TIP SHEET FOR WITNESSES GIVING EVIDENCE AT TRIAL

1. You will give evidence in chief and you will be cross-examined. The purpose of these instructions is to inform you what an examination in chief is, what cross-examination is, why it is being done, how it will be accomplished, and the pitfalls to avoid.

2. Dress neatly and conservatively. Suits can be worn, but are not necessary.

3. You will sit in a raised witness box at the front of the courtroom near the Judge. In attendance will be the Judge, lawyers, court reporter, clerk, sheriff's officer and spectators that could include the Plaintiff, family and other witnesses. You will be asked to take an oath or affirmation prior to testimony being provided.

4. Evidence in chief is your evidence in answer to the questions from the lawyer who asked you to be a witness at the Trial.

5. Cross- examination is your evidence in answer to the questions of the opposing lawyer.

6. Here's the difference! The lawyer who asked you to be a witness cannot ask you leading questions, but must ask you open-ended questions (e.g. what did you see when you got to your sister's house?), that is, this lawyer cannot ask you questions that suggest the answer.

7. The lawyer who asked you to be a witness will ask questions first by way of direct examination or examination "in chief". You will prepare for these questions through the use of the admissible documentation and photographs you will review together.

8. The opposing lawyer may cross-examine you, that is, may ask questions which suggest the answer, or give you a choice of a yes or no answer (e.g. when you got to your sister's house, you saw she was crying, very upset, and had been beat up?).

9. The most important purpose of cross-examination is to weaken the effect of your evidence and to cause damage to the strength of the case you are a witness for.

Adapted from:

1. "Top Ten Advocacy Tips: How to Impress the Judge and Hopefully, Win Your Case" National Family Law Program, Federation of Law Societies of Canada, 13 July 2014 by Justice Carole Curtis & Justice Roselyn Zisman
2. Civil Litigation Practice Basics 2017 by Samaneh Hosseini (Stikeman Elliott LLP) & Andrew Kalamut (McCarthy Tetrault LLP)

10. The other lawyer also wants to find out what facts you have in your actual knowledge and possession regarding the issues in the case. In other words, they are interested in what your story is.

11. The other lawyer, however, also hopes to catch you in a lie so that they can show you are not a truthful person and therefore, your testimony should not be believed on any of the points, particularly the crucial ones.

PITFALLS TO AVOID

12. Always remember that, either as a litigant or a witness, you do not have any purpose to serve other than to give the facts as you know them. You must give the facts if you have them. You do not, however, have to give opinions and you should never give opinions (unless you are an expert witness (like a doctor or psychologist) who was hired to give an opinion). Generally speaking, if you are asked a question which calls for an opinion, your lawyer (or the lawyer who asked you to be a witness at the Trial) will object to the question. However, after this objection, if you are advised to go ahead and answer and if you do have an opinion on the subject, then you may give it.

13. **Never state facts that you do not know.** Quite frequently you will be asked a question by the lawyer and even though you feel you should know the answer, you do not and you will be tempted to guess or estimate what the answer should be. THIS IS A MISTAKE. If you do not know an answer to a question, even though you fear you would appear ignorant or evasive by stating that you do not know, you should nevertheless do so, because a guess or an estimate for an answer is usually the wrong answer and one from which the opponent can show that you either do not know what you are talking about or imply that you are deliberately not stating the truth. You do not ever have to guess at an answer. Generally speaking, the lawyer is in a position to know what the answer should have been and it may very well be that the reason she asked the questions was because she knew you would not know the answer, but felt that you would be compelled to guess. It is always okay to answer "I don't know".

14. **Never attempt to explain or justify your answer**. You are there to give the facts as you know them and not to apologize or attempt to justify those facts. Any attempts at such would make it appear as if you doubt the accuracy or authenticity of your own testimony.

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15. **You are only to give the information which you have readily available**. You will be allowed to testify only to what you personally saw, heard, and did. You generally cannot testify to what others know or to conclusions, opinions, and speculations. If you do not know certain information, do not give it. Do not turn to your lawyer (or the lawyer who asked you to be a witness at the Trial) and ask her for the information or turn to another witness, if someone else should be present. Do not promise to get information that you do not have readily at hand, unless your lawyer advises it. If you know an answer to a question at the time that is being asked, then you should answer it. Do not agree to look up anything in the future and supplement the answer you are giving, unless you are advised to do so.

16. **Do not, without your lawyer's advice, reach in your pocket for any kind of document or information**. The other lawyer has the right to obtain documents, and you have the obligation to produce those documents, this procedure ought to have been accomplished well before the Trial.

17. **Do not let the other lawyer get you angry or excited.** This destroys the effect of your testimony and you may say things which can be used to your disadvantage later. It is sometimes the intention of the lawyers to get a party excited during the testimony hoping that you will say things which can be used against you later. Under no circumstances should you argue with the other lawyer. Don't be defensive. Give only the information you have, which is all the other lawyer is entitled to. Respond to the questions in the same tone and manner which you would in answering your own lawyer's questions.

18. **If your lawyer (or the lawyer who asked you to be a witness at the Trial) beings to speak, STOP WHATEVER ANSWER YOU MAY BE GIVING and allow your lawyer to conclude the statement**. Your lawyer may be objecting to the question being asked, and if so, do not answer until you are advised to go ahead and complete your answer. Once your lawyer tells you not to answer a question you should refuse to do so.

19. **You should take your time in answering questions when necessary.**

20. **ALWAYS Tell the truth.**

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21. **If you do not understand a question, say so, and the lawyer will rephrase it.**

22. **Never joke while giving evidence under oath**. The humour will not be apparent and will make you look crude or cavalier about the truth.

23. **Do not volunteer any facts that are not specifically requested by a question.**

24. **After your evidence is over, do not chat with the other lawyer**. The other lawyer is an opponent for the person who called you as a witness in the Trial. Do not let friendly manners cause you to drop your guard and become chatty.

25. **Do not try to figure out beforehand whether or not a truthful answer will help or hinder the case.** Answer truthfully. Your lawyer (or the lawyer who asked you to be a witness at the Trial) can only deal with the truth effectively, but is handicapped when you answer any other way.

26. After you have read all these suggestions, please write down any questions you might have and discuss them with your lawyer prior to your appearance as a witness.

27. Try to avoid answering questions with "never" or "always" if the truth is "most of the time" or "usually". It is better to be precise or if you are not certain, to say so.

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