



The expert witness question

The legal system's use of expert witnesses has increased to the point where a major review is called for to ensure that the system knows what it wants from expert witnesses and apply processes that facilitate (rather than impede) the satisfaction of those wants.

The 2004 Expert Evidence Forum canvassed the opinions of the judiciary, lawyers, police, social psychologists, academics, mediators – and the accounting profession. Those views on expert evidence produced a wide – and sometimes divergent – range of suggestions as to the best ways forward.

Some favoured a fixed panel of experts, the single expert (agreed upon by both parties or the Court), the hot tub (where experts are brought together in the presence of the Court to discuss their opinions) or joint conferences (with or without solicitors in attendance).

“My own view is that any single expert regime ought to be considered on a case by case basis (rather than prescribed in each and every situation).”

Peter Holmes, Forensics Partner, Adelaide

As forensic accountants, we have our favoured positions – with good reason.

“Generally, the favoured position is that used in the Family Court. There, in the process of instructing a single expert, each party's solicitors need to agree a single set of instructions and/or assumptions, or alternative assumptions. Our observations are that this takes much longer than the usual course of instructing experts individually – (probably for the better!)”

My own view is that any single expert regime ought to be considered on a case by case basis (rather than prescribed in each and every situation).

In significant cases consulting or 'shadow' experts are now being engaged. This not only leads to additional costs, but also to delays as each party prepares responses/questions to the single expert. Nor does there appear to be any mechanism whereby the single expert can jointly

meet these other experts and reach agreement. Furthermore, reliance upon single experts presumes they will always reach the correct conclusions. Unless parties each have access to an equivalent expert, how are they to know?

My favoured view remains the independent experts being jointly instructed by each party's solicitors with agreed facts and assumptions or alternative assumptions, followed by the conference of experts and a joint report.”

Peter Holmes, Forensics Partner, Adelaide

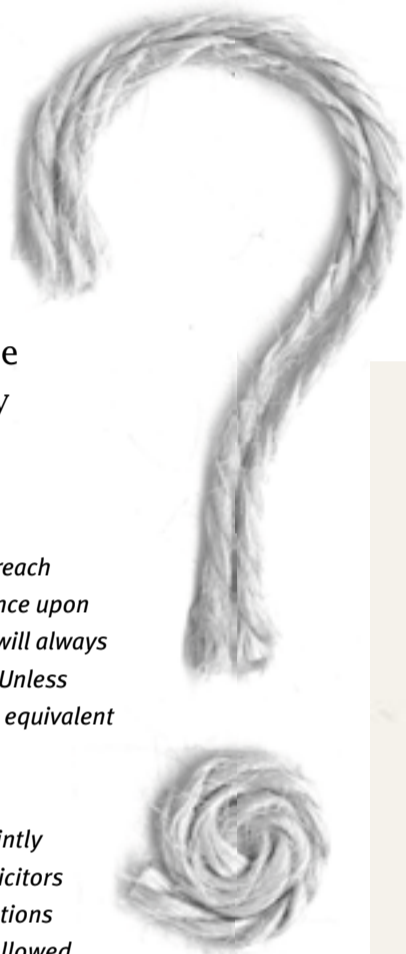
“The provision of expert evidence (the term not necessarily being restricted to expert accountants) would be assisted by a greater emphasis on the settlement of an agreed set of facts, before each side engages its expert to form an opinion on the basis of those facts. In my experience, a considerable amount of time can be expended on debating, and giving expert opinions on, facts which are not ultimately accepted by the Court.

Of course, legal practitioners would rightly point to the fact that this approach may lead to a splitting of the trial process and therefore, possibly, to considerable delay in getting to hear the evidence of experts. Despite this, I can see definite advantages in these arrangements, especially in preference to a system of single or Court appointed experts.

I think these latter arrangements would lead to a narrowing of the expert views being heard by the Court. In any event both parties are still likely to want to engage the services of a consulting expert to assess the views of the Single expert.”

Greg Meredith, Forensics Partner, Melbourne

The NSW Law Reform Commission was due to report by March 2005. **For more information on the debate see, 'Issues in expert evidence: a report on the 2004 Expert Evidence Forum'.** Institute of Chartered Accountants: www.icaa.org.au



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A test for you

If and when the time comes for you to select a forensic expert, how well will you be served by your intuition in making a good choice? Take this short test and find out.

- 1 It's a good idea to have your forensic work done by your existing firm of auditors because they already know your business and have all the relevant data readily to hand.

Yes No Maybe

- 2 The most important thing to look for in selecting a forensic supplier is their IT expertise and capacity because forensics is all about sorting through large amounts of data, quickly.

Yes No Maybe

- 3 The only time you need a forensic team is after you've found (or seriously suspect) fraud, theft or embezzlement – ie: after a crime or suspected crime.

Yes No Maybe

continued over...

- Forensic Accounting
- Fraud Risk Services
- Forensic IT

Forensics & IT

We are acutely aware we live in the age of technology, an era where technology is in the ascendancy. Technology is seen as the vanguard – the key prerequisite for successful change and competitiveness.

The consequent preoccupation with IT is evident nearly everywhere, especially in areas like ours (forensic accounting and investigations) where huge amounts of complex data have to be reviewed and interpreted speedily, economically and intelligently. Especially so given the rapidity of change in IT and information systems.

It's a constant challenge to keep up with fraudsters, scammers and embezzlers. It takes even more effort to stay ahead of the game (something you must do in forensics if you're to successfully design preventative systems as well as mount real time investigations).

We, (the forensic practitioners) are partly to blame for this because we talk so much about our IT skills that it's not hard to see why Management in client organisations is so often overly impressed by a forensic team's presentation of its IT creativity and capacities.

I say 'overly' advisedly because too narrow a focus on a supplier's IT skills can be dangerous. The truth is that while IT is necessary for success, it's not sufficient to guarantee success in forensic work. There's a lot more to good Forensics than just good IT.

It's the same in most thinking professions. Having a great legal library does not make a barrister a great SC. All the latest medical equipment doesn't necessarily make

Actually, that's not strictly true because you don't find all those skills in one person. Professionals with excellent people skills aren't usually first-rankers in technological areas. Ditto, IT experts. The E geek rarely has the intuitive, people based skills (yet alone street experience). That's why we have adopted a team approach at Ferrier Hodgson Forensics. It's a matter of complementarity.

The diagram below illustrates our approach. It applies to both the design of 'fraud preventing' systems and investigatory, forensic work.

Although we have accounting roots, we recruit from police forces, investigatory bodies and IT companies – seeking the best in their field who want to work with complementary specialists who are also the best in their fields.

Teams, of course, have their own way of thinking, their own characteristic style. And that's a major plus because it means you can assign two (or even more teams on a difficult project), knowing that their different modus operandi will provide you with options for finding the best way forward. It's another example of the benefits of putting together people of equally strong, but different, skills.



A test for you continued

4 It's best to select a forensic firm that's a major player in your own market. They'd best know the business environment you operate in.

Yes No Maybe

5 We're confident that our security system is a very, very tight one. I doubt that we'd ever need the services of a forensics firm.

Yes No Maybe

6 All forensic firms offer pretty much the same thing. They're all much of a muchness, so you basically choose on price.

Yes No Maybe

Answers: see below

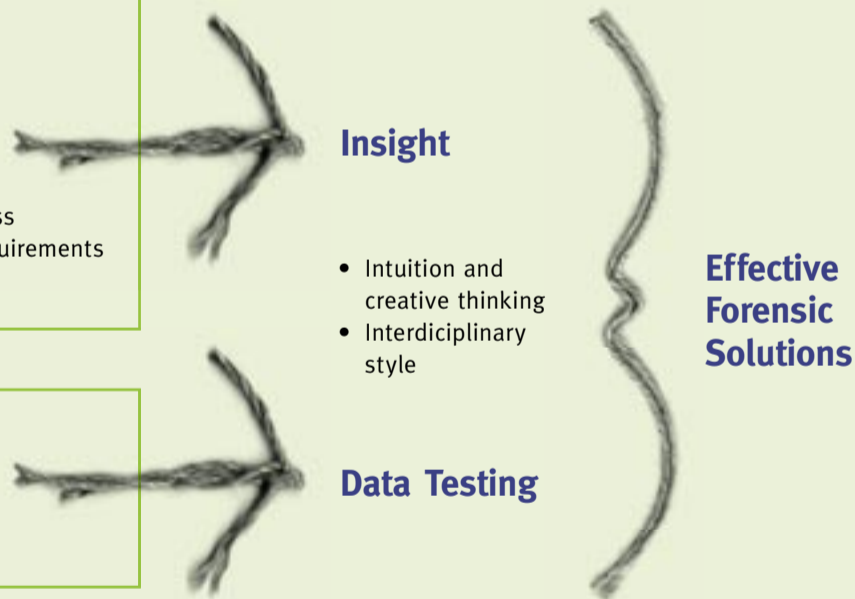
Quiz Answers: 1 NO. Forensic firms should be independent. Conflict (even perceived conflict) of interest is best avoided. By way of analogy, it's dangerous to have police investigating police. 2 ON. Good forensics is more than good IT. Technology is a means to an end. It needs to be complemented by excellent policing/investigatory skills, an understanding of the legal/evidence system – and experience in presenting that evidence in a Court. 3 ON. Surely prevention is better than cure. A little preventative work can save a lot of heartache – and money. Identification of fraud risks, or 'red flags' can help to mitigate the risk of fraud occurring. 4 YES. If you are a 'hometown-only-market' organization, globalisation, your forensic partner needs global reach to be effective. 5 MAYBE. But unlikely. Most passwords can, for example, be cracked within a few minutes (see next issue's article on passwords). Look at the difference between practitioner ability can be great. Test your chosen experts' knowledge and experience before engaging them. Is their expertise general or specific? Being an accountant 'doesn't necessarily mean you can be an expert accountant' in all facets of this field. Is their knowledge genuine enough to stand up to the rigours of examination in Court?

People skills

- Understanding of human nature/criminal mind modus operandi
- Detective/investigative/policing skills and experience
- 'Street wise', maturity, interviewing skills, witness
- Understanding of the legal system, evidence requirements
- Market, cultural orientation

Data interrogation skills

- IT expertise • Hard evidence orientation
- Conceptual, modeling skills
- Statistical/mathematical skills



a doctor a great surgeon. It's the same in forensics. IT is a means to an end – but it requires human brainpower and skill to use that to its maximum advantage. It's pretty obvious when you stop to think about it. The trouble is we often seem to overlook the obvious when chasing new frontiers in business. But that's human nature, isn't it?

Well, success in forensics requires a pretty good understanding of human nature – and the foibles of the criminal mind – as well as technology. You need good people skills, experience and street savvy to utilise technology to advantage.

So when you're looking for a forensic partner, it pays to look at the skills of the whole team because it's the interactions of their specialist skills that will determine their capacity for success. Important as they are, don't just focus on IT skills. Forensics is more than a technological race.

From an interview with John Temple-Cole, Forensics Partner, Sydney, June 2005

About forensics@ferriers...

forensics@ferriers is a newsletter issued by Ferrier Hodgson discussing current issues in the area of Forensic Services – forensic accounting, forensic technology and fraud risk services. For comments please contact john.temple-cole@syd.fh.com.au Alternatively you can read forensics@ferriers on our website.

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