

## HANDOUT 7: Other People in Court

### Accused

The accused is the person the government has charged with breaking the law. He or she is presumed innocent until proven guilty. Sometimes the accused will be a witness in court and testify on their own behalf. With the help of their lawyer, they will decide if they wish to testify or not.

### Witnesses

#### Role of a Witness

Witnesses are used in civil or criminal trials to give evidence that will assist the judge/jury in making a decision in the case. Witnesses usually make a statement to a police officer or to someone who has an interest in the case. The evidence of the witness is written down in a statement. The lawyers who are conducting the criminal or civil trial decide which witnesses will testify at trial. Those witnesses are compelled to attend court by receiving a subpoena. The subpoena is a formal document that commands the witness to attend court and to bring with them any evidence concerning the case.



#### Types of Witnesses

##### *Victim/Plaintiff*

These are usually the main witnesses. Testifying in court can be a very traumatic experience for these witnesses. Victims of crime have special needs so the government operates victim service programs in many B.C. communities. Victim service workers can help victims who are going to court by explaining what will happen in court. They can also provide support throughout the court process. For example, they can go to meetings with the police or Crown counsel and attend court with the victim. They also refer the victim to the appropriate services for legal, financial, and emotional help.

##### *Accused/Defendant*

This type of witness may testify in his/her own behalf.

##### *Witnesses with Special Knowledge*

Witnesses who have knowledge of some of the facts of the case also testify. In a criminal case there is usually more than one person who has witnessed the event or has evidence about some aspect of the case. For example, the police testify in almost all criminal cases. In civil cases such as motor vehicle accidents bystanders may also give evidence.



##### *Expert Witnesses*

These witnesses testify about special knowledge they have about the case. Forensics investigators could testify both in criminal and civil cases about such things as

reconstructing the scene of an accident or crime and giving evidence on the cause of death or medical conditions. These witnesses have to be qualified to testify as experts. Before they give their testimony the lawyer who is calling them will introduce their qualifications. The other lawyer in the case has the opportunity to cross-examine them on their qualifications before they give testimony. This could be very important in cases where there are competing experts being presented. The judge makes a ruling as to the qualification of the expert and may limit it to a specific area if necessary. Once qualified, the expert can testify in respect to that area. How much weight or credence that evidence is given is a question of fact to be determined by the judge or jury. Expert witnesses may include police who are dog handlers or fingerprint experts, document examiners, police artists, wiretap or polygraph specialists, forensics experts, medical doctors, psychiatrists, insurance investigators, or private investigators.

### ***Character Witnesses***

These witnesses usually testify in the sentencing hearing after a conviction in a criminal trial. These witnesses know the accused very well and can give testimony about the accused's character. They might be family friends, teachers, ministers, doctors, neighbours, work associates, or employers. Perhaps some of these testimonials would be included in the pre-sentence report ordered by the judge prior to sentence being imposed.

### **Responsibility to Testify**

People who witness an action that may become part of a court or legal proceeding have the obligation and duty to testify as to what they saw. Witnesses are a very important part of the court process. Everyone in Canada has the right to a fair trial and that can only be accomplished if the public comes forward to give evidence.



### **Public Gallery**

- Courts are open to the public, because "justice must not only be done, it must be seen to be done"
- Only exception may be in cases of a sensitive nature where the witnesses are young and testifying is difficult for them

### **Media Gallery**

- Where reporters from the newspaper or television take notes of the courts proceedings
- Newspaper or television artists draw court happenings
- Photographs are not allowed nor are tape recorders
- No cameras are permitted unless the judge allows them