



WITNESSES

Introduction

The LSBC Tribunal hears and decides regulatory cases about lawyers and people applying for a license to practice law in British Columbia. The LSBC Tribunal's role is to reach a fair and just outcome and its processes are designed to seek the truth. The LSBC Tribunal values the evidence and time of all witnesses who testify before it. Witnesses' testimony plays an important role in deciding cases.

Respect

Parties' and representatives' written and oral communications with witnesses, including during examination and cross-examination, must be respectful to them. Similarly, witnesses must treat all other participants in the proceeding with respect.

Methods of hearing

Appearances may take place virtually, in person or in writing. Virtual hearings typically take place by videoconference, using the Zoom platform. At a virtual hearing, all participants, including witnesses, attend electronically using a computer, smartphone or tablet. The LSBC Tribunal has a guide to attending Zoom hearings that may be helpful to witnesses participating in a virtual hearing.

Methods of testimony

A witness may testify in person, virtually by video or telephone conference, or by affidavit.

Testifying by video or teleconference at an in-person appearance

A witness can testify by video or teleconference at an in-person appearance if the parties consent or the LSBC Tribunal gives leave. The LSBC Tribunal has electronically equipped hearing rooms, and a witness can testify remotely by video conference from any device with a camera and a microphone, including a computer, smartphone or tablet. The LSBC Tribunal's equipment allows the witness to see the panel, representative or party asking questions and the other party or their representative. If the parties agree or permission has been granted, the Hearing Clerk will make the arrangements for the video conference. The parties should advise the Tribunal Office of the consent or ask for permission as far in advance as possible so the Tribunal Office can make arrangements.

Affidavits

A witness's evidence-in-chief may be given by affidavit, unless the LSBC Tribunal orders otherwise. Cross-examination, if any, on a witness's affidavit takes place before the panel at the hearing, unless the LSBC Tribunal orders otherwise.

Exclusion of witnesses

On request, the LSBC Tribunal will generally make an order that anyone who may be a witness not attend the hearing (and that those present not communicate with excluded witnesses about the evidence) until they are ready to give their evidence.

Accommodation

Witnesses are entitled to accommodation of their needs under the *Human Rights Code* and to other accommodations that would be fair and in the interests of justice. Examples are extra breaks throughout the day for health reasons, alternating between sitting and standing if prolonged sitting is difficult, and interpretation to and from a language other than the language of the proceeding.

If you are a witness who requires accommodation, please contact the Tribunal Office and/or the party who is calling you as a witness.

The LSBC Tribunal may make other orders to accommodate or protect witnesses where it would be fair and in the interests of justice.

Support person

The LSBC Tribunal may permit a support person to sit next to a witness while they testify. The support person should not communicate with the witness while they are testifying, should remain on camera in a videoconference hearing and must not disrupt the process.

A support person will be permitted on request, unless there would be harm to the hearing process. Support people must be arranged in advance and the need for a support person will not generally be a ground for an adjournment. The LSBC Tribunal may decide that a proposed support person is not appropriate, for example if they are a witness, or it appears they will not respect the limitations of their role. The LSBC Tribunal may direct that a support person be removed if they are not acting as required.

Manner of testifying and cross-examination

Children under 18, those alleging sexual assault or harassment and others may have difficulty testifying in the presence of the licensee/licence applicant, or another person, for reasons related to factors including age, disability, illness, trauma or emotional state.

To address this, and when it would be fair and in the interests of justice, the LSBC Tribunal may permit a witness to testify in a manner that would allow the witness to not see the licensee/licence applicant or other person. Generally, this will be done by having the witness testify by videoconference from an adjacent hearing room. In a virtual hearing, the licensee/licence applicant or other person may be asked to turn off their video camera.

The LSBC Tribunal may order that the licensee/licence applicant not personally conduct the cross-examination of witnesses. When it makes such an order the LSBC Tribunal will appoint counsel to do so at its cost.

No adverse inference

The LSBC Tribunal cannot find that testimony is less worthy of belief because a witness has been accommodated.

Cross-examination

Cross-examination plays an important role in the truth-finding process. There are limits, however, and it must not be abused. Cross-examination of a witness cannot be repetitive, abusive or otherwise inappropriate. The panel must stop cross-examination that includes harassment, misrepresentation, or groundless questions with irrelevant innuendo. The panel may also limit examination or cross-examination where the examination or cross-examination has been sufficient to disclose the matters at issue in the proceeding.