

Preparing and Examining Your Witnesses at Trial

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The Paralegal Licence

An Advocate's Licence

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The Advocacy Process

1. Gather info
2. Process info
3. Present info

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The 6 Trial Fundamentals

1. Story
2. People
3. Documents and things
4. Law of evidence
5. Trial procedure
6. Substantive law

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Presentation Roadmap

1. Witness Management
2. Witnesses and Ethics
3. Witness Preparation
4. Direct Examination

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1. Witness Management

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Identifying the Witnesses You Need

Documents vs. Witnesses

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The 4 Types of Witnesses

1. Parties
2. Lay witnesses
3. Participant experts
4. Hired guns

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Witness Statements

Email

Signed

Affidavit

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Witness Statements & Privilege

Paralegal – Client Privilege

Litigation Privilege

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Good Experts

Education
Experience
Have testified before
Able to explain things
Likeable

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Expert Report Requirements

1. Name, address, area of expertise
2. Qualifications
3. Instructions provided

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Expert Report Requirements (continued)

4. Nature of the opinion
5. The opinion
6. The reasons for the opinion
7. Acknowledgement of expert's
duty

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Will Say Statements

Summary of anticipated
evidence

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Long-Range Witness Management

Obtain contact information

Long-range letter

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Summonses and Subpoenas

Summons for civil

Subpoenas for criminal

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2. Witnesses and Ethics

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Paralegal Rules of Conduct

Professionalism
Integrity
Civility
Duty to the Courts

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Witnesses & Privilege

Paralegal – Client Privilege

Litigation Privilege

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Communicating With Witnesses

Recording conversations

Use of private investigators

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Experts and Ethics

An expert's duty is to help the
Court

Not to advocate for your client

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Order Excluding Witnesses

Protect yourself

Protect your client

Protect your witness

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Communicating at Trial

Only talk before they testify.

Don't talk while they testify.

Rule 4.03

(there are exceptions)

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Break

Online trial resources for the OPA:

www.trialcounsel.ca/OPA

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3. Witness Preparation

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Memo to Witness

Where and when
Tips
Documents to review
Issues

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Memo: General Witness Tips

1. Tell the truth
2. Answer the question directly
3. Be yourself
4. Teach the Judge

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Memo: Manner of Questioning

Direct – open-ended

Cross - leading

Redirect – open-ended

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Memo: Documents

Provide a copy of the documents

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Memo: List of Issues

Provide a list of issues that will form part of your examination

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Witness Meeting

Direct Examination

Cross-Examination

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The Rule in Browne v. Dunn

If you intend to call a witness to contradict the witness being cross-examined, you must put the contradictory facts to the witness being cross-examined

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Witness Likeability

Reinforce the positive

Point out the negative

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4. Direct Examination

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A Shout Out

Larry Pozner and Roger Dodd

“Cross-Examination
Science and Techniques”

2nd Edition



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3 Rules of Direct Examination

1. Open-ended questions only
2. One chapter at a time
3. Work towards a goal



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3 Rules of Cross-Examination

1. Open-ended questions only

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3 Rules of Cross-Examination

2. One chapter at a time

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3 Rules of Cross-Examination

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3. Work towards a goal



Preparing the Direct Examination

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1. Gather a pile of stuff
2. Organise info by topics
3. Draft chapters of direct examination



Organising the Facts

Preparation

TOPIC		
SOURCE	FACTS	NOTES

Chapters of Direct Examination

Direct Examination

CHAPTER		
SOURCE	OPEN-ENDED QUESTIONS	TACTICS

Conducting the Direct Examination

Use your chapters of direct examination

Have your source material handy

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Note-Taking during Direct Examination

Take limited notes into your chapters of direct examination

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Redirect Examination

Heads up given to witness

Extra notepad during cross-examination

Execution

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Thank you!

Online trial resources for the OPA:

www.trialcounsel.ca/OPA

