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**Legal Issues and Trends
Valuation 2000 Conference**

**The Valuer as
an Expert Witness**
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Question 1: What is required to be qualified as an expert witness?

American Law

Principle

McCormick on Evidence explains the requirements necessary for a witness to be qualified as an expert:

... the witness must have sufficient skill, knowledge, or experience in or related to the pertinent field or calling as to make it appear that his opinion or inference will probably aid the trier of fact in the search for truth. The knowledge may be derived from reading alone in some fields, from practice alone in some fields, or as is commonly the case, from both. While the court may rule that a certain subject of inquiry requires that a member of a given profession, as a doctor, an engineer, or a chemist be called; usually a specialist in a particular branch within a profession will not be required.¹

Examples

1. In *Farner v. Paccar Inc.*,² a witness who had been in the trucking industry for almost thirty years and, at the time of the trial, controlled twelve tractors was qualified as an expert and was permitted to state his opinion on the proper design of suspension systems for trucks.

2. In *Holmgren v. Massey-Ferguson Inc.*,³ Circuit Judge Lay held that while the witness at issue was not particularly familiar with corn picking machines, he was nevertheless able to give an expert opinion that the corn picking machine at issue was defectively designed. The Court found that because the witness was a professor of mechanical engineering, held a Ph.D. in Engineering, and had been a farmer for seventeen years, he was appropriately qualified to give an expert opinion on the design of the corn picking machine there at issue.

Circuit Judge Lay further explained that:

[a]cceptance of an expert's qualifications cannot depend on his precise skill or background in a particular profession or industry. If the

subject matter (safe design) falls within a person's experience in or overall knowledge of a specialized skill (engineering), this is sufficient to qualify the witness as an expert. We deem it too strict a standard that one must have manufactured or previously designed machinery to understand principles of safe design.⁴

Moreover, quoting from his earlier decision in *Moran v. Ford Motor Co.*,⁵ Circuit Judge Lay also outlined the more general principle of law underlying the qualification of expert witnesses:

A witness may be qualified as an expert based upon his knowledge, skill, experience, training or education... The test is whether the witness' training and experience demonstrate a knowledge of the subject matter... And practical experience as well as academic training and credentials may be the basis of qualification...⁶

3. In the *Moran* case, Circuit Judge Lay overturned the lower Court's ruling that Robert Stungis, the owner and operator of a body and fender shop, was not qualified to give expert testimony respecting whether or not the wheel of a car had become detached prior to the impact of the accident there at issue.

Mr. Stungis had been in the auto repair business for eighteen years. On many occasions, he had "inspected suspension systems to discover what parts were broken or worn, what had caused the damages and what pressures were exerted that might cause damage."⁷ Moreover, he was "familiar with the function and operation of a ball joint" and "he was able to recognize visible wear patterns on most automobile metal parts."⁸

Accordingly, Circuit Judge Lay found that Mr. Stungis was in fact appropriately qualified to be an expert witness and capable of offering his opinion on how the wheel at issue had become detached.

Conclusion

It is a sufficient skill, knowledge, or experience, capable of assisting the trier of fact, that one must possess in order to



be qualified as an expert witness. This skill, knowledge, or experience need not have come from any formal training.

Canadian Law

Principle

The requirements necessary for a witness to be qualified as an expert in Canada are essentially identical to those in the United States:

Before a court will receive the testimony on matters of substance, it must be demonstrated that the witness possesses special knowledge and experience going beyond the trier of fact. The test of expertise so far as the law of evidence is concerned is skill in the field in which the witness's opinion is sought. The admissibility of such evidence does not depend upon the means by which that skill was acquired. As long as the court is satisfied that the witness is sufficiently experienced in the subject-matter at issue, the court will not be concerned whether his or her skill was derived from specific studies or practical training, although that may affect the weight to be given to the evidence.⁹

Examples

4. In *R. v. Marquard*,¹⁰ Justice McLachlin indicated that while the expertise of medical doctors may not lie in particular areas of practice, courts may accept such doctors' opinions in areas beyond their expertise as such doctors nevertheless meet the requirement of possessing a "special knowledge and experience going beyond that of the trier of fact."¹¹

In the particular circumstances of *Marquard*, two medical doctors, neither of whom were experts on burns specifically, were permitted to state their opinions on whether or not the child at issue had suffered a contact burn. In addition, a medical doctor lacking particular expertise in the area of abused children was permitted to characterise the behaviour of the child at issue as that of an abused child.

Justice McLachlin found that the experience the first two doctors had as practising physicians was sufficient to satisfy the requirement of having a special knowledge respecting

burns beyond that of the trier of fact. Similarly, Justice McLachlin found that the third doctor's "long experience working with children" was sufficient to satisfy this same requirement as it respected the issue of child abuse.¹²

Justice McLachlin consequently affirmed that "[d]eficiencies in the expertise go to weight, not admissibility."¹³

5. In *Rice v. Sockett*,¹⁴ Chief Justice Falconbridge articulated the requirements of being an expert witness as follows:

The derivation of the term "expert" implies that he is one who by experience has acquired special or peculiar knowledge of the subject of which he undertakes to testify, and it does not matter whether such knowledge has been acquired by study of scientific works or by practical observation. Hence, one who is an old hunter, and has thus had much experience in the use of firearms, may be as well qualified to testify as to the appearance which a gun recently fired would present as a highly-educated and skilled gunsmith.¹⁵

The Court found that a witness, described as a farmer, cattle dealer, and owner of a silo, who had no formal education was nevertheless permitted to offer expert testimony respecting "what the object of a silo is, and what people should strive to obtain in order to get a perfect silo."¹⁶

Conclusion

The requirements necessary for a witness to be qualified as an expert in Canada are the same as those in the United States.

Question 2: What responsibilities do expert witnesses have and what role do they play with respect to the contents of a case?

American Law

Principles

The expert's primary role is "to draw inferences from the facts which a jury would not be competent to draw."¹⁷ In



addition, expert witnesses “may give a dissertation or exposition of scientific or other principles relevant to the case, leaving the trier of fact to apply them to the facts.”¹⁸

An expert may also state his or her opinion respecting issues within the competence of the trier of fact, *if* such an opinion would be helpful to the trier of fact:

... cases will admit expert opinion concerning matters about which the jurors may have general knowledge if the expert opinion would still aid their understanding of the fact issue. This latter standard is included within the terms of Federal Rule of Evidence and Revised Uniform Rule of Evidence 702. In fact, Rule 702 should permit expert opinion even if the matter is within the competence of the jurors if specialized knowledge will be helpful, as it may be in particular situations.¹⁹

Canadian Law

Principles

Canada’s approach to the role and responsibility of expert witnesses remains relatively similar to that of the United States:

An expert is usually called for two reasons. The expert provides to the court basic information necessary for its understanding of scientific or technical issues involved in the case. In addition, because the court is incapable of drawing the necessary inferences on its own from the technical facts presented, an expert is allowed to state his or her opinion and conclusions.²⁰

Example

1. In *R. v. Abbey*,²¹ Justice Dickson found:

With respect to matters calling for special knowledge, an expert in the field may draw inferences and state his opinion. *An expert’s function is precisely this: to provide the judge and jury with a ready-made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate.* “An expert’s opinion is admissible to furnish the Court with scientific information

which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary”: *R. v. Turner* (1974), 60 Cr. App. R. 80 at p. 83, *per* Lawton L.J...

... An expert is there to give an opinion.²²

Conclusion

The role and the responsibility of expert witnesses are, as in the United States, to provide technical or scientific information beyond the knowledge of the trier of fact and to draw conclusions respecting technical or scientific facts.

Significant Differences between American and Canadian Law

There appears to be one subtle difference between American and Canadian law respecting this question.

The role of the trier of fact in determining fact issues appears to be guarded more closely in Canada than in the United States as, in the United States, expert witnesses may state their opinions on issues within the grasp of the trier of fact. The Canadian Supreme Court, however, indicates that expert witnesses would not likely exert this extended influence in Canada.

For example, in *R. v. B. (G.)*,²³ an expert in child abuse was not permitted to state his opinion on whether the child at issue was a truthful witness as the Court found that this particular point was an issue to be determined by the jury alone.

Also, in *Marquard*, the Supreme Court’s unequivocal pronouncement respecting the role of the trier of fact in determining credibility suggests that expert testimony, even if such testimony would be helpful to the trier of fact, will not be permitted where such testimony respects an issue capable of being determined by the trier of fact:

It is a fundamental axiom of our trial process that the ultimate conclusion as to the credibility or truthfulness of a particular witness is for the trier of fact, and is not the proper subject of expert opinion...²⁴



While the Supreme Court’s comments were made within the context of expert testimony respecting credibility of witnesses, its firm affirmation that such testimony was inadmissible specifically because it encroached on the reserve of the trier of fact suggests the Court’s general unwillingness to accept *any* expert testimony where such testimony would encroach upon the function of the trier of fact.

Indeed, this inference is consistent with the Supreme Court’s approach in *Abbey* where the Court confirmed:

If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary”: *R. v. Turner* (1974), 60 Cr. App. R. 80 at p. 83, *per* Lawton L.J...²⁵

Thus, while experts in the United States may be able to give their opinions on issues within the grasp of the trier of fact where courts find that such testimony would be helpful, the same is not likely the case in Canada.

While, ultimately, this difference may be more of nuance than of substance, it nevertheless appears that the role and responsibility of an expert in the United States reaches beyond that of an expert under Canadian law.

Question 3: Who makes decisions as to the permissibility of expert testimony and the acceptance of particular expert witnesses?

American Law

Principles

“The qualification of experts and the admission of opinion testimony lies [sic] within the sound discretion of the trial court.”²⁶

The trial judge determines the acceptability of particular expert witnesses through examinations-in-chief and cross examinations on their credentials.²⁷

Canadian Law

Principles

As in the United States, it is the trial judge who determines whether or not expert evidence may be admitted.²⁸

The trial judge also determines whether particular expert witnesses will be qualified as expert witnesses through the same process as in the United States.²⁹

Question 4: What standard is used to determine whether or not expert testimony will be admitted in a case?

American Law

Principles

Not surprisingly, opinion testimony will be admitted where it is of assistance to the trier of fact.³⁰

More specifically, however, the Supreme Court’s 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals*,³¹ indicates that for expert opinion to be admitted, the subject of an expert’s testimony must rest on “scientific knowledge.”

Justice Blackmun further explains:

... in order to qualify as “scientific knowledge,” an inference or assertion must be derived by the *scientific method*. Proposed testimony must be supported by appropriate validation – i.e., “*good grounds*,” based on what is known. In short, the requirement that an expert’s testimony pertain to “scientific knowledge” establishes the standard of evidentiary reliability.³²

The following are a number of factors trial judges consider in determining whether or not an expert’s methodology rests on “good grounds”:

- (a) “... a key question to be answered in determining whether a theory or technique is scientific knowledge that will assist the trier of fact will be whether it can be (and has been) tested”;
- (b) “... whether the theory or technique has been subjected to peer review and publication”;
- (c) “... in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error...”; and



(d) “Widespread acceptance can be an important factor in ruling particular evidence admissible, and ‘a known technique that has been able to attract only minimal support within the community’... may properly be viewed with skepticism.”³³

These factors, however, are only “general observations” and do not constitute “a definitive checklist or test.”³⁴

Ultimately, trial judges themselves must determine what factors are relevant to a consideration of whether or not an expert’s methodology rests on “good grounds” with respect to the particular circumstances of each case.³⁵

Examples

1. In *Daubert*, the Supreme Court overturned the former approach of courts to experts’ methodologies. In the past, courts would refuse the admission of expert opinion where experts had failed to use the generally accepted methods of analysis for their respective fields or disciplines.³⁶

The lower courts that heard the *Daubert* case refused to admit the testimony of eight “well-credentialed” doctors each of whom were prepared to testify that the drug Benedictin, if taken by pregnant mothers, could cause birth defects in their children. The doctors’ opinions rested on animal studies, chemical structure analyses, and the analysis of previously published human statistical studies.

The lower courts, accordingly, refused to admit the doctors’ opinions as their methodology, while scientifically sound, was not the generally accepted practice in their field.

The Supreme Court, however, eliminated this latter standard of evaluation and substituted the standard of “good grounds”; thereby vacating the judgements of the lower courts and remanding the *Daubert* case for further proceedings consistent with this new standard.

2. In the *Paoli* case, the Court meticulously scrutinized the methodology of each doctor involved in the litigation to determine whether or not their respective opinions regarding the role polychlorinated biphenals (PCBs) played in the variety of physical ailments suffered by the plaintiffs rested on “good grounds.”

Where the doctors failed to examine individual plaintiffs, had not taken the individual plaintiffs’ medical histories, and did not employ the standard techniques of diagnosis, the Court refused to admit the experts’ opinion respecting whether or not PCBs were responsible for the individual plaintiffs’ injuries. The Court found that in the absence of performing these functions, the doctors’ opinions were not reliable.

However, where these same doctors had performed all of the latter functions on individual plaintiffs, the Court did in fact admit the doctors’ respective opinions.

Significantly, the Court also indicated that opinions of particular experts will be favoured over those of others where an expert’s methodology is superior.

If the judge thinks that the conclusions of some other expert are correct, it will likely be because the judge thinks that the methodology and reasoning process of the other expert are superior to those of the first expert.³⁷

3. In *Claar v. Burlington Northern Railroad*,³⁸ Circuit Judge Canby refused to admit the expert testimony of medical doctors respecting the connection between the plaintiffs’ ailments and their exposure to a variety of chemicals while working at Burlington Northern’s Livingston, Montana, shop.

The Court found that the doctors’ opinions were unreliable as the doctors failed to explain the basis for their conclusions, could not explain which chemicals caused which injuries, failed to consider other possible explanations for the plaintiffs’ injuries, and had formed their medical opinions respecting the plaintiffs’ injuries without having read the necessary and appropriate literature.

4. In *Frymire-Brinati v. Marwick*,³⁹ the Court refused to admit the opinion of a manager of an accounting firm respecting financial statements as, despite his credentials, “he did not employ the methodology that experts in valuation find essential.”⁴⁰ The Court was particularly struck by the following specific aspect of the expert’s controversial methodology:

Hassett’s method [i.e., the expert’s method] implies that raw land is worthless and that a large office building in the final



stages of construction also has no value even though it is fully leased out and could not be sold for a hundred million dollars.⁴¹

5. In *Kumho Tire*, the Supreme Court refused to admit a tire analyst's opinion that the tire at issue had failed due to a defect in either its design or manufacture.

The analyst's opinion was based on the theory that because two of the four specific physical symptoms of tire abuse were absent, there must have been a defect in the tire's manufacture.

The Supreme Court approved of the District Court's decision that the analyst's theory failed to satisfy any of the four factors mentioned in *Daubert* and that no other considerations were capable of bringing the theory within the required "good grounds."

The Supreme Court affirmed that the analyst's theory was not reasonably reliable as the expert's "analysis depended upon [an] acceptance... that [the analyst's] visual and tactile inspection could determine that the tire before him had not been abused despite some evidence of the presence of the very signs for which he looked [i.e., the presence of abuse]."⁴²

The Supreme Court further explained that despite the analyst's impressive credentials, his opinion could not be admitted as it lacked the required "scientific method":

The District Court did not doubt Carlson's qualifications, which included a masters degree in mechanical engineering, 10 years' work at Michelin America, Inc., and testimony as a tire failure consultant in other tort cases. Rather, it excluded the testimony because, despite those qualifications, it initially doubted, and then found unreliable, "the methodology employed by the expert in analyzing the data obtained in the visual inspection, and the specific basis, if any, for such an analysis."⁴³

Conclusion

While it may have initially appeared that the Supreme Court relaxed the standard to which experts' methodologies are held by substituting the "general acceptance" test with the

"good grounds" test, subsequent case law has demonstrated that the courts' scrutiny of experts' analyses and procedures remains vigorous.

Notwithstanding impressive credentials and extensive qualifications, courts will not admit expert testimony where such testimony does not rest on a reliable "scientific method."

A Special Note to Appraisers

Within the context of appraising or valuing works of art, courts would not likely admit the opinions of experts failing to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). As *Artful Ownership* indicates, "USPAP sets out the ethical and professional expectations of the Appraisal Standards Board for the conduct of valuers."⁴⁴

For a court to admit an expert opinion divorced from the practices and procedures within USPAP, such an opinion, regardless of the credentials of the expert in question, would have to rest on a reliable methodology capable of satisfying the standard of "good grounds," as understood in *Daubert*. As the case law above suggests, however, the vigour with which courts apply the *Daubert* standard, renders such a circumstance highly improbable.⁴⁵

Canadian Law

Principle

The standard Canadian courts employ to determine whether or not expert testimony is admissible is different in form from that of the United States.

The Supreme Court's 1994 decision of *Mohan* stipulates the considerations applicable to this question. In that case, Justice Sopinka indicated that the admission of expert evidence depends on the application of four inter-related criteria:

- (a) relevance;
- (b) necessity in assisting the trier of fact;
- (c) the absence of any exclusionary rule; and
- (d) a properly qualified expert.⁴⁶



The Supreme Court further explained that these criteria would be more strictly applied where the expert testimony respected a novel field of inquiry or where the expert opinion approached the “ultimate issue” (i.e., the question to be answered by the trier of fact) in the case:

... expert evidence which advances a novel scientific theory or technique is subjected to special scrutiny to determine whether it meets a basic threshold of reliability and whether it is essential in the sense that the trier of fact will be unable to come to a satisfactory conclusion without the assistance of the expert. The closer the evidence approaches an opinion on an ultimate issue, the stricter the application of this principle.⁴⁷

Example

6. In *Mohan*, the Supreme Court refused to admit a psychiatrist’s testimony that the accused could not be the perpetrator of the four sexual assaults at issue as the accused did not fit the psychological group profile of perpetrators of such crimes.

The expert claimed that perpetrators of such offences belonged to a limited and unusual group of individuals and that the accused did not fall within this narrow group because he did not possess this group’s characteristics.

The Supreme Court did not consider the expert’s methodology sufficiently reliable as there was no independent record anywhere to support the expert’s contention that group profiles were capable of determining the potential perpetrators of particular crimes.

As the expert’s analysis was unreliable, the Supreme Court determined that the admission of the psychiatrist’s opinion was not necessary in the sense of usefully clarifying a matter otherwise inaccessible to the trier of fact. Thus, the Supreme Court refused the admission of the expert’s testimony under the second element of the *Mohan* test.

Conclusion

The standard by which Canadian courts determine the admissibility of expert evidence is found in *Mohan*. This

standard is different in form from that employed in the United States.

Significant Differences between American and Canadian Law

As the Canadian Supreme Court’s approach to the psychiatrist’s evidence in *Mohan* indicates, Canadian courts do indeed engage in an analysis similar to that in *Daubert* to determine the reliability of experts’ methodologies. This analysis is simply not explicitly identified as being subject to a standard of “good grounds” as it is in the United States.

As the approach in *Mohan* to the methodology of the psychiatrist suggests, however, there can be little doubt that experts’ methodologies in Canada must nevertheless satisfy considerations similar to those explained in *Daubert* and *Kumho Tires*.

Once such considerations are satisfied, the testimony is subsequently applied to the four-pronged expert testimony admissibility test in *Mohan* to determine the ultimate admissibility of the expert testimony at issue. The *Mohan* test is simply a convenient and collective articulation of all the relevant rules respecting experts and the admissibility of evidence.

While the substantive principles respecting experts and the admissibility of expert testimony remain the same and are similarly applied in the United States as in Canada, these rules are not collectively packaged as they are in *Mohan*. Hence, once an expert’s methodology satisfies the standard of “good grounds” in an American court, the considerations collected in the *Mohan* test do, in fact, ultimately apply. These *Mohan* considerations are, however, made through the regular attention to and application of the appropriate rules respecting experts and the admissibility of evidence.

Accordingly, the difference between American and Canadian courts respecting this question is not likely anything beyond the superficial. While American and Canadian courts identify their steps in analysis differently, the substance of each courts’ standards remain the same.



Question 5: Who makes decisions as to the credibility of or the weight to be given to the opinions of expert witnesses?

American and Canadian Law

Principle

In both the United States and Canada it is the trier of fact that determines the credibility of and the weight to be given to the opinions of expert witnesses.⁴⁸

Conclusions: Respective to the Issues Considered

1. Both American and Canadian law confirm that to be qualified as an expert witness, the witness must have a special knowledge and experience beyond that of the trier of fact in a particular field of study or with respect to a specific expertise. This special knowledge or experience need not necessarily entail a formal education.

2. The role and responsibility of expert witnesses in the United States and in Canada are to provide courts with information necessary, and otherwise unavailable, to their understandings of scientific or technical issues involved in cases at hand. Unlike lay witnesses, experts state their opinions and draw conclusions on scientific or technical facts at issue. In the United States, expert witnesses may in fact offer their opinions respecting issues within the comprehension of the trier of fact where the Court considers such testimony helpful. This latter possibility is not, however, the case in Canada.

3. In both the United States and Canada it is the trial judge who determines the permissibility of expert testimony and the acceptance of particular expert witnesses.

4. While the United States and Canada approach determinations of whether or not expert testimony will be admitted in structurally different manners, the substance of each country's standard of evaluation remains similar. In the United States this standard is informed by the *Daubert* case while in Canada the standard is set in *Mohan*. Essentially, for expert testimony to be admitted in either

country, a court must find the expert's underlying methodology or procedure to be reasonably reliable.

5. In both the United States and Canada it is the trier of fact that determines the credibility of and the weight to be given to the opinions of expert witnesses.



Endnotes

¹ McCormick, *McCormick on Evidence*, 4th ed. Vol. 1 (St. Paul: West Publishing Co., 1992) at 54-55 [“McCormick”].

² 562 F.2d 518 (8th Cir., 1977); [1977] CA8-QL 407 No. 76-1992 (Q.L.) [“Farner”].

³ 516 F.2d 856 (8th Cir., 1975); [1975] CA8-QL 167 No. 74-1627 (Q.L.) [“Holmgren”].

⁴ *Ibid.* at para. 14 (Q.L.).

⁵ 476 F.2d 289 (8th Cir. 1973); [1973] CA8-QL 150 No. 72-1414 (Q.L.) [“Moran”].

⁶ *Holmgren*, *supra* note 4 at para. 10 (Q.L.).

⁷ *Moran*, *supra* note 5 at para. 9 (Q.L.).

⁸ *Ibid.*

⁹ John Sopinka, Sidney N. Lederman, & Alan W. Bryant, *The Law of Evidence in Canada*, 2nd ed. (Toronto: Butterworths, 1999) at 623 [“Sopinka”].

¹⁰ [1993] 4 S.C.R. 223 [“Marquard”].

¹¹ *Ibid.* at 243.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ (1912), 27 O.L.R. 410 [“Rice”].

¹⁵ *Ibid.* at 413.

¹⁶ *Ibid.* at 412.

¹⁷ *McCormick*, *supra* note 1 at 53.

¹⁸ *Ibid.*

¹⁹ *Ibid.* at 54.

²⁰ *Sopinka*, *supra* note 9 at 622-623.

²¹ (1982), 138 D.L.R. (3d) 202 (S.C.C.) [“Abbey”].

²² *Ibid.* at 217 [emphasis added].

²³ [1990] 2 S.C.R. 30.

²⁴ *Marquard*, *supra* note 10 at 248.

²⁵ *Abbey*, *supra* note 21 at 217.

²⁶ *Farner*, *supra* note 2 at para. 34 (Q.L.).

²⁷ *McCormick*, *supra* note 1 at 56-58.

²⁸ *R. v. Mohan*, [1994] 2 S.C.R. 9 at 20 [“Mohan”].

²⁹ *Sopinka*, *supra* note 9 at 623-624.

³⁰ *United States v. Watson*, 587 F. 2d 365 (7th Cir. 1978); [1978] CA7-QL 778 No. 77-2199 at para. 19 (Q.L.).

³¹ [1993] SCT-QL 7457 No. 92-102 (Q.L.) [“Daubert”].

³² *Ibid.* at para. 40 (Q.L.) [emphasis added]. While the requirement as articulated here indicates that an expert’s testimony must pertain to “scientific knowledge,” *Kumho Tire v. Carmichael*, [1999] SCT-QL 52 No. 97-1709 (Q.L.) at para. 25 (U.S. S.C.) [“*Kumho Tire*”] confirms that the *Daubert* standard applies equally to all expert testimony, whether specifically scientific or not.

³³ *Daubert*, *supra* note 31 at para. 44-47 (Q.L.). Besides these four factors, *In re Paoli Railroad Yard PCB Litigation Mabel Brown*, 35 F.3d 717 (3rd Cir. 1994); [1994] CA3-QL 1238 (Q.L.) at para. 43 [“*Paoli*”] explicitly noted the following additional three factors: 1) “the degree to which the expert testifying is qualified”; 2) “the relationship of a technique to ‘more established modes of scientific analysis’”; and 3) “the ‘non-judicial uses to which the scientific technique are put.’”

³⁴ *Daubert*, *supra* note 31 at para. 43 (Q.L.).

³⁵ *Ibid.*

³⁶ See *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923).

³⁷ *Paoli*, *supra* note 33 at para. 153 (Q.L.).

³⁸ 29 F.3d 499 (9th Cir. 1994); [1994] CA9-QL 2406 (Q.L.).

³⁹ 2 F.3d 183 (7th Cir. 1993); [1993] CA7-QL 1285 No. 92-1083 (Q.L.) [“*Marwick*”].

⁴⁰ *Ibid.* at para. 6 (Q.L.).

⁴¹ *Ibid.* at para. 5 (Q.L.).

⁴² *Kumho Tire*, *supra* note 32 at para. 40 (Q.L.).

⁴³ *Ibid.*

⁴⁴ Aaron M. Milrad, *Artful Ownership: Art Law, Valuation, and Commerce in the United States, Canada, and Mexico* (Washington: American Society of Appraisers, 2000) at 99.

⁴⁵ The decisions of *Marwick* and *Kumho Tire* are particularly helpful in understanding this point.

⁴⁶ *Mohan*, *supra* note 28 at 20.

⁴⁷ *Ibid.* at 25.

⁴⁸ *McCormick*, *supra* note 1 at 73 (indicated implicitly); Also see *Marquard*, *supra* note 10 at 248-249.

