

Pat Evans

From: Tipapa Events [tipapaevents@tipapa.com]
Sent: 17 May 2012 9:58 a.m.
To: S & B Barnes; A Baxter & N Stanley; Andrew Beatson; N & B Burgham; M & K Fitzsimmons; A Goodship; Chris Herbert; G & J Higginson; Lisa Kissell; L Love; A Marr; T McBreen; J & J McKone; H & K McLachlan; J McLachlan; G & M McLean; David Meares; Belinda Meares; Lyn Meares; V Meares; Ellie Messervy; M Messervy; Eric - NZ Wind Energy Assn; Kerry Smith; Gary Thomas; H & Y Turnbull; Phoebe Vincent; Holly.O'Connell@justice.govt.nz
Subject: Fwd: Meridian's additional names for caucusing.

Please see below.

Regards

John Carr

----- Forwarded message from johncarr@tipapa.com -----
Date: Tue, 15 May 2012 22:39:50 -0600
From: John Carr <johncarr@tipapa.com>
Subject: Meridian's additional names for caucusing.
To: tipapaevents@tipapa.com

Dear Holly

Further to our conversation earlier this afternoon, I set out below a problem that has arisen as a result of Meridian Energy unexpectedly including in their list of persons to be involved in caucussing three people whose names had not previously appeared.

The three persons are Tanya Breen and Kieth Petrie on the subject of Health, and Tim Crighton on the subject of Property valuation. None of the three named were submitted to Court by Meridian as witnesses by the date required by the Court being 27 January 2012. None have submitted any expert evidence, and none have submitted any written evidence whatsoever.

I raised this matter with the Registrar who sent to me the Code of Practice for experts from which I extracted the relevant clause indicated to me by the Registrar. See below his letter to me, and the relevant clause.

I forwarded this to Mr Beatson, Counsel for Meridian, who replied and I quote " You fail to appreciate that these (three) are witnesses who will be at the hearing and giving evidence". Since when, and by whose authorization?

I also spoke twice on the subject to Commissioner Manning who was quite clear to me that without the Court's approval they can not be part of this case. On Monday I suggested to Mr Beatson that he applies to the Court should Meridian want them as witnesses copying in all parties. I have received no notification to date that he has done so, and was most surprised to see their names still on Natasha's email to all parties this morning.

Please could I and all parties have a reply from the Court to this matter as a matter of urgency, and prior to the due dates for the caucusing of Health and Property Valuation. What does the Court believe is the status of these three persons if any.

This letter will be sent to all parties.

I look forward to receiving your reply.

Regards

John Carr

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>LETTER FROM THE REGISTRAR

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>A copy of the Court's Practice Note is attached. Para 5.4 covers the
>purpose of expert witness conferences. Whilst it doesn't expressly
>exclude anyone, its clear that it's purpose is for expert witnesses to
>confer (i.e. those who are to appear and give evidence) and no one
>else. I'd think if there is a suggestion that anyone other than an
>expert witness is being invited to attend the conferencing, then in
>the normal course of events, that would require leave of the Court.

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>CLAUSE 5.4

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>Expert Witness Conferences

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>5.4.1 Expert conferencing is a process by which expert witnesses
>confer and attempt to reach agreement on issues, or at least to
>clearly identify the issues on which they cannot agree, and the
>reasons for that disagreement. Such a conference is a structured
>discussion between peers within a field of expertise which can narrow
>points of difference and save hearing time (and costs). All experts
>have a duty to ensure that any conference is a genuine dialogue
>between them in a common effort to reach agreement about the relevant
>facts and issues. It should be understood that the term 'expert'
>means a person who would be recognised by the Court as an expert in
>his or her field by reason of relevant qualifications and/or
>experience. Persons not having such qualifications and experience
>will not participate in conferences unless otherwise agreed by all
>parties or directed by the Court.

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>5.4.2 Like mediation, conferencing is a private procedure and, apart
>from any agreed primary data, and the joint statement produced at the
>conclusion of the conference, what is said or done at the conference
>cannot be referred to or relied on in any proceeding before the Court.
>In that sense it is a 'without prejudice' discussion, although those
>participating may report back to the parties engaging them.

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>5.4.3 Every person at an experts' conference who is participating in
>his or her role as an expert witness, must agree to comply with the
>Code of Conduct for such witnesses, and not act as an advocate for the
>party who engages the witness. The expert witness must exercise
>independent and professional judgement and must not act on the
>instructions or directions of any person.

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>5.4.4 The Court expects that expert conferencing will occur prior to a
>hearing as a matter of course. In many circumstances it will be most

>advantageous to do so before full briefs of evidence are prepared,
>with the conference proceeding on the basis of summarised 'will say'
>briefs being exchanged beforehand (see para 5.7.1). In most cases the
>parties should be able to make the arrangements without Court
>intervention, although the Court will be willing to assist if
>required. Sound preparation is essential and the parties must allow
>adequate time for this process to be completed. Counsel are
>responsible for ensuring that the experts have all necessary
>documentation to enable proper preparation, and for briefing the
>experts on the process to be followed and their responsibilities as
>participants.

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>5.4.5 Either by agreement of the parties, or at the Court's direction,
>the conference may be facilitated by another expert (who has not been
>engaged to act by a party to the proceeding), or by an Environment
>Commissioner or any other person. If the conference is facilitated by
>a Commissioner, that person may sit as a member of the Court to hear a
>proceeding on the same matter only if the parties and the Court are
>satisfied that is appropriate. In cases where there are only two
>witnesses within a given field of expertise, or where the experts have
>agreed to manage the process themselves, facilitation may not be
>necessary.

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>5.4.6 The Court may limit the cross-examination of experts on the
>matters agreed to at the conference, and may restrict the calling of
>any further evidence, particularly where a witness attempts to
>introduce an issue or issues which the participants in the conference
>agreed did not need to be considered.

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>5.4.7 While the experts participating in the conference may agree on
>matters within their fields of expertise, it should be understood that
>their agreement will not necessarily bind any party to a particular
>overall outcome, or to the wording of conditions.

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>Acting Principal Environment Judge
>1 October 2011

----- End forwarded message -----

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