

Guide to Supporting Vulnerable Adult Witnesses in Criminal Matters

Adult witnesses may experience vulnerabilities for different reasons. This guide identifies some ways of providing support depending on the unique needs and abilities of a witness. Some witnesses may be able to have their needs accommodated using testimonial aids provided by the court. Some witnesses will have unique communication needs and abilities, which can be supported with an appropriate communication style or communication aids. Adopting a trauma informed approach when working with vulnerable witnesses can help to avoid or minimize re-traumatization and foster communication built on trust.

Meeting a Witness' Needs and Abilities

Each courthouse in BC has an accessibility coordinator who can assist in identifying how to navigate the courthouse and what equipment and services are available to meet a person's accessibility needs. Ultimately, it is up to the court to make any directions or orders for accommodations that may be requested.

Meeting a person's unique communication needs and abilities may simply require communication that is tailored to the individual's strengths and weaknesses. Gathering information about a person's education, the languages they speak, whether they use sign language or a communication aid in their daily life, and whether they have a caretaker or support person can help give a better picture of their communication abilities.

Testimonial Aids

Testimonial aids are measures that can be put in place to support witnesses in giving their full and honest testimony. They may help support the safety of a witness, their access and mobility needs, communication needs, or emotional needs.

All victims of crime in Canada have a right to request a testimonial aid when testifying in a criminal court. They also have a right to have reasonable and necessary steps taken to protect them from intimidation and retaliation. These rights are recognized in the *Canadian Victims Bill of Rights*. A victim or witness can ask the court for a testimonial aid or they can ask the prosecutor to request a testimonial aid for them. It is up to the court to decide if that request will be granted.

Testimonial aids are available to adult witnesses if it would be difficult for them to give their testimony due to a mental or physical disability. Testimonial aids may be granted for other adult witnesses if the court finds that the aid would make it easier for them to testify fully and honestly in light of their age, the nature of the offence, the nature of the relationship between the witness and the accused and any concerns for the safety of the witness.

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Restrictions on Testimonial Aids

An accused has a right to a fair trial and a court can deny the use of a testimonial aid to protect this right. Adult witnesses who do not have a mental or physical disability which makes it difficult for them to give their testimony will need to persuade the court that the testimonial aid they seek will make it easier for them to testify fully and honestly or that it will help serve the interests of justice.

Types of Accommodations Available

- A witness may testify **behind a screen or from a different location** via closed-circuit television or other technology. This can support a witness with safety concerns or barriers in accessing the courtroom. Witness safety may also be supported by excluding the public from the courtroom (ss. 486(1), 486.2, and 714.1 *Criminal Code of Canada*).
- Having a **support person or courtroom dog** present while testifying may provide emotional support for a witness (s. 486.1 *Criminal Code of Canada*).
- Use of **sign language interpretation or technology to support communication** may help a witness who faces barriers in communicating their evidence verbally (s. 6 *Canada Evidence Act*).
- **Taking evidence in advance of a trial or pre-recording evidence on video** may help preserve evidence in case a witness dies or loses testimonial competency by the time of the trial (s. 709, 715(1) and 715.2(1) *Criminal Code of Canada*).
- Asking the court to **appoint a lawyer to cross-examine** the witness if the accused is self-represented may facilitate communication during the cross-examination if the accused and the witness know each other (s. 486.3 *Criminal Code of Canada*).

Additional Ways of Supporting Vulnerable Adult Witnesses

- Explaining each person's role in the trial, including their own role, can help a witness understand the process and stay focused on what is relevant when they testify. This may minimize any need to interrupt and re-orient a witness.
- Consider whether visual communication aids (i.e., diagrams, photographs) will help support a witness' recall and communication.
- Structure questions in a logical or chronological order. If a witness has a hard time recalling the exact timing of events, ask questions that focus on memory fragments and expand from there. Tie questions about timing to an event to help with sequencing.
- Let a witness know they do not need to agree with a suggestion if it is not true.
- Use clear and simple language. Break down long or confusing questions so they are easier to understand.
- Let a witness know they can request breaks.