

## Form 58

### NOTE TO EXPERT WITNESS

If you have been approached to act as an expert witness in court proceedings or asked to prepare an expert's report for court proceedings, you should be aware of

- Your Duties to the Court as an Expert Witness; and
- The Mandatory Requirements in Expert Reports.

These requirements are prescribed in greater detail in Order 40A of the Rules of Court. Please check with the person instructing you if you require further clarification.

**Note: Your evidence may be discredited or rejected by the Court if you do not comply with Order 40A of the Rules of Court.**

#### **Your Duties to the Court as an Expert Witness**

1. It is the duty of the expert to familiarise himself with the general duties set out herein before accepting an appointment to provide an expert report or to give expert evidence.
2. It is the duty of the expert to assist the Court on matters within his expertise. This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom he is paid.
3. It is the duty of the expert to be independent and unbiased in the formation of his opinion. In this context, an expert will be independent if he would give the same opinion if given the same instructions by the opposing party.
4. In expressing his opinion, it is the duty of the expert to consider all relevant and material facts, including those which might detract from his opinion.
5. The expert should clearly state the literature or any other materials on which he has relied upon in forming his opinion and in the case when he is not able to reach a definite opinion, for example because he has

insufficient information, the extent to which such opinion may be provisional or qualified by further information or facts.

6. When the opinion is based upon experiments or joint inspections, the expert should clearly state the methodology, results and conclusions of these experiments and joint inspections and the extent to which such information has been relied upon for his opinion.
7. It is the duty of the expert to only confine his opinion to matters which are material to the dispute between the parties and to provide opinions in relation only to matters that lie within his own expertise. An expert should make it clear when a question or issue falls outside his expertise.
8. If after producing a report, an expert changes his view on any material matter, such a change of view should be communicated to all parties without delay, and when appropriate, to the Court.

### **Mandatory Requirements in Expert Reports**

You must comply with the mandatory requirements of Order 40A, Rule 3, of the Rules of Court if you are preparing an expert's report for purposes of Court proceedings. To avoid inadvertent non-compliance with Order 40A, Rule 3, of the Rules of Court your report should follow the following format:

1. Please state your qualifications – Order 40A, Rule 3(2)(a), of the Rules of Court.
  - Relevant professional or academic qualifications;
  - Specific training and experience;
  - The number of times you appeared as an expert witness in litigation proceedings and the number of occasions for plaintiffs and defendants.
2. Please state the issues you were asked to consider and the basis upon which evidence is given - Order 40A, Rule 3(2)(c), of the Rules of Court.
  - What were the complete instructions given to you;
  - A statement of facts leading to your opinion;
  - What were the facts known by you to be true;
  - What were the facts you were instructed to assume;
  - What were the facts you have assumed.

3. Please state a one-paragraph summary of your conclusions reached – Order 40A, Rule 3(2)(f), of the Rules of Court.
4. If you had to rely on the work of others - Order 40A, Rule 3(2)(b), of the Rules of Court.
  - Identify the literature or other material you relied on in making this report;
  - State whether you had the opportunity to verify the report;
  - State the identity and qualifications of the author of the report;
5. If you are aware of experiments, tests, examinations, inspections or surveys conducted – Order 40A, Rule 3(2)(d) of the Rules of Court.
  - Identify the person(s) conducting those tests etc;
  - State the qualifications of such person(s);
  - State whether those tests were conducted under your instruction or supervision;
  - State whether you relied on those tests etc;
  - State the extent to which your opinion may be qualified by inaccuracies or mistakes in such tests etc.
6. If there is a range of differing opinions amongst experts on the matters dealt with in your report - Order 40A, Rule 3(2)(e), of the Rules of Court.
  - Summarise the range you consider to be acceptable and the reasons why;
  - Summarise the range you consider unacceptable and the reasons why.

After completing your report

7. You must make the following declaration which is
  - a statement of belief of correctness of your opinion; and
  - a statement that you understand that in giving this report, your duty is to the Court, and that you have complied with that duty.

*“I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear they are and I believe them to be correct, and that the opinions I have expressed represent my accurate and complete professional opinion.*

*I also confirm that in preparing this report, I am aware that my primary duty is to the Court and not the person(s) from whom I have received my instructions or by whom I am paid”.*