

Evidence

Each party is responsible for submitting evidence during the hearing and for providing a copy of the evidence to the other party and Adjudicator deliberating the matter. Evidence can be submitted with the application or after the application is submitted to the Office of the Superintendent of Real Estate Brokers and Salespersons (Office of the Superintendent).

At the hearing, a person must prove they provided the other party the evidence to be referenced/submitted during the hearing. If the evidence was not provided to the other parties **3 days prior to the teleconference hearing**, the evidence may not be accepted by the Adjudicator or considered in the Adjudicator's decision.

The parties to the hearing are required to reference or submit all evidence provided to the Office of the Superintendent and the other party, in the hearing. Evidence not referenced or submitted as evidence in the hearing may not be considered in the Adjudicator's decision.

TYPES OF EVIDENCE

Proof by admission

At the hearing, parties may agree to accept something as fact without requiring either party to actually prove it or present evidence. This is called proof by admission.

Witness testimony

Witness testimony is the most common type of evidence.

The applicant or respondent may choose to have someone speak and answer questions at the hearing about their first hand knowledge about the dispute as evidence. In person witness testimony is generally given under oath or affirmation at the hearing. The Adjudicator administers the oath or affirmation.

A written witness statement can also be referenced or submitted as evidence during a hearing through the completion of the Witness Affidavit. An affidavit is a written sworn statement of a witness's first hand knowledge about issues within the application.

Documentary

Documentary evidence can be a purchase and sale agreement, home inspection or other reports, photo, letter or other correspondence, or other relevant printed information. Filing a document as evidence generally must be done by a person who has first hand

knowledge of the document and its contents to be accepted as evidence. For example, a photo can be filed by the person who took the photo, the person who appears in the photo or by someone who was present when the photo was taken. The same rule applies for other documents. For example, a purchase and sale agreement can be filed by the person who prepared it or the person who signed it.

Recorded

Audio and video recordings of conversations, incidents or events may also be submitted as evidence during the hearing. Similar to documentary evidence, recordings generally must be submitted by a person who has first hand knowledge of the recorded event. This is necessary so that the person submitting the evidence is able to answer questions about the evidence posed by the adjudicator or the other party.

Rules of Evidence

Four principal criteria normally guide adjudicators in deciding whether or not to accept evidence:

- **Relevance:** the evidence must have a link to the case.
- **Reliability:** the evidence must be worthy of belief. For example, the testimony from a person who did not witness an event would not be very reliable.
- **Necessity:** the use of this element of evidence rather than another must be necessary to reach a decision. For example, if 200 people witnesses the same event and one party wants to prove this event, it is not necessary to have all 200 people testify.
- **Fairness:** Allowing a piece of evidence must not create an injustice for the other party. For example, it would be unjust to allow evidence against a party if it was obtained illegally by the other party.

Evidence must normally meet all four of these criteria in order to be accepted by an adjudicator. If the evidence does not meet these criteria, the adjudicator has the authority not to accept it. In such cases, the evidence will not be considered in the adjudicator's decision making process.

Admissibility and Weighing of Evidence

During the hearing, the adjudicator normally determines the admissibility of evidence referenced or submitted in the hearing. The decision on the weight of evidence is made during the adjudicators deliberation. In a written decision, adjudicators specify what evidence they relied upon in making their decision as well as explain why they decided not to take into account certain other evidence.

The admissibility or volume of evidence is not an indication of its usefulness or weight in proving or disproving a particular fact of the case. Evidence may be admissible but carry only little or no weight in proving a case.

Disclosure

For hearings held by teleconference, all evidence must be received by the Office of the Superintendent and the other party at **least 3 days prior** to the hearing, if not, the evidence may not be accepted by the adjudicator or considered in the decision making process, even if referenced or submitted during the hearing.

If the hearing is scheduled to take place in person, evidence may be submitted at the start of the hearing.