BC Society of Transition Houses

Objections to Evidence

This document is meant to be an overview of some of the more common forms of objections that can be used in court proceedings in either the British Columbia Provincial Court or the Supreme Court. It will help you to prepare how to make and respond to objections. However, it is not meant to be a comprehensive guide to all of the rules of objections. You may need to consult with a lawyer or read additional legal materials about the laws of evidence and objections to see what rules apply.

Below are some links to the rules of court and legislation that may be helpful, depending on which court your case is in and what type of case it is:

- British Columbia Evidence Act
- British Columbia Small Claims Rules
- British Columbia Provincial Court Family Rules
- British Columbia Supreme Court Civil Rules
- British Columbia Supreme Court Family Rules
- British Columbia Court of Appeal Rules

What is an Objection?

An objection is when a party thinks that the other party is not following the rules of evidence or the rules of court. In this situation, that party can formally raise the issue with the judge who is hearing the matter and ask the judge for the appropriate remedy (for example, excluding inadmissible evidence). For simplicity, we describe either the lawyer for the other side or the person who is self-represented, as "the other party" in this document.

Who can make an objection?

A lawyer or a self-represented litigant (i.e., someone who is representing themselves without a lawyer at court) can make an objection to the judge if they think that a rule of evidence or a court process is not being followed (for example, when someone asks a question that is not allowed to be asked, if the witness is saying something that is not allowed to be said, or if the evidence has not been properly entered into court). The objection can be about evidence that a party or a witness gives (either verbally or in an affidavit), about a question that a party or a lawyer asks a witness, or about documents entered as evidence. You can also object when the court process is not being followed. For example, if someone is trying to rely on an affidavit that was served out of the timelines in the court rules, you could object.

In some cases, the other party will have a lawyer. In others, the other party may not have a lawyer and they will be self-represented. If they do not have a lawyer, they will be the one introducing evidence to

the court and asking the witnesses questions. You would make objections in the same way and on the same basis as you would if the other party has a lawyer or not.

Evidence can be the sworn testimony of a witness (verbally or in written affidavit), documents, exhibits, or expert opinions.

What happens once an objection has been made?

Once an objection is made, whoever made the objection is essentially asking the judge to make a decision on whether the rules of the court are being followed or not.

If the judge thinks the rules are not being followed, the question or evidence will not be allowed and the judge will say the objection has been "sustained". If the judge thinks the rules have been followed, the question or evidence will be allowed, and the judge will say the objection has been "overruled".

Objections can be made at court when witnesses are being questioned or when a lawyer seeks to introduce evidence to court at trial or other court hearings, such as an interim application hearing.

What if the other party makes an objection about what I am doing?

Both parties are allowed to make objections. You can make them yourself or the other party may make an objection to the questions you ask of witnesses or the evidence you try to introduce.

If you are representing yourself during your case, it is important that you familiarize yourself with the grounds for objections, so that you know how to make an objection to the other side's evidence. It is also important to know these rules in order to ensure that your evidence is admissible and to know how to respond if the other side objects to your evidence.

If the other party objects to something you are doing, you will need to explain to the judge why you think your evidence, or question to the witness, should be allowed.

What happens if the evidence is admitted?

Remember that even if the evidence is admitted, it does not mean that the court will believe it or think that it is important. If the evidence is admitted, the judge will later decide how important or believable the evidence is. The courts call this giving the evidence "weight". If the evidence is given little or no weight, the judge will not rely on it, as much or at all, when making a decision on the case. If it is given a lot of weight, then it will have more of an influence on the judge's decision about the case.

Why would you make an objection?

One reason you would make an objection is if the other party is trying to introduce inadmissible evidence (i.e., evidence that is against the rules). The reason you would make this kind of an objection is to have the judge decide if the document or witness' answer should be admissible (i.e., counted as evidence in the case) or not.

A second reason is to stop the inappropriate questioning of a witness. You would make this type of objection when a witness is being asked a question that is against the rules or if the witness is being treated in an abusive manner, explained below.

It is important to make objections to make sure that no evidence that is against the rules is admitted. It is also important to make objections because it may help you if you want to appeal your case. If you did not object to improper evidence when you had a chance at trial, you may not be able to bring the issue up at appeal.

You can make objections about questions asked to a witness, answers given by a witness, or documents or items being introduced as evidence to the court.

There must be a legal reason for your objection. You cannot object to anything you wish would not be admitted as evidence or anything you don't like that is being asked or said. If you make an objection, you will have to explain why you are making it and there has to be a legally recognized reason to make it.

Below is a list of common, legally recognized objections.

How to make an objection

In a courtroom, if you believe you have a good reason to make an objection you should stand up in court to get the judge's attention by properly addressing the judge ("My Lady" or "My Lord" in Supreme Court, or "Your Honour" to a master), followed by "I have an objection to this evidence because…" (see a list of common objections below) and explain what your objection is to the court.

If you are objecting to a question the other party asked a witness, make sure you make your objection before the witness answers the question.

If you received the document before the hearing and you intend to object to it, you will need to inform the other side in advance that you will object to the document being admitted into evidence and explain the reasons for the objection. The other side might decide not to rely on that document if you have a good reason to object to it. If the other side still intends to rely on the document, you should raise the objection with the judge at the hearing.

If you or the other party objects to a document or other evidence at the trial or hearing, the judge may decide to have a "voir dire", which is something like a mini-hearing about whether to admit the document into evidence. The objecting party will speak first to explain the reasons for the objection; the other party then responds; and the objecting party can then reply. The judge will then make a decision about admitting or excluding the evidence.

Once you have made your objection, you can sit back down. The judge may ask the other party to respond to your objection and may ask you to respond to what the other party said.

If the judge finds your objection is correct, the document will not be admitted as evidence, the witness will not be allowed to answer the question, or the other party will be told by the judge to ask a different question or rephrase the question. If the judge finds that your objection is incorrect, the document will be admitted as evidence, the witness will be allowed to answer the question, and/or the other party will be allowed to continue with their questioning.

If you are representing yourself, you may also be a witness at your own trial. In these circumstances, the other party may ask you objectionable questions at trial when you are being a witness and you will need to object to them yourself and ask the judge for a ruling on the objection before you answer them.

Anytime you make an objection, it is important that the ruling on the objection be reflected in the record of the court proceedings. If the judge did not make a clear ruling on the objection, ask for clarification on what they ruled before moving on. Again, this will be helpful for you to have an accurate official court record if you have to appeal your case. The record of the court proceedings is the official accounting of the legal matter that is reviewed on appeal.

Types of Objections

This section provides a list of some common objections. We have divided them into three sections: general objections (which apply to both documents and oral evidence), objections for questioning a witness, and objections to documents.

Objections: General

Character Evidence

If the other party tries to introduce evidence about someone's character (i.e., whether they are a good person or not), you can object.

Character evidence is allowed if a person's character is a specific issue at trial (for example, in a defamation case you have to provide evidence about a person's reputation, so some character evidence might be relevant in that case); or if it proves similar fact evidence or a pattern of behaviour (for

example, if the person has done nearly the exact same thing in the past in a similar factual situation - but it has to be very relevant to the case).

Hearsay

If a witness makes a statement about what another person said or if the other party tries to introduce a document that includes something another person said, you can object. This is called hearsay evidence.

Hearsay evidence is an oral or written statement that was made outside of court that a party is trying to use to show that what another person said is true, but there is no chance to cross-examine the person who made the statement in the court proceedings.

For example, if a witness, Shimrit, says Jules said something and Shimrit wants the judge to believe what Jules said was true, this is hearsay. In this example, unless one of the exceptions below apply, it would be necessary to call Jules as a witness so she can testify directly to the court. The court always prefers to hear directly from a person who said or saw something that is going to be used as evidence.

There are some exceptions to this rule, including:

- If the evidence is necessary and reliable, the person who said it is unavailable (for example, if they are dead or cannot be located), there is no other way to get this information, and the statement was made in a trustworthy manner or can be tested for its truthfulness.
- If the statement is not admitted for the truth of its contents, which means it is submitted to show something was said, but not that it was necessarily true. Strictly speaking, this is not an exception, because the statement is not hearsay (the exceptions only apply when the statement is hearsay).
- In a criminal case, if someone makes an admission of a crime out of court.
- If the person made a statement against their interests and is not available to testify for good reasons (for example, they live outside of the court's jurisdiction or if they have died).
- If the statement was made spontaneously in reaction to the event before the person had time to think about what they were saying. These are called spontaneous or excited utterances.
- If the evidence is testimony from another relevant trial proceeding and the person who said it is unavailable for good reasons.
- See section below on documents for other hearsay exceptions.

Hearsay is allowed during an interim application if you can identify the source (i.e., the person who said the statement).

Under the *Family Law Act,* in cases regarding the best interests of the child, the court can allow hearsay evidence of what a child said if the court thinks that it is reliable. See s. 202(a) of the *Family Law Act*. However, you need to ask the court to do this before relying on this exception to the hearsay rule.

Double hearsay is not allowed and you are entitled to object to it. Double hearsay means that there is a hearsay statement in a hearsay statement. For example, a document made by a party not in the court proceedings that includes a hearsay statement by another person, or a witness is saying what they heard one person say about what a second person said.

Misstating Evidence or Misquoting Witnesses

If the other party misstates evidence or misquotes witnesses, you can object.

No foundation

In some instances, the party will have to establish some facts about something (i.e., establish a foundation) before they can ask a witness a question about it or introduce evidence about it.

For example, if the other party wanted to ask a witness about an email that they think the witness sent, they might ask that witness, "why did you write this email?", however, if there is no proof that the email address is even the witnesses' email address or that the witness wrote the email, you could object because there is no foundation for that question. The other party would have to show evidence that the email address belonged to the witness and that they were the one to write the email, before they could ask the witness why they sent the email.

Opinion

If a witness gives, or is asked to give, their opinion on something, you can object. Ordinary witnesses (witnesses that are not expert witnesses) should only testify about facts that they are personally aware of and not give opinions.

There are some exceptions to this rule. In some cases, where the opinion is made by an ordinary person and the facts and opinion are intertwined, and the witness is the best person to make this opinion, it might be allowed. If an ordinary person is making a personal observation about something that is commonly known, that can also be acceptable (for example, how fast they think a car was going when they saw it go by).

Qualified experts with special knowledge of something can be allowed to give opinions on things within their expertise. The courts have specific rules about expert evidence, which you will need to familiarize yourself with if you or the other side intends to introduce expert evidence.

Prejudicial

If evidence is prejudicial (i.e., it is misleading, confusing, unnecessarily time consuming, or unfairly surprising), you can object. The court will balance the prejudicial effect of the evidence (something that could be improperly harmful to someone or something and creates bias, partiality or pre-judges an issue or the case) against the probative value of the evidence (something that is relevant that would legitimately help the court understand an issue or the case).

Notice and disclosure

It is important for both parties to be fair to each other. Some court rules require both parties to disclose to the other party a list of witnesses they plan on questioning and the documents they plan to use as evidence. That way, both parties can be prepared and organized to argue their case. In some cases, if the other party has not shared evidence with you, you can object to the fact that the other party is using surprise evidence.

The courts have specific rules about disclosure (sharing evidence with the other side), which you'll need to familiarize yourself with in order to make sure that you are in compliance and address instances of non-compliance by the other party. For more information on discovery obligations in family law matters, click here.

Privilege

Privileged documents and communications are considered private and cannot be shared with the courts (in most cases). They are protected to allow people to have open communication in trusting relationships or situations. This may include a conversation a lawyer has with their client, strategies about upcoming litigation, information about a legal settlement, and information shared in special relationships of trust.

Solicitor-Client Privilege

Communication between a lawyer and their clients is considered confidential. The information shared between the lawyer and client is private and neither of those people can be compelled to share that information at court.

It is important to remember that privilege also applies to communications with a lawyer that was not retained. For example, even if you only had one meeting/consultation with a lawyer and did not retain that lawyer for your case, privilege still applies to that consultation.

If the other party asks you or a witness to share information that is protected by solicitor-client privilege, you can object.

However, the witness can waive their right to solicitor-client privilege (this can be done voluntarily, impliedly, or inadvertently), but this should only be done in the rarest of circumstances and only if they are fully aware of the risks of waiving this privilege.

There are some other exceptions to solicitor-client privilege. In certain cases, if there is a risk to public safety or if someone will be wrongfully convicted of a crime, the parties can share this information at court.

Litigation Privilege

Documents or communication that were made when planning for a case (or in contemplation of litigation), that were meant to be confidential and where privilege has not been waived, are inadmissible. You can object to this evidence being introduced.

Once the case has ended, these documents and communications are no longer protected by this privilege.

Settlement Privilege

Communications made during settlement discussions are not admissible as evidence in court. If the other party tries to bring in this kind of evidence, you can object. Both parties can agree to waive this privilege, but it cannot be done by one side. Examples of settlement discussions include mediation, settlement proposals and responses to them (which should be marked "without prejudice"). They also include Judicial Case Conferences, Family Case Conferences, and Settlement Conferences. Exceptions to this rule are the orders which were made at those conferences.

Case-by-Case Privilege

You can object to certain evidence being introduced even if it does not fit in one of the more common rules for privileged documents or communication. You would have to argue that the court should find it privileged by using the following test called the "Wigmore test".

You would have to show that:

- the communication was made in confidence and wasn't supposed to be shared;
- this confidence is essential between the two parties and their relationship;
- the relationship must be one that the community fosters (for example, between a religious leader and one of their followers); and
- the injury to the relationship that would occur, if the information were shared, outweighs the benefit it would give to the case.

Relevance

If the other party tries to introduce documents or asks a witness a question that is irrelevant to the case, you can object.

However, you and the other party may have different opinions on what is relevant to the case and both sides may need to explain to the judge why they think the question is relevant or irrelevant to the case. The judge will make the decision on whether the question is relevant or not.

Objections: Questioning a Witness

Abusive, Hectoring, or Harassing

If you see that the other party is being extremely abusive, harassing, or cruel when asking a witness questions during cross-examination, you can object.

However, it is important to note that the other party is allowed to be quite aggressive in their questioning of witnesses. Their behaviour has to cross the line, from vigorous and aggressive questioning (but is allowed), to abusive, which is not allowed.

Abusive behaviour may include demeaning, humiliating, or mocking the witness. The judge will make the determination about whether the other party has crossed the line, but the other party's behavior will have to be extremely bad for the judge to agree with an objection to abusive, harassing, or vexatious questioning.

Browne v. Dunn

If one party wants to challenge the credibility of the witness, they must provide the witness with the evidence that challenges their credibility so that they can properly respond to it. If the witness was not asked about it during their cross-examination, then the evidence cannot be entered into court later.

It is not fair to challenge a witness's credibility with information they have not seen. The witness has not had the chance to defend themselves after their cross-examination is over. If the other party brings in this new evidence later, you can object to the evidence being introduced.

The judge will then either refuse to admit the evidence, give it little or no weight, or allow it, but the witness will be given another opportunity to be questioned about the evidence.

Argumentative

If the other party asks the witness to agree or disagree with a position that the other party assumes is true (often because it matches the argument their side is making), or is trying to draw a conclusion which has not been proven as true, you can make an objection that this is argumentative.

This happens when the other party asks the witness to agree or disagree with a statement that is not a statement of fact. A question about a statement of fact could be, “do you agree the phone was an iPhone 11?”. An argumentative question on the same issue would be, “do you expect the court to believe that they could afford an iPhone 11?”.

Calls for a Legal Conclusion

If the other party asks a witness to make a legal conclusion (for example, whether they think someone broke the law), you can object.

The only person in the trial who is allowed to make decisions about legal issues is the judge.

Compound or Multiple Questions

If the other party asks a question that is multiple questions in one (compound) or asks multiple questions at the same time, you can object to this.

The other party may be allowed to ask the questions separately.

Confusion, Ambiguous or Vague

If the other party asks a witness a question that is not clear or is misleading, you can object to that question as confusing, ambiguous or vague.

The other party may have an opportunity to ask a clearer question, or rephrase their question to make it clear and more specific.

Hearsay

For family law cases, the court can allow hearsay evidence of what a child said if the court thinks that it is reliable. However, you may have to ask permission of the court to do this.

For more on hearsay see the section above (Objections: General).

Improper Re-Examination

Re-examination can happen after cross-examination in a trial.

If new information comes up in cross-examination, the other party can ask that witness questions about that new information.

During a re-examination, if the other party asks questions about things that were not new from the cross-examination or should have been reasonably asked during the direct examination, you can object.

Leading the Witness

Leading questions are always allowed in cross-examination, but are generally not allowed in examination-in-chief.

During the examination-in-chief (when one party is asking their own witness questions), if the other party asks their witness a question that contains or suggests the answer ("leading" the witness to the answer), you can object.

For example, if the witness has not said when they saw someone named Raji yet, and the lawyer asks, "did you see Raji at 4pm?", this would be considered a leading question because the question suggests the answer. An open-ended question, which is allowed, would be, "did you see Raji" or "what time did you see Raji?". These questions allow the witness to testify for themselves as to who they saw and when.

There are some exceptions to this rule. If the issue is not controversial, leading questions might be allowed. You will need to ask the judge permission to ask leading questions on undisputed facts before asking these types of questions. However, this is limited to truly uncontroversial points. For example, if the witness is the sister of the other party, then you could ask, "you are Raji's sister?" instead of, "what is your relationship to Raji?"

Leading questions may be allowed, if the witness is an adverse witness (a witness whose interest does not match the side that is questioning them) or a hostile witness (a witness who may be antagonistic or confrontational to the side that is questioning them). You will need to ask the judge permission to ask an adverse or hostile witness questions. You will have to explain to the judge why you think that the witness is an adverse or hostile witness.

An adverse witness is someone who is going to provide evidence that will not help the case of the person who is questioning them. There is no precise definition for a hostile witness, but a hostile witness generally means a witness whose feelings about an aspect of your case are so strong that they would not provide truthful evidence.

Repetition

If the other party asks a question that the witness has already answered repeatedly, so much that it is wasting the court's time or intimidating the witness, you can object to this.

However, lawyers are allowed to ask the same question more than once if the witness's answer was unclear or did not fully answer the question.

Speculative

If the other party asks a witness a question that makes them guess or speculate about something or what might have happened, you can object.

Objecting to Documents

A document can be physical, such as a handwritten note, or electronic, such as an email (however, you will typically have to print out a physical copy of the electronic document to show in court).

Each court will have its own rules for disclosure of documents (when both parties need to exchange the documents they want to rely on in court) that you should review.

For tips on keeping documents and evidence organized, see here.

If you received the document before the hearing and you intend to object to it, you will need to inform the other side in advance that you will object to the document being admitted into evidence and explain the reasons for the objections. The other side might decide not to rely on that document. If the other side still intends to rely on the document, you should make the objection at the hearing.

If you or the other party objects to a document at the trial or hearing, the judge may decide to have a "voir dire", which is like a "mini-hearing" about whether to admit the document into evidence. The objecting party will speak first to explain the reasons for the objection; the other party then responds; and the objecting party can then reply. The judge will then make a decision about admitting or excluding the evidence.

Affidavits

An affidavit is a document that contains facts that a witness has sworn to be true. It is only supposed to contain facts that the person can swear to be true and should not include opinions, arguments or speculation. You can object to all of the contents of the affidavit, certain statements in it, or any document attached to it.

You would use the same types of objections listed in this document. For example, you could object that one of the statements is prejudicial or that a document contains hearsay, an opinion or is speculative.

If the court agrees that certain sections of the affidavit are against the rules, the judge will order those sections to be struck from the affidavit or rule against the entire affidavit being introduced.

Authenticity Not Established

When a document or item is brought to court to be used as evidence, it must be authenticated if the parties do not agree that it is authentic. The authenticity of documents should be raised as soon as possible, ideally before trial, as this avoids wasting time during trial. If the issue can be resolved between the parties before the hearing in court, this is preferable. Not all documents need to be authenticated. If both parties agree the document is authentic, it can be accepted as authentic without going through the steps of authentication.

However, if there is a disagreement about the authenticity of the document and the other party has not proven it is authentic and they try to admit it, you can object.

If it has not gone through the proper steps of authentication, you can object.

Best Evidence Rule

For most physical documents, the party seeking to introduce it will be expected to provide the court with the original document if they want to prove the contents of the document are true. For example, the court would want a copy of the original hand-written letter, not a photocopy.

If the original is missing, someone else has it, it is impossible to get, or it has been destroyed but the party has a copy, the copy may be accepted by the court if the party provides a good explanation for why they cannot produce the original or why a copy is good evidence.

If it is not the original document or the party does not have a good reason to use a copy, you can object.

For electronic documents, because there is usually no true single, “original” document when it comes to most electronic evidence, the courts will instead want to know that the system it was saved on was functioning normally (i.e., was working as it usually would and was not working in a way that would impact the contents of the document. For example, it would not be working properly if it were not saving the document accurately because of a glitch in the system).

If you think the system was not functioning normally and the original document may have been altered, you can object.

The party who was trying to admit the document would then need to explain that the electronic system was working properly. For example, if the program was saving data accurately on an Excel sheet, there were no interruptions in the system, and there had not been any identified problems with the Excel program’s operation and accuracy when it saved the information.

Hearsay

If a document is being admitted in order to prove its contents (i.e., whatever is said in the document is true), it will be considered as hearsay unless it falls under one of the exceptions to the hearsay rule (see above under Objections: General).

There are special rules for business and medical records when the document was made in the usual course of business. Documents are admissible when it is the usual course of business to record the information that is being presented to the court as evidence. If there is a dispute about the records, whomever keeps the records at the business will have to come to court to testify that the record is authentic.

Records from financial institutions, such as bank records, can also be admitted if they are disputed. However, a bank manager or accountant will need to provide an affidavit or a statement in court that the record is authentic. If there is no dispute – for example, bank account records that both parties accept as accurate records – then they will not need this affidavit or statement. It is common for both parties to accept bank records as accurate.

There are also special rules for Government records that can be found in sections 25 and 28 to 33 of the *Evidence Act*.

For more on hearsay see the section above (Objections: General).

Parol Evidence Rule

This rule applies to contracts. It says that only what is written in the contract is allowed as evidence. Nothing that was agreed to outside of the contract that would contradict it, such as a conversation about the deal, is admissible. If someone tries to bring in additional evidence about the contract, you can object to it.

However, there are exceptions to this rule and sometimes additional evidence is allowed. For example, if there is evidence of fraud, mistake or unclear sections, additional evidence may be allowed to resolve the matter.

Additional considerations

Interim Applications

In family law trials, there are decisions that will need to be made by an interim application before trial. This will allow the court to make temporary orders on issues such as access times for the child, child support payments, and other critical issues will need to be decided immediately and before the actual trial. The rules of evidence are slightly different for interim applications. To learn more about the process of interim applications click here.

Self-Serving Evidence

Self-serving evidence is not generally admissible. An example of this is a witness repeating her own previous statements about an issue at the hearing to confirm her current testimony at trial. However, in some cases, if the evidence is reliable and necessary, it can be allowed. If a witness' credibility has been made an issue (for example, if they are accused of lying about something), a previous statement can be allowed to show consistency, but not to show what was said was true. This applies to prior consistent statements and other out-of-court evidence that is fully self-serving.

Exhibits at Trial

Whenever you introduce a document or an object as evidence in court, it must be designated as a "numbered/lettered exhibit" by the judge. It is important to pay attention to make sure that the judge numbers all documents and objects. If they are not marked, they will not be considered part of the evidence of your trial. You should try to keep a list of all the exhibits and their numbers so you can refer back to them and you can be sure that they have been noted as evidence by the court.

When you are introducing evidence, you will want to ask the witness to identify the document and then ask the judge to mark the document as an exhibit. The judge will ask the other party if they object to it being entered as an exhibit and if they do not, the judge will say what exhibit number it is and the court clerk will confirm for the record what the exhibit it is and what identifier it has. If you do not do this, the exhibit will not be counted as evidence.

Sometimes the exhibit will be lettered rather than numbered. The important thing is to keep track of the items and the identifier given to them by the court.

Technology Safety Project

This document is a part of a series that details how to preserve evidence related to the misuse of technology in experiences of domestic violence, sexual assault, and stalking. The series is part of the Preserving Digital Evidence of Technology-Facilitated Violence Toolkit.

This document was published March 2021.

We gratefully acknowledge Suzie Dunn of The eQuality Project at the University of Ottawa for the creation of this information sheet.

BC Society of Transition Houses

THE LAW FOUNDATION OF BRITISH COLUMBIA