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# Community Legal Information Association of Prince Edward Island, Inc.

## A Guide for Witnesses

### **Introduction**

You may be called as a witness for either a criminal or civil trial. This pamphlet explains your rights and responsibilities as a witness in the **criminal courts** of Prince Edward Island.

If you are a victim of crime and will be appearing as a witness for the Crown Attorney in a criminal case, you may wish to call Victim Services at 368-4582 or 888-8217 for information and assistance.

If you will be appearing as a witness for the Crown Attorney in a criminal case, you can take your questions to the Crown Attorney.

If you will be appearing as a witness for the defence in a criminal case, you can take your questions to the defence lawyer.

A trial is held when a person who has been charged with a criminal offence pleads “not guilty”. You may be called as a witness by either the Crown Attorney, who is the lawyer acting for the state, or the defence lawyer who is acting for the accused. You could be called as a witness by both lawyers.

As a witness, you have an important duty. The testimony of witnesses is an important source of information for the courts and helps the judge decide whether the accused is guilty or not guilty.

### **Before You Testify in Court**

#### **What is a subpoena?**

A subpoena is a court order that tells you to appear in court at a specified date, time and place to give evidence. You may wish to show the subpoena to your employer to arrange for time off to attend court.

If you are unable to attend court because of a serious circumstance, you should immediately contact the lawyer who subpoenaed you. If you fail to obey a subpoena, a warrant may be issued for your arrest or you may be charged with contempt of court. If

you are found guilty of contempt of court, you may be fined or given a jail term and you will have a criminal record.

You can contact the lawyer who subpoenaed you to make an appointment to prepare for court. It is a good idea to contact the lawyer before the court date to be sure the trial is going ahead as scheduled.

If you are subpoenaed by one lawyer and later contacted by the opposing lawyer, it is okay to talk to both. However, you are under no legal obligation to do this.

If you have any questions, speak to the lawyer who had you subpoenaed. You also have a right to seek advice from an independent lawyer, although a witness is not usually represented by a lawyer.

### **How do I prepare for giving evidence in court?**

Before going into court to give your testimony, try to remember details about what happened, such as conversations, who was present, dates, times, colours, distances and any other relevant facts. If you made notes at the time of the event, you may be allowed to take these into court with you. Ask one of the lawyers if this is possible. If you signed a statement for the police at the time of their investigation and cannot remember what you said, you may arrange with the Crown Attorney to see it again.

### **What do I do when I arrive in court?**

It is important that you arrive at the courtroom at least 15 minutes before the time given on the subpoena. Make certain you know the location of the courthouse and allow enough time to find a parking space. When you get to the courthouse, ask the commissionaire where the case is being heard. The lawyer who subpoenaed you may have some questions to ask you before court begins.

A friend or family member may go with you to court.

If you are a witness for the Crown Attorney, let him or her know you have arrived. If you are a witness for the defence, let the defence lawyer know you have arrived.

Usually, a witness is asked to stay outside the courtroom until it is time to give evidence. After the witness is finished giving evidence, he or she may be allowed to stay in the courtroom for the rest of the trial.

## **Testifying in Court**

### **What will happen in court?**

When it is your turn to answer questions, your name will be called and you will be directed to the witness stand. You will be asked to state your name and swear an oath to tell the truth. Most witnesses swear to the truth by placing their right hand on a Bible. If you do not wish to swear on the Bible, you can ask to solemnly affirm the truth. Inform the Crown Attorney or defence lawyer a few days before the trial if you prefer to affirm.

A young person under 14 may be called to serve as a witness in a trial. The *Canada Evidence Act* states that children and young people under the age of 14 can give evidence if they are able to understand and answer questions and promise to tell the truth. Young people under 14 are not asked to take an oath or make an affirmation. Young witnesses must promise to tell the truth.

If you are asked to give your address, and do not wish to say it publicly, tell the judge when you are asked that you would prefer to not state it publicly.

The Crown Attorney's case is presented first. If you are a witness for the Crown Attorney, you will be questioned by him or her first. This is known as direct examination. When the Crown Attorney has finished, the defence lawyer will ask you questions. This is known as cross-examination.

The case for the defence is presented next. If you are a witness called by the defence, you will be questioned first by the defence lawyer and then cross-examined by the Crown Attorney.

While you are on the witness stand, the judge can ask you questions at any time.

**Important:**

Both the Crown Attorney and the defence must follow rules of evidence when questioning witnesses. Neither the Crown Attorney nor the defence can ask leading questions of witnesses for its own side. A leading question is one that suggests its own answer. They must ask the kinds of questions that allow witnesses to use their own words. Leading questions are allowed in a cross-examination. The defence can ask leading questions of Crown witnesses and the Crown Attorney can ask leading questions of defence witnesses.

**How should I behave in court?**

- Stand up when the judge enters or leaves the courtroom.
- Do not discuss your testimony with other witnesses.
- If a jury is present, do not talk to jurors.
- In court, your job is to answer the questions you are asked to the best of your memory.
- You should wear neat, clean clothing.
- Provincial Court judges are addressed as "Your Honour", "Sir" or "Madam". If the trial is in the Supreme Court, address the judge as "My Lord", "My Lady", "Sir" or "Madam".
- Follow the instructions of the judge.

**What should I keep in mind when answering questions in court?**

It is normal and natural to feel nervous when answering questions in court. Take your time when you are giving evidence - there is no need to feel pressured.

If you don't understand a question, ask for the question to be repeated or asked in another way.

Be as clear as possible. Avoid phrases such as "I think" or "I guess". If you do not know the answer to a question, say so.

Answer the questions you are asked and then stop. The judge and jury are only interested in the facts. Don't give opinions or draw conclusions unless asked.

If you become upset during your testimony, ask the judge for time to regain your composure.

Always be courteous.

If you make a mistake in your evidence, inform the Crown Attorney or defence lawyer as quickly as possible so that the error may be corrected.

Speak clearly and loudly so that everyone in the courtroom can hear you. Do not shake or nod your head to indicate "yes" or "no". Your testimony may be recorded to create a transcript or record of the trial. The microphone does not make your voice sound louder in the court room.

**Do I have to answer every question I am asked?**

If a question is embarrassing for you to answer and seems irrelevant to the case, you may ask the judge if you have to answer. If the judge rules that the question is relevant, you will have to answer it.

You may not want to answer a question because you believe the answer might incriminate you and lead you to be charged with a crime. If the judge says you must answer the question and you still refuse to answer, you may be found in contempt of court and be punished for your conduct.

The *Canadian Charter of Rights and Freedoms* protects witnesses against self-incriminating testimony. The Charter states that a witness who testifies in any proceeding has the right to not have any incriminating evidence used against him or her in another proceeding.

This does not apply to prosecution for perjury or giving contradictory evidence. If a witness lies after swearing or affirming to the truth, that witness may still be charged with perjury. If you find yourself in this situation, you may wish to consult your own lawyer.

**How long do I have to spend in court?**

Court proceedings can be very complex, so there is no way of knowing how long each case will take. After you testify, you must stay in the courthouse until you are excused by

the judge or until the case is finished for the day.

The judge may ask if there is any need for you to stay after you have given evidence. If the answer from both the Crown Attorney and the defence lawyer is "no," you will be able to leave.

**What if someone tries to get me to change my evidence?**

If someone tries to get you to change your evidence, tell the police immediately. It is illegal for anyone to try to influence you.

A charge of obstructing justice may be laid against the person who is trying to influence your testimony.

**What happens if there is a delay or adjournment?**

If there is a delay or adjournment in the trial, the judge will usually set a new court date and time. The subpoena will continue to be in force for the new day.

**Are there any childcare facilities in the courthouse?**

The courthouse does not provide childcare. You must make arrangements for someone to look after your children while you are in court.

**Will I be paid for being a witness?**

Witnesses subpoenaed by the Crown Attorney may receive a fixed daily rate plus mileage if they are coming from out of town. Out-of-province witnesses may also be compensated for travel, accommodation, and meals. Higher fees are paid to expert witnesses, who are asked to give their professional opinion about the matter before the court.

The police fill out witness fee forms for the Crown Attorney's witnesses stating the daily rate and all eligible expenses. These are processed and paid through the Office of the Attorney General or police departments. It is important that the police have your correct mailing address. Check with the police officer at court regarding witness fee procedures. Occasionally, witnesses are prepaid when they are served with a subpoena.

Defence witnesses may or may not be subpoenaed and do not usually get paid. If you are a defence witness who feels that you should be paid for your time, discuss it with the defence lawyer.

**What will happen to the accused?**

If the accused is found not guilty, he or she will be allowed to go free.

If the accused is found guilty, he or she will be sentenced. Sentencing may happen on the same day or it may happen on a different day. CLIA has a pamphlet on "Sentencing" which provides more information about possible sentences.

**Are there any special protections available for witnesses who testify in criminal court?**

The *Criminal Code of Canada* contains a number of ways to make it easier for young (under 18) or vulnerable victims and witnesses to testify. These are called testimonial aids.

**Testimonial aids** include the following:

1. Testifying by closed circuit TV or behind a screen

- Young or vulnerable victims and witnesses can testify outside the courtroom by closed-circuit TV or behind a screen in the courtroom.
- If the witness is over the age of 18, the judge can use discretion in approving an application that the witness testify outside the courtroom by closed-circuit TV or behind a screen. The judge will make an order if he or she believes it is necessary for the witness to give a full and candid account and it does not interfere with the proper administration of justice.

2. Testifying with a support person beside you

- A support person can be present while young or vulnerable victims and witnesses testify.
- If the witness is over the age of 18, the judge can use discretion in approving an application that the witness be accompanied by a support person while testifying. The judge will make an order if he or she believes it is necessary for the witness to give a full and candid account and it does not interfere with the proper administration of justice.

3. Requiring the public to leave the courtroom

- All or some members of the public may be required to leave the courtroom during all or part of the court proceedings involving young or vulnerable victims and witnesses.

4. Appointing a lawyer for cross-examination

- Self-represented parties cannot cross-examine witnesses under 18. A lawyer will be appointed to conduct the cross-examination of young or vulnerable witnesses when the accused is representing himself or herself.
- If the witness is over the age of 18, the judge can use discretion in approving an application to appoint a lawyer to cross-examine when the accused is self-represented. The judge will appoint a lawyer when he or she believes it is necessary in order for the witness to give a full and candid account and it does not interfere with the proper administration of justice.

#### 5. Ordering a publication ban

- In certain cases, publication bans will be ordered to prevent the publication, broadcast or transmission in any way of information that could identify a victim or witness.

#### 6. Using videotaped evidence at trial

- The evidence of young or vulnerable victims and witnesses may be videotaped and introduced at trial to spare them from repeating their testimony. However, the victim must testify that the videotaped statement represents the truth and must be available for cross-examination.

### **How do I ask for testimonial aids?**

The victim, the witness or the Crown Attorney can ask the judge for testimonial aids before or during the court proceedings.

### **Who can get testimonial aids?**

When the witness is under 18 or has a physical or mental disability that makes it difficult to testify without an aid, the judge must grant these protections. The only time a judge will not grant the use of testimonial aids is if he or she believes it would interfere with the proper administration of justice.

For any other witness, the judge can use discretion in granting these aids. The judge may refuse such aids if he or she believes it would interfere with the proper administration of justice.

### **Disclaimer**

This pamphlet was published by Community Legal Information Association of Prince Edward Island Inc (CLIA). It contains general information about the law. It does not contain a complete statement of the law in this area and is not a substitute for legal advice.

If you need legal advice, contact a lawyer. If you do not know a lawyer, call the Lawyer Referral Service (902-892-0853 or 1-800-240-9798). A 45 minute appointment with a lawyer through this service will cost you \$25 plus tax.

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