

The role of medical expert witnesses: the Goudge Inquiry

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The role of a medical expert witness needs to be strictly defined and carefully controlled during legal proceedings and physicians need to be aware of their role, states an analysis of the Goudge Inquiry into pediatric forensic pathology published in CMAJ (*Canadian Medical Association Journal*).

The Inquiry into Pediatric Forensic Pathology by Justice Stephen Goudge looked into the flawed expert testimony of Ontario pathologist Dr. Charles Smith which has been linked to several miscarriages of justice, including the wrongful conviction of Sherry Sherret-Robinson that was overturned by the Ontario Court of Appeal in December 2009.

"Several commentators have suggested that, when the adversarial system is working as it should, our courts are a robust forum for highlighting matters of scientific controversy," write the authors. "Goudge's report is a tragic narrative of the mischief that results when the system is not functioning effectively."

In the CMAJ analysis, the Honourable Frank Iacobucci and coauthor Graeme Hamilton describe 4 reasons to carefully control the use of expert witnesses, a 4-part test for determining legal admissibility of expert evidence and summarize Justice Goudge's concerns over how pathologists interact with the Canadian legal system. They also include recommendations from the Goudge Inquiry on the role of the expert medical witness.

They conclude that for the legal system to function well, each participant must do their part. "Expert witnesses must give fair, objective and impartial testimony, irrespective of whether they have been retained by a party or appointed by the court. They must also be sensitive to the vulnerabilities of the system and do their utmost to present evidence in a manner than ensures its intelligibility."

More information: <http://www.cmaj.ca/embargo/cmaj090833.pdf>

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