

law made easy



BEING A WITNESS

As a witness in a criminal case, you have a very important role to play in the administration of justice.

Our legal system depends upon citizens coming forth to give evidence truthfully and solemnly to assist the Judge to determine the guilt or innocence of the accused person.

The judicial system and your community are grateful to you for the valuable duty you will perform. This pamphlet has been prepared to assist you in carrying out that duty.

Victim/Witness Co-ordinator

667-3428

Outside Whitehorse, Toll Free:

1-667-3428



Witness Co-ordinator

The Witness Co-ordinator can help you with many questions, about being a witness. If you live in a different place from where the court proceeding is taking place, the Witness Co-ordinator can tell you how to make the travel arrangements and claim your expenses. In Whitehorse, call 667-3428. People outside of Whitehorse in the Yukon can call this toll-free number: 1-667-3428. If you live outside of the Yukon Territory, call collect.

1. What Is A Subpoena?

A subpoena is a court order which tells you that you must come to court at a set time and place to give evidence as a witness. You may be subpoenaed by the Crown or by the lawyer for the defence, or both.

To be a witness does not necessarily mean that you saw the crime. It can also mean you have some other information that is relevant. For example, a doctor who treats injuries after an assault is often a witness.

2. What Happens If You Fail To Appear At Court?

You cannot refuse to go to court once you've received a subpoena. If you disobey a subpoena without good reason, you can be arrested and charged with a criminal offence. If found guilty, you can be fined or given a jail term, or both.

If, for very good reasons, you cannot be at court you should immediately contact whoever subpoenaed you or call the Victim Witness Co-ordinator. Even though you may have good reason for not attending, you must get permission to be absent from court. If your evidence is very important in the trial, the trial might be re-scheduled.

3. What About Work?

You should tell your employer that you have to go to court to give evidence. Because a subpoena is a court order, your employer must give you time off to testify in court. Your employer is not obligated to pay you for this time, unless it is a term of your employment.

4. If You're Subpoenaed By One Party — Can You Talk To The Other Party?

If you're subpoenaed by one party and the other party contacts you, you are free to discuss the case if you wish, but are not obliged to do so. Ask the lawyer who subpoenaed you about this.

5. How Should You Prepare For Court?

A couple of days before court, you should contact the Witness Co-ordinator or the lawyer that subpoenaed you to be sure the case is going ahead as scheduled. It's always possible that the accused decided to plead guilty or the matter was adjourned to another time.

- If you move, or change your phone number, tell the Witness Co-ordinator or the lawyer that subpoenaed you.
- It's a good idea to ask the lawyer that subpoenaed you for an appointment to prepare for giving your evidence in court.
- Try to be at court about 30 minutes early, as the lawyer may wish to ask you some questions.*
- Bring the subpoena with you as well as any other documents you have been asked to bring to court. These items will be returned to you after the trial if you make your request known.

*Also, in Whitehorse, the Witness Co-ordinator speaks to all the witnesses before court.

6. When You Arrive At Court

a) In Whitehorse:

When you arrive at the Courthouse, check in with the Witness Co-ordinator on the main floor at the Court Registry counter. The Witness Co-ordinator will know whether there have been any changes to the court schedule, such as the courtroom the trial will be held in, the time it is expected to begin, etc.

b) Outside Whitehorse:

Try to let the lawyer know you've arrived. If you are a witness for the Crown, make your presence known to the Crown Prosecutor, or to the police officer in court. If you are a witness for the defence, let the defence lawyer know that you have arrived.

You may go into the courtroom before court starts, and sit in court until the case is called. Sometimes the Judge orders all of the witnesses outside the courtroom until it is their turn to testify. This is done so that one witness will not be influenced by what another witness says. If the witnesses must leave, you must wait outside the courtroom until your name is called. After you have testified, you can usually stay in the courtroom if you wish.

7. What Happens In Court?

1. Swearing In:

When it's time for you to give your evidence, your name will be called. You go to the witness box where the Court Clerk will ask you to state your name and spell it for the court record.

- 2.** You will be asked to swear an oath to tell the truth. Most witnesses swear to tell the truth by placing their right hand on the Bible. If you don't wish to swear on the Bible, you can affirm to tell the truth instead. To do this, you simply tell the Judge as soon as you take the witness stand that you wish to affirm instead of swearing on the Bible.

3. Giving Evidence:

Usually the Crown presents its case first. If you're a witness for the Crown, you will be questioned first by the Crown Prosecutor. You must answer the questions put to you telling what you have seen or heard as exactly as possible. This is called direct examination. If you don't understand a question, ask to have it repeated.

When the Prosecutor is finished, the defence lawyer may ask you questions in order to test your answers. This is called cross-examination.

Once the Crown has finished calling its witnesses, the defence will begin to call witnesses. If you are a witness for the defence, the defence lawyer will question you first. Then the Crown Prosecutor may cross-examine you.

You may also be asked questions at any time by the Judge.

After you testify, you must remain in the Courthouse until you are excused by the Judge. If you need to leave when you have finished testifying, tell the lawyer who will ask the Judge to allow you to be excused.

8. Do You Have To Answer All Questions?

You should expect to answer all the questions put to you by either lawyer. However, if a question is embarrassing for you or seems irrelevant to the case, you can ask the Judge if you have to answer. It is up to the Judge to decide if you must answer the question.

If you fear answering a question because it might mean you are admitting to a crime, you can tell the Judge this. Although you still have to answer the question, you are protected by the Canadian Charter of Rights and Freedoms. The Charter says your answer can't be used later to help convict you of an offence. The exception to this is perjury, i.e., a deliberate lie under oath.

All trials are open to the public. The public will only be excluded from the court if the Judge feels it's absolutely necessary. The Judge could, for example, exclude the public if the evidence you're to present is of an extremely personal nature. If this is a concern for you, speak to the lawyer who subpoenaed you.

9. What Happens If There Is A Delay?

You might be disappointed if you were counting on giving your testimony right away. Very often, hearings don't go ahead as planned. There are many reasons for delay. A case before yours may take longer than expected. The accused or an important witness might not show up. Sometimes, an accused will get an adjournment to get a new lawyer. If you don't understand the reasons for a delay, ask the lawyer or the Court Clerk.

If there is a delay or adjournment, the Judge may set a new date and time. You must come back to court at the new time. If you're not sure when you should appear next, call the lawyer who subpoenaed you or the Witness Coordinator and ask.

10. How Should You Give Evidence?

- Take your time; there is no need to feel pressured.
- Be sure you understand the question before you answer it. If you don't understand, don't be afraid to say so.
- If you become emotionally upset during your testimony, you may ask the Judge to stop for a moment.
- Be courteous even if the lawyer questioning you may appear to be aggressive.
- If you make an honest mistake, inform the lawyer as quickly as possible so that the error can be corrected in court.

- Don't just nod your head for "yes" or "no". Speak out clearly so that the court reporter can record all your answers.
- Stand up when the Judge enters or leaves the room.
- In Territorial Court, the Judge is called "Your Honour." In Supreme Court, the Judge is called "My Lord" or "My Lady." In any case, you can always call a male Judge "Sir" and a female Judge "Madam".
- Don't discuss your testimony with other witnesses. To do so may make your testimony less believable.

11. What If Someone Pressures You To Lie Or Not Go To Court?

Tell the police, or the lawyer who subpoenaed you, or the Witness Co-ordinator immediately. It's illegal for anyone to harass or attempt to influence a witness. A charge of obstructing justice may be laid.

12. Perjury

You are under a duty to tell the truth when you are on the witness stand. Telling a lie on purpose is called perjury. Perjury is a crime. Anyone who commits a perjury can get up to 14 years in jail. An innocent mistake is not perjury, nor is an honest answer.

13. Are There Any Child Care Facilities In The Courthouse?

No. You should make arrangements for someone to care for your children while you are in court. You may be reimbursed for baby-sitting expenses. Speak to the Witness Co-ordinator if you have baby-sitting expenses.

14. Do You Get Paid As A Witness?

Witnesses usually receive a fee from the party for whom they testify.

If you are a witness for the Crown, you will be paid the amount set by law. That amount is \$4.00 an hour for each hour you are at the Courthouse waiting to testify or actually testifying.

If you don't live in the same place as the court, you will also be reimbursed for the cost of transportation to the Courthouse and your meals and accommodation while there.

After you have finished testifying, go to the Court Registry Office. Someone there will calculate how much you are owed and give it to you. If you are owed a large amount and the Registry doesn't have enough cash to pay you, they will mail you a cheque.

If you came from out of town, save your receipts for transportation, meals and hotel. Give these to the Clerk or the Witness Co-ordinator. The maximum amount you will receive is as follows:

Transportation:

The actual cost of the transportation to the place where the court proceeding is taking place (or if you used your own car, 26¢ per kilometre).

Meals:

The cost of meals is reimbursed as follows:

- breakfast - \$7.00
- lunch - \$9.00
- supper - \$16.00

Accommodation:

A maximum amount of \$65.00 per night will be given to a witness with a hotel receipt. If you stayed with friends or relatives, the amount paid is \$13.50 per night.

As well, the Director of Court Services has discretion to reimburse you for certain special expenses. For example, if you live in the bush and have to ask your neighbour to take you out to the nearest community on a skidoo, the Director may pay your neighbour for doing this. If you have special expenses, contact the Witness Co-ordinator at this toll-free number: 1-667-3428. Ask whether you can be reimbursed for them.

If you can't afford to pay for your transportation to the Courthouse, contact the Witness Co-ordinator. This person can make your travel arrangements and hotel reservations and pay for them when it is not possible for you to do so.

However, if you are a witness for the defence, you are in a very different situation than a witness for the Crown. There are no laws stipulating what fees or expenses you should get. If you're a witness for the defence, talk to the lawyer who subpoenaed you about this.

15. Do You Have Further Questions?

If this pamphlet doesn't answer a question you have or if you need information about the case in which you're to testify, you should contact either the party who subpoenaed you or the Witness Co-ordinator.

If you are a **Crown witness**, contact the Whitehorse Regional Office, Department of Justice for information about the case in which you're to testify. Call 668-7171. People outside of Whitehorse can call collect.

If you are a **defence witness**, the defence lawyer may have the information you need. Lawyers are listed in the yellow pages of the phone book or you can get the number from the Yukon Law Society (668-4231).

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This pamphlet is one in a series called "Law Made Easy" which is designed to give you general information about the law. As changes in law may occur rapidly, the information may quickly go out of date. You can check calling the LawLine 668-5297 (Outside of Whitehorse 1-668-5297, toll-free).

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