

TENDERING OF EXHIBITS - GUIDE

OVERVIEW

- **Show exhibit to the other side**
- **Lay foundation for exhibit**
- **Show exhibit to witness**
- **Tender exhibit**
- **Obtain permission to publish**
- **Publish exhibit**



LAYING THE FOUNDATION –GENERAL [1/4]

1. **Competent qualifying witness** – The ws must be capable of authenticating the exhibit. Ws to have 1st hand knowledge that the exhibit is what it purports to be. Some exhibits may require several qualifying wss.
2. **Relevance of exhibit to facts in issue** (information, indictment, cause of action, defence).
3. **Authentication** – proving that the exhibit is what it purports to be. This of particular importance when dealing with tangible objects thus the chain of custody is very critical.
4. **Chain of custody is very critical.** See slide on tangible objects.

MORE FOUNDATION - TANGIBLE OBJECTS[2/4]

1. **Chain of custody.** A chain of custody must be established to prove conclusively that the object is the same one and has not been switched, altered, or tampered with, before it can properly be received in evidence.
2. Show that the exhibit has been in one or more persons continuous, exclusive, and secure possession at all times. Give its history.
3. Show that exhibit was in a uniquely marked, sealed, tamper-proof container and at all times kept in a secure place.

MORE FOUNDATION-PHOTOGRAPHS, FILMS, VIDEOS [3/4]

1. General foundation.
2. Establish witness's familiarity with the scene portrayed. Witness to be familiar with the scene at the material time.
3. The Exhibit must fairly & accurately show scene at material time. See R.v. Graigie Hyman (1986), 23 J.L.R. 172 at p.182.
4. Show provenance (place/source of origin) and history R.v. Robson (1972) 2 ALL E.R. 699 at p.701.

MORE FOUNDATION-TAPE RECORDINGS [4/4]

1. Mark tape for identification.
2. Demonstrate relevance, originality, authenticity, provenance (place/source of origin) Establish history of tape. R.v. Robson (1972) 2 ALL E.R. at p.701.
3. Transcript is to be prepared for court and other side. This to allow for objections that may be taken by other side. To be done during disclosure.
4. Before contents can be listened to proper identification of the tape itself is of critical importance. The object as well as its content is of critical importance. Counsel must deal separately with both issues.

PROCEDURE

1. **Criminal Trial.** In some instances it may be best to deal with Qns of admissibility before the case is opened. Empanel and swear jury. Then deal with the Qn. These matters can be lengthy. This is to be discussed with other side and involve the judge as appropriate directions have to be given to jury.
2. **Civil Trial.** If not agreed then deal with at a pre-hearing or at the trial itself . This depends on the exhibit and the circumstances of the case.
3. Transcript of content is to be dealt with as a separate item from the tape itself re admissibility as exhibits.