
An Ethical Issue Expert Witness Opinions

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The recent case of *DeBattista v Minister for Planning and Environment* [2019] NSWCA 237 highlights the importance for an expert witness to provide a report that reflects their own opinion unless stated otherwise.

In this case, Council engaged with an external Urban Design Consultant (**Consultant**) for the support of a planning proposal. After Council requested significant changes to the first and second draft reports, the Consultant provided a third and final version adopting such changes. The contention was that the final version of the report failed to identify the adopted comments from Council and thus was prima facie the Consultant's prepared report based on their own opinion.

His Honour divulged the greater pressure asserted on the Consultant by Council noting that the terms of the professional's retainer were that it would not be paid if Council was dissatisfied with the opinion provided. His Honour further stated that:

"No professional should assent to such a term. No ethical client should demand it"

The ethical dilemma boiled down to his Honour stating that:

"...the use of consultants, usually professionals, whose apparent independence is to be relied upon by their client, whilst their client seeks to control the opinion expressed."

Conclusively, the Court determined that lawyers, town planners, valuers, accountants, rating agencies and a plethora of other professionals whose opinions or reports will be relied on by other individuals other than their own client must remain independent not only in appearance but simultaneously in reality