

# The Engineer as an Expert Witness

Truth

Independence

Impartiality



The Limerick  
Solicitors' Bar  
Association



JTG

JOHN T. GARRETT & ASSOCIATES

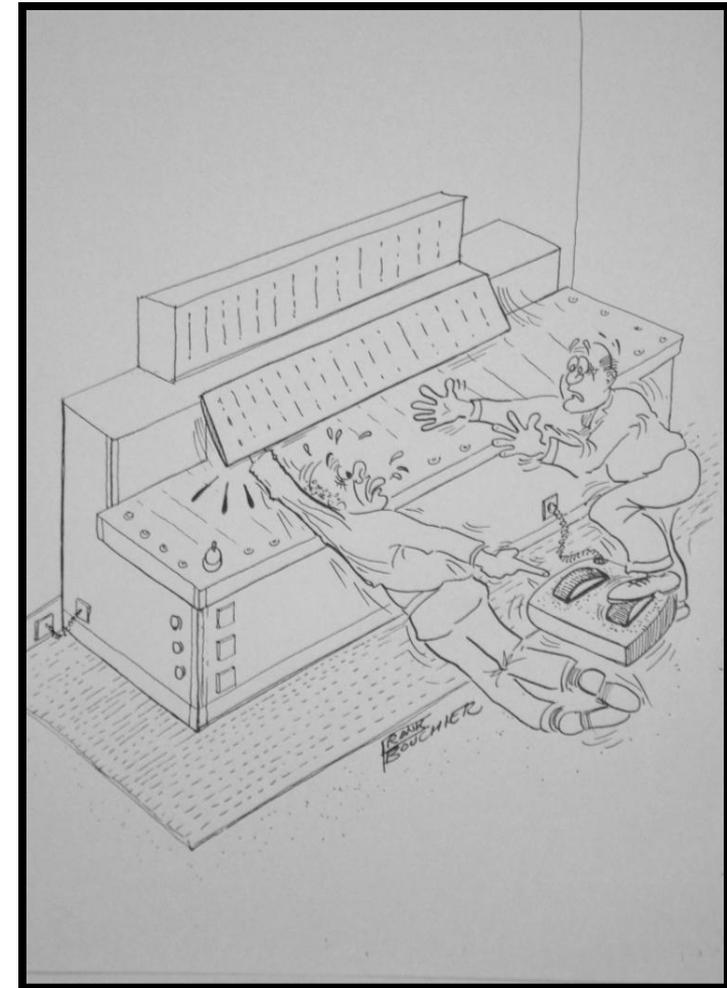
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CONSULTING ENGINEERS | MEDIATORS | CONCILIATORS

# The Engineer as an Expert Witness

## Aims:-

- To share what I have learned as an Expert Witness.
- To heighten safety awareness.
- To demonstrate in practice the Engineer as an Expert Witness.



# The Engineer as an Expert Witness

## Learning Outcomes:-

- Know the difference between evidence of fact and expert evidence.
- Understand the roles and duties of the Expert Witness.
- Be able to prepare with confidence to act as an Expert Witness.
- Be more aware of how simple things can lead to accidents.



# The Law Reform Commission

- 2008 published a Consultation Paper on Expert Evidence (LRC CP 52-2008).
- Made provisional recommendations to ensure the continued benefits of having reliable expert evidence available to courts.



# Provisional Recommendations included

- The term “expert” should be defined.
- Should be detailed guidelines containing a list of factors which can be used to help the court assess the reliability of expert evidence.
- Should be a formal guidance code for expert witnesses (which could be statutory or non-statutory).



## Provisional Recommendations included (2)

- Should be a ban on any fee arrangements with expert witnesses which are conditional on the outcome of a case.
- Submissions invited as to whether both parties should be required to exchange expert reports relating to all civil claims (only applies in personal injury cases at present).
- Should be a set form and structure for expert reports.

There are many more recommendations  
The Commission intends to issue a  
report this year (2013).

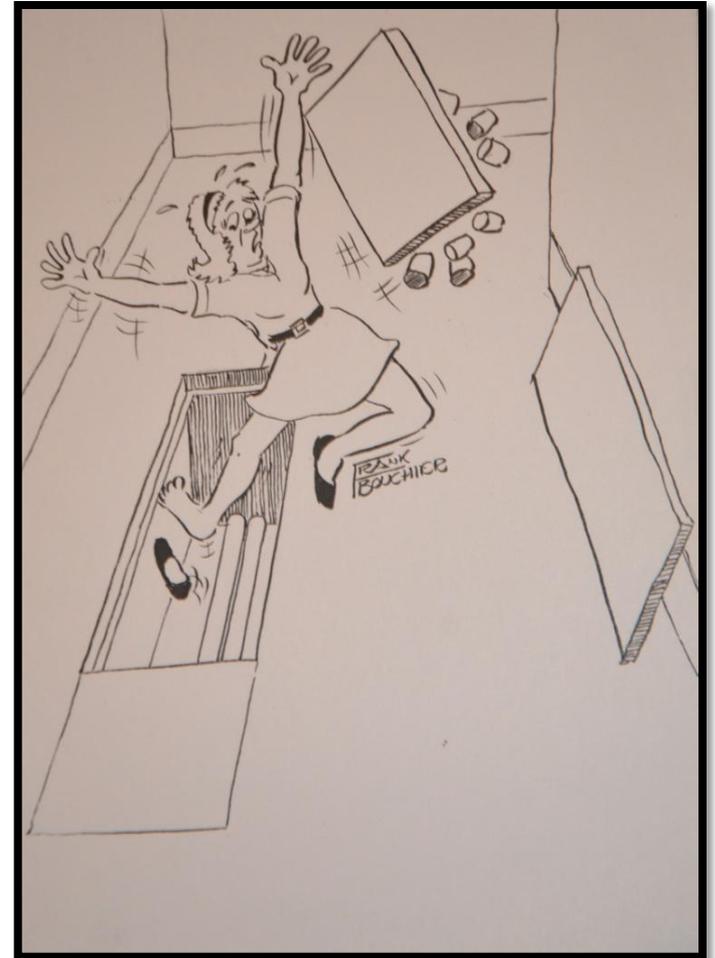


# The Engineer as an Expert Witness

At some stage in your career you may be required to give evidence in court as an Expert Witness.

Scared?

See it as a tremendous compliment that you should be put in such a position of trust.



# The Engineer as an Expert Witness

Prepare!

- Be truthful, independent and impartial
- Dispel any notions that you are a “Hired Gun”
- You are not an Advocate



# Witness testimony

# Fact or Expert

## Rule against Opinion Evidence

*“It is a long standing rule of our law of evidence that, with certain exceptions, a witness may not express an opinion as to a fact in issue...It is for the tribunal of fact - judge or jury as the case may be – to draw inferences of fact, form opinions and come to conclusions”*

*(1960) 94 I.L.T.R. 185 at 190*



# Witness Testimony (2)

# Fact or Expert

The Main Exception is Expert Opinion Evidence

*“An opinion may be given by a witness who has expertise in a particular area which is relevant to the issue at hand. The purpose of this is to provide the judge or jury with the necessary specialist criteria for testing the accuracy of their conclusions, and enable them to form their own independent judgement by applying these criteria to the facts proved in evidence”*

As Per Cooper LJ in *Davie v Edinburgh Magistrates* (1953)  
SLT 54



# What is an Expert Witness?

As yet , in Ireland there is no set definition of an expert.

There is, however an amount of Judicial Commentary on definition.

*“An expert may be defined as a person whose qualifications or expertise give an added authority to opinions or statements given or made by him within his area of expertise”*

(2000) IESC 78 at 85



# Legislative Guidance on Definition of an Expert

*“...Report or reports or statement from accountants, actuaries, architects, dentists, doctors, engineers, occupational therapists, psychologists, psychiatrists, scientists, or any other expert whatsoever intended to be called to give evidence in relation to an issue in the action.”*

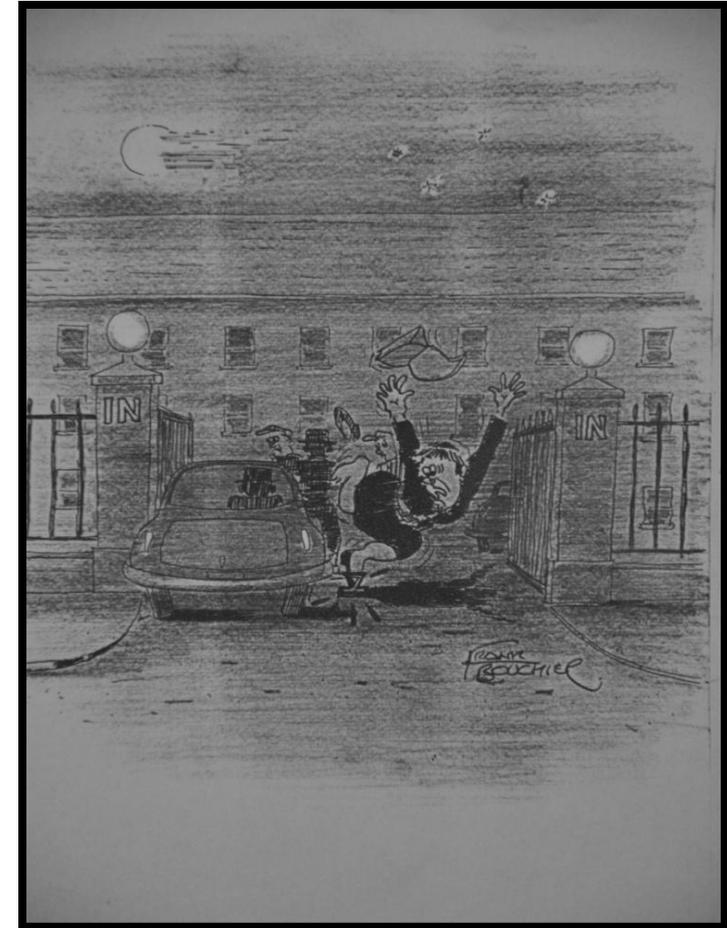
Rules of the Superior Courts (No.6) (Disclosure of Reports and Statements) 1998 (S.I. No. 391 of 1998).



# Necessary Experience and Qualifications ????

“Therefore whether the expertise stems entirely from practical experience or from formal study or a mixture of the two is irrelevant once the person can prove that they have acquired knowledge that gives them an expertise not possessed by the ordinary person.”

Cl.3.35 Law Reform Commission (LRC CP52 – 2008}



# Role and Function of Expert Witness

The main role and function of the expert witness is:-

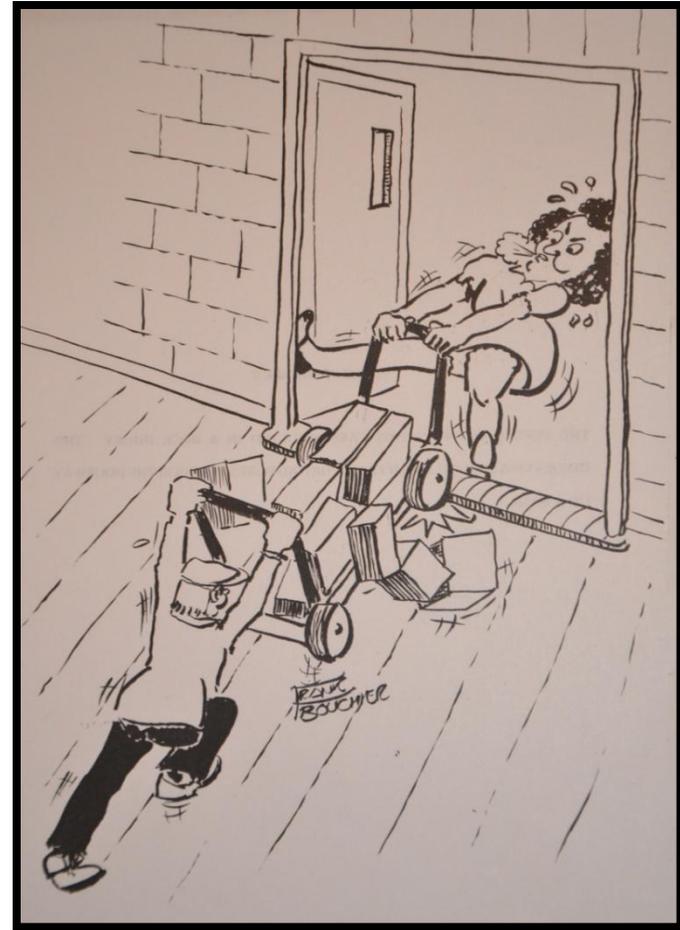
*“to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgement by the application of these criteria to facts provided in evidence.”*

Per Lord President Cooper in *Davie v Edinburgh Magistrates* (1953) SLT 54



# However, there is more to it than that... (1)

- Help instructing party to decide whether there is a case along with strengths and weaknesses.
- Prepare report.
- Help prepare Statement of Claim or Defence.
- Advise on Disclosure Documents.



## However there is more to it than that..... (2)

- Advise instructing Solicitor and Barrister on questions for other party's expert
- Meet other experts and try and limit the issues
- Advise on settlement negotiations



# Overriding Duty to the Court

It should be firmly implanted into the expert's mind that his or her function:-

*“is the provision of unbiased information to the court, and not to provide a one-sided opinion preferred by the instructing party.”*

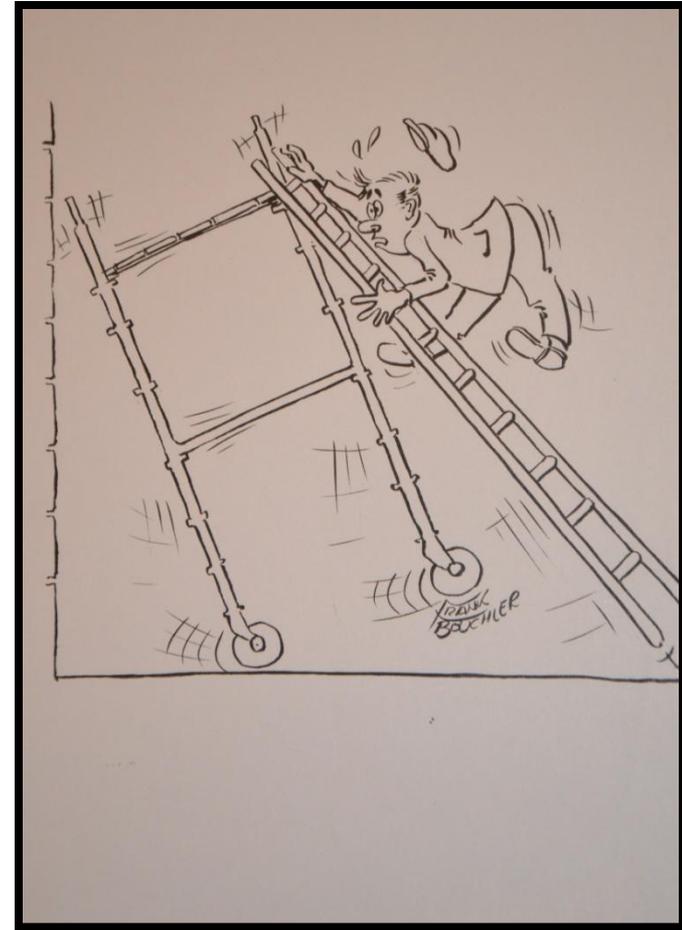
Law Reform Commission, Consultation Paper on Expert Evidence(LRC CP 52-2008), Paragraph 3.101



# Proving Expertise (1)

“The party calling the expert bears the burden of proving the expert’s qualifications and credentials as an expert in the field in question. This is normally done by way of preliminary questions during the examination-in-chief stage of the proceedings after the witness has taken an oath”.

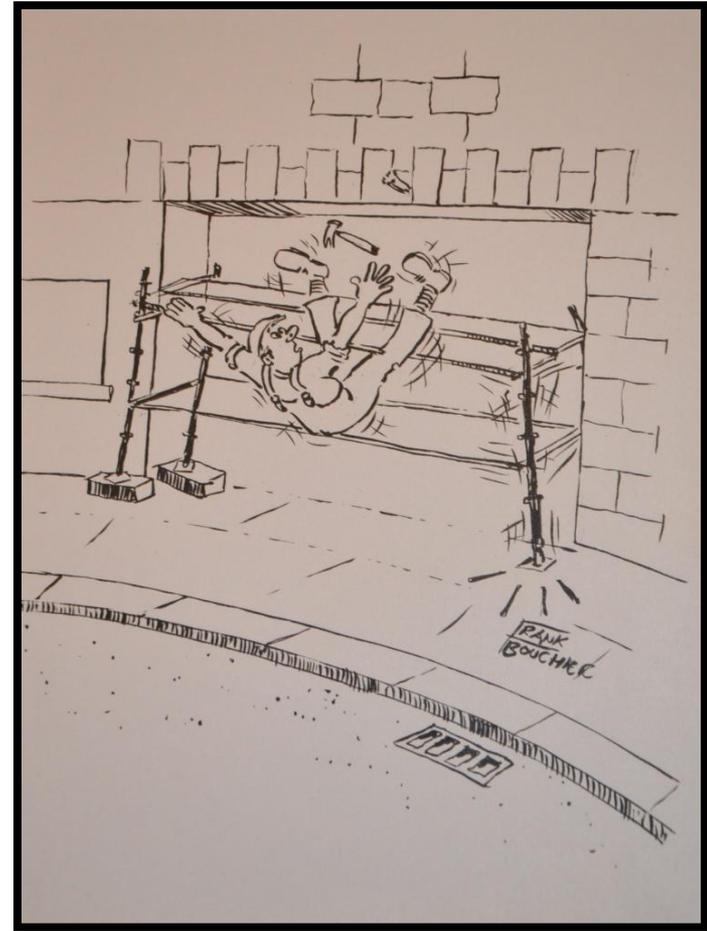
Healy Irish Laws of Evidence (2004 Thomson Roundhall) at 361.



## Proving Expertise (2)

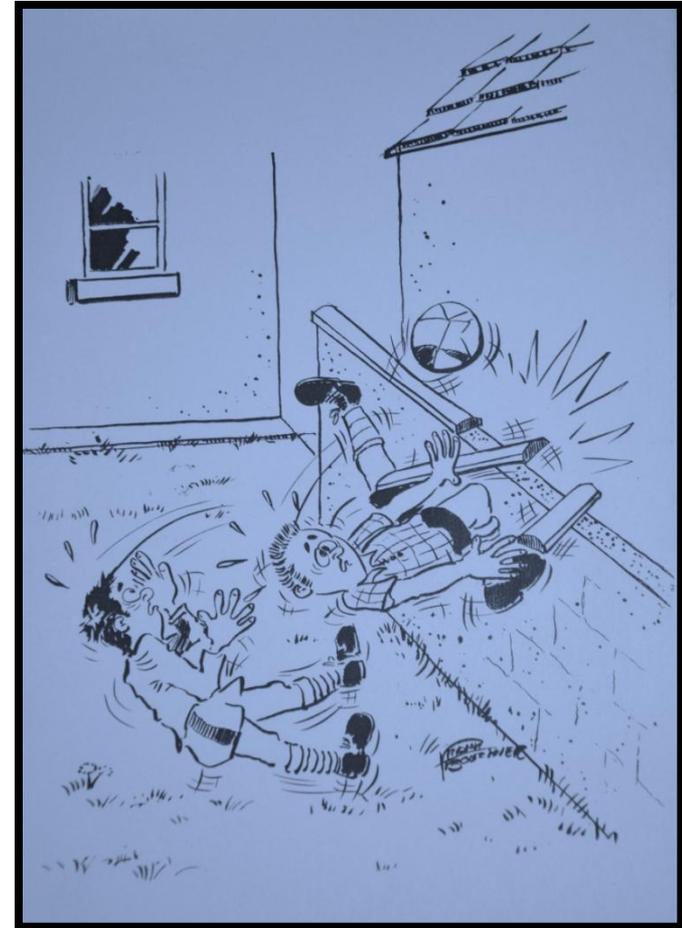
If there is a challenge to the witness's expertise, this can be proved by the expert by testifying about his qualifications and/or experience. In the absence of a rebuttal of expertise, the judge will accept the witness's testimony of his qualifications or experience as prima facie evidence of his expertise and primary evidence of this will not be required.

*Martin v Quinn [1980] I.R. 244; Minister for Agriculture v Concannon, High Court, 14 April 1980; DPP v O'Donoghue [1991] 1 I.R. 448. Cited in McGrath Evidence (Thomson Roundhall 2005) at 318.*



# Powerful questions an expert witness should ask himself or herself

- What truly are the allegations which concern me: do they define what I see as the true issue(s)?
- Have I studied all the witness statements and disclosed documents to ascertain the facts?
- Have I made all appropriate factual observations of bodies, places, machines, buildings, accounts etc.?



## Powerful questions continued...

- Have I specified for myself the assumptions I shall rely on so clearly that, if challenged, I can detail them and identify all my sources?
- What, if any, do I see as the points of challenge to my observations, assumptions, and conclusions: and what, if any are the answers to them?



# Powerful Questions Continued...

- Since the expert is not an advocate but must inform the mind of the court fully not partially, have I improperly omitted anything relevant?
- Have I prepared my report in simple, intelligible English, using as few technical words as I can, explaining those that necessarily remain?

# What really matters...



“What really matters in most cases are the reasons given for the opinion. As a practical matter a well constructed experts report containing opinion evidence sets out the opinion and the reasons for it. If the reasons stand up, the opinion does, if not, not.”

Jacob LJ in *Routestone v Minorities Finance* (1997) BCC 180

# The Engineer as an Expert Witness



Are you a competent person to assist the finder of fact (judge or jury) in this case?

# Use proper equipment



A quality camera is a must, always have appropriate personal protective equipment and ensure all measuring devices are accurately calibrated

# Expert reports

The Law Reform Commission recommends that there should be a set form and structure for expert reports:-

- The report must be addressed to the court and not to the party or parties from whom instructions have been received.
- The expert's qualifications and experience should be outlined in detail and relevant certificates of proof attached.
- The terms and conditions of the appointment of the expert witness including the payment arrangements should be explained.



# Expert reports (Continued 2)



- All material instructions, oral and written, which were given to the expert, and on the basis of which the report was written must be outlined.
- If a potential conflict of interest arises, the facts relating to this should be stated.
- All relevant information relating to the issue, including that which is capable of detracting from the expert's opinion, should be outlined.
- All materials used by the expert in coming to the opinion, clearly distinguishing between matters of fact and matters of opinion.

# Expert reports (Continued 3)

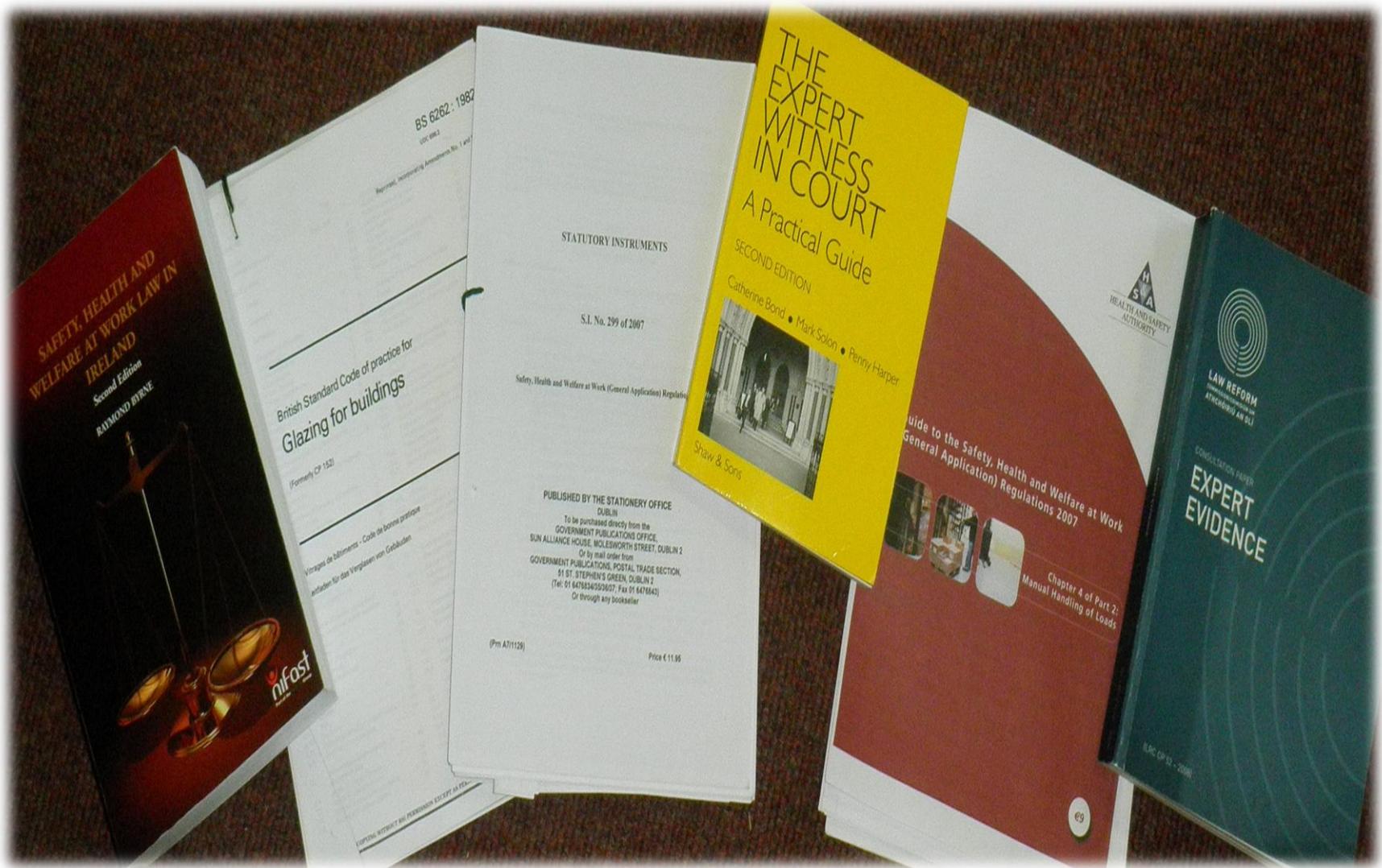
- Where tests or experiments have been conducted in the course of creating the report all related information must be included such as methodologies, results and details about the individuals and qualifications of those involved in the carrying out of these tests.
- The expert should indicate if the opinion is provisional or conditional on certain factors, or if they believe they cannot give a formal opinion on the issue without further information, or where they believe they cannot make an opinion without qualification.



## Expert reports (Continued 4)



- A signed declaration that the contents of the report are true and that the expert understands the overriding duty owed to the court and that the report has been created in compliance with this.
- If, subsequent to the completion of a report, an expert changes his or her opinion on any material issue in the report, the expert witness must state this in a supplementary report.



Have access to an authentic library of information

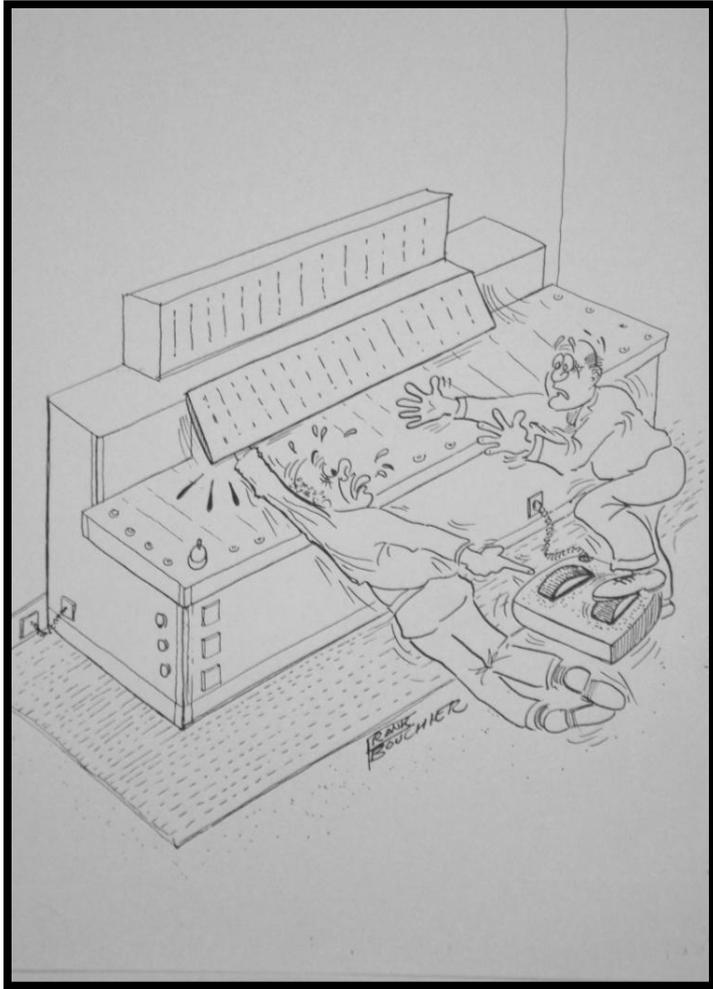
# Cross-examination is the questioning of a witness by the party who did not call them



- The purpose is for your evidence to be tested
- The other party's Barrister may try to:-
  1. Show that your information and opinions are inaccurate or unreliable.
- Elicit evidence that is helpful to their case.
- You should expect:-
  1. Searching questions.
  2. Attacks on your credibility as an expert.
  3. Attacks on your expert opinion.
- You should remember:-
  1. This is an adversarial system.
  2. The cross examining barrister is only doing his or her job.



# In the Barrister's toolbox...



- Getting you to agree to absolutes.
- Asking you to speak up.
- Looking at you with disbelief.
- Silence.
- Sarcasm.
- Interruption.
- Pretending to be confused.
- Direct attack on your ability.
- Passing notes to colleagues.
- Repeating earlier questions.
- Picking up on typos in your report.
- Getting your name wrong.
- Focusing on irrelevant points.
- Running questions together.
- Attacking your qualifications.
- Comparing you to other experts.

Never say “never” or “always”

# Visualise

**Visualisation is a very powerful tool in preparing for the court case.**

**Find someplace quiet. Close your eyes. Breath deeply. Now imagine yourself in the witness box. Sitting comfortably. Well prepared you are in control. You have pre-empted every question and every challenge put to you in cross-examination.**

**You have three or four well researched reasons for every opinion. You are clear, polite and friendly. Firm when necessary. You have the judge's attention. He is enjoying learning from you. He respects your professionalism as an expert witness. He accepts what you say.**

**You thank the judge and leave the witness box. Job well done!**



## The Engineer as an Expert Witness

“Your message to the court is more important than your nerves”

... and finally

“Your  
integrity is  
not for sale at  
any price”.



# Useful references

Many ideas used in the preparation of this presentation have been inspired by the publications or links listed below.

Law Reform Commission Consultation Paper on Expert Evidence

<http://www.lawreform.ie/fileupload/consultation%20papers/cpExpertEvidence.pdf>

SAFETY, HEALTH AND WELFARE AT WORK LAW IN IRELAND (Nifast}

Second Edition, Raymond Byrne

The Expert Witness in Court – A Practical Guide Second Edition –

Catherine Bond, Mark Solon, Penny Harper

Expert Witness Ireland

<http://www.expertwitnessireland.info/>

# Acknowledgements

I thank:

Mr Peter Tiernan, Chairman of the Thomond Region of Engineers Ireland for inviting me to make this presentation.

The Limerick Solicitors' Bar Association for their assistance in preparing the mock trial.

The University of Limerick for its generosity in providing the educational courtroom and facilities.

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Mr. John Kennedy Senior Inspector with the Health and Safety Authority for acting as an expert witness in the mock trial.

Mr. Frank Bouchier who prepared the wonderful sketches on the slides.

Ms. Jackie Condon, The "Plaintiff" in the Mock Trial.

I acknowledge the work of the Law Reform Commission in the area of expert evidence the Consultation Paper for which provided many of the sources for the information included in this presentation.

The many other publications on the subject that have informed my thinking, particularly those references outlined above.

# The Mock Trial

## **ANNE IRELAND .V. SPIDEOG COMPUTERS**

At approximately 12.30 p.m. on Tuesday 26<sup>th</sup> January 2010 Anne Ireland was involved in an accident at her place of work resulting in a lower back injury. Her employer Spideog Computers is involved in the supply of computer components for export. She has worked with Spideog Computers since December 1999.

The circumstances of the accident were as follows: At the time of the accident she was employed as a warehouse checker. This work involved her in checking that the correct type and number of computer components were put into a box according to customer orders. She would normally check about 250 boxes in the course of a normal 8 hour shift. The production line is laid out as on the attached floor plan and cross section drawings which have been agreed by Engineers instructed by Solicitors acting on behalf of the Plaintiff and the Defendant. The dimensions on the drawings have also been agreed.

Ms. Ireland usually worked in a standing position. She had a chair and would sit when she got an opportunity. The boxes would arrive at regular intervals along the higher conveyor to her right. She needed to take each box from the higher conveyor and place it on the lower table where she would check the contents and then position it on the lower conveyor and let it continue along the production line away from her. Usually she did not find the boxes particularly heavy and was able to do her job. On the date of the accident when lifting a box which was heavier than normal from the higher conveyor onto the table she experienced pain in her back. In her evidence she stated that a colleague brought her to a doctor in the early afternoon. She was given pain killers and anti-inflammatory tablets and subsequently attended a physiotherapist on a number of occasions. She was out of work for a period of 6 months. Since she returned to work she is on duties not involving lifting.

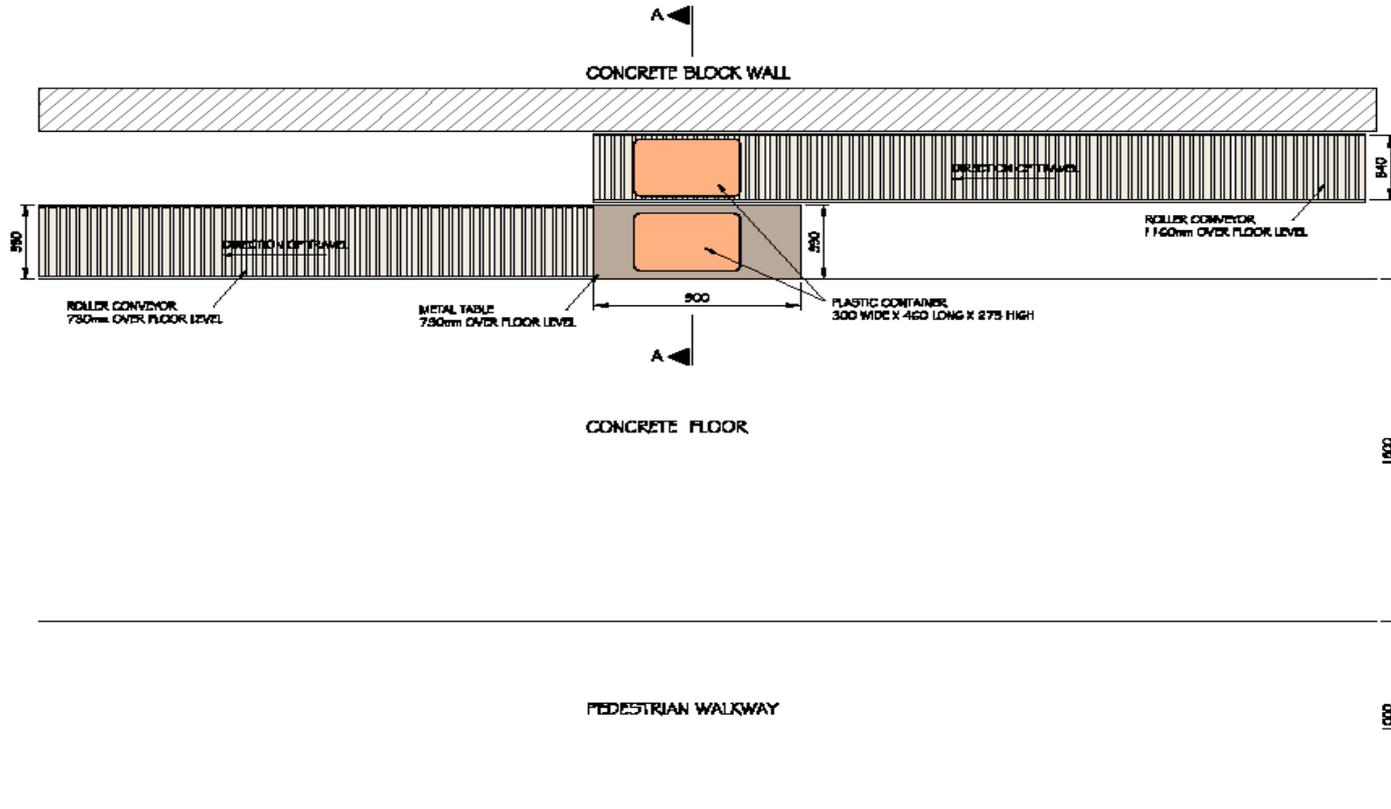
The Engineers have agreed that the height of the higher roller is 1160mm over floor level. The height of the table is 730mm and the width of the table measured in a direction away from the higher roller is 390mm. There is a lip at the outer edge of the higher conveyor which measures 15mm x 15mm and over which the boxes needed to be lifted. The boxes are made of plastic and measure 300mm wide, 460mm long and 275mm high. There is a 20mm lip around the perimeter of the box to facilitate lifting. Production records obtained on voluntary discovery suggest that the number of boxes that Ms. Ireland would have handled on the day of the accident was approximately 33 per hour.

The Engineers carried out a joint inspection on 16<sup>th</sup> October 2012. A box including contents similar to those in the box at the time of the accident was weighed as being 12kg. There was no indication of the weight given on the box.

Ms. Ireland had received training in manual handling on three occasions, in the years 2000, 2004 and 2008. The training was given by accredited trainers which included a chartered physiotherapist.

The Engineers' reports have been exchanged.

# Anne Ireland v Spideog Computers ( Mock Trial)

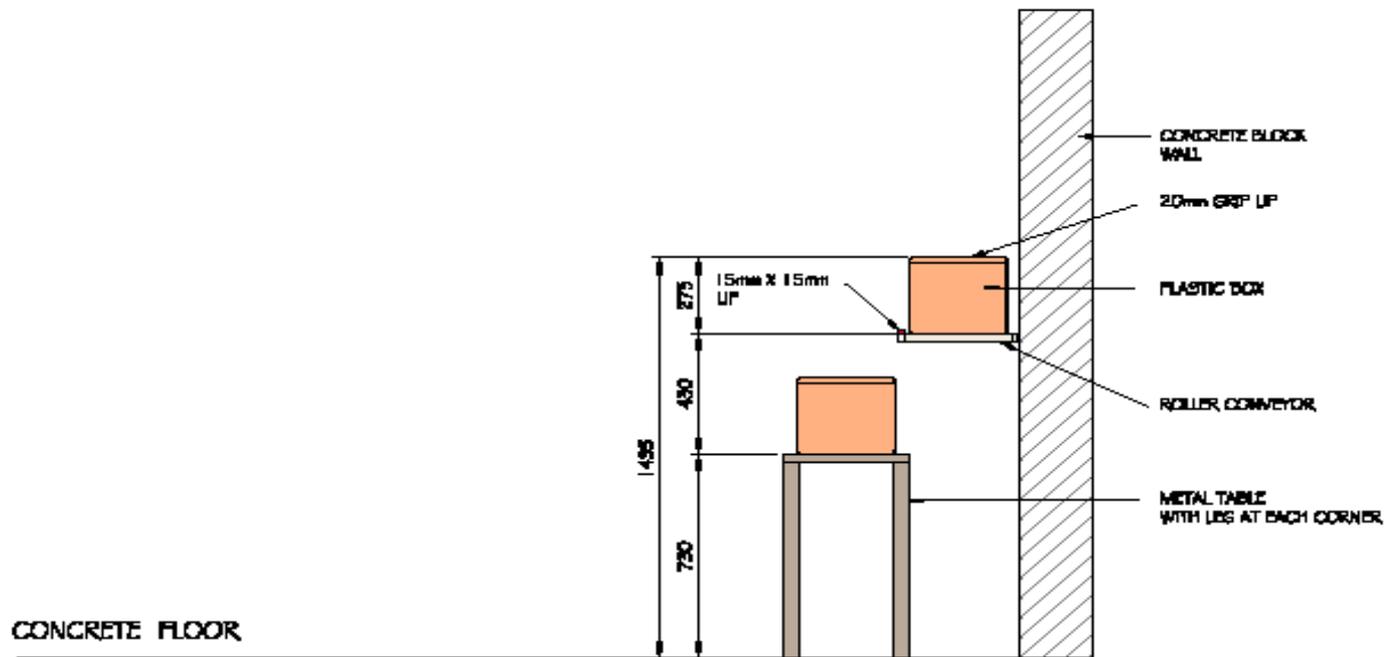


FLOOR PLAN  
SCALE: 1:20

ANNE IRELAND V SPIDEOG COMPUTERS

PREPARED BY:  
JOHN GARRETT - B.E., F.I.E.I.  
CHARTERED ENGINEER  
DATE: 16th OCTOBER 2012

# Anne Ireland v Spideog Computers (Mock Trial)



PREPARED BY:  
JOHN GARRETT - B.E., F.I.E.I.  
CHARTERED ENGINEER  
DATE: 16th OCTOBER 2012

ANNE IRELAND V SPIDEOG COMPUTERS

# The Engineer as an Expert Witness



Thank you



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