

Being a Witness



Public Legal Education and Information Service of New Brunswick is a non-profit organization. Its goal is to provide New Brunswickers with information on the law. PLEIS-NB receives funding and in-kind support for the New Brunswick Department of Justice and Consumer Affairs, the New Brunswick Law Foundation and Justice Canada.

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This publication does not contain a complete statement of the law in the area. Changes in the law may occur from time to time. Anyone needing specific advice on her or his own legal position should consult a lawyer.

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This pamphlet answers questions commonly asked about being a witness. It also explains the differences between being a witness in a criminal trial, a private prosecution and a civil matter.

What is a witness?

A witness is a person who gives relevant information to a court under oath (evidence) about a matter that is before the court.

Who can be a witness?

Anyone who has information relevant to the case may be a witness. Sometimes the witness may be the victim of a crime. Where the person with the information has an intellectual disability or is a child under 14 years old, the judge must be satisfied that he or she understands a promise to tell the truth and is able to communicate the evidence.

How does a person become a witness?

You can agree to be a witness or the court can order you to be a witness. In a criminal trial, you will get a subpoena. In a civil trial you will get a summons. These are legal documents that say you must be a witness and for which side. They give the date and time you must be in court and the location of the court. Depending which side has called you as a witness, you may be asked to meet with either the defence lawyer or the Crown Prosecutor at some point before the trial to review your evidence.

What if I cannot go to court on the date set in the summons or subpoena?

In a criminal trial, if you have a valid reason for not going to court, such as major surgery, call the Crown Prosecutor right away. If you do not show up, a warrant might be issued for your arrest.

If you are summonsed in a civil case and cannot go to court, call the lawyer who issued the summons right away.

How do I give my evidence?

You will give your evidence in person in court under oath. The Crown Prosecutor and the defence lawyer have a chance to question you. You cannot give evidence in writing. The criminal law provides special protections to help “vulnerable victims” give their evidence. Children under 18 years and any victim or witness with a mental or physical disability that impairs their ability to testify, may ask the Court to let them testify from a place outside the courtroom using close circuit TV or from behind a screen. They are ***automatically*** eligible for testimonial aids, having a court support person stand beside them, and other protections.

Other victims may apply for testimonial aids and the Court will decide if they are eligible by considering their age, the nature of the offence, and their relationship to the accused. For more information about testimonial aids, see the pamphlet ***Vulnerable Victims of Crime... Making it Easier to Testify in Court.***

In a civil trial you may not have to appear to testify if both parties agree to accept your affidavit evidence.

What does it mean to be under oath?

Before you give your evidence, you must swear to tell the truth. A court clerk or the judge will give you a Bible and ask you to swear to tell the truth. This is called swearing in the witness. When you are sworn in, you are under oath. As an alternative, you may solemnly declare to tell the truth. If the witness is a child or has an intellectual disability, she or he may be asked to promise to tell the truth.

What happens if I lie under oath?

If you knowingly do not tell the truth under oath, you commit perjury. Perjury is a serious criminal offence. If you perjure yourself in court, you could face a prison term of up to 14 years.

Who is the accused?

In a criminal trial, the *accused* is the person charged with an offence. If the accused pleads not guilty, he or she must stand trial. The intent of a criminal prosecution is to determine the guilt of the accused and decide how the person will be held accountable for the crime if guilt is found.

In a civil trial, the *plaintiff* is the person or party bringing the case and the

person or party defending it is the *defendant*. The intent of a civil action is to establish legal liability and determine compensation for the injured person.

Who is the Crown Prosecutor?

The Crown Prosecutor is a lawyer for the province who prosecutes the criminal charge against the accused. She or he presents all the evidence against the accused. Because criminal acts are considered serious enough to concern the whole of society and not just the individual victim, the Crown Prosecutor acts for the “state” (in Canada this is called the “Crown”) on behalf of the public. If you are testifying for the prosecution, you are called a witness for the Crown.

In a private prosecution, the individual or a lawyer working for her or him prosecutes the charge.

What is evidence?

Evidence is anything that is relevant to the matter before the court. In a criminal trial evidence is anything relevant to the guilt or innocence of the accused. Evidence may be physical evidence like a weapon, a piece of clothing, hair, or even blood. It may be a document, a photograph, a video tape, or a tape recording. It may be what a witness saw, heard, or experienced. Before a criminal trial the Crown Prosecutor is obliged to disclose to the accused, all evidence gathered in the police investigation. This includes evidence both for and against the accused.

Who can give me information about my role as a witness?

If a witness for the Crown wants to talk about his or her evidence, or wants general information about going to court, he or she must speak to the Crown Prosecutor. Witnesses for the defence will be instructed by the defence lawyers. In a civil matter, lawyers for each side instruct their own witnesses.

Can somebody tell me more about going to court?

If you are a victim of crime who has been subpoenaed to testify, Public Safety, Victim Services can help prepare you for going to court, explain what will happen in court, tell you about the roles and responsibilities of various officials and what will be required of you when you testify. (For more information see the pamphlet *Services for Victims of Crime*.)

What about getting to court?

It is your responsibility to get to court. If you have an emergency and cannot get there, you must call the Crown Prosecutor or the police immediately.

If you are a witness in a civil matter and you cannot get to court, call the lawyer who summonsed you.

What about my job?

An employer must give an employee time off **without** pay to attend court. However, many employers do give employees paid leave for court attendance.

Will I get any of my costs paid for being a witness?

If you are a witness for the Crown, you may be eligible to claim reimbursement for some of your costs such as meal and travel expenses. Save all your receipts. If you cannot afford to pay first, or if you have other expenses, call the Crown Prosecutor's office. Defence witnesses, and witnesses for either side in a civil matter, must make their own arrangements.

Where can I stay if I am from out-of-town?

Witnesses have to find their own accommodations. If you are a Crown witness and you wish to be reimbursed for hotel expenses, you must contact the Crown Prosecutor's office to get prior approval.

What if I need an interpreter?

The Crown Prosecutor will get an interpreter for a witness for the Crown who does not understand the official language of the court proceeding. Court Services will pay for this. However, the interpreter will only be there to

interpret your testimony and will not stay to interpret the rest of the trial for you. Defence lawyers look after interpreters for defence witnesses. In a private prosecution or a civil matter, each side makes its own arrangements.

What if I have special needs?

In a criminal trial, if you have any special needs (medical problems, communication aids, physical disabilities, etc.) you should advise the Crown Prosecutor and he or she will make arrangements to accommodate these needs. If your needs affect your ability to give your testimony, the Crown Prosecutor can explain the use of testimonial aids. (See the pamphlet *Vulnerable Victims of Crime... Making it Easier to Testify in Court*).

What should I know about going to court?

There are no rules about what you should wear. Dress appropriately and with respect for the serious nature of court proceedings.

Before the trial date make sure you know how to find the court. On the day of the trial, arrive early to allow yourself time to park and find where you are going.

Tell the Crown Prosecutor or defence lawyer when you arrive at the court.

What happens to me at the trial?

While you are waiting to give your evidence you may sit in the courtroom, unless told otherwise by a court official. When your name is called, walk forward to the front of judge's bench and stand until you are sworn in. You will then enter the witness box and sit for questioning.

Who will ask me questions?

In a criminal trial, the Crown Prosecutor and the defence lawyer will ask you questions. If you are giving evidence for the Crown, the Crown Prosecutor will question you first. He or she will ask you to tell what you know about the offence. This is called *direct examination*.

After the Crown Prosecutor is finished, the defence lawyer may ask you questions. This is called *cross-examination*. If you were called as a witness for the defence this order of questioning is reversed.

In a civil matter, whichever side called you as a witness will begin the questioning. The lawyer representing the plaintiff, will call witnesses for the plaintiff first. Afterwards, the lawyer representing the defendant may ask questions.

What if I'm worried about being a witness?

Try not to be nervous. When you answer a question, speak loudly and clearly. If

you are not sure of an answer just say so. Do not guess. If you do not hear or understand the question ask the judge to have it repeated or explained to you.

What should I call the judge?

In Provincial Court, the judge is referred to as “Your Honour”. In the Court of Queen’s Bench, judges are referred to as “Justice” or, “Madame Justice” or “Mr. Justice”. If you cannot remember the proper title, it would be appropriate as a sign of respect to refer to the judge as “Sir” or “Madam”.

Can I refuse to answer a question?

No. You must truthfully answer any question you are asked under oath, unless the judge tells you not to answer. If you give any self-incriminating evidence in the proceeding, it cannot be used against you in another proceeding. This is an automatic protection provided by the *Canadian Charter of Rights and Freedoms*.

What if somebody threatens me?

It is against the law for anyone to threaten or intimidate a witness about appearing in court or giving evidence. Tell the Crown Prosecutor or the police. The same applies in civil trials. Tell the lawyer or the police.

Where can I get more information about going to court?

If you are a victim of a crime, contact your nearest Public Safety, Victim Services Office for information and assistance throughout the court process. After the trial, they can also explain such matters as sentencing, making a victim impact statement, registering for notification of offender release or review board hearings, and so on.

Bathurst.....	547-2924
Burton	375-4035
Campbellton	789-2388
Edmundston.....	735-2543
Elsipogtog.....	523-4723
Fredericton	453-2768
Grand Falls	473-7706
Miramichi.....	627-4065
Moncton	856-2875
Richibucto	523-7150
Saint John	658-3742
Shediac	533-9100
St. Stephen	466-7414
Tracadie/Sheila	394-3690
Woodstock	325-4422

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