

# The Witness and the Justice System



## ***Introduction***

This booklet will assist you to appear as a witness in the courts of Alberta.

As a witness, you have an important duty to perform - to help ensure the accused receives a fair trial. This includes the accused right to hear all evidence for and against the accused, and to ensure an unbiased hearing.

This publication is designed to explain your role as a witness, save you time and assist you in fulfilling your responsibility.

There are two types of trial for which you can appear as a witness: civil and criminal. If you are to be a witness in a civil trial, address all your questions to the lawyer who contacted you.

If you are to be a witness in a criminal matter, you will receive a Subpoena from the Crown prosecutor or defence counsel, ordering you to appear in court. This booklet deals primarily with witnesses who have been subpoenaed.

**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.

This is for information only.  
It is not to be interpreted as the law.

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### **Environmental Reminder.**

Please return this pamphlet to the nearest court office  
when you no longer require it.

## **The Subpoena**

The subpoena (pronounced "sub-pena") is a court order commanding you to appear at a particular court at a specific time and place. Failing to obey the order without a lawful excuse can result in criminal charges against you with penalties of up to 90 days in jail or a fine of \$100 or both.

A witness can be subpoenaed anywhere in Canada to attend court concerning a Criminal Code offence. If you move before your appearance, you must notify the Crown prosecutor's office.

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.

### ***What to do when you get the subpoena***

The first thing to do is 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 proceeding is to start. If the courtroom number is not shown, check with the Information Counter. If you do not know the exact location of the court, you should check in advance. Call the nearest office of the Department of Justice of Alberta.

### ***The interview***

The lawyer calling you as a witness may wish to interview you before your appearance in court. This is done 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 are unable to attend court, you must call the Crown prosecutor's office at the place the trial will be held. 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 15 minutes before the case is scheduled to start. Except in unusual circumstances, you are expected to 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 neither a motor vehicle or the money to buy a bus ticket to where court will be held, other arrangements may be made. Contact the defence lawyer if you are a defence witness or the nearest office of the Crown prosecutor or the police if you are a witness for the Crown.

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## **Your Rights**

As a witness you have certain rights. It is illegal for you to be harassed or influenced by others in your role as a witness. This is an offence known as obstructing justice and is punishable by up to 10 years in prison. You should immediately report any attempts at interference to the police or the Crown prosecutor's office.

You also have the right to be represented in court by your own lawyer if you feel this is necessary. Outside the courtroom, you may speak to the lawyer for the other side and answer his or her questions if you wish.

## **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.

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## **In the Courtroom**

### ***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. Occasionally the accused may represent him or herself.

The Crown prosecutor is responsible for proving the case against the accused beyond 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 you are expected to 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.

### ***What should I wear?***

No special attire is necessary. However, you should do your best to dress according to the seriousness of the occasion. Refrain from wearing extravagant, informal or distracting clothing. Men should not wear hats.

### ***During the trial***

Once the case begins, the judge may order all witnesses to wait outside the courtroom until they are called to testify. This is a normal procedure, referred to as "exclusion of witnesses." Wait until your name is called by a court official before re-entering the courtroom.

If you arrive late, ask an orderly or court official to find out whether or not witnesses have been "excluded" and to advise those concerned of your arrival.

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.

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## **Giving Evidence**

Once you are in the witness box, you will be asked to take an oath before God that you will tell the truth.

If you prefer not to swear 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 wish to swear an oath in compliance with your religious belief. If so, advise the clerk when you hand in the subpoena.

### ***Answering questions***

You will probably be questioned closely by the lawyers on the case. You must answer their questions to the best of your ability. If you do not know the answer to a question or do not understand a question, do not hesitate to say so.

The court is interested in your version of what happened, not what a lawyer might suggest happened. If a suggestion is made with which you disagree, you should say why you disagree with it or to what extent you agree with it.

If you are reluctant to answer a certain question, you may ask the judge if it is necessary to answer. You should indicate why you are reluctant. 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. Do not hesitate to ask the judge if you have any problems.

### ***The Canada and Alberta Evidence Act***

Should you object to answering a question on the grounds that the answer might mean you could be convicted of a crime, you may ask for protection of the Canada Evidence Act or the Alberta Evidence Act. If the protection is granted, you still have to answer the question, but your answer cannot be used against you. The exception to this is 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, bring it to the attention of either the defence or Crown prosecutor so it can be corrected. Only when a person deliberately misleads the court may he or she be charged with perjury.

## ***Public trials***

Trials are open to the public and the news media. Your testimony may be reported in the newspapers, on the radio and on television unless the judge makes an order against it.

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## **Expenses**

If you are a witness for the defence you are not paid by the Department of Justice. Consult with the defence lawyer regarding compensation.

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.



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## **Delays and Adjournments**

Because they deal with serious matters, courts often proceed slowly and with caution. Courtroom proceedings may be delayed as a result. Sometimes, a lawyer might be unavoidably detained in another court or the accused might not appear for the trial.

When such incidents occur, 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 next appear, call the court office and 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 council.

## **The Justice System and How It Works**

### ***Criminal Justice***

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

If the accused person pleads not guilty when he or she is brought into Provincial Court, the presiding judge will set a date for trial, If the person elects to be tried by a higher court, the judge will set a date for preliminary inquiry or commit the accused to trial before a judge or judge and jury in a higher court. Witnesses will be ordered (subpoenaed) to appear in court.

Witnesses can be examined by both Crown and defence lawyers. If the trial is before a judge and jury, the jury must give a unanimous verdict based on only the evidence before it.

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 accused is found guilty, the judge will pass 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.

In civil trials, there are only six jurors. A verdict may be given by five jurors. It is the right of either party to request a jury. A Jury may be requested in actions involving slander, libel, false imprisonment, malicious prosecution, seduction or breach of promise of marriage, in actions over \$ 1, 000 founded on tort or contract, and in actions for the recovery of real property.

## 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 in your telephone directory under "Government of Alberta" listings for the nearest office of the Department of Justice. If you need to call long distance, ask the operator to connect you with the tollfree RITE telephone line.

**Court Administration Office** - Located in the courthouse in which you will appear, this office will be able to answer you questions about parking and court schedules. This number is also available from the nearest office of the Department of Justice.

NOTE: For Circuit Courts, please contact the nearest Base Point office.

**Defence Lawyers** - Lawyers are listed individually in the white pages of the telephone directory, and in the yellow pages, usually 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.

**Communications - Department of Justice** - If you have any questions about this booklet or about the Department of Justice, contact your local courthouse or ask the RITE operator to connect you.

*For additional copies of this booklet contact.*

Department of Justice - Communications  
3rd Floor, Bowker Building  
9833 - 109 Street  
Edmonton, Alberta T5K 2E8  
Telephone (780) 427- 8530  
or toll-free at (780) 310-0000 and ask for 427-8530