

Expert Evidence

1.0 This Practice Direction:

- explains what is expert evidence
- explains who pays for an expert report or expert fees
- explains how the Tribunal hears expert evidence
- explains who qualifies as an expert witness
- explains the filing requirements of an expert report.

2.0 Who is an Expert?

2.1 An “expert” is a person who gives an opinion based on education training, qualifications, expertise, or experience on an issue before the Hearing Panel or Vice-Chair. An expert can include a “specialized physician or a scientist or another person with specific skill in a certain area. See: *Decision No 2106/03*.

2.2 “Expert evidence” is evidence given by an expert.

3.0 Who Qualifies as an Expert Witness?

3.1 The Hearing Panel or Vice-Chair must recognize a person as an expert before the person is permitted to provide a technical, scientific, or specialized opinion about an issue before the Hearing Panel or Vice-Chair.

3.2 To determine if a person is an expert, the Hearing Panel or Vice-Chair may consider the person’s:

- education
- certification
- knowledge
- skill
- training
- expertise

- publications
- affiliations with regulatory or teaching institutions
- peer recognition of expertise, or
- experience in the area that the person will give evidence or testify about.

4.0 Filing an Expert Report with the Tribunal

4.1 Where a party intends to rely on expert evidence that it has obtained for the purposes of a Tribunal hearing the party must disclose the written report of the expert as soon as possible and no later than three (3) weeks prior to the hearing date.

4.2 The party's disclosure must contain a copy of:

- the expert report, signed by the expert
- the letter asking for the expert report, including the questions asked of the expert
- the expert's curriculum vitae that provides the expert's education, training or expertise.

4.3 This requirement will not apply to the disclosure of updates on the worker's condition from the family doctor or treating specialists.

4.4 The parties may make submissions about the expert's qualifications to provide opinion evidence.

5.0 Oral Expert Evidence in Tribunal Hearings

5.1 The Hearing Panel or Vice-Chair receives a complete copy of the Board file, including copies of all medical and expert reports filed with the Board. This includes the clinical notes and records from family doctors and other treating medical professionals such as physiotherapists. Parties do not need to file this type of material which is already contained in the Tribunal record.

- 5.2** Oral testimony from an expert witness is extremely rare before the Tribunal. It is not the Tribunal's practice to hear oral expert evidence from an expert witness. A written report is usually sufficient.
- 5.3** The Hearing Panel or Vice-Chair decides if it is necessary for an expert witness to give oral evidence. An expert witness will not be permitted to testify unless a report of the expert's opinion is filed with the Tribunal in the manner described above.
- 5.4** The parties may make submissions and elicit evidence from the expert about his or her qualifications based on the curriculum vitae.

6.0 Who Pays for an Expert Witness?

- 6.1** A party who files an expert report pays for the report. A party who calls an expert as a witness pays the full fee of the expert.
- 6.2** In exceptional circumstances, the Tribunal may pay for an expert report or expert fee for an expert witness called by a worker where the Hearing Panel or Vice-Chair decides:
- the expert report is significant in the decision making process; or,
 - the expert testimony is of exceptional importance to the decision-making process.

See *Decisions No. 249/96 and 260/94*.

- 6.3** If the Hearing Panel agrees to pay for an expert report or expert fees, the Tribunal pays based on the approved schedule of rates. See *Practice Direction: Fees and Expenses*. See also: *Decision No. 3079/01R*.

7.0 Related Practice Directions

- *Disclosure, Witnesses and the Three-Week Rule*
- *Starting an Appeal at the Tribunal (Notice of Appeal Process)*
- *Confirmation of Appeal and Hearing Ready Letter*

Dated at Toronto, Ontario this first day of October, 2007
Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Tribunal Chair