

FEDERAL COURT OF AUSTRALIA

Practice Note CM 13

SURVEY EVIDENCE

1. There are many problems in obtaining acceptable survey evidence including the failure to use relevant and unambiguous questions and whether the actual conduct of the survey (including methodology) is satisfactory.

2. The admissibility of surveys is always a matter for the trial Judge to determine but the risk of the survey being rejected or given little, if any, weight at the trial may be diminished if the following procedure is followed when a party seeks to have a survey conducted. Subject to other directions of the Court in the particular case, the Court expects that this practice will usually be followed:
 - (1) Notice should be given in writing by the party seeking to have the survey conducted to the other parties to the proceeding.
 - (2) The notice should give an outline of :
 - (a) the purpose of the proposed survey;
 - (b) the issue to which it is to be directed;
 - (c) the proposed form and methodology;
 - (d) the particular questions that will be asked;
 - (e) the introductory statements or instructions that will be given to the persons conducting the survey;
 - (f) other controls to be used in the interrogation process.
 - (3) The parties should attempt to resolve any disagreement concerning the manner in which the survey is to be conducted and any of the matters mentioned in 2 above.
 - (4) The matter of the survey should be raised with the Court at the directions hearing as soon as possible after the steps mentioned above have been taken.

MEJ BLACK

Chief Justice

25 September 2009