



## MEMBERS AS WITNESSES IN COURT PROCEEDINGS

It is quite possible that, at some point in your career, you will be asked to be a witness in some type of court proceeding. Teachers, ESPs, and PSPs are often viewed as impartial and observant evaluators of students' psychological, emotional, and physical well-being. We are also required as part of our professional duties to keep records regarding a child's progress or behavioural issues.

### Subpoena and Pupil Records

If you receive a subpoena to attend a court proceeding, this is a legal document that requires you to appear. Without an order of a judge, you are not permitted to testify to the contents of "pupil records" (the OSR) as these are protected by s. 266 of the Education Act. These records are not admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing, or other proceeding without the written permission of the guardian or parent. Members are obligated to preserve the secrecy of these records and breach of that obligation may constitute professional misconduct. Members should not take these documents to court.

### Seek Advice

If you are contacted by a lawyer or the crown attorney with respect to a criminal proceeding, or by a lawyer representing a parent in a custody dispute, or other court proceeding, you should not speak to the lawyer without first:

- notifying your principal and asking for advice from the principal or school board counsel; and
- if this is not forthcoming, call your local president or staff in Professional Relations at ETFO for advice.

Advise the lawyer that you must seek advice before speaking with the lawyer. Remember, you are not permitted to reveal the content of the OSR, and if you do reveal it, you may be in violation of your professional obligations.

You are not obligated to speak to any lawyer, even if you have been served with a subpoena. Obtain advice first.

### Just the Facts

If you have obtained advice, and you are advised to speak to the lawyer, remember that if you are asked about your knowledge of a student's well-being, mood, or emotional state, for example, your answers must be entirely factual.

- Never speculate or offer opinions as to why a student acted in a certain way on a certain date.
- Facts, dates, actual observations as to conduct or mood may be relevant. However, do not pass on "informal" knowledge of any sort.
- Do not descend into the "battle". Your opinions are not relevant and may embroil you inappropriately in a parental dispute.

PRS MATTERS



Consult the government's website for information on testifying in a criminal trial at [www.gov.on.ca/MBS/english/publications/pubonweb/witness/005899tc.html](http://www.gov.on.ca/MBS/english/publications/pubonweb/witness/005899tc.html)

### **Informal Requests**

Sometimes a parent, or a parent's lawyer, will ask a teacher, DECE, ESP or PSP to write a letter describing their observations of the child as part of a child custody issue. You are not legally obligated to do this. You should advise your principal of the request and consider carefully if you are prepared to become involved by complying with this request. A letter from you could lead to further involvement, including acting as a witness in court. If you receive a subpoena, however, the advice referred to above applies.

**If you have any questions or concerns about your professional boundaries, please contact your local president or call and speak with a Professional Relations Services staff at 1-888-838-3836 or 416-962-3836.**

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