

What is Questioning?

Questioning is a procedure established by the Alberta Rules of Court to help each side in a lawsuit find out about the other side's case by asking questions in a formal setting and making a record of the answers.

Questioning is a question and answer session of the parties in the lawsuit. It is usually held in the office of one of the lawyers. Normally the lawyer for the Plaintiff first questions the Defendant. Then the lawyer for the Defendant questions the Plaintiff.

In a Questioning, the examining lawyer has the right to ask a broad range of questions dealing with issues relating to the action. Your job is to answer the questions as best you can. Your lawyer is there as a gatekeeper: to ensure that all questions asked by the other lawyer are fair, proper and relevant. Your lawyer cannot help you answer a question – that is your role.

The person being examined is sworn to tell the truth. There is no Judge present, but there is a court reporter who records each question and answer. Everything that is said at a Questioning is recorded and produced in a written transcript. The answers you give may be used against you at trial, so it is crucial to give clear, concise and accurate answers. If you give different answers at trial, the transcript can be used against you, so you are committing to your evidence by the answers you give. So be careful.

Quick Tips for Questioning

When you are questioned it is important to remember that the examination is conducted solely for the benefit of the party asking you the questions. He or she will do their best to obtain answers from you which will help their case and hurt yours. He or she can use those answers against you at trial. Your lawyer cannot use those answers to help your case at trial. Therefore you should bear in mind the following points:

I. Tell the Truth - Be Honest

- The entire questioning process is under oath and all questions must be answered truthfully and to the best of your ability.
- If you do not recall, say so. You may refer to produced documents to assist your memory.
- Do not apologize for any inability to recall exact words or minor details. It is important that you remain confident that you have accurately described the essence of what you observed or recalled particular events.
- You are there to give evidence as to the facts - **DO NOT** offer opinions, guesses or speculation, e.g. do not say what *might* have happened.

II. Answer Only the Question Asked - Be Brief

- Listen to the entire question and ensure that you understand it fully before answering. If you do not understand, say so. **DO NOT GUESS.**
- Take your time. If you need to think about a question, **PAUSE**. This is not a race. You must be sure you are giving your best, most accurate answer based on your recollection of events.
- If the question is vague, ask for further detail.
- **DO NOT** volunteer information. If an explanation is required, keep it brief and to the point.
- Keep your answers audible. Avoid saying “uh-huh” or using gestures because these cannot be transcribed by the court reporter. Questions can be answered with a simple “yes” or a “no” if they are clear. You may briefly qualify the answer with more information if that is required.
- If your lawyer objects to a question, do not answer it. Generally, your lawyer will not object unless the question is improper.
- **DO NOT** give approximations of distance, time or location, unless you have discussed this with your lawyer beforehand.
- Be especially careful with questions starting with “Would it be fair to say . . .” or “I understand that . . .” These are leading questions. They are designed to have you agree with the lawyer’s version of the evidence. They may not match your actual evidence. If something has been added or omitted, or the words have been changed from your words, do not agree.

III. Stay Calm - Be Careful

- Breathe!
- Be co-operative and polite.
- Do not argue with the opposing counsel - that’s your lawyer’s job.
- If you need a break for any reason, ask for it.

Questioning as an Officer of a Company

If you are appearing as an officer for a corporate Plaintiff or Defendant, you have a duty to inform yourself of information in the company’s files and documents and of information known to other members of the company, but not personally to yourself. If you are unsure of an answer, you can undertake, or promise, to find the answer from someone in the company who might know. It is up to your lawyer to determine if the request is appropriate or if the undertaking should be objected to or “taken under advisement” for future consideration. Answers to undertakings are given to opposing counsel after the Questioning is completed. Your lawyer will assist you in preparing them.

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