

# Magistrates' Court General Civil Procedure Rules 2010

S.R. No. 140/2010

Version incorporating amendments as at  
25 April 2012

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## ORDER 44

### EXPERT EVIDENCE

#### 44.01 Definitions

In this Order, unless the context or subject matter otherwise requires—

*expert* means a person who has specialised knowledge based on the person's training, study or experience;

*opinion* includes more than one opinion;

*the code* means the expert witness code of conduct in Form 44A.

#### 44.02 Application

- (1) This Order does not apply to the following—
  - (a) the evidence of a party who would, if called as a witness at the hearing of a proceeding, be qualified to give evidence as an expert in respect of any question in the proceeding;
  - (b) a person engaged as an expert before commencement of these Rules;
  - (c) any itemised quotation or assessment attached to a complaint under Rule 5.05(2) or (3);
  - (d) an arbitration of a complaint, where the complaint has been referred to arbitration by the Court under section 102 of the Act.
- (2) With respect to the opinion of a registered medical practitioner, in a proceeding for medical negligence in which the plaintiff claims damages for or in respect of bodily injury this Order applies to an opinion on the liability of the defendant but does not otherwise apply to a medical report to which Order 33 applies.

#### 44.03 Report of expert

- (1) Unless otherwise provided, a party who intends at the hearing of a proceeding to adduce the evidence of a person as an expert must—

- (a) as soon as practicable after the engagement of the expert and before the expert makes a report under this Rule, provide the expert with a copy of the code; and
  - (b) in the case of evidence to be adduced by an expert as to the cost of repairs to or replacement of a motor vehicle damaged in a motor vehicle collision, not later than 10 days before the day fixed for the hearing of the proceeding, serve on each other party, a report by the expert in accordance with paragraph (2) and deliver a copy for the use of the Court;
  - (c) in any other case, not later than 30 days before the day fixed for the hearing of the proceeding, serve on each other party, a report by the expert in accordance with paragraph (2) and deliver a copy for the use of the Court.
- (2) The report must state the opinion of the expert and must state, specify or provide—
- (a) the name and address of the expert;
  - (b) an acknowledgement that the expert has read the code and agrees to be bound by it;
  - (c) the qualifications of the expert to prepare the report;
  - (d) the facts, matters and assumptions on which the opinion is based (a letter of instructions may be annexed);
  - (e) in relation to the opinion—
    - (i) the reasons for the opinion;
    - (ii) any literature or other materials utilised in support of the opinion;
    - (iii) a summary of the opinion;
  - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
  - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
  - (h) a declaration that the expert has made all the enquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
  - (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
  - (j) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
- (3) If the expert provides to a party a supplementary report, including a report indicating that the expert has changed his or her opinion on a material matter expressed in an earlier report—

(a) that party must forthwith serve the supplementary report on all other parties; and

(b) in default of such service, the party and any other party having a like interest must not use the earlier report or the supplementary report at the hearing without the leave of the Court.

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(4) Any report provided by the expert pursuant to this Rule must be signed by the expert and must be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.

#### **44.04 Other party's report as evidence**

Unless otherwise ordered, a party may put in evidence a report served on that party by another party under this Order.

Rule 44.04  
amended by  
S.R. No.  
36/2011  
rule 21.

#### **44.05 No evidence unless disclosed in report**

Save with the leave of the Court or by consent of the parties affected, a party must not except in cross-examination adduce any evidence from a person as an expert at the hearing of a proceeding unless the substance of the evidence is contained within a report or reports which the party has served under this Order.

#### **44.06 Conference between experts**

(1) The Court may direct expert witnesses—

(a) to confer; and

(b) to provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for their not agreeing.

(2) The Court may specify the matters on which the experts are to confer.

(3) An expert witness may apply to the Court for further directions.

(4) The Court may direct the legal representatives of a party—

(a) to attend the conference;

(b) not to attend the conference;

(c) to attend or not to attend at the option of the party whom they represent.

(5) Subject to paragraph (1)(b), except as the parties affected agree in writing, no evidence is to be admitted of anything said or done by any person at the conference.

(6) An agreement reached during the conference does not bind a party except in so far as the party agrees in writing.