

TORONTO LOCAL APPEAL BODY

Practice Direction No. ____

Expert Witnesses

Who is an Expert?

An expert is a person who may, with approval of the presiding Member, give opinion evidence before the TLAB.

Generally, opinions are not proper evidence in a court or tribunal and thus an expert's testimony is an exception to this general rule.

Experts do not need to have a particular degree or designation; they do not need to belong to a college or adhere to a formal Code of Conduct, in order to be an expert. An expert may simply be someone who has relevant:

- Skill;
- Knowledge;
- Training;
- Expertise;
- Certification; or
- Education

with respect to a matter in issue before the TLAB. To determine whether an expert is needed, the TLAB Member hearing a matter may first consider whether an expert is needed at all. For example, an expert isn't generally needed for things that would reasonably be expected to be within the knowledge and experience of an average person. If, however, the issue is one which might be outside of a person's common range of knowledge or experience, the Member may permit an expert to give his or her opinion to the TLAB.

Qualifying an Expert before the TLAB

Parties are permitted to ask questions of a proposed expert, and to make submissions, prior to an expert being qualified to give expert opinion evidence. An opposing Party might, for instance, wish to ask questions regarding the proposed expert's qualifications or experience, or make submissions with respect to whether the expert's proposed testimony is needed at all, in order for the TLAB to justly determine the issues in dispute.

If a Party intends to challenge or raise issues with respect to the impartiality of a proposed expert, or to suggest potential biases, for example, it is generally a good practice to consider providing an opposing Party with some advance notice of the intention to do so. This can avoid potential delays and disruption to the process and to the Parties' expected plan for that day's appearance before the TLAB.

At the end of this qualification process the TLAB Member will make a decision as to whether to allow the proposed expert to give opinion evidence and will identify and define the expert's area of expertise.

Expert's Duties

Experts have certain duties when appearing before the TLAB. These are expressed in the TLAB's Acknowledgement of Expert's Duty Form, which must be signed and dated by each proposed expert, prior to appearing before the TLAB. The duties of an expert include providing evidence that is fair, objective and non-partisan; providing opinion evidence that is related only to the matters that are within his or her expertise; and providing such additional assistance as the TLAB may reasonably require to determine a matter in issue.

Experts aren't deployed to tell TLAB Members how to rule on an issue, but, rather, are tendered by Parties in order to assist a Member in understanding technical or difficult matters outside of one's expected breadth and depth of knowledge or experience. Experts are therefore expected to render their opinions in an unbiased, dispassionate, helpful and assistive manner. They are not "hired guns".

Consider the Following

While not required, the following things are worth considering, when potentially hiring an Expert:

Share an Expert

Parties may wish to consider whether there is an opportunity to "share" an expert. There may be times where assistance on a technical or scientific matter, for instance, will be of equal importance to one or perhaps all Parties. Nothing prevents Parties from agreeing to jointly tender an expert, when doing so will assist the Parties, and assist the TLAB, in arriving at a just conclusion of the matters in dispute.

Narrow the Issues in Dispute

Parties may wish to consider whether having their proposed experts meet might result in a narrowing of the total number of issues in dispute. Alternatively, Parties may wish to have their experts discuss whether certain facts can be agreed upon, and discuss where their divergence in expert opinion results. Doing so can sometimes result in a shorter, more focused and efficient hearing.

Concluding Remarks

The TLAB's Rules of Practice and Procedure, and its attendant Public Guide, contain further details about experts and their role before the TLAB. Parties should consult these, first, and if further is needed, a lawyer.