

## Affidavits Simplified: A primer for self-represented litigants

V Gray J., BCSC, April 2013

1. Affidavits are simply written evidence. 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 affidavit 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. Affidavits must not contain **irrelevant** information. The application determines 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”. An Affidavit 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, an affidavit can say “My ex-wife said on January 5, 2010 that she took my camera.”);
  - b) The affidavit is being used at an **application** which is **not** a Summary Trial (Rule 9-7), and the witness states who told the witness the information and that the witness believes it is true. For example, an affidavit on an application can say “I was informed by Constable Blogs of the Vancouver Police Department on January 2, 2010 and believe that the police closed their file on the criminal investigation.”; or
  - c) The person quoted is a **child** and the court orders that the evidence can 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. Affidavits should not contain **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.

The parties are responsible for obtaining the legal advice that they need. They may wish to visit the website [www.clicklaw.ca](http://www.clicklaw.ca) which has a number of resources, including [http://wiki.clicklaw.bc.ca/index.php/JP\\_Boyd\\_on\\_Family\\_Law](http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law) which provides information on family law and a sample affidavit. Under “find help”, it provides contacts for obtaining legal information and advice.