



Canadian Nurses  
Protective Society

infoLAW®

## The Nurse as a Witness

### What are common situations where nurses are called as witnesses?

As a professional, you may be required to appear as a witness for: employment-related matters; coroners' inquests or fatality inquiries; child welfare proceedings; professional discipline proceedings before a provincial or territorial regulatory body; civil lawsuits; or criminal proceedings.

### How do I know if I am required to attend?

Depending on the type of proceeding, you may be asked to testify as a witness on a voluntary basis or you may be formally summoned. A request to attend as a witness may be verbal or in writing. When an informal request is made, you need not agree to appear. You must attend, however, when you receive a legal document such as a summons, subpoena or Notice to Attend. Failure to obey such a document will result in legal consequences for you.

### Who pays for my expenses?

When you are formally summoned to appear as a witness, the recovery of expenses and lost wages may be limited by the Rules of Court in the jurisdiction. You should therefore consult the lawyer who compelled your attendance to ask what the recovery limits are. You should also consult your employer because, in some situations, employers have arrangements for witnesses to receive their salaries while performing witness duties. If you agree to an informal request to be a witness, however, you should negotiate a fee for your services and expenses with the lawyer requesting your attendance.

### How can I prepare to testify?

Preparation prior to giving testimony is always a sound plan. In order to prepare, you should review all relevant documentation including: the patient care record (particularly your own entries); any personal notes you have prepared; statements given before the proceeding; policies and procedures relevant at the time; letters; and memos. You should also meet with the lawyer who requested your attendance to review the process and anticipated evidence.

### As a witness, what can I expect?

When called to testify, you will be sworn in and asked to tell the whole truth by swearing on a Bible or affirming that you will tell the truth. You will be questioned first by the lawyer who requested your presence and then by other lawyers involved in the case. When answering questions, you should:

- answer questions honestly;
- speak from personal knowledge;
- not guess at answers; and
- avoid conjecture and innuendo.

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**The role of the  
witness: listen  
to the questions  
put to you  
and respond  
truthfully.**



**More than  
liability  
protection**

For example, if you do not know the answer, or do not recall the incident, you should say so. Unless you are testifying as an expert witness you should stick to the facts as you know them and avoid giving opinions. If a lawyer objects to the judge about a question being asked of you, immediately stop speaking. The lawyers and the court will resolve the issue before you are asked another question.

You should dress and act professionally because your demeanour may affect the credibility of your testimony. Listen carefully to questions, ask for clarification if necessary, and respond in a clear, confident manner. Answer questions as briefly as possible, using “yes” or “no” where appropriate. Do not volunteer information that is not requested. When you are testifying, gestures such as pointing or nodding are inappropriate because the recorder can only transcribe verbal replies.

## Do I need my own lawyer if I am going to be a witness?

The need for legal representation will vary according to the type of proceeding and the facts. For example, if you are only testifying about your knowledge of the events and there are no allegations of blame or negligence against you, you are not likely to need your own legal representation. However, if you believe you are being implicated in the legal proceedings or if there are allegations of wrongdoing against you, you should consult legal counsel before appearing as a witness in any proceeding. Before hiring your own legal counsel, you should ask whether legal representation is available to you through your employer, your union, or some other source.

## Summary

There is no obligation to appear as a witness in any legal proceeding unless you have received a legal document compelling you to do so. If you do appear as a witness, proper preparation will reduce your anxiety and help you to be an effective witness. If you have any questions or concerns about being a witness, contact the Canadian Nurses Protective Society at 1-844-4MY-CNPS.

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