



Practice Direction #11

Expert Evidence

1.0 This Practice Direction explains

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

2.0 Who is an Expert?

2.1 An “expert” is a person who gives an opinion on an issue before the Vice-Chair or Panel. “Experts” are based on

- education and training
- qualifications
- expertise
- experience

An expert can include a “specialized physician or a scientist or another person with a specific skill in a certain area.”

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

3.0 Who Qualifies as an Expert?

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

3.2 An expert must provide fair, objective and non-partisan evidence.

- 3.3 To determine if a person is an expert, the Vice-Chair or Panel may consider the person's
- education
 - certification
 - knowledge
 - skill
 - training
 - expertise
 - publications
 - affiliations with regulatory or teaching institutions
 - peer recognition of expertise
 - experience in the area that the person will give evidence or testify about

4.0 Filing an Expert Report

- 4.1 If a party wants to use expert evidence in the hearing, they must disclose the written report of the expert as soon as possible. It must be before the time limits listed in Practice Direction #8 – Disclosure.
- 4.2 The party's disclosure must have a copy of
- the expert report, signed by the expert
 - an acknowledgement by the expert that they are providing fair, objective and non-partisan evidence – this overrides any obligation the expert owes to the party who hired them
 - the letter asking for the expert report, including the questions asked
 - the expert's qualifications – education, training or expertise
- 4.3 This requirement does not apply to the disclosure of updates on the worker's condition from the family doctor or treating specialists.
- 4.4 The Vice-Chair or Panel gets a complete copy of the Workplace Safety and Insurance Board (WSIB) file. This includes copies of all medical and expert reports filed with the WSIB. It may also include clinical notes and records from family doctors and other treating medical professionals like physiotherapists. Parties do not have to file this material because it is already in the record.

4.5 The parties can make submissions about the expert's qualifications to give opinion evidence.

5.0 Oral Expert Evidence in Hearings

5.1 Oral testimony from an expert is extremely rare. It is not the WSIAT's practice to hear oral evidence from an expert. A written report is usually enough.

5.2 The Vice-Chair or Panel decides if it is necessary for an expert to give oral evidence. An expert can only testify if a report of the expert's opinion is filed with the WSIAT (review section 4.1).

5.3 The parties can make submissions and get evidence from the expert about their qualifications.

6.0 Who Pays for an Expert?

6.1 A party who files an expert report pays for the report. A party who calls an expert as a witness pays the fee of the expert.

6.2 In exceptional circumstances, the WSIAT will pay for an expert report, fee or witness called by a worker if the Vice-Chair or Panel decides that

- the expert report is significant in the decision making process
- the expert testimony is important to the decision-making process

6.3 If the Vice-Chair or Panel agrees to pay for an expert report or fees, it will be based on the WSIAT's approved schedule of rates.

7.0 References and Resources

7.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) and 132 (the WSIAT's powers regarding proceedings)

7.2 Decisions

WSIAT Decision No. 2106/03 (expert evidence definition)

WSIAT Decision No. 249/96 (exceptional circumstances where the WSIAT pays for the report)

WSIAT Decision No. 260/94 (exceptional circumstances where the WSIAT pays for the report)

WSIAT Decision No. 3079/01R (payment under the WSIAT fee schedule)

White Burgess Langille Inman v. Abbott and Haliburton Co., [2015] 2 SCR 182 (duty for expert to give fair, objective and non-partisan evidence)

7.3 Related Practice Directions

#1 – How to Start an Appeal at the WSIAT

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#9 – Evidence

#36 – Delivery and Filing Documents

#39 – Fees and Expenses