



Energy Resource Appeal Tribunal

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Expert Witnesses

What is an expert witness?

An expert witness has special education, experience, or training that lets them give an expert opinion in a hearing. Most witnesses can only give opinions that are part of everyday experience: size, speed, age of a person, etc. Experts, on the other hand, might offer opinions about engineering, any field of science, anthropology, etc. The Energy Resource Appeal Tribunal (the “Tribunal”) has created rules on the submission of expert evidence.

In written hearings, expert witnesses provide their opinions in written reports. In oral hearings, expert witnesses can provide their opinions in written reports or verbally. If the expert witness is going to give their evidence verbally, they can (but do not have to) also write a report.

See page 37 of the Tribunal’s [Practice and Procedure Manual](#) for more information.

Notification

You need to notify the other parties (and any participants or interveners allowed to present or challenge evidence) before you can present an expert witness. This allows those you notified to review the expert opinion. They will be able to consider the expert opinion and the assumptions on which it is based. They will also be able to decide whether to submit their own expert evidence in reply. This may involve locating and consulting with experts, and preparing questions to ask these experts.

The Tribunal’s [Rule 27](#) describes what is required for notification. The Rule allows the Tribunal to change those requirements case-by-case.

Generally, notification must be given at least 84 days before the parties can submit evidence. In an oral hearing, the 84 days is counted back from the first day of the oral hearing. In a written hearing, the 84 days is counted back from the day when the first written submissions are due.

If there is an expert report, one party notifies the others (and any participants or interveners allowed to present or challenge evidence) by sharing the report. Otherwise, notification involves sharing a “notice of expert testimony (without report)”.

Any expert report must describe the expert's qualifications, plus the assumptions the expert made in providing their opinion, the expert's opinion, and their rationale.

A notice of expert testimony (without report) must generally include:

- (a) the qualifications and areas of expertise of the witness;
- (b) a written summary of the opinion to be given at the hearing; and
- (c) the facts on which the opinion is based.

After being notified of expert evidence, other parties (and any participants or interveners allowed to present evidence) can present expert evidence in reply. This evidence can be given in a report or, if there is an oral hearing, verbally. In either case, the party presenting the reply evidence must share a report or a notice of expert testimony. Generally, this is done 42 days before the evidence is first due in the hearing. In an oral hearing, the 42 days is counted back from the first day of the hearing. In a written hearing, the 42 days is counted back from the day when evidence is first due.

If a party does not properly notify the others (and any participants or interveners allowed to present evidence), the Tribunal might delay the hearing. The Tribunal might also refuse to consider the expert evidence.

Although sections 10 and 11 of the *Evidence Act* have different requirements, those sections do not apply if they conflict with the Tribunal's Rules.

Qualifying expert witnesses

Before a witness can give an expert opinion, the Tribunal must be satisfied that the opinion is within the witness' areas of expertise, based on their education, experience, or training. The Tribunal must also conclude that the expert can offer even-handed, independent evidence to the Tribunal.

After receiving notice that a party (or participant or intervener allowed to present evidence) wants to present an expert witness, you may have questions about that person's areas of expertise. If the hearing will be oral, you can ask questions at the hearing. If the hearing will be written, you can ask for the chance to cross-examine the witness. In either case, you will be able to argue that the Tribunal should or should not qualify the witness as an expert.

If the Tribunal does not qualify a witness as an expert, they may still testify as a regular witness. This requires the witness to have information, other than an expert opinion, that is relevant to an issue under appeal.