



## **Position Paper on Impartiality Statement**

## IMPARTIALITY STATEMENT

In 2012 NIST created a report on human factors in latent print analysis which discusses the role of the latent print examiner in the courtroom. The report quotes Bruce Budowle stating that, “All crime laboratories, both public and private, should have a code of ethics/conduct. These codes need to stress the best interests of society through government service and justice, government responsibility for professionalism and cost effectiveness, integrity (both professionally and regarding evidence), objectivity, staying within the bounds or limits of what the science can provide, maintaining confidentiality, complying to legal demands such as disclosure, and being truthful.” Moreover, the NIST report goes on to state that, “Forensic service providers should adopt codes of ethics that require testifying in a nonpartisan manner; answering questions from both the prosecution and the defense directly, accurately, and fully; and providing appropriate scientific information before, during, and after trial”.

As mandated by the Supreme Court of Canada (SCC) in *White*, an expert witness is required to be aware of their duty to be “fair, objective and non-partisan” and be willing to carry it out, otherwise they will not be found to be a properly qualified expert [section 2]. Three related concepts are at the core of the expert’s duty to the court: Impartiality - “The expert’s opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand.”; Independence - the opinion must be “the product of the expert’s independent judgement, uninfluenced by who has retained him or her or the outcome of the litigation.”; and, Absence of bias - the opinion “must be unbiased in the sense that it does not unfairly favour one party’s position over another. The acid test is whether the expert’s opinion would not change regardless of which party retained him or her:...” [section 32].

As a result of the NIST report and to address the Supreme Court of Canada’s (SCC) mandate in *White*, that the obligations owed by the experts are to the Court, CanFRWG proposes that forensic science practitioners within Canada include an impartiality statement in their technical reports.

CanFRWG endorses the use of the following impartiality statement:

*This report has been prepared in a fair, objective and non-partisan manner. The author of the report understands that their duty is to the Court and not to the party who has requested the report or retained their services. The author understands that, if they are qualified as an expert witness, the Court demands their expert opinion evidence be impartial and independent and that they present such evidence without bias.*

The statement focuses on legal principles; as long as the expert adheres to their professional and ethical obligations as set out in *White* they will not run afoul of those requirements. The SCC’s mandate in *White* is that individual experts be accountable to and responsible to the Court. This statement recognizes that obligations owed by experts are individual and to the Court.