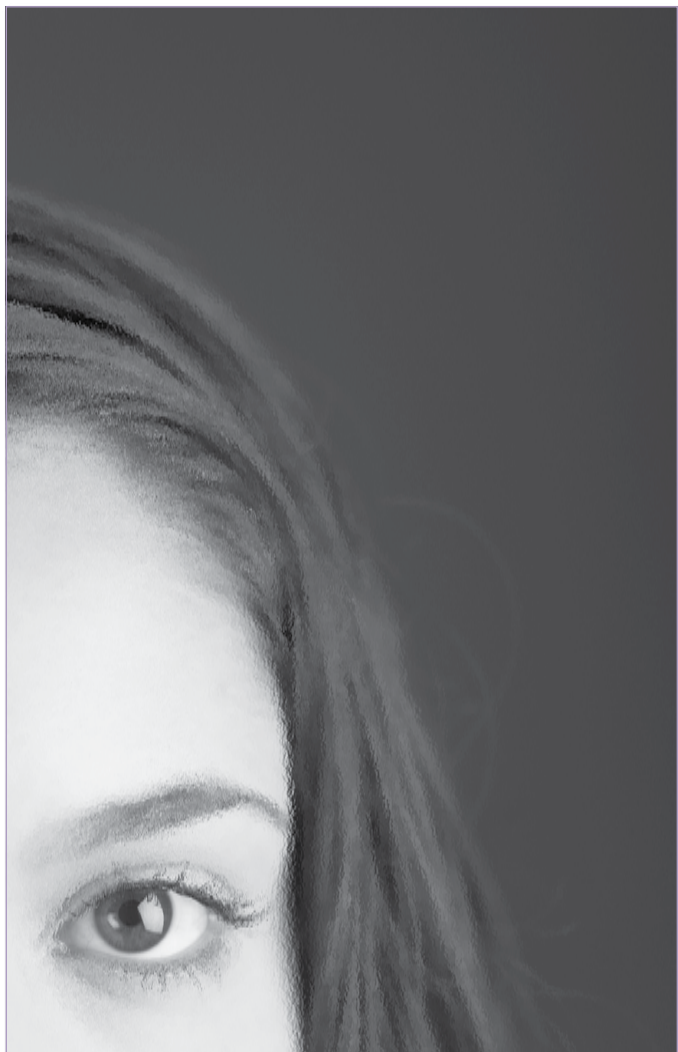


# Being a Witness





## **What is a witness?**

A witness is a person who is required to come to court to answer questions about a case. The answers a witness gives in court are called evidence. Before giving evidence, the witness promises to tell the truth.

## **How will I know if I have to give evidence in court?**

You will receive a subpoena from the court. A subpoena is a court order that tells you which court to go to and when you have to be there. It will also tell you who asked you to come to court.

The Crown prosecutor and defence lawyer will probably talk to you to find out what you know about the case before they decide to call you as a witness. At this stage, you do not have to answer their questions unless you want to. However, if either lawyer subpoenas you as a witness, you must go to the court to tell the judge what you know about the case.

Usually, a police officer will personally give you a subpoena, but sometimes the officer will leave it with another adult to give to you.

## **What should I do if I get a subpoena?**

You should arrange for time off work so you can go to court. Look at the subpoena to find out which lawyer has asked you to testify. It is a good idea to contact the lawyer a few days before the court date, just to make sure that the trial is still going ahead.



## **Do I really have to go to court if I get a subpoena?**

Yes. You must be in court to answer questions from the Crown prosecutor and the defence lawyer. If you can't go to court on the date written in the subpoena, tell the lawyer who subpoenaed you right away. If you don't go to court when you are supposed to, the judge may issue a warrant for your arrest or you could be charged with contempt of court. Contempt of court means that you disobeyed a legal order, such as a subpoena, without a good reason (lawful excuse). If you are found guilty of contempt of court, you may be fined or given a jail term.

## **When do I give evidence?**

In a criminal case, there may first be a preliminary hearing to decide if there is enough evidence for a trial. You may be subpoenaed to give evidence at the preliminary hearing and at the trial. If there is a trial, it will usually be a few months after the preliminary hearing.

## **What should I take to court?**

You should take:

- the subpoena;
- any documents or other items listed in the subpoena, such as bills or photographs;
- any items that the Crown prosecutor, the defence lawyer or the police ask you to provide.

You might also want to bring something to read or do while you are waiting to give evidence.



If you think you might need the documents that have been subpoenaed, take photocopies of them and keep the photocopies at home. It can take a long time before the items or documents are returned to you. Usually, you will get them back about a month after the judge makes a decision about the case (“gives the verdict”). But it might be a long time before the judge gives a verdict, or one of the lawyers might appeal the verdict. An appeal is a challenge to the judge’s decision and it will be heard several months after the trial.

### **What can I do to get ready to testify?**

A few days before you go to court to testify, take some time to think about what happened during and right after the offence. Try to remember details, like:

- what day and time it was;
- who else was there;
- who you talked to;
- how far away you were when it happened; and
- anything else that might be important.

If you made notes when the crime happened, you may be allowed to take these into court with you. Ask the lawyer handling the case if this is allowed. If you signed a witness statement when the police investigated the offence, a Crown witness assistant may review this with you.

Be sure that your memory is based on what you actually saw and heard and not based on what you think probably happened. If you have already testified at the preliminary hearing, you may read the court record of your testimony. This is called the transcript.



Make sure you know where the courthouse is, and leave enough time to find a place to park. If you are disabled, tell the lawyer and ask if the building is accessible to you.

If you have children, hire a babysitter or ask a friend or relative to look after them while you're in court. You do not have to wear special clothes but you should be neat and tidy in appearance.

### **Will it be hard to testify?**

Some people find it hard to talk about what happened when they are looking at the accused person. You should look at the lawyer asking the questions. Usually you will be asked to identify the person who committed the crime. Often you will be asked if that person is in the courtroom and, if so, to point him or her out. This is the only time that you must look at the accused.

If the accused says that he or she is not the person who committed the crime (if they plead "not guilty"), you will be asked to describe everything that you remember about the person you saw commit the crime.

If you are testifying against a person who is charged with sexually assaulting you, the defence lawyer might want to ask questions about other people you've had sex with. The judge will decide whether you must answer these questions. If you refuse to answer questions that the judge says you must answer, you can be found in contempt of court. While it does not often happen, it is important to remember that judges do have the power to send a person who is in contempt to jail for a short period.



## **What should I do when I first get to the courthouse?**

Follow any instructions on the subpoena – for example, it may say that you have to go to Courtroom 1. If you're not sure which courtroom to go to, ask the sheriff, court clerk or RCMP. You should be at the court at least 15 minutes before the time set out in the subpoena. The lawyer may have some questions to ask you before you testify.

Depending on the situation, you may have to wait in the same room as other witnesses in the case, the accused, and their supporters and family. The sheriff and RCMP provide security, so you will be safe. If you feel uncomfortable in the same room, talk to the lawyer who subpoenaed you. The lawyer might be able to find you another room to wait in. Remember that you can bring a friend to court with you if that makes you feel better.

## **What happens in court?**

At the beginning of the trial, the judge may make an order to “exclude witnesses”. This means that other witnesses will be told to remain outside the courtroom until it is their turn to testify. If you are excluded from the courtroom, wait in an area outside the courtroom until you are called to give evidence. If you are afraid of some of the other witnesses, tell the lawyer. He or she may be able to make arrangements for you to wait in an area away from other witnesses.



Usually you will be allowed to stay in the courtroom after you have given evidence to listen to the rest of the trial. If there is a possibility that you will have to testify again during the trial, you may not be allowed to stay. Witnesses are excluded from court because the judge and lawyers want to be sure that what you say is not influenced by what other witnesses say.

Don't talk about your testimony with anyone until the trial is over. If you are in the middle of giving evidence and the judge calls a break (for example, at lunch or at the end of the day) you must not speak to anyone about the case during the break. You can talk to other people about the case after you have finished testifying. If it is a jury trial, do not speak to any jury member at any time.

### **What should I do when I am called to give evidence?**

You should go to the front of the courtroom near the judge. The court clerk will ask you to promise to tell the truth. Most witnesses do this by placing their hand on the Bible (or other religious book, such as the Koran) and promising to tell the truth. However, if you do not wish to swear in this way, you can just promise to tell the truth. This is called "affirming". You should let the lawyer know beforehand if you wish to affirm.

You will be asked to give your name. The lawyer who asked you to come to court will ask you questions first, then the other lawyer will ask you questions. Sometimes the first lawyer will ask you questions again. The judge can ask questions, too. When you speak to the judge, you should call him or her "Your Honour" (if you are in a Territorial court) or "My Lord" or "My Lady" (if you are in Supreme court).





## **How long will I be in court?**

It is hard to say how long you will be in court. A legal proceeding may take hours, days or months. You may have to go to court more than once. For example, you may have to testify at a preliminary hearing and at trial. The Crown presents its evidence first, so, if you are a witness for the Crown, you will probably be the first witness. If you are a witness for the defence, you will have to wait to testify. No matter what happens, you must be available to the court until the judge lets you leave. You will usually be allowed to leave after you have given evidence. If the judge does not tell you that you can leave, ask for permission to do so right away. You may be allowed to leave without giving evidence. For example, the accused may decide to plead guilty to the offence or the case may be adjourned (postponed). If the case is adjourned, the judge will tell you the new court date and time. Usually you will not get another subpoena. The original one will still work.

## **What if someone tries to make me change my story?**

Tell the Crown attorney or the police right away. If you are a witness for the defence, tell the defence lawyer. It is against the law for anyone to harass or attempt to influence a witness. Anyone who does so could face a penalty of up to 10 years in jail.



## **Is the court open to the public?**

Yes. Almost all criminal court proceedings are open to the public, including the press.

Usually, members of the public will be able to come to court and hear what you say. The judge can make an order that your name and identifying information can't be reported in the paper or on the news. In cases involving young offenders, there are restrictions on publishing the name of any young person involved in the case as a victim, witness or accused.

Sometimes, the judge will make an order that all members of the public have to leave the courtroom so that a witness can give evidence. For example, this might happen in a sexual assault case or when a child is testifying. Talk to the Crown prosecutor if you think this would be helpful.

## **What should I keep in mind when I am giving evidence?**

The most important thing to remember is to tell the truth. Speak loudly and clearly. The microphone in front of you does not make your voice louder. It is used to tape-record the trial. Keep your answers short and try to be as clear as possible.



The judge will take notes of what you say. Listen to the lawyer's question and make sure you understand it. If the other lawyer objects to the question, do not answer it until the judge says you can. If you don't understand the question, say so, or ask the lawyer to repeat it.

Try not to use phrases like "I think" or "I guess". If you are sure that something happened, say so. If you are not sure, say "I'm not sure" or "I don't remember". If you are asked for an opinion on something, and you don't wish to give one, you can say "I can't give an opinion on that". A witness who appears frank and sincere is more believable than someone who hesitates or avoids answering questions.

Answer the question and then stop. Do not give unnecessary or irrelevant information. The judge and jury are interested only in the facts. Don't give opinions or draw conclusions unless the lawyer asks you to.

Be polite. It can be stressful to be a witness, but try not to get upset or become flustered when you are giving evidence. If you do get upset, ask the judge for time to calm down. The other side's lawyer can sometimes seem aggressive and even picky. It is the lawyer's job to find problems with your story. Try not to get upset. The judge is there to stop you from being badgered or confused.



If you make an honest mistake, tell the lawyer who asked you to come to court as soon as possible. The lawyer can see that your error is corrected during the court proceedings. If you lie in court, you commit an offence called perjury. If you are found guilty of committing perjury, you will have a criminal record and you may receive a jail term of up to 14 years.

You are usually required to answer every question you are asked by either lawyer. If a question is embarrassing for you and appears to be unconnected to the case, ask the judge if you have to answer it. If the judge decides that the question is relevant, you have to answer it.

If you're a witness at someone else's trial, evidence that you give cannot be used against you. The Canadian *Charter of Rights and Freedoms* states that a witness has a right not to have his or her evidence used against him or her in any proceeding. This applies to all cases except those involving prosecution for perjury or contradictory evidence. If you think that the evidence you are going to give may say that you are guilty of a criminal offence, you should talk to your own lawyer before you give evidence. Your own lawyer would be a lawyer other than the Crown attorney or the defence lawyer.



## What about children and other vulnerable witnesses?

The judge may make it easier for some witnesses to testify – for example, he or she may provide a witness screen or a support person. A witness screen hides the witness from the accused person. This is often allowed for child witnesses. A support person sits beside the witness to offer emotional support, but does not interfere with the testimony in any way. Talk to the lawyer who subpoenaed you if you think you need a witness screen or support person.

## What happens to the accused?

After all the witnesses have given evidence, the judge or jury make a decision based on what they have heard in court. If the accused is found not guilty, he or she is allowed to go free. If the accused is found guilty, the judge will pass sentence. The law usually sets out the maximum sentence for each offence. Sometimes the law sets out a minimum sentence for an offence. For example, drinking and driving offences set out minimum penalties. Possible sentences include a fine, probation, a prison term or restitution (being ordered to pay for part or all of the damage). Instead of these sentences, the accused might be given an absolute or a conditional discharge. A discharge means that, even though the accused was found guilty, they do not have a record.



## **What if I'm testifying about a family member who assaulted me or a sexual assault that happened to me?**

You can bring a friend, family member or a victim services worker to court with you for support. They may watch the trial or stay with you outside the courtroom while you wait to give evidence. You should not discuss details of the case with them until you have given evidence. You will likely be the main witness for the Crown. When you give evidence, the Crown attorney will ask you questions first. He or she will ask you what happened, usually in the order that they happened. Some of the questions may be personal and embarrassing, but the judge and jury (if there is one) need to know what happened in order to reach a verdict. The accused will be in the courtroom throughout the trial.

## **Are witnesses paid?**

Ask the lawyer who subpoenaed you if you are eligible to apply for witness expenses. Keep receipts for all of your expenses. Although some employers will pay you for the time you miss at work because you are in court, not all will. Your employer must give you time off to go to court to give evidence. He or she can't fire you or reduce your seniority because you have to go to court.





Call your local victim services worker for help with a victim impact statement, for information about your case or for emotional support in this difficult time:

Fort Good Hope: (867) 598-2247 or (867) 598-2352

Fort Smith: (867) 872-5911

Hay River: (867) 874-7212

Inuvik: (867) 777-5493 or (867) 777-1555

Yellowknife: (867) 920-2978 or (867) 669-1490

*Translation is available in your language.*

