



The Witness and the Justice System in Alberta

Introduction

This booklet provides basic information about appearing as a witness in the courts of Alberta. It is designed to explain your role as a witness, save you time and assist you in fulfilling your responsibility

As a witness, you have an important duty to perform – to help make sure the accused receives a fair trial. Trial fairness includes the right to hear all evidence for and against the accused.

There are two types of trial:

- civil (disputes between two people or businesses) or
- criminal (where a person has been charged with a crime or a provincial offense such as a traffic or bylaw offence).

This booklet deals primarily with witnesses in criminal trials. If you are to be a witness in a civil trial and you have questions, you should talk to the lawyer or person who contacted you to be a witness. You can also contact the court administration office at your local courthouse for information.

If you are a witness in a criminal matter, you will receive a subpoena (sub-pee-nah) ordering you to appear in court. The subpoena can come from the Crown prosecutor, the defense counsel, or from the accused if the accused is representing him or herself.

Important Note

Any information in this booklet can be overruled by a judge. If there is some discrepancy between what the judge says and what is written in this booklet, always follow the judge's instructions.

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The Subpoena

The subpoena is a court order telling you to appear in court at a specific time and place. If you do not obey the order, you can be charged with a crime. The judge decides on the penalty which can include a fine or jail time or both. The subpoena is “served” when it is delivered to you by a peace officer or left for you at your home address with someone 16 years or over. If you move before your appearance in Court, you must notify the Crown prosecutor’s office.

What to do when you get the subpoena:

First, read the subpoena. It contains important information, including the name of the case in which you are to give evidence, which court you are to appear in, the courtroom number and the time the hearing is to start. If there is no courtroom number, check with the information counter when you arrive at the courthouse. If you do not know the exact location of the courthouse, you should check in advance. Call the nearest office of Alberta Justice (toll-free 310-0000).

The interview

The lawyer or person calling you as a witness may wish to interview you before your appearance in court. This is to review the strength and accuracy of your testimony.

Do I have to come?

Yes. If you do not show up as ordered, the court may issue a warrant for your arrest. A subpoena takes precedence over nearly every other duty. Your employer, for instance, cannot prevent you from appearing in court.

If you can't attend court, call the Crown prosecutor’s office at the place the trial will be. If you cannot reach the office, call the RCMP or local police force. They will be able to assist you but you must let them know of your problems as early as possible.

Transportation

You should be at the court at least 30 minutes before the case is scheduled to start. You may have to go through security; also, you may need some extra time to find your courtroom. Except in unusual circumstances, you must provide your own transportation. If you are a witness for the Crown, reasonable mileage and parking expenses will be paid.

If the criminal proceeding takes place in a location other than where you live and you have no vehicle or money to buy a bus ticket to the court, other arrangements may be made. Contact the defence lawyer if you are a defence witness; contact the nearest office of the Crown prosecutor or the police if you are a witness for the Crown.

Your Rights

As a witness, you have certain rights. It is illegal for you to be harassed for being a witness. It is illegal for anyone to try to influence what you say as a witness. This is an offence known as obstructing justice and the penalty is up to 10 years in prison. You should report any attempts at interference to the police or the Crown prosecutor's office immediately. You also have the right to have your own lawyer in court, if you feel this is necessary.

When You Get to Court

Bring the subpoena with you when you register at the court administration office - usually on the main floor of the courthouse. The subpoena is required for the court records. You may also present your subpoena to the court clerk in the courtroom before or immediately after the proceedings. The court clerk wears a black gown and sits just in front of the judge.

When you get to the court building, you may find there is only one courtroom. However, in larger centres there may be a number of courtrooms. If you do not know which courtroom to go to, ask the clerk or uniformed court orderly, or inquire at the court administration office.

Once you get to the proper courtroom, advise the Crown prosecutor or defence counsel you are present.

In the Courtroom

How to Act in the Courtroom?

There is no specific dress code. Try to dress in a way that shows respect for the Court. Take off headwear (unless it is religious headwear). Do not bring food or drink into the courtroom. Turn off your cell phone before entering the courtroom. Please note that the recording of court proceedings is not allowed.

Who's who in the court?

The most important individual in the courtroom is the judge. The judge is responsible for the way the courtroom is run. Judges of the Provincial Court are addressed as Your Honour. Judges of higher courts are addressed as My Lord, or as My Lady. Lawyers in a criminal proceeding represent either the Queen or the accused. The lawyer for the prosecution is called the Crown prosecutor. The lawyer for the accused is the defence counsel, or the accused may represent him or herself.

The Crown prosecutor is responsible for proving the case against the accused beyond a reasonable doubt. The defence lawyer defends his or her client to the fullest extent of the law.

Other court officials include the court clerk (who wears a black robe and sits just in front of the judge); the court reporter (who records the proceedings); and court orderlies, who can be identified by their uniforms.

How long do I have to stay?

When you arrive, you may ask the lawyer representing the side for which you are a witness when, approximately, you will testify. Court proceedings can be lengthy and complicated. You should be prepared to stay for the period required or until the court excuses you.

If you wish to leave the court after you have finished testifying, but before the trial is completed, advise either the defence counsel or the Crown prosecutor, who will make the application for you to the judge.

During the trial

Once the case begins, the judge may ask all witnesses to wait outside the courtroom until they are called to testify. This is called “exclusion of witnesses.” Wait until a court official calls your name before re-entering the courtroom. If you arrive late, ask an orderly or court official to find out whether or not witnesses are excluded and to let the lawyer know you are here.

While you are waiting outside the courtroom, do not discuss your testimony with anyone but the Crown prosecutor (if you are a witness for the Crown) or the defence lawyer (if you are a witness for the defence). If witnesses are not excluded, you may wait inside the courtroom until it is your turn to testify.

When your name is called, you will be directed to the witness box. It is from here that you will give your evidence.

Giving Evidence

Once you are in the witness box, you will take an oath, according to your religious belief, that you will tell the truth. If you do not wish to swear an oath (if you are not religious or your religion prohibits swearing an oath) you may ask to “affirm” that you will tell the truth. If you wish to affirm, tell the judge this as you enter the witness box. You may also present your subpoena to the court clerk and tell him or her whether you would like to swear an oath or affirm before the hearing starts.

Answering questions

While you are testifying, you may ask the judge whenever you have any questions or concerns. You will be questioned carefully by the lawyers on the case. You must answer these questions to the best of your ability. If you do not know the answer to a question or do not understand a question, you should say so.

The court is interested in your version of what happened, not what a lawyer might suggest happened. If you do not agree with a suggestion that is made, you should say so. If you agree with part of a suggestion that is made, you should say which part you agree with.

If you are reluctant to answer a certain question, ask the judge if it is necessary to answer. You should also tell the judge why you are reluctant to answer. If the judge decides the question is not relevant, you might not have to answer; however, if the judge decides you should answer the question, then you must answer it.

The Canada and Alberta Evidence Act

If the reason you are reluctant to answer a question is that you could be convicted of a crime yourself, you may ask for the protection of the Canada Evidence Act or the Alberta Evidence Act. If the judge grants the protection, you still have to answer the question, but your answer cannot be used against you. The exception is that you cannot ask for this protection against perjury.

Perjury

Perjury occurs when a witness gives false evidence with an intent to mislead the court. This is a serious criminal offence punishable by up to 14 years in prison.

An honest error is not perjury. If you make a mistake while giving evidence, correct it by bringing it to the attention of either the defence or Crown prosecutor as soon as you realize your mistake. A person can only be charged with perjury if he or she deliberately misleads the court.

Public trials

Trials are open to the public and the news media. Your testimony might be reported in the newspapers, on the radio, or on television, unless the judge makes an order that this is not allowed.

Expenses

If you are a witness for the defence, you are not paid by Alberta Justice. Consult with the defence lawyer regarding any payment for expenses.

If you are a witness for the Crown you are entitled to reasonable travel and accommodation expenses if the trial is in a place other than where you live. Other expenses may be considered by applying to the clerk.

Payment is made by cheque, usually through the mail, so it is important that you give your correct address to the court administration office. If necessary, expenses for transportation to and from the courthouse may be arranged through this office.

If you have any questions regarding the payment of expenses, discuss them with the court administration office.

Delays and Adjournments

Because they deal with serious matters, courts often proceed slowly and very carefully. This means that delays may happen. A lawyer might be detained in another court, or the accused might not appear for the trial, etc.

If this happens, the proceedings may be adjourned to another date. This may result in some inconvenience for witnesses, but it is necessary to ensure a fair trial.

If the case is set over to another date, you will either be called into the courtroom and advised of the new date or you will be served with a new subpoena. If you are not sure when you should appear next, call the court administration office, tell them the name of the accused and the date you last appeared, and they will be able to help you.

If you do not understand the reason for a delay in the proceedings, ask for an explanation from either the lawyers or the court clerk.

The Justice System and How It Works

Criminal Justice

The first step in the Criminal Justice system is a written complaint made before a judge or a justice of the peace, by a person under oath, who believes someone else has committed an offence.

The accused person will then appear in Provincial Court to plead (guilty or not guilty) and depending on the charge, to elect (choice to proceed in a higher court, and choice to be tried in front of a jury). Based on the plea and elections, the judge will set either a trial date or a preliminary inquiry date.

If the case is to proceed to trial, witnesses will be ordered to appear in court (subpoenaed) by both sides, in order to present all of the relevant evidence. Witnesses can be questioned by both Crown and defence lawyers.

The most serious crimes, including murder, may be tried in a superior court of Alberta before a jury. A jury is a group of 12 citizens called to listen to a case and give a verdict. If the trial is before a judge and jury, the jury must give a unanimous verdict based on only the evidence it hears or sees in the courtroom.

If the accused is found guilty, the judge will determine the appropriate sentence.

Civil cases

Civil cases involve property, financial matters, contracts, personal injury and damages. These issues usually arise between one citizen and another when the plaintiff brings a lawsuit against the defendant. In civil cases, court procedures are not the same as in criminal matters. For cases in the Court of Queen's Bench, there may be a jury. In civil jury trials, there are only 6 jurors. 5 jurors may give a verdict.

Questions and Who to Contact

If this booklet does not answer all your questions, or if you need information about the case in which you are involved, there are several offices to contact for help.

Crown Prosecutor's Office - This office may have the information you need if you are a witness for the Crown. Look on the Alberta Justice website for listings for the nearest crown prosecutor's office. If you are calling long distance, telephone the RITE number toll-free at 310-0000 and ask to be connected to the crown prosecutor's office nearest you.

Court Administration Office - Located in the courthouse in which you will appear. This office will be able to answer your questions about parking and court schedules. The phone number is available from the nearest court office of Alberta Justice. If you are calling long distance, telephone the RITE number toll-free at 310-0000 and ask to be connected to the courthouse where you are to appear.

NOTE:For circuit courts, please contact the nearest Base Point court office.

Defence Lawyers - Contact information for lawyers can be found online or in the telephone directory under Lawyers or Barristers and Solicitors.

Police - If you want to report evidence of a crime, call the police. You should also call them if you feel someone may try to prevent you from giving testimony in court. Copies of this booklet are available from all court offices or the Alberta Courts web site at www.albertacourts.ab.ca