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Signed by counsel/solicitor

Direction 5.4 – Expert Witnesses (Rule 160)

- 5.4.1 These guidelines are not intended to address exhaustively all aspects of an expert’s report and an expert’s duties. Reference should also be made to Rule 160
- 5.4.2 These guidelines, however, must be complied with for an expert to comply with Rule 160(3)(e).
- 5.4.3 **General Duty to the Court:**
- 5.4.3.1 An expert witness has an overriding duty to assist the Court on matters relevant to the expert’s area of expertise.
- 5.4.3.2 An expert witness is not an advocate for a party.
- 5.4.3.3 An expert witness’s paramount duty is to the Court and not to the person retaining the expert.
- 5.4.4 **The Form of the Expert Report:**
- 5.4.4.1 If any tests or experiments are relied upon by the expert in compiling the report, the report should contain details of the qualifications of the person who carried out any such tests or experiments.
- 5.4.4.2 Where an expert’s report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the delivery of the report.
- 5.4.4.3 The report should set out separately from the factual findings or assumptions each of the opinions which the expert expresses.
- 5.4.4.4 The expert should give reasons for each opinion.
- 5.4.4.5 If an expert opinion is not fully researched because the expert considers that insufficient data is available - or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
- 5.4.4.6 The expert should make it clear when a particular question or issue falls outside his/her field of expertise.
- 5.4.4.7 The expert’s report will contain an acknowledgement at the commencement of the expert’s report that the expert has been provided with copies of Rule 160 and this Practice Direction prior to preparing the expert’s report and that the expert has read it and understood it.
- 5.4.4.8 At the end of the report the expert should declare that (the expert) has made all the inquiries which “*(the expert) believes are desirable and appropriate and that no matters of significance which (the expert) regards as relevant have, to (the expert’s) knowledge, been withheld from the Court.*”

5.4.5 The Further Obligations of an Expert and the Party Retaining the Expert:

5.4.5.1 If, after exchange of reports or at any other stage, an expert witness changes his/her view on a material matter, having read another expert's report or for any other reason, the change of view should be communicated in writing (through legal representatives) without delay to each party to whom the expert witness's report has been provided and, when appropriate, to the Court.

5.4.5.2 If a draft of the expert's report (in whole or in part) or any of the content of a draft report has been provided or communicated to a party, a party's representative or a 3rd party a copy of the draft so provided or communicated must be retained by the expert.

5.4.6 Consequences of Non Disclosure

If a party fails to comply with the Rules of Court or this Practice Direction in respect of an expert's report:

5.4.6.1 The Court may adjourn the hearing or trial at the cost of the party in default or his/her lawyer.

5.4.6.2 The Court may direct that evidence from that expert not be adduced by that party at the trial in the action.

5.4.6.3 The Trial Judge may award costs to the other parties or reduce costs otherwise to be awarded to the party in default.

5.4.7 Expert's Conference

If experts retained by the parties meet at the direction of the Court, or at the request of lawyers for the parties, it would be improper conduct for an expert to be given or to accept instructions not to reach agreement. If, at a meeting directed by the Court, the experts cannot reach agreement on matters of expert opinion, they should specify their reasons for being unable to do so.

5.4.8 Experts Employed by a Party to the Action

The provisions and requirements of Rule 160 and this Practice Direction apply to any person called as an expert in the action, even if the expert is employed by a party to the action.

Direction 5.5 – Shadow Experts (Rule 161(2))

A Certificate under Rule 161(2) is to be in Form 19.

(As to service of such certificate see Rules 161(4) and (5)).

Direction 5.6 – Lists, Citations & Copies of Authorities**Format**

5.6.1 Lists of authorities should contain:

5.6.1.1 the full heading of the action;

5.6.1.2 the anticipated date of hearing;

5.6.1.3 the names or name of the Judges, Judge or Master who will hear the case (if known).

5.6.2 Lists of authorities should be divided into two parts: