

expert update

Uncovering the latest Expert Witness news with Ferrier Hodgson

Could Copernicus have been an expert witness?

R v Parenzee [2007] SASC 143

One test of expertise is that it relates to a recognised body of knowledge. So what should a court do when an expert disputes the accepted view in their area of expertise?

Do you remember Copernicus's 16th century view of the earth in daily motion about its axis and in yearly motion around a stationary sun? At the time it was definitely not a "mainstream" view – as Copernicus discovered¹.

Experts typically give evidence about a subject matter based upon generally accepted or "mainstream" views. But who decides whether an expert's views are "mainstream"? And if they are not, should the court dismiss them out of hand?

In *Parenzee*, the applicant sought permission to appeal a criminal conviction on the basis that there should be a retrial so that fresh expert evidence could be led. The fresh expert evidence essentially concerned the question of whether HIV causes AIDS.

The applicant called two experts whose views were diametrically opposed to the views of the respondent's experts. Justice Sulan commented that the most significant aspect of the admissibility of these two experts' evidence was whether they were qualified to give expert evidence. The process adopted by these two experts was to criticise the scientific basis for establishing the link between HIV and AIDS, rather than putting forward their independent practical experiences and balanced reasoning.

Justice Sulan identified that their critique of the research literature was outdated. In addition, they were not objective, had an inability to bring a balanced approach and:

Their evidence demonstrates how they misinterpret their position and promote their opinions by attempting to authenticate their views in a misleading way.

In that sense, those experts became "so enamored of their own opinions that they disregarded what other experts thought of them"².

¹ Copernicus, *De revolutionibus orbium coelestium* (On the Revolutions of the Heavenly Spheres), published in 1543

² *R v Parenzee* [2007] SASC 143 – Justice Sulan

Ultimately, the applicant's experts' opinions were not accepted by the court as being expert evidence, due to their lack of expertise. Those opinions were therefore inadmissible. However, Justice Sulan reasoned that, even if they had the requisite expertise, their opinions should not be accepted as they were "so out of line with the prevailing opinions and the prevailing evidence".

Freckleton and Selby³, in their book on Evidence identified the "area of expertise rule", which asks the question:

Is the claimed knowledge and expertise sufficiently recognised as credible by others capable of evaluating its theoretical and experiential foundations?

Whether a witness is an expert in a particular field of knowledge was explained by King CJ in *Bonython*⁴:

A witness may be allowed to express opinions if the witness is shown to possess sufficient knowledge or experience in relation to the subject.

Further, one of the matters to be considered when determining whether expert evidence is admissible is:

[Whether] the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience.

Significance

It would have been interesting to have had the debate that occurred in this case in the context of a criminal trial around the 1980s when today's "mainstream views" were not so "mainstream".

It is also interesting to contemplate what may have happened had one of these two experts been selected as a "single expert". How then would the Court have determined whether his or her views were "mainstream"?

In this matter the issue perhaps was not about whether or not the experts had a view different from the mainstream per se, but how they failed to address one of the fundamental principles of expert evidence, namely expertise. However, the lack of expertise was only truly "exposed" by opposing experts during cross-examination!



Peter Holmes
Partner, Adelaide
phone: 08 8100 8600
email: pholmes@sa.fh.com.au

³ Freckleton and Selby, *Expert Evidence: Law, Practice, Procedure and Advocacy* (2nd ed)

⁴ *R v Bonython* (1984) 38 SASR 45

For more information about our forensic services, please contact:

Sydney: Andrew Ross
+61 2 9286 9906
andrew.ross@fh.com.au

John Temple-Cole
+61 2 9286 9919
john.temple-cole@fh.com.au

Melbourne: Greg Meredith
+61 3 9600 5118
greg.meredith@fh.com.au

Adelaide: Peter Holmes
+61 8 8100 7600
pholmes@sa.fh.com.au

Brisbane: Tim Michael
+61 7 3831 4833
tmichael@qld.fh.com.au

Hong Kong: John Tudorovic
+852 2820 5610
jtudorovic@fh.com.hk

Singapore: Tim Reid
+65 6416 1400
timr@fh.com.sg

Or find out more at:
www.ferrierhodgson.com

FORENSIC ACCOUNTING

FINANCIAL INVESTIGATIONS & FRAUD

BUSINESS VALUATION

FORENSIC IT