



GIVING EVIDENCE

“One witness is better than ten hearsays.” Proverbs

1. ***WHEN EVIDENCE NEEDS TO BE GIVEN***

When people go to court about a dispute, the court can act only on their evidence in making decisions. It is necessary for evidence to be placed before a court to enable it to make a decision.

2. ***THE FORM OF THE EVIDENCE***

Evidence is presented to a court in five forms:

- physical evidence
- documents,
- evidence-in-chief,
- cross-examination, and
- re-examination.

3. ***PHYSICAL EVIDENCE***

Sometimes it is necessary to produce physical evidence to a court. For example, in criminal proceedings this may be a sample of hair. It is used only occasionally in family law proceedings. Physical evidence will be presented to the court. This is called *tendering*. When items are tendered, they become *exhibits*.

4. DOCUMENTS

These are often tendered to a court, either annexed or exhibited to an affidavit, or tendered in court. There are many documents that may be able to be used. It is important to remember what documents you have that may be able to assist or harm your case, as documents can often be critical in deciding cases, and bring these to our attention at the earliest opportunity. Sometimes documents are obtained from other people, including by court documents called subpoenas or summonses.

5. EVIDENCE-IN-CHIEF

This is the main form of giving evidence. This is when the witness or party tells their story. The story is either contained in either oral or written evidence. Oral evidence is given directly to a court, either in court or by phone or videolink. Sometimes the witness is required to come to court because of a subpoena or summons.

Written evidence is usually given in the form of a sworn statement, which is called an *affidavit*. Contrary to myth, cases are not usually won on the weakness of the other side when they are cross-examined, but on the strength of the case given in evidence-in-chief. It is therefore extremely important that great effort is made to ensure that the evidence-in-chief is properly prepared. Most evidence these days is given by affidavit and often the person giving that evidence will not have to be cross-examined.

If oral evidence is being given, this will usually only occur at a final hearing or trial. It is essential that before you give evidence at a trial that you are fully prepared. The lawyer who may be questioning you in evidence-in-chief is restricted in how you can be asked questions, and in particular cannot lead or coach you.

6. CROSS-EXAMINATION

After oral evidence is given, the witness can then be cross-examined. This is a process to try and test your case. The person who questions you will usually be the lawyer for the other party, and sometimes the judge.

7. RE-EXAMINATION

Once cross-examination has been completed, the witness can then be asked more questions by their lawyer. This is **not** a process to fill in the gaps exposed by cross-examination, but merely to clear up any answers given in cross-examination. Often re-examination does not occur. It is the choice of your lawyer as to whether you are re-examined or not.

HARRINGTON FAMILY LAWYERS

Level 12, 239 George Street
BRISBANE QLD 4000

All Correspondence to: PO Box 12135, George Street QLD 4003

Telephone: (07) 3221 9544

Facsimile: (07) 3221 9969

Email: harringtonfamilylawyers.com

8. PREPARATION FOR COURT

The most important part is to be honest with your lawyer, and to tell your lawyer everything, as early as possible. If you have relevant documents, then the earlier we see them, the better. If you do not know what might be relevant, ask us. If you believe that there are witnesses who can assist your case, the sooner we know about them, the better. It is much better for your lawyers not to have surprises, as these are usually bad for your case.

9. CHECKING YOUR STATEMENT/AFFIDAVIT

It is essential that before you go to court that you have checked your statement/affidavit to make sure that it is accurate and up to date. If it is not, then let us know. The sooner you do this, the better.

10. WATCHING OTHER CASES

It is a good idea to watch other cases so that you can see some of the court processes in action well before you have to give evidence, and especially see how other people give evidence. We will usually recommend to you as to which courts to go to, so that you can be prepared fully.

11. ANSWERING QUESTIONS

When it is your turn to give evidence in the witness box, you are there for one purpose- to answer questions. You have two obligations to the court- to tell the truth, and to answer the question. There may be questions that you do not like, or feel uncomfortable with. Unless the question is unfair to you as a witness (as opposed to one you would rather not answer), then you must answer it.

It is best to answer questions in a straightforward style, and not to use too many words. If you do not understand the question, say so. If your understanding of the question is unclear, you can reframe the question and then give your answer.

Sometimes lawyers asking questions try to intimidate the witness. This is often done by eye contact and by shouting. There are two ways of dealing with this- do not maintain eye contact, and remain calm. You are the one giving evidence, not the lawyer. The easiest way is to look at a point near the lawyer's head, such as their ear or shoulder, or just above their shoulder. In this way you are looking at the lawyer, but have broken that eye contact.

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Sometimes a lawyer will pause in asking questions. This is *not* the time to leap in and volunteer answers, but to wait patiently until the next question is asked.

12. WHAT NOT TO DO IN ANSWERING QUESTIONS

The court can take into account your non-verbal responses as well as your answers to questions. These non-verbal responses are called your *demeanor*.

- DO NOT look at us for the answer – we are not the ones answering the questions. You are. By looking at us, it would seem that you are appealing to us for help.
- DO NOT stare at your former partner or at the judge (obviously look at the judge when he or she is asking you questions) – as this might be seen as intimidating.
- DO NOT move your eyes about the room, as if you have no idea as to the question being asked and need help.
- DO NOT mouth off in court (either in the witness box or elsewhere).
- DO NOT engage in theatrical gestures.
- DO treat the court with respect. Courts are solemn places and ought to be treated with respect. You are either there asking for the court’s help or helping a friend who is seeking the court’s help.

13. HOW YOUR LAWYER CAN HELP

If you are in the midst of giving evidence, ordinarily we cannot help you other than to try to make the process fair.

14. SOME POINTERS ON CROSS-EXAMINATION

- Lawyers, unlike American TV dramas, rarely approach the bench or the witness box. They remain at the table at which they stand. This is called the *bar table*.
- Whilst you might fear being asked any question under the sun, *you can only answer the truth*. Unless you are an expert on the geology of the moon, if you are asked “Is the inside of the moon blue?”, your answer would be: “I don’t know.”
- Whilst you might be offended at some of the questions being asked of you, it is necessary for you to answer those questions unless successful objection is taken to the question.
- When an objection is taken to a question, stop answering. The judge will then decide if you have to answer the question. Wait until the judge has made that decision.

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- Often lawyers are required to put their case to you. Your obligation as a witness is to respond to the proposition – you do not have to agree with it, unless it is right.

Example:

- “I put to you that my client was never violent to you?”
- “I don’t agree, he was.”

15. IF YOUR VIOLENT EX-PARTNER IS AT COURT

Unfortunately one of the features of the courtroom is that you come close to your former violent partner, who may in turn cross-examine you. Here are some pointers:

- Stand up to bullies. This is the only message that they ever ought to get.
- Be brave. It is essential that you are as strong as you can be, both to give justice to your case and for your children.
- Be prepared. Take a friend or family member with you for support. If this person is a witness, bear in mind that they may be unable to stay with you until after they have given evidence.
- Speak to us about security. We take our clients’ safety very seriously. Arrangements can be made to make you safer at court.
- Don’t stare at your ex-partner. Even though he or she may frighten you, it can still be seen to be intimidating behaviour by you.

16. COURT BEHAVIOUR AND DRESS

Courts are solemn places. It is very important that your behaviour reflects the respect you have for the institution of the court (after all you are asking the court to help you), and that you dress conservatively.

Unless we advise you otherwise, the judge is known as “your Honour”.

Harrington Family Lawyers pride ourselves on our accurate advice to clients. This brochure is of a general nature only, and may not reflect your specific needs. For specific advice in your matter, you should contact us, so as to ensure that the advice for you is accurate.

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