



## Role of Experts

- Give evidence of opinions within areas of expertise based on facts within your own knowledge or proved by other witnesses
- Applies to Council, Board of Inquiry, Auckland Unitary Plan Independent Hearings Panel and Environment Court hearings

# Environment Court Practice Note

- Environment Court Practice Note 2014:

7.2(a) *An expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise.*

7.2(b) *An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.*

# Environment Court Practice Note

- 7.3(b) *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 the evidence.*
- 7.3(c) *If an expert witness believes that her or his opinions are not firm or concluded because of insufficient research or data, or for any other reason, that must be stated in the evidence.*
- 7.3(d) *If after the exchange of a brief of evidence has occurred, an expert witness changes any of his or her opinions or conclusions, that must be communicated without delay to all parties to the proceeding.*

# Environment Court Practice Note

A single statement can cover the key elements:

- *I have complied with the Environment Court's Expert Witness Code of Conduct 2014 in the preparation of this evidence. Except where I state I am relying on the evidence of another person, this written evidence is within my area of expertise. To the best of my knowledge I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.*

# Weight to be Given to your Opinion

1. Qualifications / experience – should align with nature of evidence being given
2. Familiarity / extent of research
3. Credibility / objectivity, nature of evidence, demeanour, answers to questions, cross-examination responses
4. Ability to communicate / explain

# Role of Counsel

1. Co-ordinating overview, making sure all facts proved, assess what is relevant
2. Discussion between lawyer and expert can arise as to wording
3. Amendments should be in your words and discussed with you
4. You (the expert) have the final say

# Receiving Instructions

1. Obtain clear instructions
  - facts expected to prove
  - opinions expected to give
2. Disclose conflicts of interest
3. Ensure you have expertise
4. Inform Counsel or be aware of previous evidence / report

# Receiving Instructions

5. Be clear what is expected
6. Ask what the big picture is
7. If possible, preliminary meeting with witnesses
8. Ensure that all facts are proved

# Researching your Evidence

1. Your evidence must be based on your research
2. Must be able to explain methods, assumptions and results
3. Any work carried out by colleagues must be verified – otherwise inadmissible
4. Keep in mind statutory tests

# Photographs

1. Useful adjuncts to written evidence
2. Should generally be taken by you or in your presence
3. Take care to ensure representative and not misleading
4. Aerial photographs should include a scale and date taken
5. Should include camera focal length unless provided for general site context reasons

# Preparing written brief

A statement of experience should include:

1. Number of professional years experience
2. Type of work undertaken
3. Current and any previous relevant roles
4. Experience of particular relevance

# Preparing written brief

Evidence should also:

1. State why witness involved
2. Acknowledge the witness has read other witnesses' evidence
3. Set out the scope of the evidence
4. Establish the structure to be followed
5. Include a brief summary

# Preparing Written Brief

1. Keep to timetable – especially larger cases where several witnesses are involved
2. Keep in mind instructions
3. Clear format, logical sequence headings, (prepare an outline) short paragraphs, page numbers, paragraph numbers
4. “I” not “we”
5. Refer to the Environment Court’s practice note for certain things that must be included in a brief of evidence of an expert

## Preparing Written Brief

6. Keep it simple – explain technical terms to hearings panel / Court
7. Technical reports, complex calculations, details of methodologies should be in appendices
8. Don't lose main message in forest of detail
9. Visual aids
10. Keep within expertise

# Preparing Written Brief

11. Try to anticipate other side
12. Check evidence
  - Consistent
  - Accurate
13. Avoid hearsay
14. For experts: professionally impartial / DON'T BE AN ADVOCATE – language must be appropriate

# Preparing Written Brief

15. Summons – produce report

16. Be open with weaknesses

17. Team approach

- Your evidence
- Your responsibility
- Your credibility

# Pre-hearing Preparation

1. Cooperation with lawyer, make sure case is explained to you
2. Educate lawyer so that your evidence is understood
3. Cross-Examination - preparation / rebuttal evidence
4. Agree on common issues with witnesses for other side (agreed statement) - witness caucusing

# Presentation

1. Only “open questions” from “your” Counsel
2. Written briefs – some interpolation – on the whole now read in advance in Environment Court

## Points to Remember

1. Demeanour / appearance (including dress code)
2. Clear and flowing – pause for table and diagrams etc.
3. Objective and confident – not arrogant or emotional
4. Try to retain hearing panel's or Court's attention
5. Pause for Commissioners or Court to take notes
6. Witnesses may be called to give evidence consecutively or may be required to “hot tub”

# Cross-Examination

1. Use it as an opportunity – be properly prepared
2. Likely to attack factual basis of opinion – be aware of weaknesses in your evidence
3. Leading (“closed”) questions. Qualify your answer if necessary – answer yes / no if appropriate
4. Stay calm – communicate what you want to say

# Points to Remember

1. Listen to the question
2. Think about the question and take your time. Ask if you don't understand it
3. Avoid debate with Counsel, Commissioner or Court
4. Direct positive answers desirable
5. Speak clearly / slowly – digital transcript in Court
6. Admit mistakes or shortcomings

## Points to Remember

7. Don't back down to avoid confrontation, defend opinions
8. Avoid emotional involvement – anger, defensiveness or arrogance
9. Body language – don't slouch or fidget
10. Allow time for Counsel's objections to be resolved
11. Ask to see documents referred to in questions or cross-examination
12. Avoid talking to Counsel during breaks

# Re-Examination

1. Opportunity to fix problems
2. Think why you are being asked that question

## Questions from Court / Commissioners

1. Useful guide to Court's / Commissioners' understanding
2. If unclear, explain again

# Presenters

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