

# Witness Guide

This Guide contains general information but does not provide legal advice.

You can find explanations of terms used in this Guide in the [Glossary](#) and more general information in the [Guide to the Tribunal Process](#) on this website.

The Tribunal provides accommodation to hearing participants where required by the [Human Rights Code](#). See the [Terms of Use](#) on this website. Please tell us about your accommodation request as soon as possible. You may need to provide documentation to support your request.

## What is a witness?

Witnesses are people who have relevant information about the issues the Tribunal must decide and who are asked to testify in the hearing.

## What is a summons?

Parties will often serve witnesses with a summons to witness, although a witness can testify before the Tribunal without being formally summonsed.

The summons to witness tells you where the hearing is being held, when you must attend to give evidence, the name of the registrant who is the party to the hearing and the name of the person who summonsed you. It may also include a list of things or documents you must provide when you testify. When the hearing is held by videoconference, the party that summonsed you will provide the connection information.

You may wish to show the summons to your employer if you need to arrange time off.

If you are summonsed, you are entitled to an attendance allowance of \$50 for every day you must attend to testify, a travel allowance if you must travel and, if you have to stay overnight, an overnight accommodation and meal allowance. You should receive these allowances from the party that summonsed you when you are served with the summons. The Tribunal's [Practice Direction on how to summons a witness](#) provides more information about attendance money.

## What if I cannot attend on the hearing date?

If you were properly served with a summons you must attend the hearing at the required day and time or face legal consequences for failing to appear. If you have a scheduling conflict, speak to the person who summonsed you about alternative arrangements as soon as possible.

## What can I expect if I am a witness in a hearing?

You may be allowed to sit and watch the hearing until it is your turn to testify. However, witnesses are often “excluded” from the hearing until they complete their testimony. That prevents a witness from being influenced by the testimony of others. If a witness exclusion order is made, you will be asked to leave the hearing room (if the hearing is in person) or to wait in a virtual waiting room (if the hearing is by videoconference). When it is your turn to testify, you will be invited into the hearing.

The hearing panel is made up of five members, one of whom – the chair – is responsible for managing the hearing. The lawyer(s) representing the College, the registrant and (unless self-represented) the registrant’s lawyer(s), will be on the screen or in the room. A court reporter who is responsible for making the transcript of the hearing may be present. There may also be members of the public watching remotely or sitting in the hearing room.

## What is an affirmation?

Before you start to testify, the chair will ask you the following questions:

1. Do you solemnly promise that the evidence you are about to give is the truth, the whole truth and nothing but the truth?
2. Do you solemnly promise that no one else is with you, that you will tell me if anyone comes into the room during your testimony, and that you will not communicate with anyone in any way while you are testifying unless I give you permission?
3. Do you solemnly promise you will not look at documents, notes, electronic devices or other materials we don’t know about?
4. Do you understand that this is a legal proceeding and that intentionally breaking any of your promises is a punishable offence under the *Criminal Code*?

Questions 2 and 3 will not be asked if the hearing is in person.

## How do I testify?

The lawyer or party who asked you to attend the hearing will ask you questions. This is called “examination-in-chief.” The other party or their lawyer may also ask you questions. This is called “cross-examination.” Either lawyer may show you documents and ask you questions about them. The panel members may also ask you questions.

If one of the parties makes an objection about a question, wait for the panel to decide before answering. You may be asked to leave the room while the objection is discussed.

When you complete your testimony, the chair will excuse you. If there was an order excluding witnesses, you must not talk about your testimony with anyone. You may choose to leave or to observe the rest of the hearing.

## **How does the Tribunal protect sensitive health information?**

A publication ban that prohibits the publication or broadcast of the name and any other identifying information of a patient, as well as patient health records and personal health information is automatic. If the patient does not want a ban on their name or information, it can be lifted by an order of the Tribunal.

Where identifying information, patient health records or personal health information is included in a document filed with the Tribunal, the party filing the document must file two copies. The copy which is made part of the Tribunal's public record of the proceeding has identifying and health information removed.

## **What protections are available for witnesses alleging sexual abuse or sexual misconduct?**

The Tribunal will normally order that the identity of a witness, or any information that could reveal the identity of a witness who alleges sexual misconduct, is subject to a publication ban. You can ask the Tribunal not to make that order if you wish.

The Tribunal's rule 14.5 limits circumstances in which evidence of the past sexual history of a complainant or witness may be considered in proceedings where sexual abuse or other sexual misconduct is alleged.

## **What if I require accommodation?**

The Tribunal provides [accommodation to hearing participants](#) where required by the [Human Rights Code](#). Please tell us about your accommodation request as soon as possible. You may be asked for documentation to support your request.

Under the Tribunal's Rules of Procedure, the panel may make orders to support vulnerable witnesses. It can allow a support person sit near a witness, that a witness testify from outside the hearing room or behind a screen, that the registrant turn off their camera while the witness testifies or that a lawyer – rather than a self-represented registrant – cross-examine the witness. If you would like to take advantage of one of these supports, you should first speak to the lawyer for the party that called you as a witness.

## **What is an expert witness?**

An expert witness provides opinion evidence based on their specialized training and experience. They must be impartial and complete the OPSDT's Form 12C acknowledging their duty to be fair and impartial. The other party may challenge the expert's qualifications or impartiality. The Tribunal decides whether to accept the expert as a witness and what areas their expert testimony can cover.