

Challenging Expert Bias

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Roadmap

The Admissibility of Expert Evidence

Bias in Action

When & How to Challenge



#1: The Admissibility of Expert Evidence



a. Judge's Role as Gatekeeper

- Gatekeeper = discretion
- “Special danger” posed by expert evidence (*White Burgess v. Langille Inman v. Abbott and Haliburton Co.*)
- Role continues throughout trial



b. Expert's Duty of Impartiality

- Codified Duty: R. 4.1.01
 - Duty of impartiality
 - Duty to Court prevails
- “Acid test” *(White Burgess)*



c. Legal Test for Admissibility

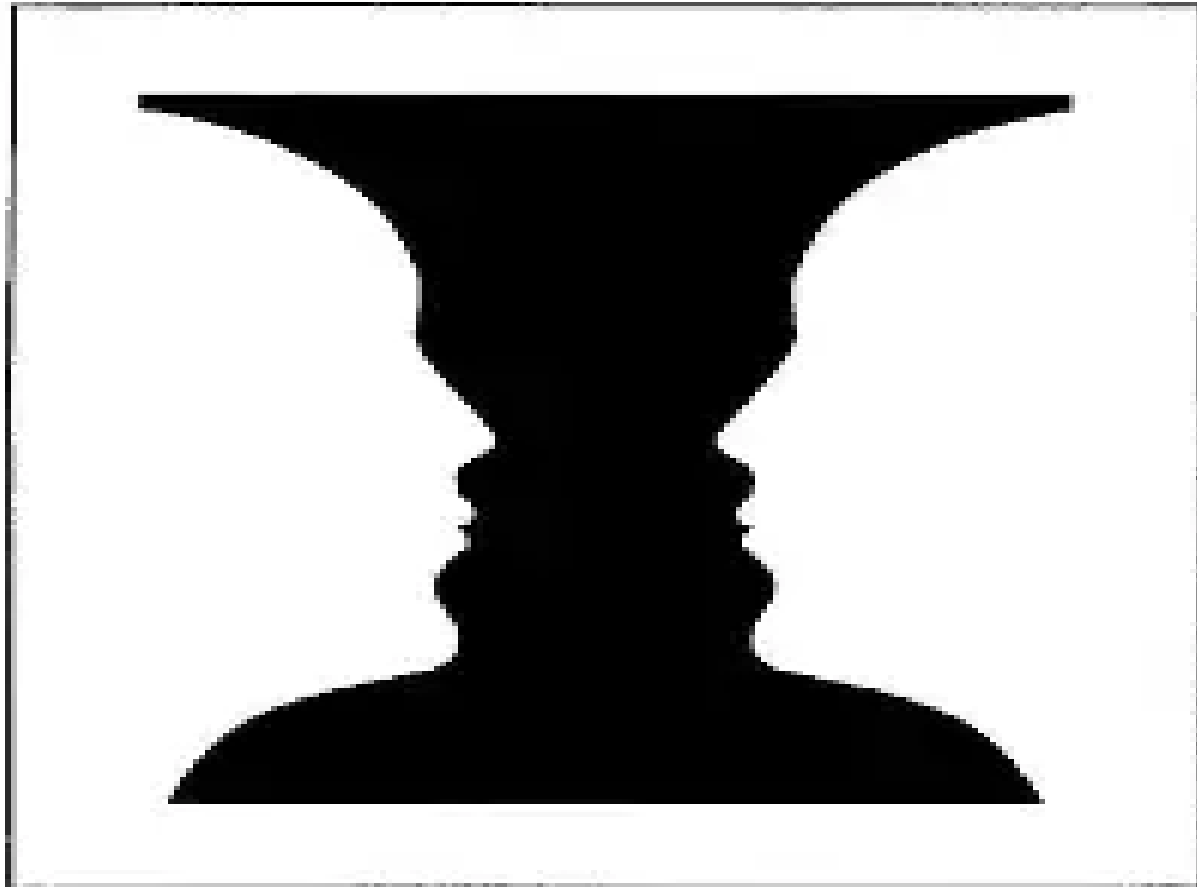
- **Step 1: *Mohan* Test**

- 1) Relevance
- 2) Necessity
- 3) Absence of exclusionary rule
- 4) Properly qualified

- **Step 2: Risks vs. Benefits**



#2: Bias in Action



a. Lane v. Kock

2015 ONSC 28 (CanLII)

- Inflammatory Language
- Use of exclamation marks
- Use of bolding
- Cherry-picking



b. *Thornhill v. Chong*

2016 ONSC 6353 (CanLII)

- Opinion not supported by records
- Circular reasoning
- Conclusory reasoning

Circular reasoning fallacy

Instead of offering evidence, the argument simply repeats the conclusion, rendering it logically incoherent.



c. Denman v. Radovanovic

2022 ONSC 4401, aff'd 2024 ONCA 276 (CanLII)

- **The “Wise Factors”**

- *Wise v. Abbott Laboratories*,
2016 ONSC 7275 (CanLII)
- OCA: Appropriate to consider,
non-exhaustively



cont. *Denman*

2022 ONSC 4401, aff'd 2024 ONCA 276 (CanLII)

- **Signs of Bias**

- Special relationship w/ party
- Exclusivity of retainer
- Unexplained refusal to assist Plaintiff
- Unexplained inconsistency of opinion
- Assumptions lacking foundation
- Making credibility findings



d. *Forget v. Gibb*

2026 ONSC 626 (CanLII)

- **Biased Expert (Plaintiff's)**
 - Disregarded ED evidence
 - Favoured P's story
 - Gave results-oriented opinion
 - Failed to take role seriously
 - Giving opinion without understanding legal issue



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Cont. *Forget*

- **Unbiased Expert (Defendant's)**

- Straight-forward, non-combative, responsive
- Fully reviewed/considered evidence
- Didn't assume facts/credibility
- Gave reasoned answers
- Understood legal test



e. Other Examples

- Coming cross as an **advocate** (*Leckie v. Chaiton*)
- Failing to review **source material** (*Boone v. O'Kelly*)
- **Revising opinion** absent new information (*Boone v. O'Kelly*)
- **Social relationship w/ one side** (*Ierullo v. Ierullo*)
- **Failing to adopt an “investigative mindset”** (*1815212 Ontario Inc. et al. v. Enbridge Gas Distribution Inc. et al.*)



"I trust this site to tell the truth."

#3: How & When to Challenge

- When: at start (qualifications)
- How:
 - Shifting onus
 - Practical considerations



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