Caught Up in Custody Cases: Serving as a Witness

Question: The lawyer of the parent of a minor client that I work with has informed me that the parent would like me to be a witness in their ongoing custody case. They even said that I can be compelled to do so through a subpoena. I have never served as a witness before, and potentially having to testify is causing stress for me. Is there any advice you can give?

Being a witness in a legal proceeding can be a stressful experience. If you are subpoenaed to testify about the clinical services you provided to a client, this is called being a 'lay' witness. This is different from being an 'expert' witness, who provides expert opinion evidence to the court. When asked to serve as a lay witness in your professional capacity, you must limit your testimony to factual evidence about your role in providing services to the client. This evidence includes any:

- Reported clinical history,
- Assessment and/or diagnostic information,
- Observations made during service provision,
- Nature and history of treatment provided, or
- Communications with the client or relevant to the client.

As a lay witness, a regulated member is not able to provide character references. Their factual evidence should also exclude speculation, opinions based on hypothetical questions, or opinions on services with the benefit of hindsight. A good rule of thumb is to restrict the information you give to only the information that is documented in your client's file.

It is also a good idea to seek your own legal counsel and obtain an independent legal opinion should instances like this arise. You should also be clear with the client (or their caregiver), and their lawyer about what information you can provide, i.e., only factual information relating to the delivery of services.

Physiotherapy Alberta's Guide to Legal Processes provides further information on commonly encountered legal processes, including the difference between acting as a lay or expert witness in court.