



CHAIR'S DIRECTIONS EXPERT WITNESSES – CODE OF CONDUCT

Expert witnesses to comply with code of conduct

1. These practice directions will apply from 15 April 2010 in respect of:
 - a) Any evidence given to the Tribunal by an expert.
 - b) The retainer by parties to a claim of any expert witness to provide a report for use in evidence before the Tribunal.
 - c) Participation of expert witnesses throughout the Tribunal process.
2. A party to claim who engages an expert witness must either give the expert witness a copy of this code of conduct, or be satisfied that the expert witness has seen the code of conduct and is familiar it.
3. An expert witness must comply with the code of conduct in preparing any report or affidavit for filing with the Tribunal, in the preparation of a proposed brief of evidence, in giving any oral evidence in any proceeding in the Tribunal, and when participating in a mediation.
4. The evidence of any expert witness who has not read, or does not agree to comply with, the code of conduct may only be adduced with leave of the Tribunal.

Duty to the Tribunal

5. An expert witness has an overriding duty to assist the Tribunal impartially on relevant matters within the expert's area of expertise. This duty continues throughout the adjudication process and in particular when participating in a mediation or an adjudication hearing.
6. An expert witness is not an advocate for the party who engages the witness. An expert therefore can not act as a representative or an advocate for a party in a claim in which he or she is giving evidence.

Evidence of an expert witness

7. The report, brief or evidence of an expert must include the following matters:
 - a) Name of the expert;
 - b) Acknowledgment that the expert witness has read this code of conduct and agrees to comply with it;
 - c) The witness's qualifications and experience;
 - d) A statement identifying the experts' area of expertise;
 - e) All instructions that define the scope of the report;

- f) Describe the ambit of the evidence given and state either that the evidence is within the expert's area of expertise, or that the witness is relying on some other (identified) evidence;
 - g) The data, information, facts, and assumptions considered in forming the expert's opinions;
 - h) State the reasons for the opinions expressed;
 - i) State that the expert witness has not omitted to consider material facts known to the witness that might alter or detract from the opinions expressed;
 - j) Specify any literature or other material used or relied upon in support of the opinions expressed;
 - k) Describe any examinations, tests, or other investigations on which the expert witness has relied, and identify, and give details of, the qualifications of any person who carried them out;
 - l) A statement identifying any provisional opinions that are not fully researched (identifying the reasons why such opinions have not been or cannot be fully researched);
 - m) If quoting from statutory instruments (including policy statements and plans), do so sparingly. A schedule of relevant quotations may be attached to the statement of evidence, or a folder produced containing relevant excerpts.
8. If any expert witness believes that his or her evidence, or any part of it, may be incomplete or inaccurate without some qualification, that qualification must be stated in the evidence.
9. If an expert witness believes that his or her opinions are not firm or concluded because of insufficient research or data, or for any other reason, that must be stated in the evidence.
10. If after the providing a report or a brief of evidence, an expert witness changes any of his or her opinions, that must be communicated without delay to the party or parties wishing to call the witness and that party shall forthwith file with the Tribunal, notice of such change of opinion.

Directions to confer or conference

11. The Tribunal may on its own initiative, or on the application of any party, direct that groups of expert witnesses confer to attempt to agree on matters in their respective fields and to narrow issues between them.
12. An expert witness must comply with any such direction of the Tribunal to:
- a) Attend an experts' conference;
 - b) Confer with another expert witness;
 - c) Give evidence as part of a panel of experts;
 - d) Seek to reach agreement with the other expert witnesses on matters within the field of expertise of the expert witnesses;
 - e) Provide reasons for disagreement with other experts;
 - f) Prepare and sign a joint statement stating the matters on which the expert witnesses agree and matters on which they do not agree, including the reasons for their disagreement.
13. When attending conferences or conferring with other expert witnesses, and in preparing a joint witness statement, the expert witness must exercise independent and professional judgment and must not act on the instructions or directions of any person

to withhold data or information, or withhold or avoid agreement, or as to the contents of the joint witness statement.

P A McConnell
Chair, Weathertight Homes Tribunal
April 2010