

**FAMILY CROWN SERVICES OPERATIONAL MANUAL**

WITNESSES	New	Office of the Attorney General / Family Crown Services	Policy 23
Policy Title	New or Amended	Division / Branch / Section	Policy #

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Approved by	This policy was approved on:	This version takes effect on:	This policy will be reviewed by:

**WITNESSES**

**1. Introduction**

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Witnesses should be treated with courtesy, compassion, and respect. Family Crown Counsel shall provide appropriate information and support to witnesses as the circumstances require. Family Crown Counsel shall ensure that any interaction he / she has with a witness, does not amount to altering, subverting, suppressing, or tainting the witness' evidence.

**2. Scope of policy**

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This Policy provides specific guidance to Family Crown Counsel in the treatment and support of witnesses. It also outlines the policy for conducting pre-trial interviews with witnesses.

**3. Provision of information and support to witnesses**

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**3.1 Role of Family Crown Counsel**

Family Crown Counsel should ordinarily speak with witnesses prior to their testimony, in order to;

- (a) explain the role of the witness, Family Crown Counsel, and defence counsel;
- (b) explain the trial process;
- (c) assess the witness' reliability;
- (d) instruct the witness to testify truthfully;
- (e) ensure that the witness has been given the opportunity to review his or her statement / affidavit before testifying; and
- (f) attempt to answer any questions the witness may have.

### 3.2 Aids to trial testimony

Measures can be used in particular cases to increase the comfort and security of witnesses. It is the responsibility of Family Crown Counsel to consider whether any of these measures are available and appropriate in a given case, and to seek to rely on them accordingly. Such measures include the following:

- (a) services of a support person;
- (b) use of a screen or closed-circuit television;
- (c) use of pre-recorded video evidence;
- (d) use of affidavit evidence;
- (e) *in camera* proceedings; or
- (f) an order preventing personal cross-examination of a witness by a self-represented respondent.

#### 3.2.1 Other Considerations

Family Crown Counsel may encounter witnesses whose circumstances require special consideration or accommodation, for example, where the witness' physical ability or language capacity is limited. Such situations require Family Crown Counsel to plan ahead in order to eliminate barriers that might impede the witness' participation in court proceedings.

#### 3.2.2 Child witnesses

In child protection proceedings it is extremely rare that a child will be called to testify at a hearing. The practice of child testimony is generally discouraged as it would tend to re-victimize an abused and/or neglected child. Family Crown Counsel shall attempt to avoid having a child testify in such proceedings arguing that such testimony is not in the best interests of the child. However, should a child be called to testify, communication and protection from emotional harm take on special importance. Family Crown Counsel shall consider using special measures to communicate with a child in a manner that helps ensure that the child understands what is being said. For example, Family Crown Counsel shall seek to use language appropriate to the maturity of the child and shall consider conducting interviews with the child in a place and manner most likely to meet the need for the child's comfort and security. Family Crown Counsel shall always adopt practices that maximize, not only the safety of a child, but also the child's perception of safety. Any interview with a child shall be in the presence of another adult. For more information, see the *New Brunswick Child Victims of Abuse and Neglect Protocols*.

## 4. Pre-trial witness interviews

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Family Crown Counsel may conduct pre-trial interviews with witnesses where Family Crown Counsel determines that it will enable him / her to reach a better informed decision about any aspect of the case, including for the purpose of assisting Family Crown Counsel in making the decision to go ahead with a particular hearing, assessing the reliability of the witness' evidence, or better understanding complex evidence.

Where Family Crown Counsel conducts a pre-trial interview to assess the reliability of the witness' evidence, the witness may be asked about the content of the witness' statements / affidavit or other issues that relate to reliability. This may include taking the witness through the statement, asking questions to clarify evidence, probing the witness' account, and assessing the witness' character.

A pre-trial interview may take place at any stage of the proceedings until the witness starts to give evidence at trial.

Before or during the pre-trial interview, Family Crown Counsel shall provide the witness with a copy of any statement / affidavit the witness has previously provided. Where the witness has participated in a visually recorded interview, he or she shall be given an opportunity to view the recording, if practicable.

Where, during the pre-trial interview, the witness provides information not previously disclosed that, in the opinion of Family Crown Counsel, could affect the duty of disclosure, Family Crown Counsel should request that an updated affidavit be provided, and shall disclose any new information to the respondents or their counsel.

#### **4.1 Persons involved in the pre-trial witness interview**

Where appropriate Family Crown Counsel may conduct a pre-trial interview of a witness in the presence of an appropriate third party. The third party may be a social worker involved in the matter, provided the presence of that third party will not, in the opinion of Family Crown Counsel, taint the evidence of either the witness or the third party. The presence of a third party will be particularly important if the witness is a vulnerable individual, such as a child or a family member testifying against a respondent.

Family Crown Counsel shall not conduct a pre-trial interview on the witness in the presence of another witness where there is a risk that the evidence may become tainted.

#### **4.2 Conduct of Family Crown Counsel in the pre-trial witness interview**

Family Crown Counsel shall not counsel the witness to alter, subvert, or suppress any evidence, or otherwise taint the witness' evidence. Family Crown Counsel shall never prompt or coach the witness by offering information for which they would not be entitled to have disclosed.

#### **4.3 The social worker and pre-trial witness interview requests**

Social workers are delegates of the Minister of Social Development, and as such they are our client. Opposing counsel or self-represented respondents are not permitted to conduct pre-trial interviews with any employee of Social Development without explicit approval from Family Crown Counsel.

Rule 7.2-8 of the Law Society of New Brunswick Code of Professional Conduct states the following:

A lawyer retained to act on a matter involving a corporate or other organization represented by a lawyer must not approach an officer or employee of the organization:

- (a) who has the authority to bind the organization;
- (b) who supervises, directs or regularly consults with the organization's lawyer; or
- (c) whose own interests are directly at stake in the representation.

in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

NOTE: "other organizations" includes government department and agencies.

## **5. Disclosure of witness information**

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### **5.1 Withholding Witness Information**

In some circumstances, it is appropriate for Family Crown Counsel to withhold information, which may include the address, email, telephone number, and fax number of a person who will be called to testify.

In such circumstances, where a respondent or his / her counsel requests the witness' information for the purpose of conducting a pre-trial interview, Family Crown Counsel shall

- (a) advise the respondent or his / her counsel that the witness will be contacted and advised of the request; and
- (b) contact the witness to advise him or her of the request.

Family Crown Counsel shall advise the witness that he or she has the right to consent to or decline such an interview. Under no circumstances shall Family Crown Counsel discourage the witness from consenting to such an interview. Family Crown Counsel shall also advise the witness of his or her rights and obligations as a witness.

Where the witness elects not to consent to such an interview, Family Crown Counsel shall advise the respondent or his / her counsel.

Where a witness consents to such an interview, Family Crown Counsel shall advise the respondent or his / her counsel and provide the witness with the contact information of the respondent or his / her counsel.

## **6. Related documents**

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Law Society of New Brunswick Code of Professional Conduct (January 1, 2020)  
*New Brunswick Child Victims of Abuse and Neglect Protocols*