profession. They should be able to speak without hesitation or needing to refer through records in order to render their opinion. Good experts need to be capable of understanding the questions that are posed to them by the attorneys and specifically answer the question asked. An expert who is a good communicator can summarize complex scientific, medical, or specialized facts in a concise way, which allows the judge or jury to understand what they are saying.

Dedication

One of the most important functions of an expert witness is the preparation of a detailed written report of their opinion. The expert report should compile all records that were reviewed in order to render the opinion and outline a concise summary of their findings and recommendations. Good experts will often ask you to send them records because they believe they need to review additional information to properly support their opinion.

One of the techniques attorneys use in trying to diminish the opinion of an expert is pointing out things that they are testifying in deposition to which are not contained in their expert report. The expert report should be free of typographical errors and should have proper chronologies, or a list of all relevant facts that were reviewed to come to the opinion. Good expert reports also cite to relevant authorities in peer-reviewed journals or other sources to bolster their testimony.

Ability to Improvise [and answer questions]

Finally, good expert witnesses need to be able to improvise. One of the most important times in litigation is when an expert witness is asked a question that they are not prepared to answer. Expert witnesses are often asked hypothetical questions that they are not prepared to answer and knowledgeable experts need to be able to come up with answers to complex hypotheticals on the spot. A common trick that attorneys used in order to diminish the opinion of an expert witness is to get them to say, "I don't know" to a large number of questions. Expert witnesses should be able to think on their feet based on their training to answer questions they did not anticipate. However, they should always be careful to only answer questions that fall within their specific area of expertise.

C. Extracts from Carlo Reys (2019) “Tips for Being an Effective Expert Witness”
Emergency Medicine News October 2019 - Vol 41(10) - p 32¹²

...

How to survive cross-examination: Before answering, an expert witness must actually understand the question being asked. Listen carefully to [the] question before rushing to answer. It is OK to say you don't understand the question or to paraphrase the question to confirm understanding

Stay calm, cool, and collected during cross. This is a personality trait more than anything else. ...

Dogmatic positions should be avoided [but stand up for what you consider is correct]. [Be] appropriately influenced by the facts of the case, not dogmatically married to a position that supports your side [and ignoring facts that do not support your client].

D. Extracts from Juli Saitz (2021) “Four Key Factors to Consider When Retaining an Expert Witness” *American Bar Association*¹³

Qualification

An expert’s qualifications are undoubtedly important; they must have subject matter expertise. ... This means the expert will be able to arrive at well-reasoned opinions, and being well-qualified will help them withstand difficult questioning at ... trial, particularly during cross-examination.

Credibility

Perhaps the most important quality in an expert is credibility. There are various opinions about the qualities that convey credibility, which simply means the ability to be trusted.

... A credible expert will acknowledge weaknesses in their analysis and will admit his or her mistakes, even during testimony. The most credible experts are those who are honest and straightforward and advocate for their own opinions. It is not an expert’s role to be an advocate for their clients or for arguments presented by counsel.

Ability to “Teach”

The best experts can convey complex ideas to judges and jurors alike. An expert’s extensive credentials mean little if they cannot clearly explain their opinions to lay people. ...

Friendly Demeanor

Good experts share a simple personality trait: likeability. Characteristics of likeability include eye contact, unassuming demeanor, and casual but professional speech. Likeable experts show appropriate levels of respect to the judge, jurors, and counsel on both sides. ...

¹² Available at https://journals.lww.com/em-news/fulltext/2019/10000/at_your_defense_tips_for_being_an_effective.20.aspx. Note: much of the advice in this article I deleted as inappropriate in an Australian context or not relevant to the fields of expertise of people in the workshop.

¹³ Available at <https://www.americanbar.org/groups/litigation/committees/commercial-business/practice/2021/four-factors-for-retaining-expert-witness-litigation/>