

HOW SHOULD YOU PREPARE FOR COURT APPEARANCES?

Text by Dr Bertha Woon

trying. I shall also take this opportunity to encourage you to attend the Medical Expert Witness Training (MEWT) course that will take place over three days on 4 May, 29 June and 6 July 2019, where you will get to role play in a real court setting with real judges and lawyers.

Think of the court appearance as preparing for a distinction viva or a concert performance. As far as possible, fix the date and time slot that you are required to appear on, so that you can close your outpatient clinic and get another doctor to cover for your patient appointments. Do not allow lawyers to give you an open-ended duration and have you on standby to appear at any time of a certain week. Make sure the lawyer agrees to your fees charged before agreeing to attend. If your medical expert witness report has been very thoroughly prepared, and has already been tendered to court, you only need to appear in court for clarification and cross-examination. This will usually, at the most, take half a day.

The scenario and the scene – pre-trial preparation

Mental preparation

Before you agree to be a medical expert witness, make sure you have the appropriate level of expertise in the matter at hand and that you can afford the time to be involved in the matter. A healthy self-awareness is key.

Pre-trial preparations involve reviewing your expert report, refreshing your memory on the issues of contention, and confirming that the references backing up your opinions are up to date. It is good to discuss issues that the opposing lawyer may raise in cross-examination and how to approach the reply. Your instructing lawyer cannot coach you on what to say, but he/she can discuss with you generally what you intend to say and help you to express it better. You cannot bring any extra notes onto the witness stand because only the agreed bundles (documents that both sides have) are allowed on the witness stand.

If you discover that you have made an error, highlight it to your instructing lawyer so that he/she can correct it in court soon after you take the witness

When you entered medical school, did it ever cross your mind that you may have to appear in court one day? Chances are, probably not. Does the thought of appearing in court fill you with a sense of fear, dread or apprehension? When you are called upon to appear in court, do you wish you could pass the “honour” to someone else?

The point is, sooner or later, you may be called to court as a witness of fact or

as a court expert/medical expert witness. Being a witness of fact is relatively straightforward. It requires you to recount factually what happened during the incident in question, what role you played and what you did. As long as you are logical, reasonable and clinically sound, this should be a walk in the park.

I shall thus focus on preparing to appear in court as a medical expert witness, since this is potentially more



stand. While you cannot discuss the matter with the other experts who are testifying in the same case; you can most certainly ask colleagues who have been expert witnesses before for tips. Treat it like a rehearsal for a play, in which you are the lead actor. Some people find it helpful to practise speaking in front of the mirror to observe their own demeanour, mannerisms and speaking speed.

Physical preparation

If you have never been to court, a trip to the public gallery to watch an on-going case in the court in question can be an adventure. Take note of where you would be seated in relation to the judge and lawyers. Most of the time, people find the air conditioning in the courtroom to be very cold, so do dress warmly. Men usually just have to wear a suit and tie to be warm. Women tend to have more considerations. Make sure that whatever you wear is comfortable, neat, professional and not distracting. Layering is a good idea.

Be familiar with the bundles of documents that will be placed before you at the witness stand. They are always lettered and numbered. Make sure you know where to turn in the course of your testimony. You will appear confident if you know exactly where to find relevant material in the bundles to support yourself when you answer questions on the witness stand.

The performance – taking the witness stand on the day of the trial

By this time, you will already know all the material very well. When you are called to the witness stand, the standard procedure is to take the oath or affirmation, state your name, address and designation, and identify your affidavit of evidence-in-chief (“AEIC”), conditioned statement, and the attached expert report and confirm that those are your statements and reports.

When giving evidence, there are three parts: examination-in-chief (“EIC”) conducted by your instructing lawyer; cross-examination by the opposing lawyer; and re-examination by your instructing lawyer.



Remember that you have no vested interest in this matter and you should conduct yourself professionally with dignity and integrity. Your job is to assist the Court to get to the truth and come to a fair decision.



The EIC and re-examination should be friendly processes. It is meant to support the case and allow you, the medical expert witness, to answer your instructing lawyer’s questions to supplement your evidence (if lacking) or to respond to new evidence that the opposing lawyer has submitted.

The cross-examination is where the opposing party’s lawyer asks you questions to test your evidence, evaluate the truth of your testimony, or seek concessions on the statements or opinions already given. Most doctors get intimidated by lawyers who are particularly fierce, loud, rude or confrontational.

Do not be afraid. Hold your ground. My recommendations are to be confident but not cocky, and do not be intimidated or riled up. Usually, if the opposing lawyer is rude and intimidating, it means that his/her case is weak. Do not take it personally and keep your cool. Treat the belligerent lawyer as you would a difficult patient’s relative and you will feel much better. Listen carefully to what is being asked and ask for clarifications if you are not sure of what the lawyer is asking. Pause to think and reply clearly without rushing. Be specific in your answers and be prepared to explain your reply. Sometimes, the opposing lawyer may try to force you to answer yes or no, even when the question cannot be answered with a yes or a no. Be firm that you need to answer properly. If you make a mistake, correct yourself. Do not volunteer information that was not asked of you. When replying, look at the judge at all times. Stop speaking

if the judge interrupts or your lawyer is making an objection to a question that the opposing lawyer asked you.

Make sure you speak audibly, because there is a court transcriber who has to transcribe every word you say verbatim. Often, the judge will be writing down what you say in long-hand as well, so there is no need for you to rush at all. Do not use body language because that cannot be transcribed.

Lastly, remember that you have no vested interest in this matter and you should conduct yourself professionally with dignity and integrity. Your job is to assist the Court to get to the truth and come to a fair decision.

With that, I wish you good courage to go ahead and be a medical expert witness. ♦

Dr Woon practises at Bertha Woon General and Breast Surgery, Gleneagles Medical Centre. She is an advocate and solicitor of the Supreme Court of Singapore, an associate mediator at the Singapore Mediation Centre, and an associate of the Medical Protection Society. She co-chairs the Medical Experts Training Committee.

