

Civil Resolution Tribunal and Personal Injury Practice 2019

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CRT and Expert Evidence



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CRT Expert Rules



- Rule 8.3(1) addresses service.
- Rule 8.3(2)-(3) and (7) address qualifications and obligation not to advocate.
- Rule 8.3(4) addresses disclosure of expert's file.

CRT Expert Rules

- Rule 8.3(5) provides:

The case manager can

- a) direct a party to obtain expert evidence, or
- b) direct multiple parties to retain a joint expert to produce expert opinion evidence.

CRT Expert Rules

- Rule 8.3(6) provides:

If the tribunal is directing a party to obtain expert opinion evidence, it can

- a) decide who must pay for it, and
- b) include the cost of that expert opinion evidence as an expense a party is ordered to pay to another party at the end of the tribunal decision process, subject to any limitations prescribed by regulations.

CRT Expert Rules

- Rule 8.3(8) provides:

A party wishing to challenge another party's expert or expert evidence must notify the tribunal of the reasons for the challenge as part of their Tribunal Decision Plan submissions.

CRT Expert Rules

- Rule 8.3(9) provides:

The tribunal may seek clarification of the expert report from the expert without advance notice to the parties.

CRT Expert Rules

- Rule 8.3(10) provides:

If the tribunal seeks clarification of the report, both the question(s) and the response(s) must be provided in writing and will be disclosed to the parties for submission.

CRT Expert Rules

- Rule 8.3(11) provides:

The tribunal may accept written reports prepared by an expert without the need for the expert to attend an oral hearing.

CRT Expert Rules – MVA Claims

- Rule 8.4(1) provides:
In determining whether additional expert evidence is reasonably necessary and proportionate for motor vehicle injury claims the tribunal may consider:
 - a) the type of bodily injury or injuries,
 - b) the nature of the claim to be decided by the tribunal,
 - c) the other evidence available,
 - d) the amount claimed,
 - e) the timeliness of the request, and
 - f) any other factors the tribunal considers appropriate.

CRT Expert Rules – IMEs

- Rule 8.5(1) provides:

For disputes filed under the tribunal's motor vehicle injury jurisdiction the tribunal may, on the tribunal's own initiative or on the request of a party, order an independent medical examination of the injured party at any point after a dispute response has been filed.

CRT Expert Rules - IMEs

- Rule 8.5 (2) provides:

A party may request that the tribunal order an independent examination by

- a) filling out the independent medical examination request form,
- b) paying the required fee.

CRT Expert Rules – IMEs

- Rule 8.5(3) provides:

Before ordering an independent medical examination, the tribunal may consider

- a) the type of bodily injury or injuries,
- b) the issues in the dispute,
- c) the extent and nature of existing expert medical evidence,
- d) the amount claimed,
- e) the ability of the parties to pay for their own experts,
- f) whether all parties consent,
- g) whether the party has failed to attend an expert examination requested by another party, and
- h) any other factors the tribunal considers appropriate.

CRT Expert Rules - IMEs

- Rule 8.4(4) provides:

The Tribunal Chair may

- a) create a roster of experts to perform independent medical examinations,
- b) retain experts from that roster, and
- c) determine the terms and conditions, including remuneration and reimbursement of expenses, under which an expert may perform an independent medical examination.

CRT Expert Rules - IMEs

- Rule 8.5(5) provides:

The tribunal must set the terms of reference for the independent medical examination and report in the order appointing the expert including

- a) the form and content of the report,
- b) setting any time periods for providing the report,
- c) setting a fee for the report,
- d) providing any information or evidence the tribunal wants the expert to consider, and
- e) the questions to be answered in the report.

CRT Expert Rules - IMEs

- Rule 8.5(6) provides:

Except with the written consent of all parties, the tribunal must not appoint an expert to provide an independent medical opinion if the expert

- a) has previously examined the injured party,
- b) is treating or has previously treated the injured party,
- c) has been consulted in the treatment of the injured party,
- d) has acted as a consultant to the insurer with respect to the accident,
- e) is a partner of or practices with an expert described above, or
- f) appointment could otherwise result in a reasonable apprehension of bias.

CRT Expert Rules - IMEs

- Rule 8.5(7) provides:

If the expert retained to conduct an independent medical examination considers it necessary to examine the party to provide a report, the expert may require the party to attend for an examination by giving the party written notice.

CRT Expert Rules - IMEs

- Rule 8.5(8) provides:

If a party fails to attend the independent medical examination when requested or obstructs the examination without reasonable cause, the tribunal may, after giving notice to the party who failed to attend or obstructed the examination

- a) direct the expert to reschedule the examination of the party and give the party notice of the rescheduled examination,
- b) direct the expert to provide a report without examining the party, or
- c) find the party to be in non-compliance and decide the dispute without the report.

Accident Claims Regulation

“independent medical examination”, in respect of an accident claim, means an examination conducted by an expert appointed by the tribunal under section 3.

Accident Claims Regulation - Expert Evidence

- R. 3 provides:

On the request of a party or on the tribunal's own initiative, if the physical or mental condition of a person is in issue, the tribunal may appoint an expert

- (a) to conduct an independent medical examination with respect to a person's injuries related to an accident claim,
- (b) to provide an opinion in the form of a report that includes the following information, to the extent that information is applicable or within the expert's area of practice:
 - (i) the nature and extent of the person's injuries;
 - (ii) the person's diagnosis;
 - (iii) the person's condition at the time of the independent medical examination;
 - (iv) the person's prognosis.

Accident Claims Regulation – Expert Evidence

- R. 4 provides:

(1) A party may introduce expert evidence from one expert other than a report under section 3(b).

(2) The tribunal may allow a party to introduce evidence from up to 2 additional experts if the tribunal considers that the introduction of additional evidence is reasonably necessary and proportionate to the accident claim.

Accident Claims Regulation - Expert Evidence

- R. 5 sets out prescribed allowable expenses:

(a) in the case of expenses and charges associated with an independent medical examination, \$2,000 is the limit prescribed in relation to the independent medical examination, excluding reasonable travelling and out of pocket expenses necessarily incurred for the independent medical examination.

(b) in any case other than the case referred to in paragraph (a),

(i) \$2,000 is the limit prescribed for expenses and charges payable in relation to each expert, including any expenses and charges payable in relation to reports or other evidence prepared by each expert providing expert evidence, and,

(ii) \$5,000 is the total limit prescribed for all recoverable fees, expense and charges, including any expenses and charges payable under subparagraph (i).

(2) For certainty, the total limit described in subsection (1)(b)(ii) does not include any fees, expenses and charges associated with an independent medical examination.

Accident Claims Regulation - Expert Evidence

- R. 6 provides:

(a) unless the tribunal orders otherwise, any expenses and charges associated with an experts independent medical examination are payable

(i) by the requesting party, or

(ii) equally by the parties, if the expert is appointed on the tribunal's own initiative;

(b) the amounts payable by a party under paragraph (a) are recoverable by the successful party.