

# Cross-Examination of Medical Experts

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OSLER

## The Basic Principles of Cross Preparation are No Different

- **Prepare, prepare, prepare**
- Become an **expert** yourself
- **Research** lies at the heart of every successful cross-examination – especially with experts
  - expert's field of expertise
  - expert's own professional background
  - everything the witness has written or said
- **Be realistic** about what you can accomplish



## Have the Tools in your Toolbox

Know **how** to:

- Undermine **credentials** and qualifications
- Point out **omissions** (esp. medical history)
- Obtain **favourable** information
- **Substitute** information
- Challenge technique, **theory**, methodology

... and know **when** to use each tool!



## Undermine Credentials and Qualifications

- Limit the scope of the witness's **expertise**
- Emphasize missing **credentials**
- Sometimes – contrast your own expert's superior credentials



## Point Out Omissions

- **Facts** not known
- **Records** not reviewed – incomplete medical records or history
- **Key literature** not reviewed



## Obtain Favorable Information

- Elicit areas of **agreement**
- **Criticize** the opposing party's conduct
- Use of **learned treatises** to impeach – gold standard journals
- Challenge **impartiality**
  - Fees
  - Relationships
  - Positional bias



## Substitute Information

- Challenge **underlying facts or assumptions** that have been – or will be – proven wrong
  - Change the assumptions
  - Vary the facts
  - Contradictory evidence
  - Challenge degree of certainty



## Challenge the Theory

- Depending on the type of expert, challenging the theory, technique or methodology can be *very difficult*  
  
... but also *very effective!*
  - **Pro Tip:** Lean on your own expert – especially your consulting expert – to ensure you understand the theory and can be nimble with it
  - **Caution:** Experienced users only!





... and then have fun!