



INTERNATIONAL
BUILDING
QUALITY CENTRE

Professor Robert
Whittaker AM, FRSN

Improvements in Core Duties of Expert Witnesses

The case for improved
expert witness rigour and
accreditation protocols

Expert witnesses must have very robust qualification and experience-based credentials

- Expert witnesses perform a critically important role in the resolution of building disputes
- However, there is no uniform accreditation mechanism for the deployment of expert witnesses
- This means there can be uncertain outcomes and variable results

The problem of adversarial expert evidence in conflict

- There is a strong adversarial culture in construction dispute resolution
- It is not unusual for a plaintiff's expert witness to be too generous in terms of rectification cost assessment
- Equally, it is not uncommon for a defendant expert witness to be too miserly with regards to rectification cost
- The net effect is a considerable disparity of evidence, which leads to protracted and very costly litigation

Recommendations that are aimed at improving expert witness deployment and expert witness rigour

- The development of an accreditation regime to ensure that the very best expertise available can be used in construction dispute resolution
- A panel of court or tribunal appointed experts

The single expert witness

The proposed system of a single expert witness would involve:

1. Legal proceedings are issued
2. The court or tribunal will convene a directions hearing
3. An expert witness will be appointed by the tribunal
4. The expert witness will be remunerated on a 50/50 basis by the disputants
5. The expert witness will inspect and prepare a report in terms of diagnostics and costings
6. The expert witness will also identify those responsible for defects
7. The report will be made available for both parties and the tribunal member
8. The report will also be made available to any mediator that is charged with the responsibility of trying to get the matter settled

The benefits of such an approach

The impartiality that will be part and parcel of a court appointed expert will be better conducive to:

- Early settlement
- Shorter trial length
- Huge cost savings
- Better outcomes for all disputants
- In light of the fact that the expert witnesses will be jointly retained, the costs associated with expert witness advocacy will be dramatically slashed.

Conclusion

- There is hope and I am totally confident that if the above recommendations are adopted the cost of dispute resolution can be dramatically reduced, as well as seeing reductions in trail lengths

Presented by Professor Bob Whittaker AM, FRSN

- Past National President Australian Institute of Building
- Vice Chair, International Building Quality Centre

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