

PRACTICE NOTE 2

COURTROOM DECORUM AND LEGAL ETIQUETTE

1. Court Dress: Gowns should be worn for all court appearances except the following:

- gowns do not have to be worn in uncontested chambers.

When a Gown is Worn:

- Striped or dark conservative trousers or skirts should be worn with the gown as well as dark shoes.
- Gowns should be worn only in court or court precincts. They should never be worn in public.
- It is just as important to be properly dressed in judges' offices as in a courtroom. A suit or jacket with shirt and tie must always be worn by men. Similar attire or a conservative dress should be worn by women.

2. Enter the Judge

When the judge enters the courtroom for the day's first appearance, order should be maintained. Counsel, their clients, witnesses and everyone else present in the courtroom should rise and remain standing in their appointed places until the presiding Clerk opens the Court and the Judge is seated. Everyone, except the Clerk, will then be seated. The Clerk will then call the matter to be heard, announce counsel and be seated. Many judges bow to counsel before they take their seat on the bench and counsel should return the bow.

3. Recess

The following procedure is to be followed when the court takes a recess. The Clerk will stand and announce:

THIS COURT IS NOW IN RECESS, and then be seated.

The Judge then retires. Everyone will remain seated while the Judge retires for recess and also remain seated when the Judge re-enters the courtroom after the recess except the Clerk who will rise and call ORDER as the Judge enters. After the Judge resumes sitting the Clerk will announce:

THIS COURT IS NOW IN SESSION and then be seated. The presiding Judge will then resume the hearing.

4. Lateness

Counsel, who arrive in court after the court has been opened and the case has been called, should offer an apology to the Court and give an explanation for their lateness.

5. My Learned Friend

When addressing the Court, counsel should refer to opposing counsel as "my friend" and a Queen's Counsel as "my learned friend." When referring to counsel who is associated with him/her, he/she should say "my friend or my learned friend (as the case may be) who is associated with me."

In addressing witnesses, who as a rule have no knowledge of this legalistic nicety, the phrase should never be used unless it is modified. For example, “my friend, Mr. Jones, who has just finished asking you some questions. . .”

It must be remembered that there are many witnesses who do not understand the meaning of words like “counsel,” “plaintiff,” “accused,” “defendant” and “Crown,” and if they do not, it is quite proper to translate these terms into simple language.

6. Decorum at the Counsel Table

No matter how friendly they may be, counsel should ignore each other socially at the counsel table and during a trial. Cordial greetings, joking with each other and other indications of intimacy are likely to engender suspicion in a client and usually give the public a bad and wrong impression.

7. Procedure During Trial

During trial, opposing counsel should not address each other directly but through the Court.

The only correct way of making an objection is, for example, “My Lord, I object to my learned friend’s question on the ground that it is. . .” stating the reason for the objection.

It is important to make any objection as quickly as possible, since once the answer is made, it cannot be ordered stricken from the record.

Typical improper objections:

(To opposing counsel): “You can’t ask that”
“That’s a leading question”
“That’s hearsay”
“You didn’t prove that”
“That wasn’t in evidence”

(To the Court): “objection”
“I object”

Talking or whispering to other counsel at the counsel table when another counsel is examining or cross-examining a witness is bad manners, because it is distracting to the Court as well as examining counsel. If counsel must communicate while opposing counsel is examining a witness, he can easily do so in writing. There is no objection to a whispered colloquy between senior and junior counsel or counsel and client.

8. Referring to the Court

It is not proper for counsel to refer to the Court in the third person as “the judge”. The Court should be referred to as “His Lordship” or “Her Ladyship”. But when examining a witness, it is best to refer to the Judge as “the Court.” The reason being is that if you ask the witness to “Tell His Lordship what happened,” the witness will often turn to the Judge and tell him the story in a low voice or confidential manner.

9. The Witness

Counsel should see that their witnesses are correctly attired in court and are presentable.

It is important that counsel should stay behind counsel table, or in any other appointed place, when examining or cross-examining a witness. Counsel should not get close to, or lean on the witness box when conducting an examination. The Court's transcription equipment is set up so that each person should speak directly into his own microphone.

In certain circumstances it will be necessary for counsel to be next to the witness, as when he wishes the witness to mark on a document.

Counsel should always be aware that the Court must hear the witness and by staying behind the counsel table he will have some idea of the volume of the witness's voice.

10. Addressing Judges

(1) When writing to a Chief Justice, address the envelope as:

The Honourable Norman H. Carruthers
Chief Justice
Supreme Court of Prince Edward Island
- or -
The Honourable Chief Justice Carruthers
Supreme Court of Prince Edward Island

Letter to the Chief Justice may open:

(most formal):
Dear Chief Justice Carruthers

(less formal):
My Dear Chief Justice Carruthers;
My Dear Chief Justice; or
Dear Sir:

(intimate): Dear Judge;
(but never): Dear Chief:

(2) Other Justices of the Supreme Court should be addressed on an envelope as:

The Honourable Madam Justice Matheson
Supreme Court of Prince Edward Island

A letter to a Justice of the Supreme Court would open in the same respect as to the Chief Justice except "Mr. Justice" is substituted for "Chief Justice."

An envelope to a Judge and his wife would be:

The Honourable Mr. Justice DesRoches and Mrs. DesRoches

And informally they are referred to as:

Mr. Justice and Mrs. DesRoches.

- (3) In court or court precincts the judges are addressed as “My Lord”, “My Lady”, and otherwise as “Sir”, “Madam.” They are only addressed as “Your Lordship” when the word “you” would be used.

In the third person the Judges are referred to as “Their Lordships” (plural) or “His Lordship” or “Her Ladyship” (singular). Socially a judge is introduced and referred to as “Mr. Justice DesRoches” except “Chief Justice” is substituted when appropriate.

For those interested in a more detailed account of legal etiquette and courtroom decorum, including some excellent examples of how to conduct an examination of a witness and the proper use of the English language in court, please refer to the S. Tupper Bigelow book “LEGAL ETIQUETTE AND COURT ROOM DECORUM” published by the Carswell Company Limited in 1955. This book is available in the Judges’ Library.