Objections

This information is from the booklet 'Going to Court: Self-Represented Parties in Family Law Matters.' You can find this booklet on the Nova Scotia Family Law website at www.nsfamilylaw.ca.

An objection is a formal protest raised in court during a hearing. An objection can be raised when you believe that proper court process or a rule of evidence is not being followed. Objections can be raised when

- a witness is asked an improper question
- a witness is giving improper testimony
- an exhibit is being improperly entered into evidence

When you raise an objection, you are asking the judge to make a ruling on whether or not to allow the question being asked or the exhibit to be entered, or whether or not to allow the witness to continue giving the evidence being objected to.

It is best to raise an objection as soon as you notice that an improper question is being asked or the rules are not being correctly followed. If you are objecting to the question being asked to a witness, it is best to object before the witness starts answering the question.

When you are objecting, you must stand up and say, "Object," and give the reason for your objection. It is not enough just to say you are objecting, without explaining why. The judge will decide whether the objection is "sustained" or "overruled." If the judge sustains the objection, this means that they agree with the objection and are not going to allow the question, testimony, or evidence objected to. If the judge overrules the objection, this means they disagree with the objection, and the question can be asked, or the witness can continue giving the testimony they were giving, or the exhibit can be entered into evidence.

If the objection was to a question being asked of a witness, the judge may allow the person asking the question to rephrase it. This means they can try asking it again in a way that follows the court's rules and procedures.

In some cases, a judge will raise an objection and not allow certain evidence because these rules are not being followed.

Objections can be called for many reasons. Be careful to raise objections only when necessary. If you call objections for a bad reason (for example, "just because"), doing so can be disruptive

to your own case and can cause delays. An objection might be raised because something is

- **irrelevant**

Questions, testimony, or exhibits that do not relate to the legal issue the court is dealing with are usually "irrelevant."

For example, if you are dealing with the table amount of child support, it is likely irrelevant to ask about the other parent's new partner and how long they have been dating.

- **hearsay**

In general, witnesses can only testify or be asked about things they know, saw, or heard firsthand; anything they heard from a source is "hearsay."

For example, "My friend Mary lives two doors down from the Smiths, and she told me that she saw Mr. Smith going into the house on December 1st."

This is hearsay, as the witness heard this information from a third party, Mary. In this case, Mary should be the one testifying about what she saw, because it is her firsthand information.

- **a leading question**

A leading question is one that suggests its own answer. It is not appropriate to ask a leading question when you are questioning your own witness, or when the other party or their lawyer is questioning one of their witnesses. Leading questions are only appropriate during cross-examination.

For example, these are leading questions: "Isn't it true that she returned from work at 10:30 that night?" and "They work for the same company, right?"

The proper way to ask questions in a direct examination would be to say something like, "What time did she return from work that night?" or "Do they work for the same company?"

- **a compound question**

A compound question is actually two or more questions. A witness should only be asked one distinct question at a time. A witness should not be asked, "What did you see her doing that afternoon, and how many people was she with?" This is asking two questions at the same time. Instead, the witness should be asked, "What did you see her doing that afternoon?" Once the witness answers this question, he or she can then be asked, "How many people was she with?"

- **repetitive**

A question that has already been "asked and answered" may be objected to as "repetitive." It is not appropriate to ask a witness the same question more than once, even if the question is worded differently.

For example, if you have already asked, "How much alcohol did Pat drink that night?" and the witness has answered that Pat drank 3 bottles of beer, it is not appropriate to then ask, "So how many bottles of beer did Pat drink?" If the witness has answered the question, you must move on to another question, even if you did not get the answer you wanted.

- **opinion or calls for a conclusion**

An opinion may be objected to when it comes from a non-expert, because an opinion is subjective and not based, or not sufficiently based, on fact. A question to a witness that calls for a conclusion asks for an answer that is based on an opinion, and therefore an objection may be raised against it. Only the judge can draw conclusions or make a decision about the legal issues being addressed in a hearing. It is not appropriate for a witness to draw a conclusion or give their opinion about the legal issue being addressed. It is also not appropriate to ask witnesses for opinions or to draw conclusions about matters they are not qualified to address. In general, only people qualified as experts can give opinions in court.

Non-expert witnesses may be able to give some opinion, like estimating someone's age or height, but their ability to give opinions is limited. For example, a witness must not be asked what decision the judge should order, or to give their opinion on what the judge should do. Likewise, a non-expert witness must not be asked something like, "In your opinion, is Bob a good father?" or, "Do you think Jane has a mental health problem?"

- **making an assumption ("assumes facts not in evidence")**

A claim cannot be assumed to be true or factual, when the claim has not been proven. For example, a witness cannot be asked something like, "Where were you standing when you saw Joe punch Brian?" when it has not been proven that Joe ever punched Brian.

- **speculation**

Speculation is the same as guessing. An intelligent or clever piece of speculation is still essentially a guess. A question calls for speculation when a witness is asked for information that he or she cannot possibly know. In such a case, the witness is essentially asked to guess an answer. Questions should try to discover facts, not guesses about facts.

For example, if a witness is testifying that he or she saw someone drinking alcohol, it is not appropriate to ask that witness to guess what the person's specific blood alcohol level was. Only someone with proper testing equipment could know that answer. Without such equipment, only an expert could give an opinion about the likely range of blood alcohol level. In such a case, even the expert would need to know some essential facts.

In addition to the reasons given above for objections, there are times when other, less specific, objections may be raised. For example, an objection might be made against a witness's answer, or against a question, when it is confusing / ambiguous / vague / unintelligible:

- the witness is jumping all over the place with their evidence
- the person asking the question is not making sense or not being clear

For example, an objection might be made when the other party or their lawyer misstates evidence or misquotes the witness. For example, Jerome testified that he was laid off from his job as a result of company cutbacks. But the other party's lawyer says that Jerome quit his job because Jerome thought that cutbacks were going to take place. The lawyer has misstated what Jerome said.