

EXPERT REPORTS - more than just findings

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Rule 53.03(1) states “A party who intends to call an expert witness at the trial shall ... serve ... a report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony [emphasis added].”

What constitutes the “substance” of the proposed testimony is open to interpretation. In our view, as a general rule, the basis for the expert’s opinion should be apparent from a review of the report (and - if applicable - from a review of any additional documents referred to therein).

Rule 53.03 (3) states “An expert witness may not testify with respect to an issue, except with leave of the trial judge, unless the substance of his or her testimony with respect to that issue is set out in a report ...”¹

A practical implication from the above Rule is that the expert’s report provides the foundation for opposing counsel to ensure that the expert does not stray into areas beyond his or her expertise/mandate.

The particular contents of an expert report will be dictated to some extent by the nature of the mandate. However there are fundamental components of an expert analysis that should be communicated.

As of January 1, 2010, expert reports submitted to the Court are required to include specified information outlined in Rule 53.03 (2.1). In addition, The Canadian Institute of Chartered Business Valuators has previously established Standard #310 – Expert Reports. This Standard provides recommendations to Chartered Business Valuators concerning the content of expert reports.

One common theme between the new Rules of Civil Procedure and Standard #310 is that the guidance is general in nature which, in our view, is appropriate given that the expert should have latitude to communicate his analysis and findings in a manner that fits the circumstances.

“...the basis for the experts opinion should be apparent from a review of the report...”

We compare the provisions of the new Rules of Civil Procedure and the provisions of the CICBV Standard #310, below:

¹ As was discussed in our Winter newsletter, the expert may also be requested to perform additional analyses as directed by the Court.

	RULES OF CIVIL PROCEDURE	CICBV STANDARD #310
The Expert’s name and address	Rule 53.03 (2.1) (1)	Paragraph 6.1 (F)
The Expert’s area of expertise	Rule 53.03 (2.1) (1)	Not required (2)
The Expert’s qualifications, employment and educational experiences in his/her area of expertise	Rule 53.03 (2.1) (2)	Not required ²
Instructions provided to the Expert	Rule 53.03 (2.1) (3)	Paragraph 6.1(B)
Nature of the opinion being sought and each issue in the proceeding to which the opinion relates	Rule 53.03 (2.1) (4)	Paragraph 6.1 (E) Paragraph 9.2 (A)

² The expert will typically provide his/her curriculum vitae.

Statement of the Expert's opinion/conclusion	Rule 53.03 (2.1) 5	Paragraph 2 ⁴ Paragraph 11.1
List of assumptions employed in the analysis by the Expert	Rule 53.03 (2.1) 6(i)	Paragraph 9 (E)
Description of research undertaken	Rule 53.03 (2.1) 6(ii)	Paragraph 9.2 (B)
Listing of the Expert's Scope of Review	Rule 53.03 (2.1) 6(iii)	Paragraph 8.1 ⁵
Acknowledgment of Expert's Duty (Form 53 in the Rules) ⁶		
• Independence	Rule 53.03 (2.1) 7	Paragraph 6.1 (G) Paragraph 6.1 (H) & (I)
• Fairness	Rule 53.03 (2.1) 7	Paragraph 6.1 (G) Paragraph 6.1 (H) & (I)
• Expertise	Rule 53.03 (2.1) 7	Not required ³
Substance of the proposed testimony	Rule 53.03 (2)	Various (see below)

CICBV Standard #310 specifies the types of information to be included in the Expert's reports, including:

	STANDARD #310
(a) The effective date of the analysis	Paragraph 6.1 (C)
(b) The date of the report	Paragraph 6.1 (D)
(c) Definitions for defined terms	Paragraph 7.1
(d) Sufficient information to allow the readers to understand how the expert arrived at the conclusion	Paragraph 9.1
(e) Description of the nature of the dispute	Paragraph 9.2 (A)
(f) Statement of the approaches taken and techniques used	Paragraph 9.2 (C)
(g) Description of the calculations	Paragraph 9.2 (D)
(h) Summary of relevant financial information	Paragraph 9.2 (F)
(i) Restrictions and Qualifications on the analysis and report	Paragraph 10.1

³ The expert will typically provide his/her curriculum vitae.

⁴ CICBV Rule 310 applies to expert reports. An expert report is defined as "any written communication other than a valuation report [which is governed by a different Standard], containing a conclusion ..."

⁵ Pursuant to Paragraph 8.2, "Where the conclusion is qualified by a scope limitation, the limitation shall be explained, setting out the reasons for the limitation and disclosure of the potential impact on the Expert's conclusion."

⁶ Form 53 is submitted by the Expert to the Court.