

CIVIL PRACTICE NOTE 5

FORMAT OF EXPERT EVIDENCE OF ECONOMIC LOSS OR DAMAGES

1. Where a party serves an expert's report containing evidence as to economic loss or damage pursuant to Rule 5.34, including any expert's report offered by way of reply, that report must contain the following information:
 - (a) a list identifying individually, all of the factors upon which, in the opinion of that expert, finding of fact must be made to arrive at an ultimate conclusion;
 - (b) the assumptions of fact for each factor, used to determine his/her opinion as to economic loss or damage; (it would be helpful for the expert to offer alternative conclusions based on all alternate assumptions of fact available on the evidence);
 - (c) the expert's reason(s) for choosing each such assumption from among the available alternatives; and
 - (d) where alternative methods of calculating a loss/damages exist, the method chosen by the expert and the reason for selecting same.
2. Where the assumptions of fact chosen by an expert as a basis for his/her opinion are based on evidence given by that expert, that evidence must also be contained in the expert's report. Counsel should be mindful that the value of the expert's report will be seriously debased if the expert makes assumptions of fact for which no evidence is led at trial, either from the expert or some other witness. If the expert has engaged in no independent verification of the economic facts upon which his/her assumptions are based that should be clearly noted.
3. When instructing experts, counsel should remain mindful that an expert's report is more effective if it contains opinions based on several various possible findings of fact that may be made by the trial judge. Expert evidence based on only the "best case scenario" set of facts from the perspective of the party entering it in evidence may be of little use to the judge.
4. Whether or not an expert has stated the numerical total of economic loss or damages in written or oral evidence, the trial judge may, upon giving judgment, direct the expert to calculate the economic loss or damage, on the basis of the facts as found by the trial judge. Where this occurs all parties have the right to be heard as to the accuracy of the calculation before the final judgment is entered.
5. The requirements of this Practice Note do not limit the ability of an expert witness to otherwise address, explain or support his or her opinion. Lawyers must ensure that all issues upon which expert opinion will be tendered at trial are addressed in his or her expert report whether or not they are included in the following example.

6. Any party served with such an expert report may apply to the Court at least 60 days prior to the commencement of the trial to review the working file upon which the expert report is based, including any spreadsheets or other analytical documentation prepared by the expert for the purpose of arriving at his/her expert opinion; leave may be granted subject to any conditions that judge considers appropriate, including any required to protect client privilege.

7. An expert who provides written or oral opinion evidence in reply to an expert report governed by this Practice Note, shall specifically identify the information in the expert report with which he or she disagrees and the reasons for the disagreement.

An Example:

An economist's report relating to the present-day value of future income loss in a personal injury case should contain the following type of statement:

"In my opinion the following matters must be addressed to arrive at a conclusion as to the present value of future income loss in this case:

| Mandatory Factors | Assumption of Fact & Reason for Selecting Assumption |
|---|--|
| 1. Age at which Plaintiff would have retired had she not been injured | 62 years, based on Statistics Canada statistical information that workers in the Plaintiff's occupation retire at an average age of 62 years |
| 2. Mortality rate to be applied had Plaintiff not been injured | .02% per annum, based on Canada Life Insurance Tables |
| 3. Plaintiff's future annual income had she not been injured | \$11,000 which was her average total annual income for each of the three years prior to the accident, based on her produced income tax returns for those years |
| 4. Likelihood Plaintiff would have been completely and permanently disabled pre-retirement by other causes had this injury not occurred | .05% in any year, based on Statistics Canada statistical information for workers in the Plaintiff's occupation |
| 5. Likelihood Plaintiff would have become unemployed in any event | 10% in any year, based on Canada Employment Insurance statistical information for workers in the Plaintiff's occupation |
| 6. Discount Rate | 2.5% being the historical difference between the rate of inflation and the interest rates paid on conservative |

| | |
|--------------------|-------------|
| | investments |
| 7. <other factors> | ..” |

**[Note: While this example relates to a personal injury loss it may be adapted, as appropriate, to business evaluation and other types of economic loss.]