

Evidence in Court: Oral Testimony

There are different ways of presenting evidence in court:

1. **Oral Evidence:** Evidence given by speaking under oath at a questioning, hearing or trial. Sometimes it is called oral testimony or *viva voce* (Latin for “by word of mouth”) evidence.
2. **Written Evidence:** Evidence in a written **Affidavit** that the writer makes under oath. This includes any documents attached to your Affidavit as exhibits.

What is oral testimony?

Oral testimony, or oral evidence, is evidence given by witnesses speaking under oath. Only some legal proceedings allow oral evidence, including **questionings**, a **hearing**, or a **trial**.

An **oath** is a legal promise to tell the truth. A witness can give an oath by swearing on a spiritual object, such as a bible or eagle feather, or affirming to tell the truth in a non-religious way.

Witnesses are people a **party** asks to give evidence to support their legal position. A party in a legal proceeding can be a witness for their own case. A child under 18 years of age can also be a witness. Witnesses should be credible (trustworthy or believable) and able to provide facts, not opinions, related to the case.

Expert witnesses can give evidence about their opinions based on their experience and education. An expert witness may be a doctor, engineer, repairman, appraiser, and more. Each court and tribunal has its own process for deciding who is an expert witness.

Examination (also called direct examination or examination in chief) is where a party or their lawyer asks questions of their own witnesses. The goal is for the witness to give credible evidence in support of the party’s case. **Cross examination** is where a party or their lawyer asks questions of the other party’s witnesses. For example, the accused in a criminal trial can cross examine the Crown prosecutor’s witnesses. The goal is for the cross-examining party to create doubt about the witness’ evidence or credibility (how trustworthy or believable they are).

Witnesses must only give information about what they saw or experienced. They cannot give evidence about what someone else told them, which is **hearsay evidence**. Most times, hearsay evidence is not allowed.

Administrative bodies are agencies, boards, tribunals, and other government bodies created by legislation. Some have authority to resolve conflicts about specific issues. For example, Alberta's Employment Standards office can make decisions about issues between employees and employers under the *Employment Standards Code*.

An **Affidavit** is a written statement of facts that you swear or affirm before a Commissioner for Oaths or Notary Public. It is evidence in court. The judge treats it the same way as if you were giving oral evidence. Read our **Evidence in Court: Affidavits** info sheet at cplea.ca/courts.

A **hearing** is a legal proceeding before a court or other decision-maker. For example, pre-trial hearings before a court can deal with procedural or interim questions and lead to a short-term or partial resolution of the legal issues. A hearing may also be before an administrative tribunal, such as a human rights tribunal, and fully resolve the legal issues.

The **parties** are the people involved in the court case, including the plaintiffs, defendants, applicants, and respondents.

Questioning is a legal process where the parties in a civil case question the other party about their case before trial. Witnesses at a questioning are under oath. If a witness gives different answers to the same questions in court, a party can show the court the witness' different answer at the questioning. Questioning encourages settlement because it lets the parties learn more about what the other parties will say at trial.

A **trial** is a court proceeding where a judge or jury hears evidence and decides on all outstanding legal issues.

Preparing to give oral testimony

- **Prepare beforehand by thinking about what you know.** The party calling you as a witness may give you questions to help prepare, but they cannot tell you what to say.
- **Show up early.** If you are appearing in person at court, you will have to go through security. If you are appearing remotely, make sure you have a good internet connection and no distractions around you.
- **The judge or decision-maker may exclude you from the proceeding until it is your turn to give evidence.** This is so witnesses cannot hear each other's evidence. Usually no one can talk to you during the time you are excluded unless the judge allows it.
- **When you hear your name, move towards the spot for witnesses.** Someone, usually a clerk, will ask you to say your name. They will also ask you to take an oath in the way you choose.
- **When a party or their lawyer asks a question, respond clearly and honestly.**
- **If you do not hear a question, ask the person to repeat it.**
- **If you do not understand a question, ask the person to rephrase it.**
- **Only say what you experienced (saw, heard, tasted, etc.).**
- **Do not say what someone else told you.** This is hearsay evidence and is not usually allowed.
- **If you do not remember or do not know the answer, it is okay to say so.** Do not guess or make something up. A witness

who lies under oath is guilty of **perjury**. This is a criminal offence that can lead to a fine or jail term of up to 14 years.

- **The party who called you will ask you questions first.** When they finish, the other party can ask you questions (called cross-examining). The judge or decision-maker may also ask you questions.

What if I do not want to be a witness?

If you are a party in the legal proceeding, you can decide whether you want to give evidence. You may choose not to give oral evidence if you think doing so will harm your case.

If a party calls you to be a witness and you refuse, they can ask the judge for an order compelling (ordering) you to attend the proceeding and give oral evidence. Disobeying the court order may lead to negative consequences, including the judge ordering your arrest.

The laws about evidence

There are many laws that apply to evidence, including giving oral testimony.

1. The **Canada Evidence Act** applies to all criminal proceedings and all other proceedings regulated by the federal government, including issues before the Federal Court and federal administrative bodies.
2. The **Alberta Evidence Act** applies to all other legal proceedings under Alberta laws.
3. The **Alberta Rules of Court** set out practices and procedures for the Court of King's Bench of Alberta and the Court of Appeal of Alberta. There is a section specifically for family law proceedings (see Part 12).
4. Alberta's **Court of Justice Act** sets out rules and processes for evidence given in the Alberta Court of Justice. If the Court does not have a rule about something, it may apply or modify the *Alberta Rules of Court* to fit its proceedings.
5. The **laws or bylaws of an administrative body**, such as the *Alberta Human Rights Act* or the *Employment Standards Code*, set out rules and processes for those bodies.

If you are representing yourself in court or before an administrative body, you must know the laws that apply to you, including about evidence.

***Read the laws in Canada
for free online at canlii.org***

Resources

CPLEA

Free information booklets, FAQs and videos on many areas of the law.

cplea.ca

Free information about court process in Alberta.

cplea.ca/courts

LawCentral Alberta

(a CPLEA website)

List of legal clinics and organizations in Alberta providing free or low-cost legal services.

lawcentralalberta.ca/clinics

List of more resources for preparing for court.

lawcentralalberta.ca/preparing-court

Alberta Courts

Information about the courts in Alberta, including forms and court processes.

www.albertacourts.ca

Court and Justice Services

Government service providing resolution and court support for Albertans.

www.alberta.ca/court-and-justice-services.aspx

Alberta Law Libraries

Access to legal information and resources.

lawlibrary.ab.ca