

Information and Tips for Victims and Witnesses Preparing to Testify in Criminal Court

If you are the victim of a crime, telling your account of events in court is a powerful thing to do. When one is victimized, control and power have been removed from them. Telling your story in front of lawyers, judges, sheriffs and peers who have all their attention on you, is your way of taking power back. When you tell your story, you are sending the message that it is not ok to treat you badly, that you will stand up for yourself, that you will not tolerate what has happened without speaking. If you are a parent, you are modeling strength and social justice to your children, and teaching them to stand up for themselves as well as to tell someone when something bad has happened. It also sends a message to other people who have been victimized that they can speak up for themselves too. Very importantly, by speaking up you may stop the same thing from happening to someone else. While you cannot control the outcome of the trial – that is up to the judge – you can tell your story, and thereby take back power in many ways, benefiting both yourself and others.

In cases where there is limited evidence other than “he said, she said,” (no witnesses, no pictures, no physical proof like bruises and injuries and broken furniture, no tape recordings, no documented evidence through doctors or professionals, etc) it becomes imperative that your testimony be believable to the Judge because that is what he will base his decision on.

For your testimony to be believable, it must ‘ring true’ in that your memory must be solid even under cross-examination. The context that you describe around the incident needs to be logical and possible. If your testimony and demeanor indicate that you have doubts about what you are saying, the Judge will have doubt too.

The criminal justice system is based on the idea that a person is ‘innocent until proven guilty.’ There only has to be ‘a reasonable doubt’ about guilt in order for the Judge to acquit him. ‘Acquitted’ means ‘not found guilty.’ It does not mean that he did not do it; it means that the evidence that was presented could not prove beyond a doubt that he was guilty. Proving guilt in a court may not be possible.

All trials are public. This means that people are free to walk in and out of the court room (quietly) while court is in session. Usually there are only a few people present for a trial, and they are often there to support either the accused or the victim with their presence. In very rare cases an application can be made to a judge far in advance of the trial date, through the Crown Counsel’s office, to have things like a publication ban or a ban on observers in the court room. Generally these are not accepted except under extenuating circumstances.

There is always at least one Sheriff in the court room during a proceeding. It is their job to ensure that people do not make noise, become disruptive or threatening, and to watch their monitors to ensure that people are orderly in other parts of the building. They also may help to bring a witness to the witness chair if the person is called and seems unsure of how to proceed.

There are no cell phones (or anything else that will make a noise) allowed in the court rooms. If you carry one with you, it must be shut off completely. If a cell phone makes a noise in the court room it will be confiscated by the Sheriff.

In this document the terms 'victim' and 'witness' can be used interchangeably. The term 'testify' means to give your evidence. Your evidence is your testimony, or your version of events – your truth.

Crown Counsel:

The Crown Counsel is a lawyer that works out of the Crown Counsel's Office (The Ministry of the Attorney General), and who's responsibility it is to defend society. In Canada, a crime against one person is seen as a crime against all. While the Crown Counsel is not technically the victim's lawyer, it is the Crown who will prosecute the charges against the accused person, so the Crown is oriented to the victim's testimony and to them doing a good job in court. Usually the Crown Counsel will meet with the victim at least once before they testify.

* Certain trials seen as particularly serious, like sexual assault or attempted murder, usually occur in Supreme Court. Domestic assault trials usually occur in Provincial Court. Sometimes the accused person can 'elect' to have the charges heard in either Provincial or Supreme Court – they may see advantages to one and disadvantages to another – there are several variables involved. They might make this decision based on guidance from their Defense lawyer. The Provincial Court and the Supreme Court are two different courtrooms in Smithers, sitting side by side in the 'court hallway'. They are laid out roughly the same way, but the Supreme Court is more formal and has a Jury section. All Jury trials are held in this court room.

If the trial is in Provincial Court, you will be subpoenaed (receive a summons to court) to attend court on that day to testify. You must come to court when subpoenaed, but if you have a significant reason for not being able to attend that day (eg it is your wedding day, or you have surgery planned that day) you can ask the Crown Counsel's office if another date could be set. They may or may not be able to change it.

If your case is being heard in Supreme Court, the trial is a two-step process. You will first receive a subpoena to testify at the Preliminary Inquiry. The PI is a 'fact-finding' stage to determine whether there is enough evidence to warrant a Supreme Court trial. Only the major witnesses testify at a PI. It is similar to a trial, but shorter, and it is held in the Provincial Court.

Provided the PI leads to the Judge ordering a trial, a date is then set for the Supreme Court trial, and you will receive a subpoena. This is the actual trial and will be held in the Supreme Court. The Supreme Court trial is more formal than either a Preliminary Inquiry or a Provincial Court trial, and may take longer.

* Certain vulnerable witnesses, especially people under the age of 18, may be allowed to have testimonial aids when they testify, to facilitate them being able to answer the questions fully. Testimonial aids can include having a screen between the witness and the accused, having a support person sit by the witness when they testify, using your video-taped statement in court so you do not have to tell your whole story again, and testifying from another room by closed

circuit TV. The Crown Counsel must apply to a Judge for testimonial aids well before the trial. The Judge can refuse the application if he/she feels it would interfere with the proper administration of justice.

* In the trial the Crown Counsel will be the first lawyer to ask you questions. This is called 'direct' and will usually start by asking questions that identify you, such as age, address, how long you have been in a relationship with the accused, what type of relationship that was, etc.

* Crown Counsel will only ask you questions that are related to the incident that the charges in today's trial have arisen from. The Crown will not bring up past similar incidents, or anything about your past.

* If you do not go into detail as you answer questions, the Crown may ask questions to encourage you to describe the incident more completely. The Crown is not allowed to 'lead' a witness when they ask their questions. You must tell what happened from your memory of the event. It can be difficult for a Crown Counsel who knows you have something important you could say, but you are not saying it, as they are not allowed to ask questions like "What was the distinguishing feature on the accused's body that makes it clear who sexually assaulted you?"

* The Crown may say things like: "You said ____ happened. What happened next?" or "And then what did you do?" or "Could you tell us how he did that?" but even these questions may be seen as 'leading the witness' and can be objected to by the Defense lawyer.

* It is important for you to tell your story fully, including details, and find ways to incorporate all the information you want to express into your answers. You will NOT be given an opportunity to answer a question like "Is there anything else you want to say?"

* It is your job in court to tell the truth as you know it, and describe events as you remember them. The better your memory is of the details, the better your testimony will come across.

* Telling the truth includes being defenseless about issues that may embarrass you or that seem to question your character. For example if the question was asked "Were you drinking that night?" you should answer truthfully, without trying to minimize or modify the truth. Remember that this court case is about the charges that are proceeding against the accused. The court case is not about you and whether you drink. You are not at fault for what someone else did to you, no matter what you did first. The accused is standing trial for the actions they took, and they alone are responsible for the actions they took.

* Only you know your story exactly as you know it and experienced it. In these terms you are the expert, and what you say is very important. Do not assume that anyone in the courtroom has any prior knowledge or understanding of the situation. What you say is all there is. Make sure you find a way to say everything you feel needs to be known. However, be careful to not use 'hearsay' which is when you relay information that was given to you by someone else.

* If you do not know the answer to a question, you can say "I don't know."

* If you do not remember, you can say “I don’t remember.”

* If you do not understand the question, you can say “I don’t understand the question. Could you please repeat it?”

Defense:

The Defense Lawyer has been hired by the accused (or assigned by Legal Aid) to defend him in court. He will uphold the accused person’s right to a fair trial, and to being considered innocent until proven guilty. The Defense lawyer defends the version of events given to him by the accused.

* The Defense’s questions are called ‘cross-examination’. This starts when the Crown is finished.

* The Defense lawyer’s strategy will be built around information given to him by the accused person. It is important to remember that the Defense lawyer has been given a different version of the events. It is his job to try to prove that the version that he has is the correct one. In order for you to be in a trial right now, the accused has said that he is not guilty of the charges. He will give the Defense lawyer information that will build on HIS version of events. You must hold strong to YOUR version of events, which is the truth.

* The Defense is allowed to bring up issues that the Crown Counsel is not allowed to raise. For example, the Defense may bring up past issues in your relationship with the accused, especially those that may paint the accused in a positive light or you in a negative light. They may also bring up issues that could be seen to question your character or past behavior. This could be embarrassing or painful for you if you have not prepared yourself emotionally for it. You should think about this in advance of the trial date, and prepare yourself for the kinds of things that may arise. Think about how to answer these in a defenseless honest way. Your answers should be short and simple.

* You can expect that things you thought were private between you and the accused may be brought up during cross-examination, especially if they can be used in a way that throws doubt on your credibility as a witness.

* The Defense may ask questions like:

“Isn’t it true that you want revenge on the accused because he has a new girlfriend?” or

“Let me suggest that you have made this all up. What do you say to that?” or

“If I was to say that you really remember nothing about this incident because you were drunk, what would you say?” or

“Didn’t it really happen THIS way.....?” or

“Let me suggest that you may think you remember ____ doing this to you, but that in fact you have mixed them up and it was really ____ who did this to you.”

If questions and statements given by Defense are not true, your answer can be “That is not true” or something along those lines. If the Defense says many things that to your knowledge are not

true, you can answer each one of them with “That is not true.” If what they say is partly true, you can answer with something like “Yes, I had had a couple of drinks that night, but I was not drunk, and I remember everything that happened.”

* If the Defense lawyer seems to ask you the same question over and over again, you should simply answer it each time with the truth. Do not allow the repetitiveness of questions to rattle you or make you begin to question yourself. If you begin to become upset, it may be more difficult for you to think clearly in order to answer the questions to the best of your ability. The Defense lawyer may take advantage of this, and continue with a line of questioning that seems to be upsetting you. Answer each question with the truth as you remember it. Do not become frustrated. The Defense lawyer is doing his job. It is his job to raise doubt that your version of events occurred.

* If the Defense lawyer can find a way to divert the focus away from the incident and onto the witness as a way of raising doubt about the credibility of the witness, he will. For example, he could pursue a line of questioning that is about the victim’s past behavior around alcohol, drugs, sexual activities, personal relationships, troubles with the law, etc. Responding to these kinds of questions defenselessly usually takes the power out of the questions. It is only if the questions upset the victim, or if the victim defends themselves by protesting, or the victim begins to doubt themselves that this line of questioning ‘works well’ for the Defense by causing the witness to be confused. Questions like these may hide the incident by blurring it or covering it up with other information. Answer these kinds of questions truthfully, simply and calmly, no matter how often they are asked.

* Do not get angry or be argumentative with the lawyers asking you questions. Losing your temper makes YOU look bad. A common strategy for opposing lawyers is to goad a witness into anger. Witnesses say things in anger that are deeply damaging and cannot be retracted – they are recorded and part of the permanent record.

*The court is used to seeing people get upset or cry, so do not worry if you need to take a moment to collect yourself.

* Do not joke, laugh or smile while you are testifying. It may be seen as a lack of respect for the court, or that you do not take the criminal charges seriously. It also could put your credibility into doubt.

* Do not exaggerate, nor minimize, when you are testifying. Be as accurate as you can be.

* If you need to while testifying, you can ask that you be able to review your statement to refresh your memory.

* It is very important to remain calm, remember that YOU know your truth, and to continue to answer the questions simply and clearly. Think about testifying as though you have a job to do today, and that is to stay as rock-solid as possible in the consistency and truth of the story you have to tell. The truth is what it is (even if it is incomplete as you know it), and you should not seek to add to it, change it or defend it.

Judge:

- * The Judge is the one that will determine whether the accused is guilty or not guilty, based on the evidence given in the trial. His/her decision is based only on the evidence presented at the trial – he/she has no other information.
- * The Judge will listen carefully to the testimony given by the various witnesses, and will make notes as the questions are answered.
- * It is important that the Judge hear everything you say, so remember to speak clearly. You may also look at the Judge to answer the questions, rather than the lawyer who asked it.
- * If you feel you need something, you can ask the Judge. For example, if you would like Kleenex, water or a short break, you can request it and it is likely to be agreed to.
- * Do not ask the Judge why you need to answer these questions, or how much longer this will take, or anything like that. If something improper is happening in the questioning, the lawyer will speak up to the Judge. Otherwise the trial is proceeding in a proper manner. You must continue to answer the questions until you are excused.
- * The Judge will tell you when you are finished, and you may leave.
- * During breaks and lunchtime, the Judge may remind you that you are still under oath and you must not discuss your evidence or the trial with anyone.

Before the Trial Day

- **DO NOT** discuss the incident or your evidence with any other witness(es) until the trial is completely finished. Such discussions “taint” the evidence and are improper. If you discuss the incident with others, there is a chance that you will be influenced to ‘remember’ the incident differently. This could jeopardize the whole trial. A witness is any person who has been subpoenaed to testify at the trial. If you think that someone may be subpoenaed, do not discuss the incident with them.
- **Read your statement**-you are expected to refresh your memory. You will be given your statement, usually the day before the trial or the morning of the trial, by the Crown Counsel Office staff. If you feel you need to read it more in advance than that, you should ask if you may have it early.
- **Make a connection with Victim Services a few months before the trial** – Victim Services can make your experience in court much smoother and calmer. They may meet with you several times before the trial and offer emotional support, help you with paperwork like Victim Impact Statements, act as a liaison between you and the Crown Counsel or the RCMP, prepare you for court by doing an orientation, accompany you to court, give you ongoing information about the file, and follow up with you after the trial is over. Victim Services can write a letter to Crown Counsel on behalf of the client requesting testimonial aids for specific vulnerable witnesses.

When you are working with Victim Services you can discuss ways that you can keep yourself calm while testifying.

- **If you are contacted by the Defense lawyer** – It is **your choice** whether to talk to the Defense lawyer or not. He has been hired by the accused to defend him in court, so you should keep that in mind. He does have the right to try to talk to you, and **you have the right to say yes or no to his request for a conversation. DO NOT feel like you have to talk to him if you do not want to. Remember that the things you tell him can be used in the Accused person's favor. You can say "I do not wish to talk to you about this issue. Goodbye."**
- **Spend some time** thinking about who else might show up to observe the trial, and prepare yourself for how to react. Sometimes family members or friends show up to support the accused person, and it can be upsetting for various reasons. Make a plan for how you will conduct yourself if this happens, and focus on what you have to do in court as your #1 priority for that day. Do not let things like this rattle you. You can worry about them after court is over. Practice how you would ignore a situation like that until your testimony is finished.

Trial Day

Getting dressed for Court

- * Court is a professional environment. Dress in a conservative manner.
- * You and your clothing should be clean and tidy.
- * You may wear a skirt, dress or pants.
- * Do not wear shorts, cutoffs or tank tops.
- * Do not wear hats.
- * Do not wear clothing that has a low neckline or a short hemline.
- * Dressing in layers can help you be comfortable if the temperature is variable. For example, wear a short sleeved shirt, but bring a light sweater in case you get cool.
- * You may be sitting in these clothes for several hours, so make sure all your clothing and footwear is comfortable.
- * Do not bring valuable items that you will worry about losing or keeping track of.
- * If you bring a cell phone, it **MUST** be shut off completely while you are in the court room. If it makes a noise it will be confiscated by the Sheriff.

Get ready:

- * Eat a meal before going to court, and take some snacks and water with you. Do not go to court without eating, as you may not be able to obtain food for several hours.
- * Take things with you that will help to pass the time. Often court can be delayed for several hours unexpectedly. Bring magazines, music through an iPod or something else that you can listen to silently, deck of cards, knitting, crossword puzzles, a good book, a pad of paper and pen, etc.

- * Take something in your pocket that will help to ground you and keep you centered and focused. This could be something that was given to you by an important person in your life, or something that has symbolism for you.
- * Have Victim Services and a support person like a friend or family member be at the courthouse with you so you feel supported.
- * You may have been asked to check in at the Crown Counsel's office when you come in to attend court.
- * You will wait outside the courtroom until it is your turn to testify. Victim Services can reserve a private waiting room for you near the courtroom. You and your support people can wait together in privacy.
- * When it is your turn you will hear your name called over the public address system. Enter the courtroom through the door that is nearest to the witness chair. Victim Services and your support person will enter at the same time, and sit in the public seating area in a place where you will be able to easily see them.
- * Enter the witness box and remain standing.
- * You will be asked to either swear on the Bible or affirm that you will tell the truth.
- * You will be asked to say and spell your name for the record, and then the Judge will ask you to be seated.

Giving Evidence in Court (Testifying):

- You may direct your answers to the Crown, Defense or directly to the Judge. Looking at the Defense lawyer may be uncomfortable because the Accused person is very close. It is perfectly acceptable to look only at the Judge when answering questions.
- If there are support people for the Accused person that make you feel uncomfortable with their presence in the court room, do not make eye contact with them. To the best of your ability, ignore them. Focus on the job you have to do, and on listening carefully to the questions from the Crown and the Defense, and ensuring the judge hears everything you have to say.
- Have your talisman with you. You have a job to do today. That job is to calmly and clearly tell your version of events by answering questions to the best of your ability. It is not a test, there is no pass or fail – it just is what it is. Just say what you know.
- Take some deep breaths, and think about why you are testifying today - that you are taking your power back and speaking up for yourself. Remember that your version of events is your truth, and this is the story you have to tell. Be calm and strong inside. You will get through this.
