

CONSTRUCTION ENGINEERING MASTERS DISSERTATION ABSTRACT

Improving the reliability of expert evidence in construction litigation

Construction litigation is time-consuming and expensive despite previous reforms to court procedures. A key problem is that the courts regularly receive partisan or misleading expert evidence, which results in significant wasted time and costs. Yet despite the vital role experts play in construction litigation, little research exists which explores issues relating to the reliability of expert evidence in construction practice.

To address that gap, this dissertation investigated how the reliability of expert evidence might be improved in construction litigation. The dissertation used a multiple-case study analysis to examine 50 publicly available court judgements, which included rich contextual information on the performance of 97 expert witnesses. Based on thematic analysis of the data, the case study identified four main problems associated with the reliability of expert evidence in construction litigation: (i) the methodology adopted by the experts, (ii) the expert's independence, (iii) the expert's use of evidence and (iv) the expert's qualifications/experience. Discussion of the findings suggested that these problems arise due to the "hands-off" management of judges in respect of expert evidence, poor supervision of experts by party representatives, and a lack of clarity by experts on which issues to address.

In light of these findings, the dissertation proposed three reforms to Civil Procedure Rule 35 on expert evidence: (i) Judges should have the opportunity to test the expert evidence earlier in the proceedings and before the matter reaches trial (depositions); (ii) It should be mandatory that the courts give directions on key questions and evidence to be addressed by experts early in proceedings, and; (iii) The courts should introduce an experts' facilitator to function as an intermediary between the parties, the expert, and the court. The findings suggest that implementing these reforms could positively impact the reliability of expert evidence in construction litigation.

The dissertation also makes a potentially significant contribution to existing expert witness evidence research by illuminating some of the primary issues that can influence expert evidence reliability in construction litigations. The case study's findings also have important practical implications in indicating how these problems might be avoided through the reform of traditional litigation procedures and practices.

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