

Completing a Brief of evidence (BOE)

Overview

When you have completed an investigation, you will often need to prepare a brief of evidence that reflects all the admissible evidence that you have obtained. Part of this process involves you-

- Analyse all your evidence.
- Authenticate your evidence.
- Handle and store evidence appropriately.
- Prepare witness statements.
- Separate admissible and non-admissible evidence.
- Compose a brief of evidence in accordance with legal and organisation requirements; and
- Manage witnesses.

In this session, you will learn various skills and knowledge required to adequately prepare a brief of evidence. These include:

- Research and analysis skills.
- Collating and compiling information.
- Writing formal reports.
- Working with witnesses from various backgrounds; and
- Understanding concepts such as admissibility and burden of proof.

Please keep in mind that this unit primarily addresses post-investigation analysis of evidence and the process of preparing a brief of evidence. It does not discuss the investigative processes used to obtain it.

Analyse evidence

When compiling a brief of evidence, you must first consider all evidence, that is related to the investigation regardless of its admissibility. As you examine evidence you should ensure that evidence management is actioned from the outset.

Depending on the type of investigation and information that you are examining you will need to categorise the information to assist you in retrieval. A simple example may be

- Alphabetical order.

- Time.
- Categories of information; and/or
- Hierarchy (e.g., importance to the case or admissibility).

You should also ensure that all this information is easily accessible and in a safe location. On occasion, you may find that some of your information may be incomplete, unclear, or inconsistent. In those instances, you must either omit that evidence or gather additional information to verify and supplement it. Whether you should exclude the evidence or investigate further depends on a variety of factors such as the relative importance of the information and the amount of time that you must devote to further investigation.

If you decide to gather more information, you should take care to limit the scope of your inquiry only to what is directly relevant to the issues at hand.

Determining admissibility

Although you should consider all related evidence regardless of its admissibility, you should begin to determine whether your evidence will be admissible. At its most basic, admissibility refers to whether a piece of evidence can be accepted by the court.

Evidence that is admissible must be relevant, material, and competent, meaning that it must be reliable and directly related to the facts of the case.

Once you have gathered and considered all relevant evidence, you must then confirm the origin, authenticity, and reliability of it. This will help you determine whether the information is generally reliable and admissible.

A good investigator will from the outset begin to anticipate any challenges that may occur when introducing the evidence. For instance, if a piece of evidence is borderline hearsay, then you will need to overcome issues that this type of evidence will attract.

Confirming origin

When analysing your evidence, you must first confirm its origin so that you may evaluate its source.

Confirming the origin of your information may entail:

- Revisiting investigation notes or other documentation.
- Contacting witnesses or other parties involved.
- Verifying information with colleagues; and
- Performing research on your source of information.

Confirming authenticity and reliability

Once you have confirmed the origin of your information, you must then examine its authenticity and reliability. For information to be authentic, it must be reasonably true and gathered ethically. Confirming authenticity may therefore involve:

- Consulting other witnesses or sources for corroboration.
- Examining the information critically in relation to the facts of the case; and
- Evaluating sources' motives or biases.

There will be some instances where you must gather further evidence in order to verify information, determine source reliability or clarify questions. Generally, some of the challenges that may cause you to conduct further investigation include:

- Poor records or note taking.
- Conflicting information.
- Evidence contamination; and
- Lack of adherence to evidence management principles.

In some cases, this may be as simple as reinterviewing a witness or conducting a background check, but it can also become more complicated when more serious questions arise. This section will therefore discuss how to determine whether you need to conduct further investigation along with techniques to use when doing so.

Determining whether to conduct further investigate.

When you encounter a situation that may require you to perform more investigation. In general, you should consider the following factors when deciding whether to further investigate-

- The overall importance of the information to the investigation.
- Whether other pieces of evidence rely on this information.
- Time constraints; and
- Legal constraints.

Recording information appropriately.

When dealing with information and evidence, you should always take care to handle and store evidence in an integral manner. You should utilise good evidence management principles to ensure that your evidence is handled and stored properly.

These include:

- Continuity of possession.
- Labelling.
- Protection and storing of evidence.

Continuity.

To protect the integrity of your evidence, you must maintain a clear chain of possession from when you first acquired the evidence to when it is presented in judicial proceedings. When presented you must demonstrate that the evidence has been in your possession from the time it was uncovered to the time it was presented. This will involve clear labels, images and internal movement registers. This provides assurance that the evidence has not been tampered with, potentially rendering it admissible.

Systematic recording

All evidence obtained must be systematically recorded to ensure integrity and prevent objections from the opposing side. For evidence to be admissible, you must provide clear records of:

- When and where the evidence was obtained.
- The original condition of the evidence.
- Any person who handled the evidence after it was collected; and
- Any changes to the evidence after its collection.

Prepare and review admissible evidence.

Once you have finalised your investigation and outstanding witness and expert statements must be obtained. Don't forget these statements are sworn affidavits that outline witness testimony in their own words. Therefore, to prepare these, you will need to work directly with your witnesses.

Witness and expert statements are critical to ensuring that your witnesses' testimonies are permitted at any judicial proceedings. You should ensure these statements are prepared in a timely manner.

How to prepare a witness experts/statement

When preparing a witness statement, you should consider what they, heard, smelt, touched and saw. Expert statements are like witness statements in that they are formal testimonies. However, unlike regular witness statements, expert statements often include opinion testimony rooted in the witness's expertise. Because of this, you will often need to include enhanced information on the witness's background, such as a CV, and you will generally attach more evidence to this statement than to other witness statements.

As you compose the BOE, you must determine admissibility and relevance. For evidence to be admissible, it must be relevant. Additionally, only certain types of evidence will be accepted by the court you must also comply with other rules of evidence. The following section will therefore address core standards of admissibility, types of admissible evidence and the rules of evidence. It will also discuss how to determine which evidence to include in your brief.

Defining admissibility

In any judicial proceedings no other rule of evidence is as important as admissibility. At its most basic, admissibility refers to whether a piece of evidence can be accepted by the court. For evidence to be admissible, it must be relevant.

For evidence to be relevant, it must prove or disprove a fact of the case. For example, a glove found at the scene of a crime with the defendant's fingerprints would be relevant since it proves that the defendant was at the scene of the crime.

Types of admissible evidence

Along with these core standards of admissibility, your evidence must also be one of the following types to be considered for admission by the court:

- Direct evidence, such as an eyewitness account.
- Documentary evidence, such as audio or video recordings.
- Demonstrative evidence, such as photographs or charts.
- Testimonial evidence, such as witness testimony; or
- Physical evidence, such as fingerprints or items.

Once you have determined the admissibility of each piece of evidence, you should then determine whether you have sufficient evidence to proceed. This often involves reviewing the proofs of evidence. Whether you have sufficient evidence often depends on the proofs

required by the specific type of law involved. Each Offences have elements that require fulfilling. The proofs or elements of the offence being investigated can be found within statutes.

Types of law

To determine whether you have evidence, you must first understand the type of law that your case falls under. In general, most cases fall under the following categories:

- Civil.
- Common.
- Criminal.

This section will therefore address each type of law and the types of proof required under it.

Civil

Civil law governs disputes between two parties. In a civil case, a plaintiff sues a defendant for damages for alleged wrongdoing. For example, a person may sue their neighbour if the neighbour's dog bites their child. In these cases, the plaintiff must provide sufficient evidence that the defendant was the cause of their losses to be awarded a monetary settlement in their favour. In civil cases, the burden of proof is the balance of probability.

Common

Common law rests on hundreds of years of court decisions made by Australian, English and other similar courts. Courts interpret common law when making decisions about cases where no law clearly applies. For instance, the notion of "common law marriage" refers to couples who have cohabited for an extended period but are not formally married. Thus, a couple that is "common law married" will likely be treated as a formally married couple if one sues the other for assets. In general, many of these types of decisions rest heavily on the evidence provided by both sides as well as the reasonable interpretation of the judiciary.

Criminal

Criminal law primarily exists to prohibit, prosecute, and punish wrongful conduct by individuals or groups. In criminal law the police will charge a suspect and if found guilty may

go to prison. Therefore, in criminal law, standards of proof and evidence are much higher than in civil law. The prosecution must prove that the defendant committed the crime beyond a reasonable doubt, so the defendant must prove that either they did not commit a crime or that they committed a less severe offense.

In criminal cases, you must satisfy certain conditions necessary for the prosecution to proceed with the case. A prosecutor must believe that:

- The complaint against the defendant warrants prosecution.
- The prosecution is in the public interest.
- There is enough reasonable cause for charging and
- There is enough admissible evidence to prove the charges.

Plan and prepare brief of evidence according to standards required by the prosecution.

Once you have analysed and prepared your evidence, you may then begin to plan and prepare your brief of evidence. At its most basic, a brief of evidence sets out all the evidence that you plan to use during the prosecution. This allows legal counsel and the judiciary to clearly view and understand the evidence that you plan to present.

Basic components of a brief of evidence

As mentioned, the primary purpose of your brief of evidence is to demonstrate to the Court the allegation, therefore your brief of evidence must include:

- A full and complete list of all the evidence discussed in the brief.
- All witness statements, including those from the victim(s), involved officers, eyewitnesses, and expert witnesses.
- Any recordings relevant to those statements.

- Copies of all exhibits you intend to present (e.g. photos or videos);
- Any relevant test results (e.g. forensic tests); and
- Any related court documents that you must include with your brief.

Professionally presented (BOE)

You should always present your BOE in a logical order. This assists to enhance the readers understanding in a holistic manner. The order in which you present your evidence brief will depend upon the investigation and the evidence that you are presenting. Your brief should only contain simple, concise language. This ensures that the reader can clearly understand your descriptions and arguments without having to decipher the meaning of complex or confusing words or phrases.

Your language should also be unbiased and professional throughout your brief. You should avoid using antagonistic, argumentative, or unprofessional language. Ensure to describe your evidence as objectively as possible.

Organise witness summonses when required.

Once you have determined your list of witnesses, you should begin to organise witness summonses as necessary. These summonses compel witnesses to testify in court on a given date while formally submitting them to the court. Most cases that involve court proceedings will require you to obtain these summonses.

Witness summonses also ensure that the parties whom you call to testify will appear in court to give testimony. This can be crucial in instances where you have a witness who is uncooperative or unwilling to appear in court. A formal summons encourages witness compliance by imposing penalties such as fines and imprisonment for violating the summons.

Once you have formally submitted your witness list and obtained summonses as necessary, you should then maintain contact with your witnesses to ensure continued cooperation until the end of court proceedings. Maintaining communication with your witnesses is key

to ensuring that they have all the necessary information about their court appearance, and it allows you to mitigate any extenuating circumstances that may arise.

Provide brief to prosecution/other parties.

Once your brief is finalised, you must provide your brief of evidence to the prosecution and to defence counsel. When determining what information to disclose to the prosecution or other parties, you should adhere to the relevant legislation regarding disclosure.

As you compose your brief of evidence, you should, if possible brief your legal counsel regularly and maintain an open line of communication. As an example, you should promptly inform them when circumstances arise that may impact the outcome or progress of any evidence.