



General rule

Evidence is the information presented by parties or their counsel to the court. It can include witness testimony, documents or other things. Admissible evidence is evidence that is relevant and material and that the judge will consider when deciding your case. Although there are exceptions, evidence that is considered hearsay evidence is normally not admissible (inadmissible) and will not be allowed at a trial. Although there are exceptions, evidence that is considered hearsay evidence is normally not admissible (inadmissible) and will not be allowed at a trial.

What hearsay is

Hearsay is any written or spoken statement that was made outside the trial and is being used to prove the truth of the statement.

An example of hearsay would be a witness, Tanya, testifying about what someone else, Raj, said outside the trial and the trial judge being asked to believe that what Raj said was true.

Hearsay evidence carries the risk that the reported statement is not reliable. In our example, Raj is not at court to be questioned about his statement. Tanya may not have heard or understood him correctly. Because of the possibility that hearsay evidence is not reliable, this form of evidence is usually not allowed at trial.

Preparing for trial

You can avoid the problem of hearsay evidence by having witnesses come to court to testify.

When preparing for trial, take time to consider what evidence you wish the judge to take into account and whether that evidence might be hearsay. One suggestion is to make a list of your key facts and how you will prove those facts. If that proof involves hearsay evidence, then you may want to look at other ways of proving the fact.

Take for example a case where Tanya is suing Joe for repayment of a \$6000 loan. She might

analyze her evidence like this:

Example: Tanya loaned Joe \$6,000. Joe has refused to pay Tanya back.

Evidence: Tanya will give the judge a letter signed by Joe saying he will pay her back. Joe's signed promise to pay Tanya back would be admissible evidence. If Joe told a friend that he wasn't going to pay Tanya back, that friend would need to appear as a witness for that statement to be admissible evidence. Tanya's testimony about what Joe told his friend would be hearsay.

Other ways hearsay evidence can be admitted in a trial

It is best to avoid hearsay evidence if you can, but in some cases a trial judge may be able to allow hearsay evidence.

In small claims matters, trial judges may allow any form of evidence that they consider to be credible or trustworthy. In family court proceedings, a trial judge may allow evidence of a child that is considered reliable even if that evidence is hearsay.

The law of evidence also allows hearsay evidence to be admitted in a trial if the judge decides that evidence is necessary and reliable.

There are other more technical exceptions to the hearsay evidence rule, including exceptions that are set out in legislation. Talk to a lawyer for advice on preparing and presenting evidence in a trial.

[*Small Claims Act s. 16\(1\)*](#)

[*Family Law Act s. 202*](#)

What is it?

What is hearsay evidence? Listen to the podcast.



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