



## Witnesses

### » Your role in Criminal Court



You may be someone who has witnessed or been a victim of a criminal act, or has information that may assist the court in trying a criminal case. As a witness, you are called on to play an essential role in the administration of justice. The *Statement of Principle regarding Witnesses* signed by the Ministère de la Justice, the judiciary and the Barreau du Québec in June 1998 reaffirms the key role of witnesses in the judicial process and contains formal commitments by the signatories to simplify the process for court witnesses.

If you have any misgivings about having to testify, read this brochure carefully. It has been prepared to reassure prospective witnesses by explaining in simple terms their exact role and responsibilities.

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### » Subpœna

A subpœna, also referred to as a summons, is a court order for a witness to appear and testify in a criminal case on the date and at the time and place specified in the subpœna.

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## » Are you obliged to testify?

You must comply with a subpoena. If you refuse to appear in court, a warrant may be issued for your arrest and you may be brought before a judge. Your employer must allow you to take time off from work to fulfil your duty. It is against the law for an employer to penalize an employee for attendance in court on being subpoenaed as a witness.

If, for a serious reason, you cannot appear in court at the appointed time, you must immediately contact the court service indicated on the back of the subpoena, the criminal and penal prosecuting attorney, or the police investigator in charge of the case.

## » How can you prepare to testify?

When preparing to testify, try to remember the details of the incident you witnessed such as conversations, persons present, times, distances and other relevant information. Make sure you are familiar with any document about which you will be testifying.

If you took notes at the time of the incident, make sure the police investigators have been made aware of them so that they are included in your testimony. And if you signed a statement during the course of the police investigation, ask the police investigator to let you review it before you testify.

Should you feel the need to do so, ask a close relative or acquaintance to accompany you to court, or request assistance from the crime victims assistance centre [CAVAC](#) in your area.

## » What should you do when you arrive at court?

On the day you are to testify, arrive at court early and bring your subpoena. On arriving, it is suggested you check the courtroom number with the reception desk or court clerk since sometimes cases are re-assigned to a different courtroom.

At the same time, inquire about the procedure for receiving the allowances and travelling expenses to which you are entitled for attendance as a witness.

Next, find out where you can inform the police investigator that you have arrived and ask him or her any questions you may have. If you have been called to testify by the defence, see the defence counsel. In any event, make sure you are in the courtroom at the scheduled time.

## » What should you expect once inside the courtroom?

Generally, several cases will be scheduled to be heard in the same courtroom on a given day, and all the witnesses in those cases are subpoenaed for the same time. It is therefore all but impossible to draw up a precise schedule for the day so be prepared to wait before you are called to give evidence.

Before the start of the proceeding in which you are to testify, you will probably be asked to leave the courtroom and wait outside to be called. This is a normal procedure, intended simply to prevent you from being influenced by the testimony of preceding witnesses. After giving testimony, you may remain in the courtroom unless the judge directs otherwise.

Court proceedings are usually open to the public. However, in the interests of the proper administration of justice or to maintain order, the judge may on his or her own initiative or at the request of one of the lawyers order that the proceeding be conducted in private. If this happens, not only is the public not allowed inside the courtroom, there is also a ban preventing anyone from publishing or disclosing information about what occurs or is said during the proceedings.

## »» **Ban on publishing the names of the victim or witnesses**

If the victim or a witness is under 18 years of age, the judge when requested is required to prohibit the media from disclosing the person's name or any other information that could serve to identify the victim or witness. The judge will decide on an individual basis if there are grounds for a publication ban on the names of other witnesses.

## »» **Can you refuse to testify or to answer questions?**

You cannot refuse to testify or answer questions. If you do refuse, you may be held in contempt of court and fined, sentenced to prison, or both.

It's important to remember, however, that your testimony cannot be used to incriminate you in other proceedings, except if you commit perjury or give contradictory testimony.

## »» **What should you do if someone tries to intimidate or influence you?**

If someone tries to intimidate you or influence your testimony, report it to the police or the criminal and penal prosecuting attorney immediately. Charges can be brought against anyone who attempts by threat or any other means to influence a witness or dissuade a witness from testifying.



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## »» **On the witness stand**

If you do not understand or speak the language of the proceedings, or have a hearing impairment, you are entitled to the assistance of an interpreter.

On the witness stand, you must promise to tell the truth, either by swearing on the Bible or making a solemn affirmation. The court clerk will then ask you to state your name and address. If you fear reprisals or threats, you can ask the judge to allow you to give your address in writing and it will then be kept confidential.

After you have been sworn in, the criminal and penal prosecuting attorney and the defence counsel will proceed to question you. Do not worry if you feel nervous, this is common and perfectly normal. Take your time, listen to the questions carefully, and make sure you understand them before answering. When in doubt, ask to have the question repeated or rephrased.

Give simple answers to the questions without adding unnecessary details. Always address your answers to the judge. Speak clearly and audibly so that your testimony can be recorded accurately. Be affirmative. If you don't know the answer, say so. Because the court is interested only in the facts, refrain from giving opinions or interpretations unless you are asked to do so.

If a lawyer objects to a question that has been asked, do not start to answer until the judge asks you to. Should you realize that you have given an incorrect answer, tell the judge immediately so that you can correct your error.

Do not discuss your testimony with other witnesses unless authorized to do so by the judge.

The lawyer for the party for whom you have been called to testify will question you first. The lawyer for the opposing party may then ask you questions in order to clarify your testimony or check its accuracy. This step is called cross-examination and it serves as a way of ensuring that everything has been said and that the truth has been determined.

Remain courteous in all circumstances. Remember that the judge is there to make sure that you are treated with respect.

## » How much time will you have to spend in court?

As mentioned earlier, it is practically impossible to predict how long proceedings will take. You must remain at court until you have testified or until the judge authorizes you to leave, which usually will be after you have testified.

You may also be authorized to leave without testifying. This may happen if the accused pleads guilty or waives a preliminary inquiry or the facts about which you were going to testify are not contested. It is also possible the case may be postponed and if so, the judge will tell you when you must come back to court or inform you that will be receiving a new subpoena.

## » Witness compensation

Whether you testify or not, before leaving the court you must go to the cash counter (caisse) or the witness compensation service to have the amount of witness allowances calculated. In addition to compensation for attendance in court, the allowance covers travelling, meal and stayover expenses.

Present your subpoena and vouchers for expenses such as hotel and public transportation receipts or the vehicle registration if you used your car.

If you were called as a witness by the prosecution, your expenses will be reimbursed by the compensation service at the courthouse. If you were called by the defence, your expense claim should be submitted to the defence lawyer.

## » Amount of allowances

### *Time loss*

Time loss compensation for an ordinary witness is \$90 per day or \$45 per half-day of absence from your residence. Compensation for an expert witness is \$180 per day or \$90 per half-day.

### *Transportation*

Transportation allowances are the same as those granted to government employees. Witnesses are entitled to be reimbursed for the cost of public transportation, or \$0.41 per kilometre and parking fees if the witness uses a car.

### *Meals*

Witnesses are reimbursed for meals up to the following amounts inclusive of taxes and tips:

- breakfast: \$10.40
- lunch: \$14.30
- dinner: \$21.55

### *Accommodation*

An allowance ranging from \$79 to \$138 per night inclusive of taxes, depending on the location of the hotel facility and the time of year, may be paid to a witness who provides a valid hotel receipt.

If the residence of a witness required to attend court on more than one day is far from where the testimony is to be given, the witness has the choice of travelling or staying overnight. The allowances paid, however, will always be calculated on the basis of the less expensive option.

## » Statement of Principle regarding Witnesses

In 1998, the Ministère de la Justice, the judiciary and the Barreau du Québec adopted the [Statement of Principle regarding Witnesses](#) which contains measures to protect the rights of witnesses and make the process of testifying easier.

## » For more information

Preparing to testify in Youth Court:

- [Witnesses: Your role in Youth Court](#)

The various stages in the judicial process for minors:

- [Understanding the youth criminal justice system](#)

Crime victims assistance centres (CAVACs):

- [CAVAC website](#) 

The statement of principle regarding witnesses:

- [Statement of principle](#)

The addresses and telephone numbers of Québec courthouses:

- [Courthouses](#)

Which judicial district a municipality is located in:

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**The content of this document is strictly informative and has no legal value.**

If you find some of the information difficult to understand, do not hesitate to [contact us](#).

**Please note, however, that we cannot interpret the information to apply it to a specific situation.**



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## Statement of Principle regarding Witnesses

- » **RECOGNIZING** the importance of maintaining the primacy of the person in the administration of justice;



**RECOGNIZING** the essential role played by witnesses in the judicial process;

**RECOGNIZING** the importance of ensuring that persons called to testify are given the respect, information and consideration to which they are entitled;

The parties agree to take appropriate action in their respective spheres to protect the rights of witnesses and to minimize inconvenience to witnesses. In particular,

- » **The Ministère de la Justice du Québec** agrees to:

- provide special rooms for crime victims and vulnerable witnesses where they can wait to testify without coming into contact with the accused (when a new courthouse is built or extensive alterations or renovations are made to an existing courthouse);
- provide witnesses with the appropriate reception, assistance and orientation services in courthouses and other court locations, to the extent that court resources allow;
- give particular consideration to the needs of witnesses when designing courthouse facilities.

- » **The Ministère de la Justice du Québec and the Barreau du Québec** agree to:

- provide subpoenaed witnesses with information on the judicial process and the conduct of proceedings;
- ensure that a witness directly affected by the proceedings is given information on the status and outcome of the proceedings by the party who subpoenas the witness, when explicitly requested by him or her;
- notify witnesses as quickly as possible when their presence is no longer required;
- advise witnesses of their rights and of their employers' legal obligations towards employees called as witnesses;
- advise witnesses of their entitlement to payment of travel and meal expenses and, as the case may be, compensation for time spent at court;
- avoid unnecessary subpoenas.

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» **The Judiciary, the Ministère de la Justice du Québec and the Barreau du Québec** agree to:

- treat witnesses with the utmost consideration, particularly vulnerable witnesses such as children, the elderly and persons with a physical or mental disability;
- provide child witnesses with special protection and care and address them in a manner that is appropriate to their level of understanding;
- take appropriate action to avoid repeated subpoenas to the same witness and to minimize inconvenience to witnesses;
- protect witnesses from intimidation tactics during proceedings and ensure that witnesses are not harassed or insulted during cross-examinations;
- protect the confidentiality of the address of a witness when there is reason to fear for the witness's physical or mental well-being, particularly in proceedings involving domestic violence.

**THE PARTIES HEREBY AGREE**, individually and collectively, to assume responsibility for compliance with the above-mentioned principles and to foster observance of them by justice practitioners.

*Montréal, June 1, 1998*

Chief Justice of Québec

Minister of Justice and Attorney General

Chief Justice of the Superior Court of Québec

Chief Judge of the Court of Québec

Bâtonnier of the Province of Québec



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## General Information

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**Please note:** The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

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