

A hand holding a stethoscope over a book, with a warm orange overlay.

# Law and the Medical Expert

A Lawyer's Guide to Getting Advice on Injury and Disability

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Westen Medical Assessments  
Evidence-based Clarity™

How Is a Person Feeling, Really? ..... 3  
    When Might an Expert Medical Opinion Be Relevant? ..... 4  
    What Independent Medical Services Are Available to Lawyers? ..... 5  
What Medical Help is Available and How Do You Know What You Need? ..... 6  
    Independent Medical Examinations ..... 7  
    Document Reviews ..... 8  
    Coaching for Questionings / Discoveries / Trial ..... 9  
    What Does a Medico-Legal Report Look Like? ..... 10  
How to Select an Expert Medical Witness ..... 11  
    Can They Clearly Communicate the Issue? ..... 12  
    Specific Expertise is Vital ..... 13  
    A Medical Witness Must be Objective ..... 14  
Get the Expert Medical Help Your Case Needs ..... 15



# How Is a Person Feeling, Really?

Lawyers often find themselves with cases involving, at their heart, the question of how injured or how disabled a person is. The problem? Only the person can truly know how they are feeling. The existence of a broken arm is obvious — but knowing the amount of pain they're in, and what the injury means for their quality of life, that's a lot harder to pin down objectively.

If you're representing the injured party, this is where you need to be on alert. The defense will call into question their trustworthiness. There are many examples out there of injuries being exaggerated for some reason. A person could be anything from genuinely injured, to being accidentally misleading about it, honestly mistaken or outright malingering. Any possibility you leave open to anything but the genuine injury is something the defense may exploit.

Medical testing can provide an objective measure of many issues, and the right expert can help confirm and explain answers to those open questions: where the weight of evidence lies with regards to the existence, extent, prognosis, and impact on quality of life.

This eBook will go through a variety of useful tools available to lawyers, share valuable information you may not be familiar with — and give you vital advice in selecting a medical expert.



## When Might an Expert Medical Opinion Be Relevant?

The simple answer to this question is “whenever the existence or extent of a medical issue would be of interest in a legal case.”

A big example is personal injury. Clearly, the degree to which the injured is suffering and their prognosis for recovery is key. A broken bone is objectively verifiable, but other conditions involving more subjective feelings of pain are much harder to pin down. When the defense may seek to suggest bias in the diagnosis or that the injury is not as severe as it is, an independent specialist's testimony can be vital.

Another major area is medical malpractice. Having a medical witness is essential to be taken seriously given the complexity of medicine. You'll need them to help answer the two key questions: did the doctor follow the standard of care, and if not, did their failure to do so injure the patient? There are few cases so clear cut that the malpractice is plainly obvious.

Issues around employment and insurance can also involve litigation. An employee injured on the job may be entitled to particular compensation depending on the extent. They may also find themselves fighting to receive disability insurance to which they should be entitled.

# What Independent Medical Services Are Available to Lawyers?

Think you might need some independent medical assistance? There's plenty on offer to help lawyers and their clients get closer to the truth and increase the strength of their case.

- Medical Assessments
  - Independent Medical Examinations
  - Independent Dental Examinations
  - Psychology
  - Neuropsychology
- Certified Examinations
- Document Reviews
- Rebuttal Opinions
- Literature Reviews
- Toxicology Interpretations
- Coaching for Questionings / Discoveries / Trial
- Functional Capacity Examinations
- Cost of Future Care
- Vocational Assessments
- Specialized Investigations
  - MRIs
  - Nerve Conduction Studies
  - Audiology Testing
  - Sleep Studies
  - Lung Function Studies

This eBook won't cover all of these topics, but it will take you through what you need to know about the most important services. You can [find out more about all of them on our website](#).



# What Medical Help is Available and How Do You Know What You Need?

As you've seen, assistance from an expert medical witness can take many forms. What you need is going to depend on what your situation is. Do you expect it to go to court, or is an early settlement an option? Who are you representing? Is the medical aspect a core part of the case, or more parenthetical?

We'll go through three important services lawyers may find themselves needing:

- Independent Medical Examinations
- Document Reviews
- Coaching

Remember, a quick phone call is all it takes to get an answer to your specific situation.

## Independent Medical Examinations

An Independent Medical Examination (IME) involves a medical specialist being brought in to take an independent look at a patient's ailments.

This allows you to pre-emptively root out the chance of bias having influenced a diagnosis and strengthen your case through the benefits of having a medical professional with specific expertise in the type of injury or illness provide their more qualified opinion.

You'll get detail you may be lacking, more information on the extent of the injury or illness, a prognosis for recovery, and the assurance that you've got the most accurate picture available.

They also provide a speedy answer, allowing you to bypass normal wait times. No matter how solid you think a GP's diagnosis is, or how believable the client may appear, there's nothing else like having an IME providing that extra level of clarity and assurance.





## Document Reviews

Legal issues often involve a huge amount of paperwork — and medical issues often involve a lot of technical language and knowledge.

A document review allows you to take stock of the information you have and understand what's important and what's suspect. Are there gaps in your case that could be accounted for before they're called out? Are there facts from which you can build your entire case? Take the time to get this right at the earliest stages, in private.

Whether it's a toxicology report, a literature review, a WCB challenge, or some other matter, the right medical advice and interpretation could be the difference between letting yourself become overwhelmed by a sea of information — and putting together a strong, confident case.

Get your facts right at this stage, and you'll have an advantageous edge when it comes to building your strategy. You may even be able to negotiate an early settlement.



## Coaching for Questionings / Discoveries / Trial

Are you going to let yourself get steamrolled by a more prepared opposition? Obviously not. So how do you get your case in order when you're not an expert in medical issues?

Engage with someone who is. You've got the legal mind, so combine it with a medical expert — preferably one who's had experience doing this kind of consulting before — and you'll be able to pick their brain and construct a solid, well-rounded approach.

This will save you and your staff all that time you might otherwise spend pouring through books and documents that you don't understand, and just get you advice relevant to the case and the circumstances from someone who's already done all that. You'll be able to run through different scenarios and ensure you've got the case covered from all angles.

When a case rests on the medical issue, why settle for anything less than a medical expert?





## What Does a Medico-Legal Report Look Like?

What should you expect in the process of getting a medical opinion? Typically, a phone call is the best way to start, so any initial questions can be asked without missing anything important. Then, you'll want to put together a more formal request for service along with documentation required to get familiar with the nuances.

At this point, you should expect to be contacted to discuss the actionable details: who are the relevant experts available, and what should the strategy be — from a medical perspective.

You should be able to trust that your assessment or report will be subjected to a thorough quality assurance review, and that you'll be able to access this expertise afterward with any follow-up questions or concerns.

Generally, you should expect a report to contain:

- Qualifications
- History
- Past History
- Full Document Review
- Complete Examination
- Diagnosis
- Causation
- Treatment Recommendations
- Prognosis
- Barriers to Recovery
- Answers to Questions in the Letter of Instruction

# How to Select an Expert Medical Witness

The contentious thing at the heart of a personal injury case is often the injury itself. How severe is it? Has it been mischaracterised by the other side? Could bias be colouring the presentation of the issue?

A lawyer may need to find an expert medical witness to perform an independent medical examination (IME) to help achieve clarity and confidence amidst a clash of opinion and evidence. But even here, the lawyer must navigate the complicated field of medicine to find the right person.



## Can They Clearly Communicate the Issue?

In case they're cross-examined, your expert witness must be able to present a credible case to a judge or jury who likely do not understand the intricacies of medicine. They need to come across as knowledgeable, objective, and clear. A pleasant and professional demeanor is important, as is the ability to react capably to difficult questions.

They have to be experts in communication as well as experts in medicine in order to be taken seriously, able to not only produce any reports which your case relies upon, but seamlessly reference and explain these reports to their audiences in a manner that leaves clarity.

You should expect they'll be challenged and will need to be confident that they're capable of responding convincingly. There are common approaches that medical experts are likely to face, and you both should have a strategy for dealing with them.

## Specific Expertise is Vital

Aside from their communication skills, their actual medical expertise is of critical importance. Different injuries to different body systems are best examined by different specialists. You'll need your medical witness to have solid experience in the relevant field, and ideally the assurance that they've done this before.

A common tactic opposing lawyers will use is calling this expertise into question exactly because it's so important to ensuring the most accurate medical report. A more general practitioner, especially should the opposition have access to an opposing opinion from a more specialized expert, leaves room to question their testimony.





## A Medical Witness Must be Objective

Whether you're defense or plaintiff, the facts of a case are what they are — but the other side has an obvious interest in winning, even if the facts are not in their favour. If both sides are using IMEs to help present their case, the objectivity of your examiner is paramount.

An expert who has been consistently accused of bias in the past will not appear as strong as one who has a lengthy reputation of being objective and fair. Even should they have an excellent reputation, the nature of medicine is that some things will come down to matters of judgement, and your witness should be prepared to authoritatively respond to suggestions that they may have made an error.

It would be worth your time to ask questions such as how long the expert has been practising and performing IMEs. You should also search for comments previously made about them and be certain that they're fully qualified to conduct the assessment in anticipation of any challenges.

## Get the Expert Medical Help Your Case Needs

We've handled more than 63,000 Independent Medical Examinations and share our decades of expertise with lawyers looking to get authoritative assessments and relevant expert help. We have access to a huge network with experts in every specialty and arrange for help you can trust to create evidence-based reports that hold up in court.

Ready to get started? Give our [Medical Director Dr. Roger Hodkinson](#) a call at 780.433.1191

<https://westernmedical.ca>

