



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and Regulation for purposes of interpretation and application of the law.

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## Being a Witness

If employees and employers (the parties) are unable to resolve a dispute under the *Employment Standards Act*, the Employment Standards Branch may hold a complaint hearing to determine whether the Act has been contravened.

### Complaint hearings

A complaint hearing is also called an adjudication hearing. An officer of the Employment Standards Branch (the Adjudicator) is appointed to hear the parties give evidence on the issues that gave rise to the complaint. This evidence is given under oath or affirmation, which means that the person giving the evidence swears to tell the truth.

A hearing is usually conducted by way of a telephone conference call or sometimes in person. The Adjudicator will hear evidence from the parties and any witnesses the parties call. After the conclusion of the hearing, the Adjudicator will issue a written decision called a “Determination”.

### Evidence at a hearing

In a hearing, an employer or a complainant may call one or more witnesses to give evidence, and the other party has the right to cross-examine.

Usually a party will call a witness because the party thinks the witness can give evidence that supports their case. Witnesses must have direct knowledge of the facts they are giving evidence about. They cannot give evidence of events they were told about by someone else.

Cross-examination is important because it gives the other side an opportunity to challenge evidence or identify inconsistencies in the witness’s evidence.

Witnesses may prefer to provide a written statement instead of giving evidence. However, if the witness isn’t available to give their evidence under oath and be cross-examined, the contents of the written statement may not be admitted as evidence or will be given less weight.

### What to expect at the hearing

Only the employer, the complainant and their representatives will be present with the Adjudicator for the entire hearing. The parties may or may not be represented by a lawyer. Witnesses may not hear the proceedings until they are called to give evidence.

When a witness is called to give evidence, the Adjudicator will administer the oath. Then the party who called the witness will ask the witness questions regarding the information the witness has. The other party will then be given an opportunity to cross-examine the witness. While challenging the evidence, the person cross-examining the witness is not permitted to argue with the witness.

The Adjudicator may also ask questions of the witness.

When the witness is finished giving evidence, he or she is free to leave the hearing.

