

Schedule 7 Expert witness code of conduct

(Rule 31.23)

(cf SCR Schedule K)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed:

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duty to the court

- (1) An expert witness has an overriding duty to assist the court impartially on matters relevant to the expert witness's area of expertise.
- (2) An expert witness's paramount duty is to the court and not to any party to the proceedings (including the person retaining the expert witness).
- (3) An expert witness is not an advocate for a party.

3 Duty to comply with court's directions

An expert witness must abide by any direction of the court.

4 Duty to work co-operatively with other expert witnesses

An expert witness, when complying with any direction of the court to confer with another expert witness or to prepare a parties' expert's report with another expert witness in relation to any issue:

- (a) must exercise his or her independent, professional judgment in relation to that issue, and
- (b) must endeavour to reach agreement with the other expert witness on that issue, and
- (c) must not act on any instruction or request to withhold or avoid agreement with the other expert witness.

5 Experts' reports

(1) An expert's report must (in the body of the report or in an annexure to it) include the following:

- (a) the expert's qualifications as an expert on the issue the subject of the report,
 - (b) the facts, and assumptions of fact, on which the opinions in the report are based (a letter of instructions may be annexed),
 - (c) the expert's reasons for each opinion expressed,
 - (d) if applicable, that a particular issue falls outside the expert's field of expertise,
 - (e) any literature or other materials utilised in support of the opinions,
 - (f) any examinations, tests or other investigations on which the expert has relied, including details of the qualifications of the person who carried them out,
 - (g) in the case of a report that is lengthy or complex, a brief summary of the report (to be located at the beginning of the report).
- (2) If an expert witness who prepares an expert's report believes that it may be incomplete or inaccurate without some qualification, the qualification must be stated in the report.
- (3) If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.

(4) If an expert witness changes his or her opinion on a material matter after providing an expert's report to the party engaging him or her (or that party's legal representative), the expert witness must forthwith provide the engaging party

(or that party's legal representative) with a supplementary report to that effect containing such of the information referred to in subclause (1) as is appropriate.

6 Experts' conference

(1) Without limiting clause 3, an expert witness must abide by any direction of the court:

(a) to confer with any other expert witness, or

(b) to endeavour to reach agreement on any matters in issue, or

(c) to prepare a joint report, specifying matters agreed and matters not agreed and reasons for any disagreement, or

(d) to base any joint report on specified facts or assumptions of fact.

(2) An expert witness must exercise his or her independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement.