Evidence

Evidence Basics

Last Reviewed: March 2023

Reviewed by: JES

Evidence Basics

Evidence is what you present to the court to prove your claim or your defense.The rules of evidence are fairly complicated.

Evidence takes different forms.

- **Oral Evidence:** This is when someone "takes the stand" in Court and describes what they saw or heard under oath or solemn affirmation
- **Affidavit Evidence:** This is written evidence made under an oath or solemn affirmation
- **Documentary Evidence:** This can include photographs, drawings, documents, records, videos, sound recordings, etc.
- **Expert Evidence:** This is when an expert provides an opinion to help the Court understand the evidence before it

A judge can consider your evidence only if it is *admissible*, which means that it is relevant to a material fact in the case and not excluded by any rules.

Relevance

Evidence is relevant if it is related to the facts of the case in some logical way. To decide whether evidence is relevant, ask yourself whether the evidence helps you prove the facts of your case.

To give an example, the fact that the roads were icy on the day of the car accident is probably relevant to your case. The fact that the driver of the other car was wearing a blue sweater probably is not relevant.

Material Facts

A material fact is one that is important or essential to the case. What is material is often determined by the pleadings because the pleadings set out what is being disputed. For example, in a car accident case, the fact that the other driver was intoxicated is a material fact. The fact that the other driver served time in jail ten years ago is probably not material to the dispute.

Exclude Evidence

The judge may not allow evidence into court if:

- The evidence is privileged – that is, if you have the right to keep that document confidential
- It would be unfair to let the evidence in (for example, if the other party wanted to rely on a document that they had not disclosed to you)

Weight of the Evidence

The judge will decide the weight (importance) of a piece of evidence in light of all the evidence that has been admitted by the judge into court. Just because evidence has been admitted into court, it does not mean that it will be given the same weight as other evidence or any weight at all.

For example, if a witness to a fight in a bar had been drinking all day and gives evidence that contradicts the evidence of a police officer that was called to stop the fight, the judge will probably give more weight to the police officer's evidence. That is, when deciding what they believe, they will prefer the officer's evidence.

Similarly, the judge will decide if the witness's evidence is credible (i.e., believable). If it is not credible, the judge will not attach much, or any, importance to the evidence. For example, the judge may conclude that the evidence of the wife to someone involved in the fight was biased.

Burden of Proof

The person who is asking the court for a remedy has the burden (responsibility or obligation) of proving the facts that support their case. Generally, if you want the Court to do something, you have to prove the facts that support that request.

You do not necessarily have to lead evidence to defend a lawsuit. Sometimes you can simply say that the plaintiff has not proven their case. However, usually, defendants do lead evidence to respond to the plaintiff's evidence.

Standard of Proof

In a civil case, the person submitting the evidence (providing the evidence to the court) must prove that it is true "on a balance of probabilities." This means that it is "more likely than not."

Is Proof Necessary?

It is not always necessary to prove every fact that you want to submit as evidence in your case. Some facts are so commonly known that they do not need to be proved, and in a few (rare) situations, facts are accepted into evidence on the basis of legal principles, as in judicial notice and admissions.

Judicial Notice

A judge can acknowledge that a fact has been proven without you having to prove it if the community commonly knows the fact. This is called "judicial notice". For example, it would not be necessary to prove that in the year 2004, Christmas was on December 25th.

However, what judges will take judicial notice of is not large. Some things that you may think are quite "common sense" will still require proof.

A judge must also take "judicial notice" of provincial and federal statutes, as well as provincial Regulations. You would not need to prove, for example, that the *Motor Vehicle Act* of BC was a validly enacted law of the province.

The Rules of Evidence

Rules of evidence establish what evidence can be presented to the Court in which cases.

The rules also control the procedure for introducing the evidence to the court. For example, it is a rule that a document cannot be introduced into evidence if it has not been included on a list of documents.

The rules of evidence help the trial run smoothly and efficiently. The rules also ensure that the trial procedure is fair to both parties.

The rules of evidence come from three sources:

- The **Supreme Court Civil Rules**
- Provincial legislation (statutes, including notably the ***Evidence Act***) and
- Case law (much of which is searchable at **CanLII**)

The **Supreme Court Civil Rules** (usually called the "Rules of Court" or the Rules) are the main source for the rules of evidence that apply in proceedings in the Supreme Court of BC.

Statutes (or legislation) are laws made by the provincial and federal governments. For example, the ***Evidence Act*** sets out the principles of evidence that apply to civil and family cases being heard in the BC Supreme Court.

Case law is the decisions made by other judges. The judge in your case will apply the laws of evidence, in part, according to earlier decisions. Applying the law from previous court decisions is called common law.

For more information on how to research the law, which applies as well to researching the law of evidence, see **Legal Research**.

Admissions

A party can admit that certain facts or issues are not in dispute. Also, you and the other party can tell the court that you agree on certain facts in the case. This is called an agreed set of facts. It will speed up the trial process because those facts do not need to be proved in court.

For example, in a motor vehicle accident case, the defendant will often admit liability (that they were responsible for the accident) but will dispute the amount of personal injury damages the plaintiff is claiming (called quantum of damages).

If one party admits a fact in this formal way, it is binding on that party. Withdrawing an admission requires permission from the Court. That means that once the defendant, for example, admits liability for the accident, they cannot argue against that later without getting permission from the Court to withdraw an admission.

Formal admissions can be made:

- In the pleadings
- In a notice to admit (see **Rule 7-7(1)**and **Form 26**, as well as **Discovery**) or
- In an agreed statement of facts

Documents as Evidence

Documents can also be evidence in court.

Key Terms

A "**document**" has a broad meaning under **Rule 1-1**. In general, a document is a physical or electronic record of information recorded or stored by means of any device, and includes photographs, films, and sound recordings.

When thinking about what type of evidence you can use to prove your case, remember that a document is *anything that contains information*, such as a memo, invoice, letter, drawing, transcript, or information on a computer hard drive, or CD.

In order to use a document at trial, you must have included that document on your list of documents. For more information on preparing a list of documents, see **Discovery**.

Proving Documents at Trial

At trial, a document can be put into evidence:

- To prove that it exists

- To prove its contents

To prove that a document is real (to "authenticate" it), the person who created the document can be called as a witness to give evidence about it. Or, the document's authenticity can be admitted, for example, under a notice to admit. (see the section on Admissions)

If a document is put into evidence to prove its contents, it will be considered hearsay, and therefore not admissible, unless it falls within one of the exceptions to the hearsay rule. (see the discussion on Hearsay)

The use of documents as evidence is covered by the "best evidence" rule. This means that you generally need to submit the original document if you want to prove its contents. If the original document cannot be produced, you may need to explain to the court why you are submitting a copy – the original may be lost, or destroyed, or someone else may have it.

Specific Documents

During the course of litigation, you may have to introduce many documents into evidence, such as business records (for example, an invoice) or a financial institution record (for example, a bank statement). The BC ***Evidence Act*** will give you information about how these documents can be admitted into evidence.

Business records are discussed in **s. 42** of the ***Evidence Act***. A statement of a fact in a business record is admissible as evidence of the fact if:

- The document was kept or made in the usual course of business and
- It was in the usual and ordinary course of business to record the statement of fact in the record

You will need to call the person responsible for making and keeping the business records to give evidence that the document is authentic, unless authenticity has been admitted. Medical records fall into the category of business records.

Records from financial institutions (a statement from a bank) are discussed in **s. 34** of the ***Evidence Act***. A bank manger or accountant can come to court or provide an affidavit confirming that the bank record is authentic.

Government records are discussed in **s. 25, 28-33** of the ***Evidence Act***. These sections deal with both proving authenticity and the contents of various types of government records.

The ***Motor Vehicle Act*** (s. **82** and **82.1**), provide that certain ICBC records are "self-authenticating", meaning that they do not need to be authenticated by a witness or by admission.

These sections also provide that statements of fact contained in these records are admissible as evidence of those facts.

Entering Documents Into Evidence

When the evidence has been admitted into court in a trial, it becomes an exhibit. Certain steps must be followed in order to get a piece of evidence marked as an exhibit in the trial.

In this example, you are the plaintiff who wants the court to admit (accept) a signed contract as an important piece of evidence. You are representing yourself and have called a witness to give evidence that they saw the defendant sign the contract. You have disclosed the contract in the list of documents to the defendant.

1. Show the contract to the other party's lawyer. Tell the judge that you have disclosed this document to the other party before trial (or have provided them with a copy)
2. Show the contract to the witness
3. Ask the witness questions, leading them to confirm that they saw the defendant sign the contract and that the signature is the defendant's
4. Ask the judge to admit the contract into evidence as an exhibit. (For example, say: "Mister or Madam Justice, I'd like to offer this contract as the next exhibit.") If the other party does not object to the document being entered into evidence as an exhibit, the judge will confirm that it is an exhibit and give it an exhibit number

Affidavits

Key Terms

An **affidavit** is a written declaration of facts that the person (the deponent) swears or affirms is true.

Affidavits are primarily used in chamber hearings. Affidavits are rarely used in regular trials because the evidence is usually entered in other ways, such as through the evidence of witnesses. A witness who gives evidence in the trial must generally do so in person so that they can be cross-examined on the evidence by the other party. In some cases, however, the court will allow evidence to be given by affidavit if the deponent is not able or available to appear in court or if it would be too expensive to bring the deponent to the trial. See **Affidavits.**

The statements made in the affidavit must be relevant to the case and it must contain only facts, not opinions. For example, in your affidavit, you can say that you saw the plaintiff's car drive through an intersection without stopping at a red light because that is a fact. You cannot say that the plaintiff is a bad driver because that is just your opinion.

You can attach important documents to your affidavit. These attachments are called exhibits. The affidavit itself must refer to the exhibit and confirm that it is a true copy of the original.

Transcripts

You can also use transcripts (written records) from examinations for discovery, interrogatories, and pre-trial examination of witnesses as evidence.

You can use evidence given from the other side in an examination for discovery against that person. This evidence is "read in" to the Court record. In this way, if you obtain a good admission in discovery, you can let the Court know about it.

You have to let the other side know what questions and answers are going to be read. They may ask that the Court consider other questions and answers too if they provide needed context. If you read any part of the examination for discovery, the Court is allowed to review the entirety of the transcript.

In addition to being read in as admission, a transcript for discovery can be used to challenge a witness's credibility. You might use a transcript from an examination for discovery if a witness gives different evidence at trial than they did in the examination for discovery. Your purpose will be to show that the witness is not credible because they gave two different versions of the story.

For example, the witness may have said under oath in an examination for discovery that he went through the intersection when the light was amber. If he states at trial that he stopped when the light changed to amber, he has given two different versions of the event.

At trial, you can remind the witness that he made the prior statement by reading in that part of the examination for discovery transcript and having them admit that they made that previous statement under oath. If the witness cannot explain the inconsistent statements, it will be evidence that the witness is not reliable.

Interrogatories can be used at trial in the same way as examination for discovery transcripts. For more information on examination for discoveries and interrogatories see **Discovery.**

Pre-trial Examination of Witnesses

In addition to examining another party in the lawsuit, you can sometimes examine a witness before trial. For more information on the pre-trial examination of witnesses, see **Discovery.**

The court may allow a transcript from a pre-trial examination to be submitted as evidence at trial if a witness:

- Is dead
- Is unable to come to court to testify because of illness, age, imprisonment, or
- Cannot be forced to attend by a subpoena

The use of recorded testimony (under oath) at trial is generally described in **Rule 12-5(54)**.