



Licensing Manual 2006

Section 8

Evidence

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Summary

1. Only sufficient, relevant, and reliable evidence is admissible in licensing proceedings;
2. A applicant supplying an application, form or request has the burden of providing sufficient, relevant and reliable evidence;
3. Printed evidence that proves a fact and which in itself is reliable, conclusively establishes a fact;
4. Expert evidence is admissible;
5. Written representations shall be provided in the form of statutory declaration;
6. Copies of printed evidence are admissible as long as they are certified as a "true copy".

Evidence - Detail

EV 1 Scope of section

- 1.1 The following provisions relate to both verbal and written evidence in relation to any part of an licensing proceeding.

EV 2 Nature of evidence required

- 2.1 Only sufficient, relevant, and reliable evidence is admissible in licensing proceedings. The issue of reliable evidence is dealt with in paragraph EV 6 "Reliability of evidence";
- 2.2 Professional judgment shall be used on a case-by-case basis to determine what constitutes sufficient, relevant and reliable evidence. Evidence standards shall be maintained by the Board or its delegate(s) from time to time;
- 2.3 Failure to provide sufficient, relevant, and reliable evidence after reasonable efforts are made by the Board or its delegate(s) or panel constituted for the purposes of this Manual, shall cause either licensing proceedings to be abandoned, or a negative conclusion to be drawn in relation to the assertion to which the evidence relates;
- 2.4 Assessments undertaken in accordance with paragraph AST 1 "General nature of assessments", and applications, forms, and requests submitted as part of licensing proceedings shall be supported by a balance of printed evidence (paragraph EV 7) and written representations (paragraph EV 10) unless otherwise approved by the Board or its delegate(s);

EV 3 The burden of evidence

- 3.1 A applicant supplying an application, form or request has the burden of providing sufficient, relevant and reliable evidence which is essential to the application, form or request. Clear and convincing evidence is required;
- 3.2 Every applicant to an appeal shall have the right to present his or her case or defense by verbal or printed evidence, and to submit rebuttal evidence as may be required for a full and true disclosure of the facts;
- 3.3 A person subject to an interview or appeal may authorise a barrister or solicitor to appear on their behalf to provide evidence as long as the evidence provided or required is not technical in nature.

EV 4 Exclusion of evidence

- 4.1 Evidence may be excluded from consideration if:
 - 4.1.1 Its value is substantially outweighed by the probability that its admission shall:

- 4.1.1.1 Necessitate undue consumption of time; or
- 4.1.1.2 Create substantial danger of confusing the issues;
- 4.1.2 It is illegible;
- 4.1.3 It is repetitious;
- 4.1.4 It is not provided in a form required under paragraph EV 7 “Printed evidence”, and EV 10 “Written representations”;
- 4.1.5 It is deemed to be unreliable (see paragraph EV 6 “Reliability of evidence”);
- 4.1.6 It is substantially based on assumptions.

EV 5 Obtaining evidence

- 5.1 Evidence may be obtained by the Board or its delegate(s) by one or more of the following procedures:
 - 5.1.1 Provision by applicant, Licensed Building Control Official, complainant, etc;
 - 5.1.2 Inspection of records, documents or tangible assets;
 - 5.1.3 Observation, for example observing building sites;
 - 5.1.4 Inquiry and confirmation. Inquiry consists of seeking appropriate information through interview (refer to the “Interview” section) or appeal (refer to the “Appeal” section) procedures. Confirmation consists of securing responses to an inquiry in accordance with paragraph EV 10 “Written representations”;
 - 5.1.5 Any other means as deemed appropriate by the Board or its delegate(s) to the circumstances.

EV 6 Reliability of evidence

- 6.1 The reliability or suitability of evidence is to be carefully evaluated so as to ensure the appropriateness of the evidence within the circumstances of each case.

EV 7 Printed evidence

- 7.1 Copies of printed evidence (reports, printouts, certificates, attendance records, etc) are admissible as long as they are certified as a “true copy” by the requests on the application forms or by:
 - 7.1.1 A justice of the peace;
 - 7.1.2 A notary public;
 - 7.1.3 A judge or associate of a judge;
 - 7.1.4 A barrister and solicitor of the Supreme Court;

- 7.1.5 The principal registrar, registrar, or deputy registrar of a Court as long as he/she is a justice of the peace;
- 7.1.6 A member or former member of either House of Parliament;
- 7.1.7 A natural person who is a current legal practitioner;
- 7.1.8 A member of the police force of or above the rank of sergeant or for time being in charge of a police station;
- 7.1.9 A chief executive officer of a Council;
- 7.1.10 Any other person empowered authorised or permitted by or under any Act or Parliament to take affidavits;
- 7.1.11 Any other person authorised by the Board or its delegate(s);

EV 8 Expert evidence

- 8.1 Expert evidence is admissible;
- 8.2 Nothing in these provisions prevents any applicant subject to a licensing proceeding from producing expert evidence, but where other experts are called, their fees shall be paid by the applicant calling them;
- 8.3 When it appears necessary that expert evidence is or may be required, the Board or its delegate(s) may appoint one (1) or more experts to assess (in accordance with paragraph AST 1 “General nature of assessments”) and render a report (in accordance with paragraph AST 2 “Assessment reports”). The Board or its delegate(s) shall consider the risk of incorrect or inappropriate conclusions, and the availability of other evidence, and the licensing proceedings to which the matter under assessment relates, when determining the necessity for expert evidence;
- 8.4 An expert may be an entity, a group or individual and must hold appropriate Public Liability insurance;
- 8.5 A person is qualified as an expert if he or she has special knowledge, skill, experience, training, and qualifications sufficient to qualify him or her as an expert on a subject. Such special knowledge, skill, experience, training, and qualifications must be provable. When determining whether an expert is qualified the following should be considered:
 - 8.5.1 Membership in an appropriate professional body;
 - 8.5.2 Experience and reputation;
 - 8.5.3 Qualifications;
- 8.6 When using an expert or reviewing an expert’s report, for example as part of an interview, consideration needs to be given to his or her:
 - 8.6.1 Actual and perceived objectivity;

- 8.6.2 Knowledge, skill, experience, training, and qualifications. Expert opinions shall be limited to such an opinion as is related to a subject sufficiently within his or her boundaries of knowledge, skill, experience, training, and qualifications;
- 8.7 Experts are to provide detail as to the reasons for their opinion and the data, assumptions, and work upon which it is based;
- 8.8 Experts are required to render reports as per paragraph AST 2 “Assessment reports” of the “Assessment” section;
- 8.9 If an expert bases an opinion in whole or part upon the opinion or statement of another person, that opinion or statement must be provided in the form of statutory declaration;
- 8.10 Conflicting expert opinions shall be carefully examined for depth of reasoning, completeness and accuracy of facts, and degree of the author's expertise.

EV 9 Written representations

- 9.1 Generally written representations presented in accordance with this paragraph shall be obtained when printed evidence as set forth in paragraph EV 7 “Printed evidence” of this section cannot reasonably be expected to exist, and/or the cost of obtaining, or time taken to gather the evidence renders the exercise inappropriate;
- 9.2 Written representations provided by persons and experts shall be dated and provided in the form of statutory declaration. The essential features of a statutory declaration are:
- 9.2.1 It contains an acknowledgement that to the best of their knowledge and belief the Statements in it are true and that the person making it is aware that a false declaration renders its maker punishable by law for perjury;

EV 10 Institute's expertise

- 10.1 The Board or its delegate(s) may utilise the experience, technical competence, and specialised knowledge available to the Board or its delegate(s) in the evaluation of the evidence presented to it.

EV 11 Type of evidence required

- 11.1 Assessments undertaken in accordance with paragraph AST 1 “General nature of assessments”, and applications for licensing and re-licensing shall be a balance of printed evidence (EV 7) and written representations (EV 10).

EV 12 Additions and amendments

12.1 The Board or its delegate(s) maintains a systematic program of review of its standards, policies and procedures (refer to the “Review of Standards, Policies and Procedures” section) in order to ensure that it contributes to:

12.1.1 Community safety, health, and amenity, and the preservation of community confidence in the building control profession;

12.1.2 The development and protection of the building control profession;

12.1.3 The achievement of the objectives of various building acts and regulations around New Zealand;

12.2 However, where Licensed Building Control Officials or interested parties believe that all or parts of this section requires addition or amendment, they are encouraged to do so by filing a submission with the Board or its delegate(s).

EV 13 Board delegation

13.1 The Board may choose to delegate its authority wholly or partly under this section.