

WHEN IS AN EXPERT NOT AN EXPERT

David McKenzie
Colin Biggers & Paisley

The title of this article is neither a typographical error nor a question put by Lewis Carroll's Walrus to confuse. It describes an issue considered recently by His Honour Justice Wood the Chief Judge of the Common Law Division of the Supreme Court of NSW in industrial accident proceedings.

THE FACTS

The plaintiff, a roof tiler, while tiling an awning roof fell through fibro sheeting placed over the roof's rafters three metres to the verandah below. The awning rafters were offset from the main roof rafters. The plaintiff asserted that he relied on the carpenters who erected the rafters and fixed the fibro to the rafters to mark the position of the rafters below the fibro with pencil or chalk lines and nails. There were no lines or nails on the sheet of fibro the plaintiff was to lay tiles over. He assumed the awning rafters were aligned with the roof rafters. He stepped onto the fibro thinking a rafter was under the fibro where he stepped. It wasn't and he fell through the fibro.

THE EXPERT

The plaintiff served a report by an expert who proffered the opinion that the placing of chalk or pencil lines or nails on the fibro was good building practice and that the failure to place those lines or nails was negligent.

The expert was a civil engineer who held a Diploma of Engineering, had worked for a builder and for over 30 years had been employed by a large city council as an engineer rising to the heights of Chief Engineer. The expert had overseen many large building projects including the construction of police stations, bridges, group dwellings, retirement homes and the like.

Despite his most impressive curriculum vitae the defendants objected to the expert's report and the expert giving evidence on the basis of qualifications.

THE LAW

Section 79 of the Evidence Act 1995 allows as admissible an expert's report and evidence if the expert has specialised knowledge based on his or her training, study or experience.

THE FINDING

His Honour found that, although the expert had vast experience as a civil engineer, he had no training, study or experience in the laying of roof tiles. His Honour found that the expert was not a roof tiler, had not laid roof tiles and had not supervised the laying of roof tiles. His Honour found that the expert did not have the necessary expertise to satisfy section 79, rejected the tender of the expert's report and precluded the expert from giving evidence.

THE MORAL

An expert is not always the expert required. Make sure that the expert you qualify satisfies the requirements of Section 79 and test the expertise of those served against you.

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