

## ✔ Tip sheet: Cross-examination

Use this checklist to help you remember everything you need to do when preparing for and cross-examining witnesses.

If you are the defendant in domestic violence proceedings, you won't be able to cross-examine the complainant yourself. The Court will appoint a suitable person from the court staff or a Justice of the Peace to ask your questions for you. This person is known as a Court Appointed Questioner.

This checklist is not legal advice. If you don't know what to do, you should get legal advice.

For more information about how to prepare for and conduct a cross-examination, see [Checklist: Preparing questions for cross-examination](#).

### Tip sheet

#### Review all the evidence

To be successful in cross-examination, you must be familiar with all the evidence in your case. You should review all the evidence in your case at least twice before you start preparing for cross-examination.

It is important that you understand:

- what evidence the prosecution has
- what evidence is missing
- how the pieces of evidence relate to one another
- whether there are any inconsistencies in the evidence.

To help you understand how all the evidence fits together, and identify any gaps in the evidence, you may want to make a chronology.

If you are missing any evidence from the prosecution brief, you should speak to the prosecutor.

<p><b>Identify the issues</b></p>	<p>The purpose of cross-examination is to question a witness about the issues in your case. To do this effectively, you must be able to identify the issues.</p> <p>An issue is a question of law that the Court must decide.</p> <p>Your case may involve one or more issues that you need to address.</p> <p><b>Example of issues in AVO cases:</b></p> <ol style="list-style-type: none"> <li>1. <i>Does the protected person fear the defendant?</i></li> <li>2. <i>Would a reasonable person in the position of the protect person fear the defendant?</i></li> </ol>
<p><b>Identify the inconsistencies</b></p>	<p>When reviewing the evidence, you need to identify any inconsistencies that relate to the issues in the case.</p> <p>If you want to argue about inconsistencies in a witness's evidence, you must point out these inconsistencies to the witness during cross-examination. The witness must be given the opportunity to respond to your arguments.</p> <p>If you don't, the magistrate may:</p> <ul style="list-style-type: none"> <li>• recall the witness</li> <li>• exclude evidence of the contradiction</li> <li>• discharge the jury.</li> </ul>
<p><b>Choose the witnesses you want to cross-examine</b></p>	<p>Don't cross-examine a witness unless you have a very good reason.</p> <p>You don't have to cross-examine every witness that is called by the prosecution.</p> <p>You should only cross-examine a witness if it will either:</p> <ul style="list-style-type: none"> <li>• strengthen your case, or</li> <li>• weaken the prosecution's case.</li> </ul> <p>If you decide not to question a witness, you will need to let the Court know. You can do this by simply saying, 'No questions on cross-examination, your Honour'.</p>

	<p>Don't cross-examine a witness if it will hurt your case or add nothing to your case.</p>
<p><b>Prepare your questions</b></p>	<p>You should prepare at least some of your questions for cross-examination before the hearing. However, you should be ready to change your questions or ask new ones at the hearing in response to the evidence a witness gives.</p> <p>It is important that you are flexible about what questions you ask a witness.</p> <p>Your questions should be:</p> <ul style="list-style-type: none"> <li>• short</li> <li>• unambiguous</li> <li>• plain English</li> <li>• leading</li> <li>• about one issue or matter only.</li> </ul> <p>If you are the defendant in domestic violence proceedings, you won't be able to cross-examine the complainant.</p>
<p><b>Avoid improper questions</b></p>	<p>You cannot ask questions that are improper.</p> <p>An improper question:</p> <ul style="list-style-type: none"> <li>• is misleading or confusing</li> <li>• is unduly annoying, harassing, intimidating, offences, oppressive, humiliating, or repetitive</li> <li>• has no basis other than a stereotype, such as a person's sex, race, culture, ethnicity, age, or disability.</li> </ul> <p>A question will also be improper if you ask it in a manner or tone that is belittling, insulting or otherwise inappropriate.</p> <p>The Court must not allow you to ask, and must inform the witness that they don't have to answer, improper questions.</p>
<p><b>Treat each witness with courtesy and respect</b></p>	<p>You must treat all witnesses with courtesy and respect, even if they are being argumentative or rude.</p>

	<p>You should ask all your questions in a calm and courteous manner. This will allow the witness to relax and help you to establish rapport with each witness.</p> <p>It is especially important when questioning a witness about things they might find difficult or upsetting.</p> <p>As hard as it may be, try not to allow yourself to become frustrated or aggressive with a witness. This won't help you to get the evidence you want.</p>
<b>Speak loudly and clearly</b>	<p>You need to speak loudly and clearly so that everyone in the courtroom can hear your questions, especially the witness and the Court.</p> <p>The microphones in the courtroom don't amplify your voice, they only record what is being said.</p> <p>If the witness can't hear you, they can't answer your questions.</p> <p>If you speak too quietly and have to keep repeating your questions, this is likely to annoy the witnesses, as well as the Court.</p>
<b>Keep a steady pace</b>	<p>You should ask your questions at a steady pace. Don't rush your questions or go too slow.</p> <p>You should give the witness enough time to answer your questions without leaving long pauses between questions.</p> <p>Asking short, leading questions in a logical order will help you to maintain a steady pace.</p> <p>If you don't keep a steady pace:</p> <ul style="list-style-type: none"> <li>• the impact of the witness's answers may be lost on the Court</li> <li>• the witness, and the Court, may struggle to hear and understand your questions</li> <li>• you may miss the witness's answer.</li> </ul> <p>If you ask your questions too slowly, the witness may try to explain their evidence or volunteer information that you don't want. This can be harmful to your case.</p>

<p><b>Allow the witness to answer</b></p>	<p>Allow the witness to finish their answer. This is a sign of courtesy and respect, and it will help you to establish rapport with the witness.</p> <p>You should only interrupt a witness when:</p> <ul style="list-style-type: none"> <li>• they refuse to answer your questions</li> <li>• they are not answering your question, but talking about something else</li> <li>• their answer is long-winded and rambling</li> <li>• it appears they have not understood the question.</li> </ul> <p>If you must interrupt a witness, you should do it politely. For example:</p> <p><i>“I am just going to stop you there to clarify...”</i>.</p> <p><i>“Do you mind if I interrupt you. I just want to confirm...”</i>.</p> <p>If you unfairly cut a witness off, the prosecution might object, and the Court might invite the witness to finish their answer.</p>
<p><b>Listen carefully to the answers</b></p>	<p>Always listen carefully to the answers a witness gives to your questions.</p> <p>Don't assume the witness will give you the answer you want.</p> <p>Don't be distracted thinking about the next question.</p> <p>It is important to listen to a witness's answers because:</p> <ul style="list-style-type: none"> <li>• you can't decide what question to ask next until you hear the answer to your current question</li> <li>• you may have to ask the question again if the witness has not understood it</li> <li>• this will also help you to avoid asking questions that the witness has already answered</li> <li>• you must be able to accurately recall their evidence if you want to talk about the witness's evidence in your closing submissions.</li> </ul> <p>It is important to listen to a witness's answers, so you understand when they have given all the evidence you</p>

	<p>want from them. Once you have all the evidence you need from a witness, you should end cross-examination.</p> <p>Don't ask any more questions than is necessary to get the evidence you want.</p>
<p><b>Take notes of important answers</b></p>	<p>When a witness gives evidence that is of real significance to your case, you should write down what they said using their exact words.</p> <p>It is important that you accurately refer to a witness's evidence and use their words:</p> <ul style="list-style-type: none"> <li>• to cross-examine the witness</li> <li>• in your submissions, when summing up the evidence in your case.</li> </ul>
<p><b>Don't argue with the witness</b></p>	<p>Don't argue with a witness.</p> <p>Don't try to make a witness:</p> <ul style="list-style-type: none"> <li>• admit inconsistencies in their evidence</li> <li>• admit their mistakes</li> <li>• agree with you.</li> </ul> <p>This just gives the witness an opportunity to re-state their evidence-in-chief or explain why their evidence has been inconsistent.</p> <p>If you ask a witness a question, and they are evasive or non-responsive, you may want to ask your question again once more.</p> <p>However, you should not ask the same question more than twice. If you repeat a question to many times, the magistrate may instruct you to move on, and the witness not to answer.</p> <p>If necessary, you could try rephrasing the question to see if the witness will answer your question if asked differently.</p> <p>You could also politely instruct the witness to answer the question. For example:</p> <p><i>"Mrs S, are you able to answer the question?"</i></p>

	<p><i>"Mr P, can you please answer my question."</i></p>
<b>Save the explanations for submissions</b>	<p>Don't:</p> <ul style="list-style-type: none"><li>• ask a witness to explain how evidence relates to the issues in your case</li><li>• invite a witness to explain anything.</li></ul> <p>The purpose of cross-examination is to ask questions, to get the evidence you want; not to make comments or gives explanations about evidence.</p> <p>Save your explanations of the evidence for submissions.</p> <p>You need to convince the Court that your explanations are correct, not the witness.</p>