

# Expert Evidence:

## *Law, practice, procedure and advocacy*

Ian Freckleton and Hugh Selby, published by Thomson LBC 2005 (third edition)

By Bill Madden

I was rather surprised to discover that *Expert Evidence: Law, Practice, Procedure and Advocacy* was in its third edition. It had somehow escaped my attention when published in 1999 and 2002, which is a pity as it really is a most interesting and comprehensive text by two authors who are both well-regarded for their prolific writings on evidence law, and in other areas.

As the authors point out in the preface, over the last few years there has been ongoing debate in Australia on expert evidence, with the introduction of codes of conduct, pre-hearing 'hot tubs', single experts and the discussion of expert assistants for courts. Concerns have been expressed regarding the expert witness 'industry', including experts who are prepared to provide opinions on a conditional fee basis. Perhaps ultimately all these matters come down to the problems that courts face in assessing competing expert opinions, touched on by the High Court in its first decision this year.<sup>1</sup>

This text is a substantial work of some 1,000 pages, and begins by undertaking a historical overview and comprehensive review of the expertise rule, areas of expertise, common knowledge and other evidentiary rules.

Having done this, the text then devotes chapters to specific areas of recent debate in both the civil and criminal arenas – syndrome evidence, profiling evidence, psychiatric trauma, scientific evidence and DNA profiling. Further chapters address such matters as document analysis, valuation and financial evidence.

The text addresses the potential for civil or criminal liability of expert witnesses – an area of controversy for some time now, perhaps more so recently given the recent English debate on the tainted statistical evidence given by Sir Roy Meadow in a Münchhausen's syndrome by proxy murder trial; the echoes of concern from which reverberate around the world.

I mentioned above the recent debate about conditional fee expert evidence; I was pleased to see that a chapter is devoted to the topic of expert

remuneration. Similarly, court rules and codes of ethics are the subject of detailed treatment.

The book concludes with a series of chapters considering the practicalities of expert evidence-in-chief, cross-examination and re-examination – all of which may well require more attention at trial as a result of *CSR Ltd v Della Maddalena*.

There is, of course, a comprehensive table of cases, statutes and a truly enormous 24-page bibliography.

*Expert Evidence: Law, Practice, Procedure and Advocacy* is an impressive text: hardly light reading, but it provides a thought-provoking review of many controversial areas and a valuable reference for the difficult cases we all grapple with from time to time. ■

**Note:** 1 *CSR Ltd v Della Maddalena* [2006] HCA 1 (2 February 2006).

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