

Forensics: a look at the evolving use of experts



By Anand Nalachandran

"Forensics" has been defined as the "application of scientific knowledge to legal problems", and the developing complexity of litigation as well as arbitration has augured the prominence of the expert witness – and especially the forensic expert witness – as being well-placed to assist the Court or Tribunal in any contentious proceedings. This has therefore led to forensics becoming a potentially pivotal component in establishing (or defending) civil liability or criminal culpability.

Criminal proceedings

The application of forensic expertise has been inextricably linked with criminal law, and in particular in relation to police investigations and medical pathology. This is undoubtedly the case in a Coroner's Inquiry where establishing the cause of death may carry substantial ramifications against the potential Defendant if there was any criminal negligence, and may give rise to a tortious claim for medical negligence against the attending physician or hospital.

The use of forensic psychiatry may also substantially impact mitigation and sentencing and may spare an offender from the gallows if diminished responsibility can be established as an exception to the offence of murder, which carries mandatory capital punishment in Singapore. Furthermore, psychiatric expertise may be necessary to determine mental capacity in circumstances where infirmity or incapacity prevents an individual from managing his personal affairs.

Civil proceedings

The benefit of forensic expertise is equally distinct in civil proceedings. For example, expert testimony would be useful to reconstruct an accident to determine liability by establishing the sequence of events and the respective roles of the constituent parties, and could also be necessary to resolve claims arising from construction defects or product liability. In these circumstances,

the forensic experts of adverse parties would be utilised to attack (and defend) the respective findings.

Regulatory Compliance

The advent of forensic computing can assist employers to ascertain if current employees are acting in compliance with guidelines or if former employees are acting in breach of post-termination obligations relating to confidential information, non-disclosure and non-solicitation. There have been several instances where former employees have been taken to task for breaches based on evidence uncovered through the forensic examination of computers.

Furthermore, the acuity of forensic accounting can assist in detecting commercial misfeasance or employee fraud within an organisation as well as the tracing of misappropriated funds to augment asset-recovery. This compliments the responsibilities imposed by the extra-territorial reach of the USA's *Foreign Corrupt Practices Act* and the UK's *Bribery Act*, as well as Singapore's *Prevention of Corruption Act*, and may enable entities to review protocols and processes in their countries of registration as well as their countries of business and operation.

Conclusion

Counsel may often be required to gather working knowledge of technical matters in dispute, and the appropriate expert could supplement the strengths of a claim or defence in both civil and criminal proceedings. However, counsel should be alive to the perils of being overly reliant on any witness as the lynch-pin of any position.

Whilst counsel may not have the same technical or scientific proficiency as the expert witness, he/she should be adept at identifying the circumstances that require an expert as well as the type of expert that would suit the circumstances.

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