in a subjective or argumentative way, as this may be seen as advocacy rather than expert opinion. For example, in *Crawford v. Nazif*, 2019 BCSC 2336, the court was critical of an expert's emphasis on certain events and statements in the report as argumentative and suggestive of bias. See also *Warkentin v. Riggs*, 2010 BCSC 1706 and *Turpin v. Manufacturers Life Insurance Co.*, 2011 BCSC 1159 at paras. 31 to 32, where the court found the experts' use of bold and italicization of certain words and phrases problematic and an indication of advocacy and bias.

To satisfy the requirements of Rule 11-6(1)(c), the expert should be directed to append the instruction letter (including any appendixes to it) to the expert report (*Turpin*).

2. NATURE OF OPINIONS REQUESTED [§5.8]

The instructing letter should include a general statement of the nature of the opinion sought and how that opinion relates to the issues in the lawsuit. For example:

> Our client, *[name]*, alleges that *[name of respondent]* negligently operated her vehicle and caused the collision. We ask that you perform an analysis of the collision and provide your opinion of the events relating to the collision. Your opinion may be used at trial to prove the liability of the defendant in operating her vehicle.

The instructing lawyer must specifically request the opinions sought from the expert. It is not up the expert to decide what opinions they will or will not provide. As a result, in addition to a general statement of the nature of the opinion sought, it is standard practice in British Columbia for the instructing letter to set out a list of questions to which the expert is asked to respond in providing their opinion (*Sebastian v. Neufeld*, 1995 CanLII 1320 (BC SC) at para. 15). This question-and-answer format helps ensure the expert provides opinions that are:

(1) relevant to the matters in issue;

(2) within the expert's expertise; and

(3) compliant with exclusionary rules.

Care must be taken to draft questions that elicit the opinions sought without offending exclusionary rules. Courts have repeatedly found reports and opinions to be inadmissible when the question asked by instructing counsel caused the expert to provide an opinion that offended one or more principles or rules of admissibility. In particular, counsel must be mindful of wording their questions such that they do

not offend the ultimate issue rule (i.e., experts should not decide key issues in place of the trier of fact). The closer the opinion comes to opining on the ultimate issue, the more likely the court will exclude the report (*Ralmax Properties Ltd. v. Pt. Ellice Properties Ltd.*, 2025 BCSC 814 at paras. 110 to 112; *Somers v. MacLellan*, 2022 BCSC 2304 at paras. 9 and 25 to 26).

Counsel must take care when drafting questions for "standard of care" opinions, as the line dividing admissible and inadmissible standard of care opinions is sometimes faint and finely drawn. The following general principles arise from case law:

(1) A plaintiff alleging a breach of the standard of care in negligence bears the onus of establishing the standard of care (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3).

(2) Establishing the standard of care of a professional normally requires expert evidence of the applicable standard of care of the subject professional (*Heidebrecht v. Fraser-Burrard Hospital Society*, 1996 CanLII 2214 (BC SC); *Forliti v. Woolley*, 2003 BCSC 1309; *Zink v. Adrian*, 2005 BCCA 93 at paras. 42 to 43; *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2015 BCSC 845 at paras. 22 to 25). However, this rule does not apply where the matter is non-technical or otherwise within the knowledge of an ordinary person, or the defendant's conduct is so egregious a breach can be inferred without knowing the standard's precise parameters (*Miller v. Hall*, 2020 BCSC 461 at para. 20).

(3) An expert may opine on the standard of care or generally accepted practices and standards in a particular industry or profession (*Krawchuk v. Scherbak*, 2011 ONCA 352, leave to appeal refused 2011 CanLII 79120 (SCC)).

(4) An expert may opine on whether a party met generally accepted standards and practices of an industry or profession based on an assumed set of facts (*CMC Engineering and Management v. Pinnacle Renewable Energy*, 2018 BCSC 2457 (Chambers)).

(5) An expert opinion respecting a party's "negligence" or "breach of duty" is not admissible, because these are questions of law for the trier of fact alone (*Surrey Credit Union v. Willson*, 1990 CanLII 1983 (BC SC); *Murray v. Galuska*, 2002 BCSC 1532 at paras. 12 to 15; *Bryce v. Rala Investments Ltd.*, 2020 BCSC 51 at para. 18).

(6) An expert opinion that a party committed "errors" and failed to do "what ought to have been done" goes to the ultimate issue and is inadmissible (*Shortreed Joint Venture Ltd. v. Guvi*, 2024 BCSC 1610 at paras. 142 to 160).

While posing hypothetical questions to experts is permissible (see, for example, *The Estate of Maryam Asharzadeh v. Amin*, 2019 ONSC 1024 at para. 22), counsel must ensure the hypothetical question is based on a reasonable factual basis and thus relevant to the issues being addressed (*Crawford v. Nazif*, 2019 BCSC 2336 at paras. 50 to 52).

For responding reports under Rule 11-6(4), the expert should be asked to provide their opinion responding to the opinions in the report-in-chief. This can be asked by way of a general question or by way of specific questions to address particular opinions or conclusions in the report-in-chief. The latter approach may be preferable where the experts are in agreement on some opinions but in disagreement on others.

It is also important to inform the expert that responding reports must be truly responsive to the report in-chief and not contain new opinions or be a restatement of prior in-chief opinions (though the expert may refer to their opinions in a prior report in-chief). Counsel should be mindful of their word choice in requesting such reports to avoid any appearance of bias. For example, in *Healey v. Vos*, 2021 BCSC 2488 at paras. 27 to 28, the court commented that it was "unfortunate" that counsel asked their expert for a "rebuttal opinion" instead of requesting that they "review, comment and opine" on the opposing party's expert report.

Where there is a proper basis for a supplementary report under Rule 11-6(6) and (7), the instructing letter should ask the expert to set out the basis for the requested supplementary report along with the change in the expert's opinion. Typically, a supplementary report will be required and proper when new evidence arises that changes the expert's opinion in a material way. Supplementary reports must also comply with the requirements set out in Rule 11-6(1) (*Amini v. Khania*, 2014 BCSC 697 at para. 23).

3. THE EXPERT'S METHODOLOGY AND REASONING [§5.9]

The instructing letter must tell the expert to explain the methodology and reasoning underlying their opinion. A conclusory opinion (i.e., one which lacks any supporting reasoning) will be afforded little or no weight (*Newman v. Johal*, 2021 BCSC 65 at para. 19). The expert should clearly distinguish facts and assumptions from their opinion (*Maras v. Seemore Entertainment Ltd.*, 2014 BCSC 1109 at paras. 29 to 30).

This requirement has two primary objectives: