

# An updated evidence cheat sheet



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In 2007, Justice Paul Perell published “An Evidence Cheat Sheet” in *The Advocates Quarterly* (2007) 33 Adv Q 490.

The “cheat sheet” has become a regular reference for litigators, providing a starting point for deeper legal research or a brief overview of an evidentiary topic when a refresher is needed. In this article, we provide an updated and refreshed version of Justice Perell’s original.

The focus of this update is twofold. First, we have updated the citations to reference more recent cases where applicable and appropriate. Second, we have focused this version on civil

litigation, for use in trial, motions, and applications. Although Supreme Court of Canada jurisprudence from the criminal context is noted, we have endeavoured to provide examples of civil decisions applying the various rules of evidence. To this end, we have also adjusted the objections listed depending on their applicability to the civil context. Where rules of evidence are reflected in rules of court or evidence statutes, the references are to the Ontario *Rules of Civil Procedure* and the Ontario *Evidence Act* and the *Canada Evidence Act*.

OBJECTION	EVIDENTIARY RULE	EXCEPTIONS
<b>Abusive cross-examination</b>	<p>The trial judge shall exercise reasonable control over the mode of interrogation of a witness to protect the witness from undue harassment or embarrassment. The judge may disallow a question put to a witness that is vexatious or irrelevant to any matter that may properly be inquired into at the trial.<sup>1</sup></p> <p>The trial judge should place limits on cross-examination where it lacks a good faith basis or is sarcastic, personally abusive, or derisive.<sup>2</sup></p>	<p><b>Broad scope of cross-examination</b> Cross-examining counsel are afforded broad scope for cross-examining a witness on matters related to credibility.<sup>3</sup></p>
<b>Authenticity not established</b>	<p>Generally speaking, before a document can be admitted into evidence, it must be “proved” as authentic – that is, it must be shown to be what it purports to be (or a true copy of the original) and signed or written by the person by whom it purports to be signed or written.<sup>4</sup></p> <p>However, the common law’s standard for authentication of documents is low. The burden may be discharged by direct or circumstantial evidence.<sup>5</sup></p>	<p><b>Authenticity admitted by counsel</b> Where the authenticity of a document is admitted by counsel, this dispenses with the need for proof.<sup>6</sup></p> <hr/> <p><b>Ancient document rule</b> Documents may be admitted without the presence of a witness if the document is:</p> <ol style="list-style-type: none"> <li>1. Not less than 30 years old;</li> <li>2. Produced from proper custody; and</li> <li>3. Free from suspicious circumstances.<sup>7</sup></li> </ol> <p>However, documents admitted under the ancient document rule may not necessarily be admissible for the truth of their contents. The reliability of the document must still be considered.<sup>8</sup></p> <hr/> <p><b>Documents in possession rule</b> If it can be shown that a document is in the “possession” of a party, the document will generally be admissible against the party as circumstantial evidence of the party’s knowledge of the contents, connection, or complicity in the transactions to which they relate.<sup>9</sup></p>

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<b>Character evidence</b>	Evidence of good and bad character is ordinarily inadmissible in a civil action since it is often irrelevant. <sup>10</sup>	<p><b>Reputation for untruthfulness</b> Cross-examination relating to general reputation for untruthfulness, including prior criminal convictions or findings of professional misconduct involving dishonesty, may be used to diminish the credibility of a witness.<sup>11</sup> However, the trial judge can refuse such cross-examination where the examiner intends to call further evidence to diminish the witness’s credibility (i.e., application of the collateral fact rule – see below).<sup>12</sup></p>
		<p><b>Similar fact evidence</b> In exceptional circumstances, similar fact evidence is admissible if it is relevant to an issue in the case (versus showing that the opposing party is a bad person) <i>and</i> its probative value outweighs the prejudice to the opposing party that may arise from the admission of such evidence.<sup>13</sup></p>
<b>Collateral fact rule</b>	<p>The collateral fact rule is an exclusionary rule that prohibits calling evidence solely to contradict a witness on a collateral fact.<sup>14</sup></p> <p>The rule does not impact the scope of cross-examination but rather limits what contradictory evidence can be called to refute a witness’s answer. The rule seeks to preserve trial efficiency and avoid confusion or distraction by preventing the litigation of issues that have only marginal relevance.<sup>15</sup></p> <p>The collateral fact rule provides that answers given during cross-examination on collateral facts are final. Generally, this includes questions and extrinsic evidence directed solely at impeaching a witness’s credibility.<sup>16</sup></p>	<p><b>Discretion of the trial judge</b> There is an argument that if the evidence of the contradiction (on the collateral fact) is probative enough to outweigh the prejudice it may cause, the court has the jurisdiction to admit the evidence.<sup>17</sup></p> <p><b>Prior inconsistent statement</b> Evidence that a witness made a prior inconsistent statement may be elicited on cross-examination and, if denied, may be admitted to impeach the credibility of the witness.<sup>18</sup></p> <p>If the witness does not admit the statement, it will be necessary to prove the statement, usually during the case of the party cross-examining. The technique for impeachment is:</p> <ol style="list-style-type: none"> <li>1. Recommit the witness to the evidence in chief;</li> <li>2. Establish from the witness the circumstances of the prior inconsistent statement;</li> <li>3. Show the witness the prior statement if it is in writing; and</li> <li>4. Identify or have the witness identify the prior inconsistent statement.</li> </ol> <p>However, an examination before and certified by a judge, officer, or person appointed to take it shall be received and read in evidence without proof of signature, saving all just exceptions. The examination shall be presumed to represent the evidence of the witness accurately, unless there is good reason to doubt its accuracy.<sup>19</sup></p>
<b>Deemed/implied undertaking</b>	<p>The “implied undertaking rule” is the rule under which evidence compelled during pretrial discovery from a party to civil litigation can be used by the parties only for the purpose of the litigation in which it was obtained.<sup>20</sup></p> <p>All parties and lawyers are deemed to undertake not to use evidence or information to which the deemed undertaking rule applies for any purposes other than those of the proceeding in which the evidence was obtained.<sup>21</sup></p>	<p><b>Exceptional circumstances</b> The court may order that the deemed undertaking rule does not apply to the evidence if it is satisfied that the interest of justice outweighs any prejudice that would result to a party who discloses evidence.<sup>22</sup> The court must weigh the public interest at stake or the interests of justice against the values protected by the deemed undertaking rule, namely privacy and the efficient conduct of civil litigation.<sup>23</sup></p>

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<p><b>Discrediting party's own witness</b></p>	<p>A party producing a witness shall not be allowed to impeach their credit by general evidence of bad character.<sup>24</sup></p>	<p><b>Witness declared adverse</b> If, in the opinion of the judge presiding, a witness proves adverse, the party producing the witness may, with leave, prove the witness made a prior inconsistent statement. However, the party must first mention to the witness the circumstances of the proposed statement and the witness must be asked whether they made the statement.<sup>25</sup></p> <p>A witness is adverse where they assume a position unfavourable or opposite to that of the party calling them, and it is shown they made a former inconsistent statement.<sup>26</sup></p> <hr/> <p><b>Prior inconsistent statement reduced to writing</b> Where a party producing a witness alleges the witness made a statement reduced to writing or recorded that is inconsistent with the witness's present testimony, the court may, without proof that the witness is adverse, grant leave to that party to cross-examine the witness as to the statement. The court may consider the cross-examination in determining whether in the opinion of the court, the witness is adverse.<sup>27</sup></p>
<p><b>Hearsay</b></p>	<p>Evidence of an out-of-court statement tendered to establish the truth of its contents is inadmissible. The essential defining features of hearsay are: (1) the statement is adduced as proof of its contents; and (2) the opportunity for a contemporaneous cross-examination of the speaker is absent.<sup>28</sup></p>	<p><b>Non-hearsay use – evidence that the statement was made</b> Evidence of an out-of-court statement is admissible as proof that the statement was made but not proof of its truth.<sup>29</sup></p> <p><b>Necessary and reliable</b> Hearsay evidence is admissible if the indicia of necessity and reliability are established on a <i>voir dire</i>.</p> <p>Necessity: Evidence will be necessary when the declarant is unavailable to testify at trial and where evidence of a similar quality from another source is not obtainable.</p> <p>Reliability: Reliability is usually satisfied because either the statement came about in a way that indicates trustworthiness or the circumstances permit the ultimate trier of fact to sufficiently assess the statement's trustworthiness.<sup>30</sup></p> <hr/> <p><b>Hearsay admissible on motions and applications</b> An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and belief are specified in the affidavit.<sup>31</sup> However, this evidence may be subject to less weight and more scrutiny the closer it comes to the dispositive issue in the motion.<sup>32</sup></p> <p>An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious if the source of the information and the fact of the belief are specified in the affidavit.<sup>33</sup> Facts are contentious if they are not just background or so well documented as to be beyond contention.<sup>34</sup></p> <hr/> <p><b>Res gestae</b> Courts have permitted utterances to be admitted for their truth in the following three circumstances: 1. Declarations of bodily and mental findings and conditions;</p>

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<p><b>Hearsay</b> (continued)</p>		<p>2. Declarations accompanying and explaining relevant acts; and</p> <p>3. Spontaneous exclamations.<sup>35</sup></p> <p>The requirement for strict contemporaneity has been abandoned. The requirement for contemporaneity remains. The declarant must, at the time of the declaration, continue to be under the pressure or emotional intensity that obviates the risk of concoction or distortion; it is this that provides the guarantee of reliability which underpins the exception.<sup>36</sup></p> <hr/> <p><b>Admission by a party</b> The party admissions exception to the hearsay rules permits a party to prove any relevant statement that it can show was made by the opposing party, whether or not the opposing party knew at the time they were making the statement that it could help the opposing party litigant.<sup>37</sup></p> <hr/> <p><b>Business record [statutory]</b> Any writing or record made of any act, transaction, occurrence, or event is admissible as evidence of such act, transaction, occurrence, or event if made in the usual and ordinary course of business. It must also be in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter.<sup>38</sup></p> <p>This rule applies only if the party tendering the writing or record has given at least seven days' notice of the party's intention to all other parties in the action.<sup>39</sup></p> <p><b>Business record [common law]</b> Records made contemporaneously by someone having personal knowledge of the matters then being recorded and under a duty to make the entry or record should be received in evidence as <i>prima facie</i> proof of the facts stated therein.<sup>40</sup></p> <hr/> <p><b>Report of practitioners</b> A report obtained by or prepared for a party to an action and signed by a practitioner and any other report of the practitioner that relates to the action are, with leave of the court and after at least 10 days' notice has been given to all other parties, admissible in evidence in the action.<sup>41</sup></p> <hr/> <p><b>Past recollection recorded</b> Past recollection recorded is admissible when the following conditions are met:</p> <ol style="list-style-type: none"> <li>1. <b>Reliable record:</b> The past recollection must have been recorded in a reliable way. This requirement can be broken down into two separate considerations: First, it requires the witness to have prepared the record personally, or to have reviewed it for accuracy if someone else prepared it. Second, the original record must be used if it is available.</li> <li>2. <b>Timeliness:</b> The record must have been made or reviewed within a reasonable time, while the event was sufficiently fresh in the witness's mind to be vivid and likely accurate.</li> <li>3. <b>Absence of memory:</b> At the time the witness testifies, they must have no memory of the recorded events.</li> <li>4. <b>Present voucher as to accuracy:</b> The witness, although having no memory of the recorded events,</li> </ol>

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<b>Hearsay</b> <i>(continued)</i>		<p>must vouch for the accuracy of the assertions in the record. In other words, the witness must be able to say that they were being truthful at the time the assertions were recorded.<sup>42</sup></p> <hr/> <p><b>Statement against interest</b>  A statement by a deceased person that was against their pecuniary, penal, or proprietary interest at the time that they made it is admissible as evidence of the facts contained in the statement, provided they had competent knowledge of the facts they stated.<sup>43</sup></p> <hr/> <p><b>Prior inconsistent statement</b>  A prior inconsistent statement made out of court is admissible to impeach the credibility of a witness (perception, memory, narration, or sincerity), and where the tests of necessity and reliability are met, it is admissible for its substantive truth.<sup>44</sup></p>
<b>Irrelevant</b>	<p>Evidence that is not logically probative of a fact in issue is inadmissible. For evidence to satisfy the standard of relevance, it must have “some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would be in the absence of that evidence.”<sup>45</sup></p> <p>Relevance depends on the tendency of an item of evidence, as a matter of logic and human experience, to make the proposition for which it is advanced slightly more probable than that proposition would be without the evidence.<sup>46</sup></p> <p>In a civil trial, the material facts in issue are set in general by the nature of the cause of action and defence and then more specifically by the pleadings.<sup>47</sup></p>	<p>The concept of relevance is a low threshold.<sup>48</sup></p>
<b>Improper re-examination</b>	<p>A re-examination cannot be used as an opportunity to introduce new subjects or evidence that could have been included in the examination-in-chief.</p> <p>While the trial judge has discretion to grant leave to introduce new subjects in re-examination, they must then afford the opposing party the right of further cross-examination.<sup>49</sup></p> <p>Counsel is also not permitted to cross-examine their witness in the course of a re-examination.<sup>50</sup></p>	
<b>Improper reply evidence</b>	<p>A party must exhaust their evidence in the first instance and may not split their case.<sup>51</sup></p>	
<b>Leading questions</b>	<p>A leading question is one that suggests the answer. A party who calls a witness is generally not permitted to ask the witness leading questions. However, a trial judge has discretion to permit leading questions.<sup>52</sup></p> <p>Leading questions are permissible for matters that are merely introductory and form no part of the substance of the inquiry.<sup>53</sup></p>	<p><b>Permission of trial judge</b>  Where a witness appears unwilling or unable to give responsive answers, the trial judge may permit the party calling the witness to examine them by means of leading questions.<sup>54</sup></p> <hr/> <p><b>Party calls an adverse witness</b>  An adverse party may be cross-examined by the party who called them as a witness and by any other party who is adverse in interest to that person.<sup>55</sup></p>

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<p><b>Leading questions</b> <i>(continued)</i></p>		<p><b>Witness declared hostile</b> When a witness is declared hostile, counsel is not limited to cross-examination only on prior inconsistent statements but may cross-examine the witness generally as to all matters in issue.</p> <p>A hostile witness is one who does not give their evidence fairly and with a desire to tell the truth, or who possesses “hostility of the mind.”<sup>56</sup></p> <p>An “adverse” witness is one who is opposed in interest or unfavourable in the sense of opposite in position to the party calling that witness, whereas a “hostile” witness is one who demonstrates an antagonistic attitude or hostile mind toward the party calling them.<sup>57</sup></p> <p><b>Prior inconsistent statement of own witness</b> See “Discrediting party’s own witness,” above.</p>
<p><b>Litigation privilege</b></p>	<p>Litigation privilege gives rise to immunity from disclosure for documents and communications that were prepared for the dominant purpose of contemplated or pending litigation.<sup>58</sup></p>	
<p><b>Opinion</b></p>	<p>As a general rule, a witness may not give opinion evidence but may testify only to facts within their knowledge, observation, or experience.<sup>59</sup></p>	<p><b>Expert opinion</b> A witness who is qualified by education or experience to provide the trier of fact with an opinion that is outside the trier of fact’s knowledge and experience may provide an opinion to assist the trier of fact to come to their own conclusion.</p> <p>Determining the admissibility of expert evidence is a two-step analysis. First, the court must consider the threshold requirements of admissibility. Second, the court must consider the cost-benefit analysis of admitting the evidence.</p> <p>The threshold requirements of admissibility are relevance, necessity, the absence of an exclusionary rule, and a properly qualified expert who is impartial, independent, and unbiased.<sup>60</sup></p> <hr/> <p><b>Lay witness non-expert opinion (compendious statement of facts exception)</b> Lay witnesses (non-experts) may be permitted to offer opinions or conclusions where there is no other way for them to communicate the ordinary knowledge they possess.<sup>61</sup></p> <p>Non-expert opinion evidence is admissible for purposes of identifying persons or things or for purposes of offering conclusions relative to observations which a person of ordinary knowledge and experience is able to make.<sup>62</sup></p> <p>A witness may state their opinion or impression where the facts are too evanescent in their nature to be recollected, or too complicated to be separately and distinctly narrated.<sup>63</sup></p>

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<p><b>Opinion</b> (continued)</p>		<p>Courts have greater freedom to receive lay witnesses' opinions if:</p> <ol style="list-style-type: none"> <li>1. The witness has personal knowledge of observed facts;</li> <li>2. The witness is in a better position than the trier of fact to draw the inference;</li> <li>3. The witness has the necessary experiential capacity to draw the inference, that is, form the opinion; and</li> <li>4. The opinion is a compendious mode of speaking, and the witness could not as accurately, adequately, and with reasonable facility describe the facts they are testifying about.<sup>64</sup></li> </ol>
<p><b>Post-testimony impeachment (the rule in <i>Browne v Dunn</i>)</b></p>	<p>If a witness's credibility is going to be impeached, they should be given the opportunity during cross-examination to provide an explanation.<sup>65</sup></p>	<p><b>Discovery evidence not used to impeach credibility</b> A witness need not be confronted with admissions which are not being used to impeach their credibility and only used to fill in gaps in evidence. A party may read into evidence as part of their case any part of the examination for discovery of the adverse party, whether or not the adverse party has already given evidence.<sup>66</sup></p> <p><b>Witness has notice of issue</b> Where a confrontation of the witness's evidence and the matters at issue are known to the witness, there is no need for confrontation.<sup>67</sup></p>
<p><b>Prejudicial effect</b></p>	<p>The trial judge has discretion to refuse to admit evidence where its prejudicial effect would exceed its probative value.<sup>68</sup></p>	
<p><b>Prejudicial demonstrative aids</b></p>	<p>Demonstrative aids are only admissible where they are relevant, likely to assist the trier of fact in understanding the case, not prejudicial, and are verifiable or authenticated under oath by a person capable of doing so.<sup>69</sup></p>	
<p><b>Prior consistent statement</b></p>	<p>Evidence that the witness made an out-of-court statement consistent with their testimony in court is inadmissible as oath helping and as hearsay.<sup>70</sup></p>	<p><b>Present memory revived</b> The memory of the witness may be revived by reference to any document that stimulates a recollection of the forgotten event. The document, however, does not become evidence in the trial: Its only purpose is to jog the witness's recollection of the forgotten matter. The evidence is the testimony of the witness given after the matter has been recalled.<sup>71</sup></p> <p><b>Rebuttal of allegation of recent fabrication</b> Evidence of a prior consistent statement is admissible to rebut an allegation that the witness's evidence is a recent fabrication.<sup>72</sup></p> <p><b>Narrative</b> Evidence of a prior consistent statement is admissible so far as necessary to provide cogency and chronological cohesion of the testimony.<sup>73</sup></p> <p><b>Res gestae</b> See the "res gestae" hearsay exception above.<sup>74</sup></p>

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<b>Privileged communications</b>	<p>Privilege over communications can arise on a case-by-case basis where the following conditions are met:<sup>75</sup></p> <ol style="list-style-type: none"> <li>1. The communication must originate in confidence that it will not be disclosed;</li> <li>2. The element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties;</li> <li>3. The relationship must be one which should be sedulously fostered; and</li> <li>4. The interests served by protecting the communication from disclosure outweigh the interest at getting at the truth and disposing correctly of the litigation.</li> </ol>	
<b>Settlement privilege</b>	<p>Communications made in the course of negotiations with the intention of settling a dispute by a party are inadmissible.<sup>76</sup></p>	<p><b>Proving scope of settlement</b> Protected communications may be disclosed to prove the existence or scope of a settlement.<sup>77</sup></p>
<b>Solicitor-client privilege</b>	<p>Solicitor/client privilege exists where the following criteria are satisfied:<sup>78</sup></p> <ol style="list-style-type: none"> <li>1. A communication between a client and solicitor, acting in a professional capacity;</li> <li>2. The communication entails the seeking of legal advice; and</li> <li>3. The communication is intended to be confidential by the parties.</li> </ol>	<p><b>Waiver</b> A client may voluntarily or implicitly waive privilege.<sup>79</sup></p> <p><b>Future crime or fraud</b> A rare exception is that no privilege attaches to communications criminal in themselves or intended to further criminal purposes.<sup>80</sup></p> <p><b>Public safety</b> Solicitor-client privilege may be set aside where there is a risk to public safety, considering the following three factors:<sup>81</sup></p> <ol style="list-style-type: none"> <li>1. Whether there is a clear risk to an identifiable person or group of persons;</li> <li>2. Where there is a risk of serious bodily harm or death; and</li> <li>3. Whether the danger is imminent.</li> </ol>
<b>Spousal privilege</b>	<p>A person is not compellable to disclose any communication made to the person by their spouse during the marriage.<sup>82</sup></p>	<p>The privilege is testimonial in nature, giving a right to withhold evidence, but the communications themselves are not privileged. The privilege belongs to the spouse receiving the communication and can be waived by them.<sup>83</sup></p>

#### Notes

1. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 53.01(2).
2. *R v Lyttle*, 2004 SCC 5, [2004] 1 SCR 193 at para 44; *Girao v Cunningham*, 2020 ONCA 260 at paras 127, 145–46.
3. *Girao v Cunningham*, 2020 ONCA 260 at para 123.
4. *Ontario v Rothmans et al*, 2011 ONSC 5356 at para 47.
5. *R v CB*, 2019 ONCA 380 at paras 60–72.
6. *Ontario v Rothmans et al*, 2011 ONSC 5356 at para 48.
7. *Ontario v Rothmans et al*, 2011 ONSC 5356 at paras 53–55.
8. *Canadian Pacific Railway Company v Canada*, 2020 FC 1058 at paras 31–37; *Ellis Don Corporation v Ontario Metal Workers'*, 2013 ONSC 5805 at para 46.
9. *Ontario v Rothmans et al*, 2011 ONSC 5356 at paras 56–57, aff'd 2013 ONCA 353 at paras 18–24.
10. *Deep v Wood*, 1983 CanLII 3101 (ONCA), [1983] OJ No 23 at para 10; *Verbeek v Kooner*, 2021 ONSC 7863 at para 73; *Saskatchewan v Racette*, 2020 SKCA 2 at para 23; *Jarvis v Oliveira*, 2024 ONCA 200 at para 55; *Dickson v Publicover*, 2023 NSSC 221 at para 41.
11. *Verbeek v Kooner*, 2021 ONSC 7863 at paras 71–77; *Jarvis v Oliveira*, 2024 ONCA 200 at para 56.
12. *Rassouli-Rashti v Tayefi*, 2023 ONCA 315 at paras 21–25; *Soliman v Bordman*, 2021 ONSC 7023 at para 8.

13. *R v Handy*, 2002 SCC 56 at paras 47–55; Sidney Lederman, Michelle Fuerst, & Hamish Stewart, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 6th ed (Toronto: LexisNexis, 2022) at §11.01 [Sopinka]; *Yelda Haber Ve Görsel Yayincilik A.S. v GLWiZ Inc*, 2025 FC 1107 at para 262 (*R v Handy* applies in civil cases); *ATCO Energy Solutions Ltd v Energy Dynamics Ltd*, 2024 ABKB 162 at paras 151–53; *Saskatchewan v Racette*, 2020 SKCA 2 at paras 26–29.
14. *R v Samaniego*, 2022 SCC 9 at para 134.
15. *R v CF*, 2017 ONCA 480 at para 58.
16. *Zahariev v Zaharieva*, 2025 BCCA 35, at para 76.
17. *Kolapully v Myles*, 2024 ONCA 350 at para 39.
18. See *Evidence Act*, RSO 1990, c E.23, ss 20–21; *Canada Evidence Act*, RSC 1985, c C-5, ss 10(1), 11.
19. *Evidence Act*, RSO 1990, c E.23, s 48; *Hanes v Wawanesa Mutual Insurance Co*, [1961] OR 495, rev'd on other grounds [1963] SCR 154.
20. *Juman v Doucette*, 2008 SCC 8 at para 1.
21. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 30.1.01(3);
22. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 30.1.01(8); *Juman v Doucette*, 2008 SCC 8 at para 34.
23. *Kitchenham v Axa Insurance Canada*, 2008 ONCA 877 at para 32.
24. *Evidence Act*, RSO 1990, c E.23, s 23; *Canada Evidence Act*, RSC 1985, c C-5, s 9(1).
25. *Evidence Act*, RSO 1990, c E.23, s 23; *Canada Evidence Act*, RSC 1985, c C-5, s 9(1).
26. *Hanes v Wawanesa Mutual Insurance Co*, [1961] OR 495, rev'd on other grounds [1963] SCR 154; *Sopinka*, *supra* note 13 at §16.89.
27. *Canada Evidence Act*, RSC 1985, c C-5, s 9(2); *Sopinka*, *supra* note 13 at §16.94; *R v Milgaard*, 1971 CanLII 792 (SKCA) at para 55.
28. *R v Khelawon*, [2006] 2 SCR 787 at para 35.
29. *R v Evans*, [1993] 3 SCR 653 at para 16; *LLP Holdings Ltd v Hongkong Bank of Canada*, 2003 CanLII 27680 (ONCA) at para 6.
30. *R v Furey*, 2022 SCC 52 at para 4; *R v Khelawon*, 2006 SCC 57 at para 105; *R v Mapara*, 2005 SCC 23 at paras 27–28; *R v Starr*, 2000 SCC 40 at paras 52, 54.
31. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 39.01(4).
32. *Jacobson v Atlas Copco Canada Inc*, 2015 ONSC 4 at paras 28–31.
33. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 39.01(5).
34. *Paul v Veta*, 2020 ONSC 6839 at para 25.
35. *Sopinka*, *supra* note 13 at §6.339; *R v Camara*, 2021 ONCA 79 at paras 83–86.
36. *R v Pelletier*, 2024 SKCA 12 at para 23.
37. *R v Evans*, [1993] 2 SCR 629 at para 33; *MJL Enterprises Inc v SAL Marketing Inc.*, 2025 ONCA 120, at para 17; *Jones v Ma*, 2010 BCSC 866 at paras 10–13.
38. *Evidence Act*, RSO 1990, c E.23, s 35(2).
39. *Evidence Act*, RSO 1990, c E.23, s 35(3).
40. *Ares v Venner*, [1970] SCR 608 at 626.
41. *Evidence Act*, RSO 1990, c E.23, s 52(2).
42. *Grain Workers' Union Local 333 v Viterra Inc.*, 2021 FC 920 at para 48; *R v Louan-grath*, 2016 ONCA 550 at para 43; *R v Fliss*, 2002 SCC 16 at para 63; *Sopinka*, *supra* note 13 at 16.122.
43. *St Hilaire et al v Kravacek et al*, 1979 CanLII 1705 (ONCA) at para 13; *Sopinka*, *supra* note 13 at §6.193.
44. *R v B(KG)*, [1993] 1 SCR 740 at para 123; *Sopinka*, *supra* note 13 at §16.200.
45. *R v White*, 2011 SCC 13 at para 36; *R v J-LJ*, 2000 SCC 51 at para 47.
46. *R v Vant*, 2015 ONCA 481 at para 124.
47. *Girao v Cunningham*, 2020 ONCA 260 at para 94.
48. *R v J-LJ*, 2000 SCC 51 at para 47.
49. *R v Candir*, 2009 ONCA 915 at para 148; *R v Moore*, 1984 CanLII 3542 (ONCA) at p 568.
50. *Arkell v Brightpath*, 2017 ONSC 6612 at paras 40–45.
51. *Schick v Boehringer Ingelheim (Canada) Ltd*, 2011 ONSC 63 at para 15; *Allcock Laight & Westwood Ltd v Patten*, [1966] OJ No 1067 at paras 6–7.
52. *Siemens v Howard*, 2018 BCCA 197 at para 27; *R v Rose*, 2001 CanLII 24079 (ONCA) at para 9.
53. *Maves v Grand Truck Pacific R Co*, 1913 CanLII 337 (ABCA) at para 14, or p 406.
54. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 53.01(4).
55. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 53.07(5); *Livent Inc v Deloitte & Touche LLP*, 2013 ONSC 621 at para 3.
56. *HMQ v OSAE*, 2010 ONSC 3108 at paras 13–16; *R v Figliola*, 2011 ONCA 457 at para 50.
57. *R v Figliola*, 2011 ONCA 457 at para 50.
58. *Lizotte v Aviva Insurance Company of Canada*, 2016 SCC 52 at paras 1, 19, 33, 36; *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at paras 28, 34.
59. *R v DD*, 2000 SCC 43 at para 49; *Masales v Cole*, 2014 ONSC 4679 at para 27; *Sopinka*, *supra* note 13 at §12.2.
60. *Parliament v Conley*, 2021 ONCA 261 at para 43, leave to appeal ref'd, 2022 CanLII 694; *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para 23; *R v Abbey*, 2009 ONCA 624 at para 75; *R v Mohan*, [1994] 2 SCR 9 at paras 16–17.
61. *Fraser v Nova Scotia Barristers' Society et al*, 2024 NSSC 173 at para 245.
62. *Burlington (City) v Carly N Foresto*, 2016 ONCJ 695 at para 62.
63. *Ganges Kangro Properties Ltd v Shepard*, 2015 BCCA 522 at paras 70–71; *Graat v The Queen*, 1982 CanLII 33 (SCC), [1982] 2 SCR 819 at p 837.
64. Alan Bryant, *The Law of Evidence in Canada*, 4th ed (Markham, ON: LexisNexis Canada Inc., 2014) at 774, as cited in *Ganges Kangro Properties Ltd. v Shepard*, 2015 BCCA 522 at para 73.
65. *Quadrangle Group LLC et al v Attorney General of Canada*, 2024 ONSC 7371 at para 47; *Flying E Ranche Ltd v Attorney General of Canada*, 2021 ONSC 4301 at paras 10–21; *Nemich v Green*, 2019 ONCA 634 at para 31; *Browne v Dunn*, 1893 CanLII 65 (FOREP) at pp 70–71.
66. *Rules of Civil Procedure*, RRO 1990, Reg 194, r 31.11; *Chandra v CBC*, 2015 ONSC 8140 at para 5.
67. *Trillium Motor World Ltd v Cassels Brock & Blackwell LLP*, 2017 ONCA 544 at paras 315–17; *R v Quansah*, 2015 ONCA 237 at para 82.
68. *Girao v Cunningham*, 2020 ONCA 260 at paras 91–92; *Draper v Jacklyn et al*, 1969 CanLII 6 (SCC) at p 98.
69. *Cheesman et al v Credit Valley Hospital et al*, 2019 ONSC 4996 at para 75; see also *Jenkyns v Kassam*, 2006 CarswellOnt 8890 at para 7.
70. *R v Stirling*, 2008 SCC 10 at para 5.
71. *Stone v Ellerman*, 2009 BCCA 294 at paras 53–60; see also *Sopinka*, *supra* note 13 at §16.135 on the distinction between past recollection recorded and present memory revived.
72. *R v Stirling*, 2008 SCC 10 at para 5; *Goruk v Greater Barrie Chamber of Commerce*, 2021 ONSC 5005 at paras 51–56.
73. *R v Khan*, 2017 ONCA 114 at paras 30, 32, 39.
74. See also *Sopinka*, *supra* note 13 at §7.41–7.44.
75. *R v Gruenke*, [1991] 3 SCR 263 at para 22; *Slavutych v Baker et al*, [1976] 1 SCR 254.
76. *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 at paras 16, 18.
77. *Union Carbide Canada Inc v Bombardier Inc*, 2014 SCC 35 at para 35.
78. *Sakab Saudi Holding Company v Al Jabri*, 2025 ONSC 35 at para 42; *Canada (National Revenue) v Thompson*, 2016 SCC 21 at para 18; *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 15; *Solosky v The Queen*, [1980] 1 SCR 821 at p 837.
79. *Sopinka*, *supra* note 13 at §14.155–14.181; *R v Youwarajah*, 2011 ONCA 654 at paras 146–53.
80. *Sakab Saudi Holding Company v Al Jabri*, 2025 ONSC 35 at para 42; *Wintercorn v Global Learning Group Inc*, 2022 ONSC 4576 at para 5; *Descoteaux et al v Mierzwinski*, [1982] 1 SCR 860; *Solosky v The Queen*, [1980] 1 SCR 821 at pp 835–36.
81. *Smith v Jones*, [1999] 1 SCR 455 at para 77.
82. *Evidence Act*, RSO 1990, c E. 23, s 11; *Canada Evidence Act*, RSC 1985, c C-5, s 4(3).
83. *R v Couture*, 2007 SCC 28 at para 41.