

Admissible Evidence: A primer for self-represented litigants at trial

V Gray J., BCSC, April 2013

1. A witness must state only what she or he saw, heard, did or said (unless the witness is accepted by the court as an expert witness). A witness should not say “My son was late for school only twice” unless the witness saw that happen, in which case the witness should say something like “I took my son to school every day, and we were late only twice.” What a witness **thinks** is not evidence unless it is an admissible expert opinion.
2. Testimony and documents cannot be admitted if they consist of **irrelevant** information. The issues at trial determine what is relevant. You must include dates, either the day or the month or sometimes the season, or else the information may be rejected as irrelevant.
3. Testimony must not contain **argument**. It is not evidence to say “I think it is unfair that ...” or “My ex-husband should ...” or include any rhetorical questions like “why should I do this when my ex-wife ...”
4. Sometimes it is acceptable for a witness to quote what another person said. This is called “hearsay”. Evidence at trial may contain **hearsay** if either:
 - a) The person quoted is the **other party** (eg. your ex-husband or ex-wife), and they admit a relevant fact. (For example, a witness can say “My ex-wife said on January 5, 2010 that she took my camera.”); or
 - b) The person quoted is a **child** and the court gives leave for that evidence to be presented as hearsay. The court will often permit such evidence to avoid children being witnesses.
5. Testimony must not contain **speculation**. Don’t say “My son is sad.” You can say “I saw my son cry after ...” or, with leave of the court, “my son told me he was sad because...”
6. Do not seek to include in evidence **long exhibits**, like long email chains or diary notes. Such documents usually include a great deal of inadmissible material which the judge must ignore, like argument, speculation, and irrelevant information. Find the key part and refer to that alone.
7. **Expert** evidence, such as the opinions of doctors, can be admitted at trial only if the judge orders that expert evidence is appropriate and the expert is properly qualified. The party seeking to provide the evidence must have given the necessary notice to the other side, except in the rare cases when the court orders that it can be admitted without that notice. The expert can be cross-examined if the necessary arrangements have been made. Sometimes the party cross-examining the expert will ask to see the expert’s file before completing the cross-examination.

The parties are responsible for obtaining the legal advice that they need. They may wish to visit the website www.clicklaw.ca which has a number of resources, including http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law which provides information on family law and a sample affidavit. The Clicklaw help map provides contacts for obtaining legal information and advice.