

# High Court Rules

## 324 Appointment of Court expert

- (1) In any proceeding which is to be tried without a jury and in which any question for an expert witness arises, the Court may at any time, of its own motion or on the application of any party, appoint an independent expert or, if more than one such question arises, 2 or more such experts, to inquire into and report upon any question of fact or opinion not involving questions of law or of construction.
- (2) An expert appointed under subclause (1) is referred to in this rule and in rules 325 to 330 as a **Court expert**.
- (3) Any Court expert in a proceeding shall, if possible, be a person agreed upon by the parties and, failing agreement, shall be appointed by the Court from persons named by the parties.
- [(3A) A person appointed as an independent expert in a proceeding under rule 330B(3)(a) may not be appointed as a Court expert unless the parties to the proceeding agree.]
- (4) In this rule, **expert**, in relation to any question arising in a proceeding, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

## 325 Submission of question to Court expert

The question to be submitted to the Court expert and the instructions (if any) given to the Court expert shall, failing agreement between the parties, be settled by the Court.

## 326 Report of Court expert

- (1) The Court expert shall send his report to the Court, together with such number of copies thereof as the Court may direct.
- (2) The Registrar shall send copies of the report to the parties or their solicitors.
- (3) The Court may direct the Court expert to make a further or supplemental report.
- (4) Any part of the Court expert's report which is not accepted by all the parties to the proceeding in which it is made shall be treated as information furnished to the Court and shall be given such weight as the Court thinks fit.

### **327 Experiments and tests**

- (1) If the Court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report, the Court expert—
  - (a) Shall inform the parties or their solicitors; and
  - (b) Shall, if possible, make an arrangement with the parties or their solicitors about—
    - (i) The expenses involved; and
    - (ii) The persons to attend the experiment or test; and
    - (iii) Any other relevant matters.
- (2) If the parties or their solicitors are unable to agree on any of the matters referred to in subclause (1)(b), the matters on which they are unable to agree shall be settled by the Court.

### **328 Cross-examination of Court expert**

- (1) Any party may, within 14 days after receiving a copy of the Court expert's report, apply to the Court for leave to cross-examine the Court expert on his report.

- (2) On an application under subclause (1), the Court shall make an order for the cross-examination of the Court expert by all parties, either—
  - (a) At the trial; or
  - (b) Before an examiner at such time and place as may be specified in the order.

### **330 Calling of expert witnesses**

- [(1) If a Court expert is appointed in a proceeding or interlocutory application,—
  - (a) A party may call 1 expert witness to give evidence on the question reported on by the Court expert, if the party gives notice of the party's intention to do so a reasonable time before the trial; but
  - (b) No party may call more than 1 such witness without the leave of the Court.]
- (2) The Court shall not grant leave under subclause (1)(b) unless it considers that the circumstances of the case are exceptional.

### **[330A Expert witness to comply with Code of Conduct**

- (1) A party to a proceeding who engages an expert witness must give the expert witness a copy of the Code of Conduct set out in Schedule 4.
- (2) An expert witness must—
  - (a) state in any written statement of the proposed evidence of the witness served under rule 441B or rule 441C or at the time of giving any oral evidence or in any affidavit containing the evidence of the expert witness that the expert witness has read the Code of Conduct and agrees to comply with it:
  - (b) comply with the Code of Conduct in preparing any written statement of the proposed evidence of the witness to be served under rule 441B or rule 441C or in giving any oral or affidavit evidence in any proceeding.
- (3) The evidence of an expert witness who has not complied with subclause (2)(a)

may be adduced only with the leave of the Court.]

**[330B Court may direct conference of expert witnesses**

- (1) The Court may, on its own initiative or on the application of a party to a proceeding, direct expert witnesses—
  - (a) to confer:
  - (b) on the matters on which the expert witnesses must confer:
  - (c) to confer in the absence of the legal advisers of the parties:
  - (d) to try to reach agreement on matters in issue in the proceeding:
  - (e) to prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:
  - (f) to prepare the joint witness statement without the assistance of the legal advisers to the parties.
- (2) The Court may not give a direction under subclause (1)(c) or (f) unless the parties agree.
- (3) The Court may, on its own initiative or on the application of a party to the proceeding,—
  - (a) appoint an independent expert to convene and conduct the conference of expert witnesses:
  - (b) give any directions for convening and conducting the conference the Court thinks fit.
- (4) The Court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.
- (5) Subject to any subsequent order of the Court as to costs, the Court may determine the remuneration of an independent expert and the party by whom it must be paid.
- (6) The matters discussed at the conference of the expert witnesses must not be referred to at the hearing unless the parties by whom the expert witnesses have

been engaged agree.

- (7) An independent expert appointed under subclause (3) may not give evidence at the hearing unless the parties agree.]

### **[330C Status of joint witness statement by expert witnesses**

- (1) A joint witness statement prepared by expert witnesses under rule 330B—
  - (a) must be circulated by the parties to the proceeding by whom the expert witnesses have been engaged to every other party who has given an address for service; and
  - (b) may be produced in evidence by any expert witness who signed the statement as part of his or her evidence; and
  - (c) may, if the parties to the proceeding agree, be produced in evidence without the need to call any of the expert witnesses who signed the statement.
- (2) Rules 441D to 441L apply, with all necessary modifications, to a joint witness statement as if the statement were a written statement under rule 441B or rule 441C.
- (3) An expert witness is not precluded from giving evidence on any matter at the hearing simply because the expert witness has participated in the preparation of a joint witness statement under rule 330B or because the witness statement is evidence at the hearing under rule 441F.]

### **[330D Evidence of expert witnesses at trial**

The Court may, at the hearing, direct that the evidence of expert witnesses is given after all or certain factual evidence is given or in an order the Court thinks best suited to the circumstances of the proceeding.]

## **[Schedule 4**

## Code of Conduct for expert witnesses

### Duty to the Court

- 1 An expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.
- 2 An expert witness is not an advocate for the party who engages the witness.

### Evidence of expert witness

- 3 In any evidence given by an expert witness, the expert witness must—
  - (a) acknowledge that the expert witness has read this Code of Conduct and agrees to comply with it;
  - (b) state the expert witness' qualifications as an expert;
  - (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise;
  - (d) state the facts and assumptions on which the opinions of the expert witness are based;
  - (e) state the reasons for the opinions given by the expert witness;
  - (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness;
  - (g) 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.
- 4 If an 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 his or her evidence.
- 5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

### Duty to confer

- 6 An expert witness must comply with any direction of the Court to—
  - (a) confer with another expert witness;
  - (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
  - (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including

the reasons for their disagreement.

- 7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment and must not act on the instructions or directions of any person to withhold or avoid agreement.]

# Evidence Act 2006

 [Updater](#)  [Case Law](#)  [Subordinate Legislation](#)

## 4 Interpretation

**expert** means a person who has specialised knowledge or skill based on training, study, or experience

**expert evidence** means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion

**opinion**, in relation to a statement offered in evidence, means a statement of opinion that tends to prove or disprove a fact

## 23 Opinion rule

A statement of an opinion is not admissible in a proceeding, except as provided by section 24 or 25.

## 25 Admissibility of expert opinion evidence

- (1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.
- (2) An opinion by an expert is not inadmissible simply because it is about—
  - (a) an ultimate issue to be determined in a proceeding; or
  - (b) a matter of common knowledge.
- (3) If an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding.

## 26 Conduct of experts in civil proceedings

- (1) In a civil proceeding, experts are to conduct themselves in preparing and giving expert evidence in accordance with the applicable rules of court relating to the conduct of experts.
- (2) The expert evidence of an expert who has not complied with rules of court of the kind specified in subsection (1) may be given only with the permission of the Judge.