NSRLP

The National Self-Represented Litigants Project

Coping with the courtroom

A primer to help you navigate the written (and unwritten) rules of the courtroom

representingyourselfcanada.com

THE CANADIAN BAR ASSOCIATION

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A note of support

If you are reading this, you are considering representing yourself in court without the assistance of a lawyer – or perhaps you've already begun.

However you reached this decision, **you should know that you are not alone** – many Canadians are now coming to court without a lawyer, most often because of the high cost of legal services.

If you're going to be a self-represented litigant in family or civil court, this primer has a lot of important information for you, created with input from a number of legal experts. We hope that the information is presented in a way that is accessible and useful, and that it assists and supports you at each stage of the process.

We've created this primer for Canadians in different parts of the country who are bringing forward a number of legal actions. To be helpful to all, we've included practical advice to get you oriented, but the advice is also general enough to be useful in different courts and regions.

You will need to do additional research to learn what rules and laws apply to your particular situation. As a starting point, we've included Online Resources for Courts Across Canada at the end of this primer.

Representing yourself is stressful and difficult, but **the advice and tips here will help you to navigate the process.** If you want to connect with other SRLs who are in a similar situation to yourself, I encourage you to join our Facebook group.

Good luck!

Julie

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Grateful appreciation to Hannah Bahmanpour and Kaila Scarrow for their research and input into this primer.

Coping with the courtroom

A primer to **help you navigate** the written (and unwritten) rules of the courtroom

You've filed the paperwork to start the legal process. You've done your legal research, and prepared your case.

You know who will be coming with you to court, and you've managed your stress along the way.

You've waited and waited – and you finally have your court date. And now you're ready to learn what will happen the "day of". How you can navigate the written and unwritten rules of the courtroom.

The tips we've included in this guide are based on years of experience from legal experts and self-represented litigants who have done what you're about to do.

So let's begin! This primer is organized into the following sections:

1. Things to do well in advance
2. Preparing for each stage of your hearing
3. Court etiquette and tips for the "day of" and
4. Things to do after your hearing

By the time you're finished this primer, you'll know what to expect in the courtroom, and how to present your case effectively.

Things to do well in advance

This section gives you things you can do in advance to increase your confidence on the day of your hearing.

Learn the physical set up of the courtroom (or chambers)

To ease your nervousness, make time to visit the court you'll be appearing in ahead of your court date.

Where the judge sits

In the courtroom, the judge usually sits on a dais, which is a platform at the front of the courtroom. So they will be sitting "higher" than you.

Where you sit

In front of the judge, there will be two tables, one for each party. These are called counsel tables. You will sit at a table, with your support person, if you have one. And the other party will sit at the other table with their lawyer, if they have one.

Where you'll speak

There's usually a stand with a microphone at the front of the courtroom. This is where you'll be doing most of your speaking and presenting.

Others who may be there

- The court reporter takes notes during the hearing.
- The registrar wears a gown. They pass files back and forth between you and the judge, and provide you with any final endorsement. (The judge's order.)
- The court clerk doesn't wear a gown. They may pour water for the judge and do other minor errands. In some courts, the clerk will also act as the reporter.

Be aware, most hearings are public – Most family court cases are open to the public, and just a few proceedings are closed and held "in camera". This means that you may see people walking in and out of the courtroom during your hearing. Also, be aware that everything said is recorded.

Attend and observe other hearings

If you can, attend other public hearings and trials before your first court appearance. Although cases naturally differ from one another, you'll still get a sense of what to expect. Many SRLs have told us that this was very useful to them, and helped to settle their nerves somewhat.

To find out what's happening at your courthouse, ask at the front counter about the upcoming hearing schedule. You might also be able to check the "Daily Court List" of hearings online.

Try to attend a hearing that's dealing with a situation similar to yours. This way, you can observe the procedures used. For example, if you have a witness in your case, you may want to attend one or more hearings where there are witnesses.

We encourage you to take some time to attend some hearings. It'll help you see how judges and lawyers interact. Plus it'll show you how to put your witness on the stand, how to ask questions, and how to object, for example.

Confirm your court's hours of operation

Courtroom hours vary across the country. So you'll want to confirm the hours at your local courthouse before your court date. You can either check their hours online, or call the courthouse directly.

Generally, trials and hearings are scheduled from 9:30 or 10:00 a.m. until 4:30 p.m. The court usually takes a break for lunch at 1:00 p.m.

Plan how you'll present (and prove) your case

At first, you'll be doing a lot of organizing and researching in different areas. Before your hearing or trial, you'll pull it all together into a presentation designed to prove your case to the best of your ability.

Quick recap. Before you go to your hearing or trial, you'll need to organize:

Your case

If you started the legal process, you submitted an application form (in a family case) or a statement of claim (in a civil case). If you didn't start the case, this would be your answer (in a family case) or your defence (in a civil case) to the other party's claims.

The names of the forms will be a bit different depending on whether your case is a civil or family matter, and what province or territory you're in.

Online Resources for Courts Across Canada

A list of all provincial court websites:

- British Columbia – https://www.bccourts.ca/
- Alberta – https://www.albertacourts.ca/pc/home
- Saskatchewan – https://sasklawcourts.ca/
- Manitoba – http://www.manitobacourts.mb.ca/
- Ontario – http://www.ontariocourts.ca/ocj/
- Quebec – http://www.tribunaux.qc.ca/mjq_en/c-quebec/index-cq.html
- New Brunswick – https://www.courtsnb-coursnb.ca/content/cour/en.html
- PEI – https://www.courts.pe.ca/
- Nova Scotia – https://www.courts.ns.ca/
- Nunavut – https://www.nunavutcourts.ca/
- Northwest Territories – https://www.nwtcourts.ca/en
- Yukon – http://www.yukoncourts.ca/courts/territorial.html

The legal argument

This has to be more than just your opinion or evaluation. It has to be based on the law in either previous legal decisions similar to your own, and/or statutes that apply to your case.

How do you find the relevant law in your case?

The source that most SRLs use is **CanLII**, a publicly accessible legal database of legal decisions in Canada.

CanLII is a great resource – and it's free! – but it takes practice to use effectively. You can learn how to use CanLII to research the law on your case and help you read a legal decision by going to our primers ***Doing Your Research Part 1***, ***Doing Your Research Part 2***, and ***Reference Guide***.

And where a statute applies to your case – for example, the Children's Law Reform Act – you will find reference to this in legal decisions on similar cases.

Your evidence (proof)

Your goal is to put together enough evidence to convince the judge to agree with your legal argument. Evidence connects the facts of your own case to the legal arguments you are making, and shows the judge why that law is relevant to their decision.

Evidence might include:

- Witnesses, who are family or friends;
- Expert witnesses, with a professional expertise (such as a doctor, therapist, or counsellor);
- Documents, such as financial statements, letters, photographs, receipts, or reports;
- Affidavits (sworn statements) from a witness or expert who cannot come to court with you but who can support your case in some way.

To understand how to write and swear an affidavit, see our primer ***What you need to know about affidavits***. (Watch out for our new primer on evidence in fall 2020)

Your presentation in court

This is your presentation of the evidence that helps prove the claims in your application. It is your claims or your answer to the other party's claims against you.

We include detailed tips on how to present your case later on in this guide. To briefly summarize, your presentation in court will include:

- Your opening statements;
- Presenting your case;
- Questioning and cross-examining witnesses;
- Testifying yourself;
- Closing statements.

Choose and prepare witnesses

You can call individuals as witnesses, including family or friends who have relevant information. You can also testify yourself as a witness. And in some cases, you may wish to use an **expert** witness. Keep in mind there are fees to issue a summons to a witness, and there are fees payable to a witness. We suggest you ask your courthouse for more details.

Expert witnesses

Expert witnesses give an opinion based on their professional qualifications and expertise. You may decide that you want an expert's opinion to strengthen your case.

For example, you might want an opinion from a doctor about a medical diagnosis. Or a professional opinion from other experts like therapists or counsellors.

You can also ask a family law expert to prepare a custody and access assessment report, which you can present in the court as evidence (such reports sometimes assist with settlement). If the matter goes to trial, the person who prepared the report may also be called as a witness, and testify at your hearing in person.

Note that your friends and family cannot give an expert opinion in court, even if they are an expert in a certain area.

If you're considering using an expert witness, here's what to do:

Research the court rules around expert witnesses

Civil matters

Refer to the **Rules of Civil Procedure** in your province or territory. For instance, the Ontario Rules of Civil Procedure are available here: https://www.ontario.ca/laws/regulation/900194.

Rule 53.03 sets out the rules surrounding expert witnesses. You may also want to refer to **Rule 31.06(3)** and **Rule 36.01(4)** which discuss expert witnesses.

Family matters

Refer to the **Family Law Rules** in your province or territory. For instance, the Ontario Family Law Rules can be found here: https://www.ontario.ca/laws/regulation/990114.

Rule 20.1 specifically sets out the rules surrounding expert witnesses.

When you're researching other cases, notice how expert witnesses are used.

Find out when the court requires you to submit an expert report.

When you decide who you want as an expert witness, call them to ask if they'd do this for you and how they work. Remember to ask them:

- what their fees are for preparing an expert report and testifying in person;
- how long they'd need to produce an expert report;
- how much notice they'd need to appear in person.

Excluding witnesses from the courtroom

If you testify yourself, you can stay in the courtroom when other witnesses testify.

But at the beginning of trial you, the judge, or the other party may order that a witness be excluded from the courtroom. This makes sure that a witness doesn't change their testimony after listening to another witness.

Be sure to warn your witnesses that they may be excluded, so they aren't surprised. And if one of your witnesses is excluded, do not speak to them about any other evidence or witness testimony given before they testify.

Research your judge (each one is different)

It's possible that you'll have the same judge for your entire case. If so, it's beneficial to get to know them. But more often, you'll be presenting before a number of different judges, with different approaches.

Some SRLs have told us that they found it helpful to do a little bit of homework to find out a bit more about their judge beforehand.

There are a few ways you can do this:

1. Talk to other SRLs, Duty Counsel at your courthouse, or other court staff.
2. Search online to find out a little about the judge's reputation, and how he or she has decided previous cases.
3. Enter the judge's name into the legal database CanLII to get a sense of how they decide their cases and how they interact with parties, generally.

Be aware that sometimes the volume of cases a judge is dealing with means that it is not possible for them to have read all the materials for all their cases in advance. Always make your submissions simple, short, and easy for the judge to understand.

Many judges will treat parties, including people representing themselves, with courtesy and respect, attend court with an open and inquiring mind, and do the hard work required to reach a reasonable decision. However, as with any group of human beings, you may encounter a judge who does not possess these qualities generally, or on a given day.

Judge "types" to be aware of

Justice Carole Curtis is a former Law Society Bencher and family practitioner. In her 2011 article *Dealing with Difficult Judges*, she describes some more difficult judge "types" to be aware of and to be prepared for.

The judge who has prejudged – If you suspect that the judge has already decided on your case before you and the other party speak, take a deep breath. In this difficult situation, do exactly what you were planning to do. Continue presenting your case clearly and precisely. This way, you'll have a chance of convincing the judge, or changing their mind.

The discourteous judge – If you encounter a discourteous judge, maintain your composure, remain calm, polite, and focused. Remember that everything you say and do in court will become part of the public record and that everything is recorded. In this challenging situation, your goal is to diffuse the situation.

The inexperienced judge – Appearing before a judge who isn't experienced in family law can be a unique challenge. If this happens to you, be prepared to adjust your presentation. Start by explaining exactly what you are asking the judge to order. Then make sure you cover basic information when presenting your case.

The judge who appears to dislike you – If the judge appears to dislike you, first try to find out why. Pay attention to clues from the judge about your materials. Do not butt heads with a judge who appears to dislike you. Instead, back down. End the 'contest' by retreating or apologizing. Stay calm, focused, polite, and respectful at all times. This may not be easy, but it's your best chance of turning things around.

Create a case binder

The legal system just loves paperwork ☺. So get organized by keeping all your documents in a binder.

Here are some ideas on the kinds of tabs you might use:

Tabs for court documents, such as your Application or Answer, Claim or Defence

Tabs for key evidence, which might include timelines or cases that are useful

Tabs that mirror the court record (this is what lawyers tend to do). In family matters, this is called a Continuing Record. The court keeps the Application at Tab 1, the Answer at Tab 2, and so on. This works well, because when you're in court, you can direct the judge to the tab in their version of the continuing record.

Create a "what to bring with me to court" checklist

This would be a practical list of things to take with you to your hearing:

- ☐ Questions for the judge, witnesses, or Duty Counsel
- ☐ Courthouse address, hours, and parking instructions
- ☐ Personal items, such as water, and nuts to snack on
- ☐ Your notes about court etiquette, your opening statement, or other helpful reminders

If you or a witness needs an interpreter

Arrange for an interpreter as far in advance of your case as possible.

Each province and territory handles interpreters a bit differently. And each offers different levels of support. For example, the number of interpreters available, how they provide services, and the languages they handle (including sign language) vary across the country, and may change.

Here's what to do:

1. Use the links below to read up about interpreters in your province or territory.
2. Call the office to ask questions, or to schedule an interpreter for your court date.
3. If you don't get what you need, you can also call your local courthouse for advice on how to arrange for an interpreter.
4. When you've scheduled an interpreter, let the court office where your case is scheduled know, before your hearing.

Interpreter services by province and territory

PROVINCE OR TERRITORY	WHERE TO GET MORE INFORMATION
Alberta	Website: https://www.albertacourts.ca/pc/court-practice-and-schedules/interpreters-french-trials Website: https://acia-alberta.org/ Email: info@acia-alberta.org We also suggest asking at your courthouse.
British Columbia	Website: https://www2.gov.bc.ca/gov/content/justice/courthouse-services/interpreters Email: AskCIP@gov.bc.ca
Manitoba	Website: http://www.manitobacourts.mb.ca/pdf/interpretation_services.pdf Email: AskCIP@gov.bc.ca *Official languages French and English* – From one official language to the other for all criminal and civil proceedings (including family proceedings) • Interpretation Section Head, Translation Services • Phone: 945-3096 • Email: translation@gov.mb.ca American sign language – English Interpreters and Deaf-Blind Intervenors or Notetakers to accommodate Deaf and Deaf-Blind Manitobans • E-Quality Communication Centre of Excellence (ECCOE) • Phone: 926-3271 • Email: candy@eccoe.com

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PROVINCE OR TERRITORY	WHERE TO GET MORE INFORMATION
New Brunswick	Website: https://www2.gnb.ca/content/gnb/en/contacts/dept_renderer.173.201760.1662.html Phone: (506) 453-2920 Email: tb.reception@gnb.ca We also suggest asking at your courthouse.
Newfoundland and Labrador	Website: http://www.languagelinx.ca/court/newfoundlandandlabrador-court-interpreters.aspx Phone: 1-800-385-8593 Email: bookings@languagelinx.ca We also suggest asking at your courthouse.
Northwest Territories	There is no dedicated program for interpreters. Contact CanTalk, a company offering interpretation assistance: Website: http://cantalk.com Phone: 800-480-9686 We also suggest asking at your courthouse.
Nova Scotia	Website: https://www.nsfamilylaw.ca/other/family-law-and-race-culture-language-or-ethnicity/interpreter-services Website: http://www.languagelinx.ca/court/novascotia-court-interpreters.aspx Phone: 1-800-385-8593 Email: bookings@languagelinx.ca We also suggest asking at your courthouse.
Nunavut	There is no dedicated web page for interpreters. Phone: 867-975-6102 We also suggest asking at your courthouse.
Ontario	Website: https://www.attorneygeneral.jus.gov.on.ca/english/courts/interpreters/ Phone: 416-326-6500 Email: MAG.InterpreterServices@ontario.ca We also suggest asking at your courthouse.
Prince Edward Island	Use this web link to identify the right person to call: Website: http://www.gov.pe.ca/phone/index.php3?number=2087 Shelley Brennan Young, Trial Coordinator We also suggest asking at your courthouse.
Quebec	Website: http://www.justice.gouv.qc.ca/english/joindre/renseign-a.htm We also suggest asking at your courthouse.
Saskatchewan	Website: http://atisask.ca and Website: http://www.languagelinx.ca/court/saskatchewan-court-interpreters.aspx We also suggest asking at your courthouse.
Yukon	There is no dedicated web page for interpreters. We suggest asking at your courthouse.

If you or a witness needs accommodation

As a person with a disability navigating the courts, you are entitled to have your needs accommodated to facilitate your participation.

Federal, provincial, and international laws protect you from discrimination, and require courts and legal service providers to accommodate your disability.

The core principle to remember is that you have the right to equal access to the courts. To get more information on understanding your rights and requesting the assistance you need, please read our primer ***A guide for SRLs with disabilities***.

Offers to settle and costs

Remember that we said earlier to remain open to settlement? Here's another really good reason to consider it.

Imagine this. You prepared for trial. Did the work, endured months of stress. You get a formal "offer to settle" under your court Rules from the other party. You turn it down. You go to court. Wait for months for the judge's decision.

Then you find out that you've lost. To your horror, you learn that you'll not only get less than the settlement offer from months before, but you're also being asked to pick up the other party's legal costs!

It sounds horrible, and it is. But it can happen. Which is why we suggest to always stay open to offers to settle. Consider making your own offer. Get emotion out of the way and stay realistic at every step of the process.

When is it worth it? When is it not? That's a personal decision only you can make. As you consider your options, be sure to read our primer ***Settlement Smarts***.

Court etiquette and tips for the "day of"

Here are some court etiquette and speaking tips, as well as suggestions on how you can get assistance while in court. We suggest that you study this section more than once so that it becomes second nature to you.

How and when to speak in court

> **"It's hard, but you have to wait your turn to speak and present yourself without emotion. When you do that, you can play on their field."**

We understand that the rules for speaking in a courtroom may be confusing and difficult to follow. And it's normal if you're feeling distressed or frustrated at first.

But SRLs have told us that learning and following these rules **helped them be more credible to the judge**. So, we encourage you to study them and put them into practice.

Talk to the judge

When you want to speak during the trial, talk to the judge. Do not speak directly to the other party.

Address the judge formally

When you address the judge, simply use *your Honour*. Or use *Justice* before the judge's last name: for example *Justice Smith*.

If you are appearing before a master, say *Master Smith*. *Masters* are judicial officers appointed by a province or territory who have the authority to hear certain matters in civil cases.

If you are unsure whether you are appearing before a judge or a master, ask the clerk – or use "Justice" just in case.

Don't interrupt: wait your turn

Only one person is allowed to speak at a time. When the judge or the other party is speaking, don't interrupt. Just be patient, you'll get your turn.

Keep it brief

When you're speaking, stay on point. For example, do not tell the story of your relationship. Stick to your claims, and what you're seeking.

Write down your disagreements

If you disagree with something the other party says, do not argue with them, or tell them that you disagree. Instead, immediately write it down. It's okay to respectfully disagree, when it's your turn to speak.

If you can't hear, speak up

If you can't hear what's being said at the hearing, stand up and politely let the judge or the other party's lawyer know that you can't hear what's being said.

Getting help from Duty Counsel

On the day of your trial, you can get free legal guidance on court procedures from Duty Counsel at the courthouse (subject to eligibility based on an income and asset test). Many SRLs report very good experiences with Duty Counsel. Ask around at the courthouse for Duty Counsel's office if you cannot find it.

Two ways to swear to tell the truth

Have you seen legal drama shows? And the scene where a witness puts their hand up and swears to tell the truth, the whole truth?

You, the other party, and all witnesses will be asked to do this before testifying. But it's a bit different than on television.

The court will tell witnesses that they must swear to tell the truth. Witnesses will generally be asked which of the following methods they prefer, before they testify.

There are two ways to swear to tell the truth in the courtroom. Both have the same effect.

An oath is a verbal promise to tell the truth, swearing on a religious text.

Swearing by oath

Oaths are frequently made while holding the Bible, the New Testament, or the Old Testament, or while holding another religious text. But sometimes, a religious text isn't used at all when taking an oath.

Here's the oath that's generally used for a witness appearing in court:

> **"I swear (or the person taking the oath may promise) by Almighty God (or the person may name a god recognized by his or her religion) that the evidence I shall give will be the truth, the whole truth and nothing but the truth."**

An affirmation is a verbal, solemn and formal declaration, which doesn't use religious texts.

Swearing by affirmation

Affirmations are solemn and formal, but do not refer to God or a religious text.

Here's the affirmation that's generally used for a witness appearing in court:

> **"I solemnly and sincerely declare and affirm that the evidence I shall give will be the truth, the whole truth and nothing but the truth."**

Court etiquette tips

Here are some written and unwritten court etiquette rules to keep in mind. Do your best to follow these to a "T". Judges appreciate it.

Arrive early

Make sure to arrive at the courtroom with your witnesses and support person (if you have one) at least fifteen minutes early. If you don't show up on time, the trial could go ahead without you.

Be respectful

Always be respectful and polite to everyone in the courtroom. This includes the other party and their legal representatives. This is important to do, even if it's tense between you.

Showing frustration makes you less credible
Judges have told us this time and time again. Huffing and puffing in frustration, making faces, interrupting, or tapping your pen is disrespectful, annoying, and unprofessional. You may have a real reason to be angry at the other party. If you do, share your frustrations with people who support you. The courtroom is not the place to vent.

Know when to stand

You must stand when a judge enters or leaves the courtroom. And when you're speaking to the judge. If, when you enter the courtroom, the judge is already at the bench, you must bow as you enter. You must also bow when you walk past the bar toward your table.

If you want to record, get permission

For a fee, you can obtain digital copies of your court hearings. For more information on how to do this, please read our primer ***How to order a court transcript across Canada***. If you want to record the hearing yourself, you must first obtain permission from the judge.

Rules for recording vary in each province and territory. You may have to ask permission, or just notify the judge that you'll be recording.

Here are the Ontario rules about recording:
http://www.ontariocourts.ca/ocj/legal-professionals/practice-directions/electronic-devices/

If you're not sure what to do, ask the judge at the beginning of the hearing if you can record for note-taking purposes. Explain why recording is important for you: that it helps you to track what is discussed, and what the outcome is, so that you can do what is required of you.

Address witnesses formally

When speaking to a witness, use *Mr.*, *Ms*. or *Doctor,* and not their first names. For example, you can say, *Mr. Smith* but not *Joe*.

Return from breaks on time

Make sure that you return to court on time after any breaks.

When it's not your turn to speak, take notes

When someone else is speaking, write down the questions you want to ask. This way, you can more easily respond when it's your turn to speak to the judge.

What to do (and not do) if you need help in court

If you have questions about legal arguments in your case, **do not ask the judge**.

The judge is not allowed to give you any legal advice on your case. This is because they must remain impartial when hearing the trail. If they don't, their judgment may be overturned at a later date. If a judge's decision is overturned, an appeal court might find in favour of the other party. Or, the court might order a new trail.

You cannot ask the judge about a legal point or case used by the other side, but you can ask questions about how a rule of procedure works, what happens next or what's expected of you during your trail. This was established by the Supreme Court of Canada and details can be found in our primer ***Critical Judicial Decisions for Self-Represented Litigants***.

For questions about law, duty counsel (see above) is available for those representing themselves in court who qualify and who need immediate legal assistance on the day of court. You can check on your court website to see if they have duty counsel, and their hours of operation.

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Preparing for each stage of your hearing

In this section, we break down the stages of your hearing and some things to keep in mind at each stage.

Opening statements

You're sworn in. Your trial has begun! Opening statements are next.

Most judges will require both you and the other party to give an opening statement at the beginning of the trial.

What your opening statement is (and isn't)

The purpose of your opening statement is to give the judge a roadmap of the issues and the evidence that you will be presenting to the court. It isn't the time to give evidence. At this point, you should only give the judge a summary of what you'll be presenting later, and the orders that you want the judge to make.

How to prepare an effective opening statement

When you prepare your opening statement, make it as **concise as possible**. If you make a lengthy speech or tell the entire story of your relationship the judge and the other party may become impatient with you and this will set a poor tone.

> "Judges hate it when you ramble on and on like I did at the beginning."

Prepare your opening statement by briefly summarizing the following:

1. The orders that you want the judge to make today
2. Your most important issues
3. How you intend to support your claims (an outline of the evidence you will bring, and the documents you will be presenting to the court).
4. Any witnesses you will be calling.

When you'll give your opening statement

The party that started the case (the applicant) will be asked to give their opening statement first. The respondent will give their opening statement right after the applicant's.

This is the way it works most often. However, it also depends on how the judge wants the hearing to run.

For example, if the hearing is expected to be relatively short, the judge may ask for the applicant's opening statement, immediately followed by the presentation of their argument and evidence. The judge may then turn to the respondent for their opening statement, immediately followed by the presentation of their argument and evidence.

The above isn't common. But it's something to be aware of, in case the judge chooses to proceed this way.

Tips on presenting your opening statement

Don't present your detailed evidence yet. It's very important to remember that your opening statement is not the time for you to present your evidence in any detail. Instead, give brief "bullet points" of the evidence you'll be presenting.

Do not be argumentative or dramatic. You want to be seen as reasonable, calm, and confident.

Do not interrupt the other party when they give their opening statement. You will be given a chance to present when it's your turn.

Presenting your case

Remember all that research you did? The witnesses you arranged? The documents you organized? This is where your hard work pays off.

Once you and the other party have made opening statements, the judge will ask you both to present your detailed evidence.

If you started the case (if you're the applicant), you'll present your evidence first. Set out your evidence in detail. You'll also want to produce and identify any documents or "exhibits" you have to support your case.

Quick reminder, your evidence may come from:

1. Your documentary evidence or exhibits, such as affidavits (sworn statements), financial statements, letters, photographs, receipts, or reports
2. Past legal decisions (precedents) on cases similar to yours.
3. You directly (when you testify in court).
4. Your witnesses who are friends and family.
5. Your expert witnesses.

After you present your legal precedents and exhibits, you'll move on to witnesses. If you decide to testify on your own behalf, it's most common for you to go first. Then you decide the order of your other witnesses.

Throughout the process, the other party and the judge will have an opportunity to ask you questions.

How witnesses are questioned in court

When your witness takes the stand, here's how it works:

1. Witnesses will stand up and **swear an oath or affirm** that they will tell the truth. This is serious, because lying under oath is called "perjury" and is punishable by up to 14 years in jail.
2. You'll ask your witness questions (this is called **direct examination** or **examination in-chief**). You'll also ask them to identify any documents or "exhibits" you have, if they're able to do so. When you're done, you can say something like, "Your Honour I have no further questions".
3. The other party may then question your witness (this is called **cross-examination**).
4. You may then question (**re-examine**) your witness to clarify anything that the other party raised during their cross-examination. **Note that you may not raise any *new* issues that haven't already been discussed**. Once done, you can say, "*no further questions*".
5. After you re-examine your witness, **the judge may then ask questions**.
6. Once your witnesses have finished testifying and answering questions, you can usually sit down.

It's the same process for the other party's witnesses. You'll be able to ask questions to cross-examine the other party (if they testify) and their witnesses. And they may ask questions (re-examine) in response.

Allow your witnesses to tell their own story
In the next section, we help you structure and organize your questions for witnesses. But when they're on the stand, allow your witness to tell his or her own story and speak to the judge in their own words. Don't interrupt or "lead" them when they're answering your questions. And make sure you discuss all this with them beforehand, so they know what to expect.

The "Art" of questioning witnesses

There are very specific rules involved in questioning witnesses. It's a true "art-form". Here are some tips to help you prepare your questions.

Your witnesses (direct examination or examination in-chief)

First of all, remember that the questions you ask a witness in court are not evidence. Rather, it is the witnesses' ***answers*** to the questions that are evidence. When you question a witness:

DO NOT use leading questions. Leading questions are those that have the answer in the question – for example: "The car was red, wasn't it?" These kind of questions are not allowed.

ASK about what they personally witnessed. Generally, witnesses can only testify about what they have personally seen, heard, or did. There are some exceptions to this, such as when a witness is an expert.

DO NOT rush the witness, or interrupt. Always allow a witness to finish answering your question before you ask them another question.

NEVER argue with a witness. This will make you look bad and will not help your case.

The other party's witnesses (cross-examination)

The purpose of cross-examining a witness is to **test the truthfulness of their answers** and bring out evidence that's favourable to you.

You don't have to cross-examine a witness for the other side. The judge will ask you if you want to, and if you don't, just answer "*No*". Or "*Thank you Your Honour, I will not be cross-examining this witness*", or something similar.

Or, if the judge doesn't ask you directly, you can stand up following direct examination and indicate that you have no questions for cross-examination.

One big difference with cross-examination questions
Here's something important to keep in mind. Leading questions are often preferable to open ended questions during cross-examination. This is completely opposite to what you'll need to do when you ask your witnesses questions during examination-in chief.

Here are some tips for preparing your cross-examination questions:

ASK questions about the witnesses' ability and opportunity to observe the things that he or she is telling the court.

ASK the witness about their ability to provide an accurate re-telling of what he or she has seen and heard. For example, you could say:

> *Good morning. Thank you very much for being here today. Before we begin I would just like to ask if there's any reason that you don't feel that you can provide an accurate re-telling of what you have seen and heard...*

ASK whether the witness has any reason to be biased or prejudiced or has an interest in the outcome of the case. For example, you could say:

> *Good morning. Thank you very much for being here today. Before we begin I would just like to ask if you have any interest in the outcome of the case and whether you can provide an unbiased account of the events...*

QUESTION inconsistencies in affidavits If a witness for the other side made a sworn statement before the trial (an affidavit) and is now saying something different, you should cross-examine the witness about their prior statement, and any discrepancies.

GET witnesses to make positive statements that strengthen your case If a witness for the other side has said something positive about you that helps your case in their sworn statement or testimony, you want to make sure that this statement is stated in court from the witness stand, for the record. So ask a question that you know would result in the witness's positive response.

Here's how to reinforce a positive statement:

- Read the section of the prior statement or testimony that is helpful to you or your case out loud to the court. Make sure to identify what you're reading by evidence exhibit number, if it has one.
- Ask the witness if they remember making the statement and swearing that the statement was true.
- If they say "*Yes*", ask the witness again if the statement is true.

If the witness says "*Yes*", the positive statement about you is true, you have made your point. If they say "*No*", they don't remember making the statement or "*No*", the statement is not true, this will show the judge that the witness is not credible.

TELL a witness in advance if you are going to contradict them If you are planning to offer evidence that contradicts what the witness is saying, you must warn them in advance. You must also allow them to attempt to justify the contradiction (this is known as the rule in *Browne v Dunn*).

How to object to the other party's witnesses

Making objections to witness testimony the right way

Unlike legal tv shows you may have seen, you don't just interrupt right away and yell "*objection!*" when you hear something you don't agree with. You do have a right to object, of course. But there's a way to do it right.

You have the right to object to:

- questions that the other party (or their lawyer) asks a witness, and
- the documents that a witness has introduced as evidence.

To object to something *your witness* is saying or presenting, do this:

- **Write down your objection** – Immediately write down what you disagree with, so you can refer to it later.
- **Stand up** – This tells the judge that you have something to say.
- **When the judge asks you, explain** – The judge will ask you why you're objecting. The judge will listen to both you and the witness. Then they'll decide if your objection is valid.

To object to something the *other party's witness* is saying or presenting, do this:

- **Write down your objection** – Immediately write down what you disagree with, so you can refer to it later.

- **Wait – do not stand up** – When the witness is finished testifying, the judge will ask you if you have any objections.
- **When the judge asks you, explain** – The judge will ask you why you're objecting. The judge will listen to both you and the witness. Then they'll decide if your objection is valid

Special instructions if you testify as a witness

You choose whether or not you want to testify on your own behalf when you put together your case. But keep in mind that even if you choose not to testify, **the other party may still call you as a witness** for their case. You would typically be informed prior to trial if you're being called as a witness for the other party.

You'll go through the same four steps for witness questioning that we've outlined on page 15. But the judge may ask you questions a bit earlier, during the other party's examination-in-chief. When you testify, **you must only say what you personally saw, heard, or did**.

Here's how to prepare if you're testifying as a witness:

DO make notes about events you want to include in your case.

DO think about what you want to say before you testify, and write it out before you come to the courthouse... But!...

DO NOT read from your notes when you are giving witness testimony.

INSTEAD ask the judge for permission to look at your notes, and tell them why you need to look (for example, to ensure that you are being accurate in your testimony).

Closing statements

By the time you reach closing statements, you're on the home stretch! Be proud of all the work you did to get to this point.

After all the evidence has been presented and all the witnesses have testified, the judge will ask you and the other party to make your closing statements.

Just like in the opening statements, the party that started the case (the applicant) will be asked to give their closing statement first. The respondent will give their opening statement right after the applicant's.

In your closing statement:

Briefly tell the judge what you believe the decision should be, based on the evidence.	Point out problems with the other party's evidence, if you see any.	Do not include new issues that weren't already presented in your evidence.

Your closing statement will also refer to the legal cases that support your argument. Read our ***Doing Your Research Part 1*** and ***Part 2*** primers for more information on this.

The judge's decision

After you and the other party make your closing statements, the judge will either tell you their decision immediately, or "reserve" their decision to be shared with the parties in writing at a later date.

In family and civil cases, judges use a test called the "balance of probabilities" to determine if a side has proven their claims.

Simply put, the judge will look at all the evidence and facts presented, and the case law that supports both positions. Then he or she will determine, on a balance of probabilities, who should be the successful party.

The successful party has proven to the judge that their claims are 50% more probable than the other party's claims.

In most cases, the judge will release their written decision within six months, and usually sooner. While you're waiting, you can ask the counter staff at the courthouse to ask the court clerk when the decision is likely to be ready.

When you get the judge's final written decision, it will explain the judge's reasoning, and why she or he has chosen to make this decision.

Things to do after your hearing

Your day in court may be long and exhausting. But while everything's fresh, we suggest that you do the following shortly after your proceeding.

Make a to do list at the end of your hearing

Write down a list of things you need to do at the end of your day in court. Do it before you leave, so that it's fresh in your mind.

Request a court summary sheet

A court summary sheet is a one-page summary of what happened in court that day. Court summary sheets are not available in every province or territory, and there may be a copy fee.

Before you go home after your day in court, see if you can request a court summary sheet from the court registry. After the judgment is made, ask about it at the registrar's desk. *Hint: this can go in your court binder, and on your list!*

Access the decision online

When the judge makes a decision on your case, you may also be able to access a summary of the decision in your court's online Court Index and Docket.

If written reasons for the decision are also issued, they will be made available on the Court's website at the Decisions page a few days after the decision is signed, or on CanLII a little later.

Get digital recordings

If you didn't record the hearing yourself, you may be able to obtain recordings of your court hearings. The process to do so will vary in each province or territory.

You'll be required to pay for the recordings, which can be costly. To find out more about fees for digital recordings, visit your province's Ministry of the Attorney General or Justice Ministry website.

Request a written transcript

If you're planning an appeal, or just want complete records of your case, you may wish to request a written transcript. Fees and the process of ordering transcripts vary in each province or territory. We've included detailed instructions in our primer ***How to order a court transcript across Canada***.

A list of the primers we offer

Here are the primers we currently offer

They're free for you to download here: https://representingyourselfcanada.com/our-srl-resources/

Step 1: Getting ready and starting the legal process

- **So you're representing yourself:** A primer to help you get ready to represent yourself in family or civil court
- **A guide for SRLs with disabilities:** Understanding your rights and requesting the assistance you need
- **A Courtroom Companion (McKenzie Friend)**
- **The McKenzie Friend: Canadian cases and additional research**
- **Considering Mindfulness:** How you can use Mindfulness to increase your focus and relieve the stress of representing yourself

Step 2: Doing your research and preparing your arguments

Doing Your Research

- **Part 1:** Understanding precedent and navigating the CanLII legal database (available in English and French)
- **Part 2:** Assessing CanLII case reports, and using them to build your legal argument
- **Reference Guide:** Legal definitions, court abbreviations and Canada's court systems-at-a glance
- **Critical Judicial Decisions for Self-Represented Litigants:** Using important case law that establishes rights for self-represented litigants and how the justice system should protect you from bias
- **Settlement Smarts** Tips on effectively using negotiation, mediation and Judge-led settlement processes
- **What you need to know about affidavits**

Step 3: Presenting your case in court

- **Coping with the courtroom:** A primer to help you navigate the written (and unwritten rules) of the courtroom
- **How to order a court transcript**
- **Working with opposing counsel:** Building constructive working relationships between self-represented litigants and opposing counsel
- **Tips from the bench:** Advice for SRLs, and the judges who work with them

To keep up with what's happening at the National Self-Represented Litigants Project (NSRLP), visit **RepresentingYourselfCanada.com**.

If you have comments for us, or suggestions for ways to improve our primers, let us know at representingyourself@gmail.com.