

Section 4: The Justice System

Lesson 5: Court Personnel

SNAPSHOT

Grade Level	5-7
Duration	3 periods

Introduction

There are many people involved in trials and each of these people has a specific role. The court personnel include the judge, jury, and legal counsel. A court clerk assists the judge and records the trial. A sheriff may also be present in order to transport prisoners and protect those who are in court. Other people in court can include the accused, witnesses, media gallery, and the public. In a courtroom, there is a specific spot designated to each of these people.

Objectives

Upon completion of this lesson students will:

- Understand what the roles of court personnel, such as judges, jurors, legal counsel, court clerk, and sheriff
- Learn how judges are appointed and how jurors are selected
- Become familiar with how to find formal case reports online
- Know the roles of other people in court, such as the accused and witnesses
- Be able to identify where court personnel and other participants sit in a criminal courtroom

Focus Questions

1. How does one become a judge?
2. What role do judges have?
3. How are jurors selected and what are their responsibilities?
4. What is the role of legal counsel?
5. Why are court clerks and sheriffs important in court?
6. What is the role of the accused in court?
7. What is the importance of witnesses?
8. What are some different types of witnesses?

Teaching Summary

Topic 1: Judge

Students will read *Handout 1: Appointment and Role of Judges* before beginning the lesson. They will look at formal case reports for two cases where a driver hit a pedestrian. They will compare the two cases and answer some discussion questions. Students can do this independently or as a class. Students will then look at and discuss the reports from the trial court and Court of Appeal case for *Regina vs. Kelly Ellard*.

Topic 2: Jury

Students will read *Handout 2: Jury Role and Selection* and complete an exercise in which they must differentiate between statements that are facts and opinions. Students will look at a car crash scenario and will be challenged to see how many details they can remember. This will give them some idea of how difficult it is to be a juror.

Topic 3: Legal Counsel

Students will be introduced to this topic by reading *Handout 4: Legal Counsel* and deciding whether questions would be considered leading or not. They will be asked to come up with their own examples. *Handout 5: I Object!* can be used to give the students some practice in making objections.

Topic 4: Court Clerk and Sheriff

Students will read *Handout 6: Court Clerk and Sheriff* to gain an understanding of the role that they have in court.

Topic 5: Other People in Court

Handout 7: Other People in Court can be given to students to read. With the help of someone unknown to the students, you will stage a robbery in class. Students will then be asked to fill out a robbery suspect description form, and then discuss it as a class. This exercise will give students an idea of what some of the difficulties in being a witness as they fill out *Handout 8: Robbery Suspect Description Form*.

Testing Student Knowledge

Use *Handout 10: People in a Criminal Trial*, *Handout 11: Court Personnel Roles* and *Handout 12: What Do You Know about Court Personnel?* as tests for this lesson.

CONTENT

Topic 1: Judge

The Courts in British Columbia

The Canadian judicial system is organized under the provisions of the *Constitution Act, 1867*, and authority over the judicial system is divided between the federal and provincial governments. Under section 92(14) of the *Constitution Act, 1867*, the government of British Columbia is responsible for the “administration of justice” in the province, which includes “the constitution, organization and maintenance” of all of the courts in the province.

This means that the provincial government is responsible for the administration of all of the courthouses and court staff, as well as the establishment of the procedures to follow in civil cases. It also means that provincial governments can establish provincial courts, appoint provincial court judges and pay the salaries of provincial court judges. However, section 96 of the *Constitution Act, 1867* provides that the federal government appoints the judges of the superior courts in each province. Sections 99 and 100 provide that federally appointed judges may work until the age of 75 and that the federal government will pay their salaries.

In British Columbia, there are three different courts: the Provincial Court, the Supreme Court and the Court of Appeal. The Provincial Court is the largest trial court in the British Columbia, with 44 courthouses and approximately 150 judges, including the Chief Judge, located throughout the province. The Provincial Court is a statutory court, which means that the court was created by a provincial statute, the *Provincial Court Act*. As stated above, the provincial government appoints judges to the Provincial Court and sets the salaries of Provincial Court judges. The Provincial Court hears cases in four main categories: criminal and youth criminal matters (formerly known as young offenders); family matters, but not divorce, adoption or division of family property cases; small claims cases (civil claims under \$25,000.00); and traffic and bylaw cases. Ninety-eight per cent of all criminal matters begin and end in the Provincial Court.

The Supreme Court and Court of Appeal are the province’s “superior” courts, which mean that the judges of these courts are appointed by the federal government. The federal government pays the salaries, pensions and allowances of the Supreme Court and Court of Appeal judges. The Supreme Court is a court of general and inherent jurisdiction which means that it can hear any type of case, civil or criminal. It hears most appeals from the Provincial Court in civil and criminal cases and appeals from arbitrations. The *Supreme Court Act* sets out the powers and privileges of Supreme

Court justices and makes provisions for the administration of the court. Section 2 provides for the appointment of one Chief Justice, one Associate Chief Justice and 86 other justices. However, as of March 2012, there are 106 judges because there are a number of semi-retired justices who are called supernumerary judges. The Supreme Court judges sit in eight judicial districts and they travel around the province on circuit throughout the year.

The Court of Appeal is the highest court in the province. It hears appeals from the Supreme Court, from the Provincial Court on some criminal matters, and reviews and appeals from some administrative boards and tribunals. Appeals from the Court of Appeal are heard by the Supreme Court of Canada. The *Court of Appeal Act* sets out the powers and privileges of Court of Appeal justices and makes provisions for the administration of the court. Section 2 of the Court of Appeal Act provides for the appointment of the Chief Justice of British Columbia and 14 other justices. However, as of March 2012, there are 22 Court of Appeal justices including the supernumerary judges. The Court of Appeal sits regularly in Vancouver and Victoria, and from time to time in Kamloops and Kelowna.

Once appointed, all judges in all the courts across the country are “independent”. Judicial independence means that a judge must hear and determine each case based on the law, evidence and argument before the judge, and not based on other external factors, such as the views of government or the media. As well, judicial independence means that the judges are independent from each other. This means that no judge (including the Chief Justices, the Associate Chief Justice and the Chief Judge) can tell another judge how to decide a case.

Appointment of Provincial Court Judges

The *Provincial Court Act* governs the appointment of judges to the Provincial Court. To be appointed to the Provincial Court, a person must be a lawyer in good standing with a provincial law society and have practiced law for a minimum of five years (although in practice, persons with less than 10 years’ practice are rarely appointed). Lawyers interested in becoming a Provincial Court Judge must apply to the Judicial Council, a body established under the Provincial Court Act.

The Council consists of nine persons: three judges, two lawyers (representing the Law Society and the Canadian Bar Association), a judicial justice of the peace, and three lay people (non-lawyers). The Judicial Council secures an in-depth peer-referencing analysis prepared by a committee of lawyers, as well as references from judges who are familiar with the applicant's professional work. Unlike the federal judicial

appointment process, the Council interviews applicants who receive favourable reports in the referencing process.

About one in ten applicants are approved by the Council to be included in a "pool" of approved applicants who are eligible for appointment. At any given time there tends to be only about 25 candidates around the province who are eligible to be appointed. They remain eligible for three years.

When a new judge is required, the Chief Judge recommends persons from within the pool. The Attorney General may accept the Chief Judge's recommendation, or select anyone else from the pool of approved candidates, but may not appoint anyone unless they are within the approved pool. The Attorney General's recommendation is taken to Cabinet who make the final decision through an Order in Council. The Chief Judge, not the government, determines where in the province a judge will preside, and in what sort of cases.

As a matter of constitutional law, provincial court judges are appointed "during good behaviour", meaning their appointment cannot be terminated by the government. A Provincial Court judge can only be removed from office if a judicial inquiry concludes that the Provincial Court judge because of some judicial misconduct is no longer fit for office. Provincial Court judges can serve until they reach age 70.

Appointment of Superior Court Judges

The federal *Judges Act* provides that a person interested in becoming a judge on a superior court must be a lawyer in good standing with a provincial law society and have practiced law for a minimum of 10 years, although typically those selected as judges have practiced law for longer than 10 years. The majority of appointments to the Court of Appeal are current Supreme Court judges, although some people have been appointed directly to the Court of Appeal from practice as lawyers.

An interested and qualified person must complete an application form and send it to the Office of the Commissioner for Federal Judicial Affairs in Ottawa. The Office was created in 1978 and its mandate is to "safeguard the independence of the judiciary and put federally appointed judges at arm's length from the Department of Justice." The Commissioner acts on behalf of the Minister of Justice in matters relating to the appointment, age limit and salaries applicable to federally appointed judges.

The Commissioner's office has an appointments secretariat which administers 16 Judicial Advisory Committees who are responsible for evaluating candidates. The Judicial Advisory Committees are independent from the Minister of Justice and are

responsible for assessing the qualifications for appointment of each applicant in a confidential process. The Minister of Justice meets periodically with the chairs of all the Advisory Committees to exchange views concerning the operation of the appointment process. Seven people sit on the Judicial Advisory Committee: the Minister of Justice nominates three members of the public and the provincial or territorial Law Society, the provincial or territorial branch of the Canadian Bar Association, the Chief Justice of the province or territory and the provincial or territorial Attorney General or Minister of Justice each nominate one person.

The Judicial Advisory Committee assesses each candidate's application and determines whether a candidate is "highly recommended", "recommended", or "unable to be recommended". The Committee presents its conclusions and the reasons for arriving at them to the Minister of Justice. The Minister of Justice may consult further with members of the judiciary and the bar or of the public before he or she recommends to cabinet an individual for appointment as a superior court judge.

Appointment of Supreme Court of Canada Judges

The government of Canada established the Supreme Court of Canada in 1875 by an act of Parliament. It is now governed by the Supreme Court Act. The *Supreme Court Act* provides that appointees to the Supreme Court of Canada must have been a judge of a superior court or a lawyer with at least ten years' standing at a provincial bar. Most of the justices have prior experience as trial and appellate judges, although one of the nine judges is typically a direct appointment; Mr. Justice Ian Binnie is the current member of the Supreme Court of Canada who was appointed directly from practice. Section 6 of the Supreme Court Act dictates that three of the judges must come from Quebec. Conventionally, the rest of court is made up of three judges from Ontario, two from the Western provinces, and one from the Atlantic provinces.

While there has historically been some consultation with the Canadian legal community regarding appointments to the Supreme Court of Canada, in 2004, in order to diffuse the criticism that the appointment process is overly secretive, an Interim Ad Hoc Committee was created to review the nomination of two possible candidates, Justices Rosalie Abella and Louise Charron, then both judges of the Ontario Court of Appeal.

The Interim Ad Hoc Committee was created on the recommendation of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, which also made other recommendations as to how the government could make the appointment process clearer to Canadians. That committee acted in a purely advisory capacity, and did not have the power to stop an appointment. If the Interim Ad Hoc Committee had been given this power, it could conflict with s. 96 of the Constitution

which gives the Governor General the power to make judicial appointments. The Interim Ad Hoc Committee questioned the Minister of Justice about the candidates at a public hearing, thereby increasing public awareness and discussion, and encouraging a transparency of process. However, at the conclusion of the process, the Interim Ad Hoc Committee complained that they were not given enough information about the appointees and that they were not given adequate time to prepare for the hearing.

In 2006 the federal government announced that it would change the process for appointing judges to the Supreme Court of Canada. The federal government created the Ad Hoc Committee to Review a Nominee for the Supreme Court of Canada. The Ad Hoc Committee, whose members were drawn from all parties in the House of Commons, was directed to conduct a hearing during which committee members would be able to question the Prime Minister's nominee. The Ad Hoc Committee did not have the power to veto the nomination and was not permitted to ask the nominee questions about personal opinions on moral issues or possible future rulings.

On February 27, 2006, Mr. Justice Marshall Rothstein of the Federal Court of Appeal, the Prime Minister's nominee to fill the vacancy created by the retirement of Mr. Justice Major, appeared before the Ad Hoc Committee. On March 1, 2006, Mr. Justice Rothstein was appointed to the Supreme Court of Canada.

In May 2008, when Mr. Justice Michel Bastarache announced his intention to retire from the court, the federal government stated that the parliamentary review process that had been used when Mr. Justice Rothstein was appointed would be used again. However, the October 2008 federal election and the instability of the minority government that followed resulted in the nomination process being suspended. On March 30, 2009, the federal government announced that Mr. Justice Thomas Cromwell would be appointed to the Supreme Court without appearing before the Ad Hoc Committee.

The federal government was criticized for bypassing the review process it had created and had stated would be followed. The federal government responded by stating that the Supreme Court, which had been operating with eight judges rather than its full complement of nine since July 2008, urgently needed its full complement and that the parliamentary review process would result in an unacceptable delay in filling the longstanding vacancy. The federal government also stated that future nominees would be required to appear before the Ad Hoc Committee.

Appointing Judges versus Electing Judges

Common law judges have historically been appointed, not elected. The main concern with electing judges is that an election could compromise judicial independence. Judicial

independence is a right entrenched in the Charter of Rights and Freedoms as one of the “principles of fundamental justice” provided for by section 7 and further guaranteed in section 11(d) which affords an individual charged with an offence the right “to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

Although some American states have an elected judiciary, there are many reasons to prefer an appointment process to an election process. Potential judges may not want to risk running for election to a judicial position because a rejection could have a detrimental effect on their legal practices. Requiring judges to stand for re-election would make it difficult for judges to make decisions that are unpopular, yet legally correct. The logistics of campaigning creates many problems. Often, candidates acquire debt and spend large amounts of time campaigning. If a candidate is running for re-election, he or she may spend valuable time campaigning that could be spent adjudicating. Subjecting the judiciary to elections would likely attract the same kinds of deals, incentives, and trade-offs that are associated with elections for politicians.

In the United States, there is an ongoing debate about the impact that campaign money has on judicial decisions. Recently, the Supreme Court of the United States released a decision in a case which involved an appeal court justice who had received significant campaign contributions from the president of a company who was appealing a lower court decision. The appeal court judge had been asked to remove himself from the case, but had refused and went on, ultimately, to grant the appeal. The U.S. Supreme Court was asked to decide whether the appeal judge should have removed himself from the case. The U.S. Supreme Court ruled that the appeal judge should have removed himself because of the perception of bias.

The appointment process has some disadvantages, as well. In 1984, the Canadian Bar Association released a publication identifying ten problematic aspects of the appointment process as it then existed (before the institution of the current process of application and independent vetting by the Judicial Advisory Committees):

1. The public lacks knowledge about the appointment process generally
2. The public perceives that appointments are often politically motivated
3. In some provinces politics have played too large a role in appointments
4. Regional ministers of justice (attorneys general) hold an inordinate amount of influence over the federal Minister of Justice
5. The special advisor’s role is too large
6. There is a lack of consistency in the consultation process engaged in by the Minister of Justice and the attorney generals and chief justices

7. Information about candidates is often inadequate
8. The provincial law societies are often not involved enough
9. The process is lengthy and vacancies are often left open for months while the process is being completed
10. There is evidence of uneven competence on the bench

The judicial appointment process was revised in 1988 and some of the concerns identified in the report, including lack of consultations, potential for political interference and delays in the review process were addressed.

It is important to note that since the appointment of judges is set out in the Constitution, changing to an electoral system or a system which permitted the Ad Hoc Committee to veto the Prime Minister's nomination or appointment would require a constitutional amendment.

Term of Appointments

The federal Judges Act provides that federally appointed judges may serve until they reach the age of 75; the Provincial Court Act provides that Provincial Court judges must retire at the age of 70.

As judges are independent, a judge could only be removed from office in instances of serious misconduct. For less serious misconduct, the judge may be reprimanded or disciplined by the federal Canadian Judicial Council (federally appointed justices) or the provincial Judicial Council (provincially appointed judges). Otherwise, a judge can be assured that he or she will not lose their position for any decision made in the court, even if the decision offends the public, the media or politicians. This is part of the notion that a judge must be able to act independently of outside influences.

Topic 2: Jury

Jury Selection

- Potential jurors are selected randomly from the British Columbia voters list and are summoned to court by a notice sent out by the sheriff.
- The people summoned become part of the jury panel and must be Canadian citizens.
- BC residents, and between the ages of 19 and 65 before they are eligible to serve on a jury.
- The panel provides a pool of potential jurors for upcoming trials and can remain active for up to two months. A member of the panel must attend one or two jury selection processes during that period.

- A member of the panel could serve on more than one trial during the panel's active period but then that juror is exempt from being summoned for two years.
- All potential jurors from the panel are gathered into a courtroom.
- Each person's name is printed on a card and placed in a box. Then the court clerk pulls 15-20 of those cards from the box and the panelists come forward.
- Each panelist is either consented to, challenged or stood aside until 12 jurors are chosen. Each juror swears an oath and is then seated in the jury box. Civil trials start the same day but a criminal jury is called back for trial on a different day.
- The judge may excuse some potential jurors if they have good reasons. Missing work is not an excuse, as the employer is required by law to give a worker time off to serve on a jury. Inconvenience is not an excuse. The judge will decide after questioning that person as to their reason. Some considerations include:
 - Relationship to anyone in the case
 - Personal hardship: e.g. full-time student
 - Medical reasons
 - Limited ability to speak or understand English
 - Personal interest in the matter
 - Booked travel plans which conflict
 - People in some occupations are exempted such as police, judges, lawyers,
 - Court officers or corrections officers

If the judge directs a potential juror to stand aside and if a jury cannot be selected from the names called then the people stood aside can be recalled to complete the jury selection.

Jury Duty

As a member of the jury, it is his or her job to listen carefully to all the evidence. In a criminal trial, the evidence is presented by the Crown and defence lawyers through their witnesses. The jurors then decide what they believe. They will make the final decision as to whether the accused is guilty or not guilty of breaking the law.

An accused person is always considered to be innocent of a crime until s/he has been proven guilty in court. It is the job of the Crown lawyers to prove that the accused broke the law. The jury has to decide whether the Crown lawyers have presented enough evidence to convince them of the guilt of the accused.

The Crown must prove guilt "beyond a reasonable doubt." This means that the jury shouldn't decide that the accused is guilty unless they are sure. If they have a doubt as

to whether the accused is guilty and that doubt is "reasonable" (which means that they can give a reason for their doubt) then they should find the accused not guilty. The jury is not allowed to speculate. This means that they can't say "maybe they did it," or they could have done it if..." If's or what if's are not allowed. To find the accused guilty, the guilt of the accused must have been proven beyond a reasonable doubt.

In a civil case, both parties will introduce evidence for the jury to consider. The jury will then decide who is at fault or liable. The burden of proof is on a balance of probabilities which means it is more probable that one side is correct. The jury does not have to be 100% sure as in a criminal case.

Making a Decision

Before the trial begins, the jurors elect a "foreperson." The foreperson is the person who sits in the jury box closest to the judge. This foreperson will ask the jurors for their decision in the jury room. S/he may ask for the reason for the decision. After everyone has explained his or her reasons, the jury will vote and the verdict needs to be unanimous in a criminal trial with all deciding not guilty or guilty. Otherwise, there is a hung jury and a new trial will be ordered. In a civil case, the jury will answer the questions that have been prepared for them. Only 6 out of 8 jurors need to be unanimous.

When the jury returns to the courtroom, the court clerk or judge will ask them for their verdict, if one has been reached. The foreperson will stand and say, "Yes, we have." Then the jury will wait for the accused/defendant to stand before giving their verdict of "guilty" or "not guilty" or answering yes to the finding of fault in a civil case. The jury will be asked by the court clerk "This is your verdict, so say you all? Please stand to confirm your verdict." The jurors will all stand to confirm their verdict. The judge will either sentence the accused or release them, depending on the verdict in a criminal trial. In a civil trial the judge will confirm the verdict and adopt it as the judgment in the case. Jurors will be thanked for their service and then discharged or let go.

Topic 3: Legal Counsel

Professional Responsibility

In a criminal case it is the lawyer's responsibility to represent the government or his/her client to the best of his/her ability. Even someone who has been charged with a very serious offence is entitled to a defence. Counsel encounters a range of clients and cases and this enables them to expand their understanding of society's relationship with the legal system. They develop techniques that help them to interact with the public.

Each lawyer needs to achieve a certain standard of conduct and a strong work ethic. Being well prepared and diligent in the preparation of a case is crucial. A lawyer needs to be sensitive to the client's circumstances, problems and financial resources. Confidentiality in communications between a lawyer and a client is expected and required. Also lawyers must be sure that they do not act for a client where there may be a conflict of interest. For example, a conflict could arise if a lawyer was a good friend of the opposing party or if a lawyer acted for both parties in a real estate transaction.

In criminal cases it is the duty (guaranteed by the *Charter*) of Crown to disclose all evidence to the defence whether or not it is favourable to the Crown's case. It is not the job of the Crown to win the case but to present a fair and impartial case to the judge or jury. However the Crown is not obligated to introduce that favourable evidence nor does it have to put forward a statement of the accused that offers an excuse. In the latter case the Crown will not introduce the statement thereby forcing the accused to testify and present his/her own excuse. This way the Crown can cross-exam the accused and test his/her credibility and veracity.

Defence counsel in criminal cases do not make judgments about the accused and are really defending the liberty of everyone when representing an accused party. The accused is entitled to a full answer and defence to the charge. Defence counsel's role is to access the Crown's case, access the evidence an accused may wish to bring out at trial and then try to determine what the trier of fact (the judge or jury) may find to be credible and believable in the circumstances. In most cases the Crown has a *prima facie* (sufficient) case which it can prove so the accused must call some evidence to refute the facts or otherwise s/he will be found guilty. Sometimes the evidence the accused wishes to put forward may be unacceptable and unbelievable. It is the duty of defence counsel to warn the accused what might happen if s/he presents that evidence.

Legal counsel have the same duties to act responsibly and ethically in civil cases as well. Both parties will present their evidence and discovery of the two parties will precede the trial. Many civil cases reach a settlement between the parties before trial.

Rules of Evidence

Evidence is introduced to prove a material fact at issue in a legal proceeding. Direct or circumstantial evidence can be introduced. The purpose of the rules of evidence is to have a judicial system that is exact and fair in its procedure.

Direct Examination

This is the questioning of a witness by the counsel who has called this witness to the stand to testify. No leading questions are allowed in direct examination. A leading question is a question that suggests its own answer. The purpose of direct examination is to allow the witness to tell his/her story in his/her own words. That is the best evidence. In practice some flexibility is given but only with questions that are not essential to the issue being tried. Generally lawyers try to avoid making who, what, where and why questions leading questions.

Example of an allowable question: Where were you on Monday, January 4, 2000, and what did you observe?

Example of a question not allowed: Did you see the accused go up to the bank teller and demand the money?

Cross-Examination

Cross-examination is the questioning of a witness by counsel for the other side. Leading questions are allowed as the purpose of cross-examination is to check the witness's facts. It tests the witness's memory of events and it can bring out vital information that did not come out in direct examination. Testimony may not be believed if the cross-examination reveals problems or discrepancies in the witness' story.

Example of an allowable question: I put it to you that you could not possibly have seen a robbery because at the time you were in the manager's back office absorbed in a discussion about your mortgage, were you not?

Credibility and Character

Credibility questions are allowed as long as they are relevant to the case. They go to the issue of whether or not the witness is believable, reliable and trustworthy.

Example of an allowable question: You told the police officer a different story than what you have told the jury here today, didn't you?

Character questions are allowed if relevant to the case. Crown cannot lead evidence about the character of the accused unless the accused has made his/her character an

issue. However, where the accused has prior convictions the Crown can prove those convictions by showing the accused official documentation.

Example of an allowable question: Were you convicted of robbery on January 29, 2001?

Types of Evidence

Direct Evidence: Proves a fact directly which is in issue in a legal proceeding such as the complainant testifying that the accused is the person who assaulted him/her.

Circumstantial Evidence: Evidence that is not direct. It establishes a link between certain facts that leads to only one conclusion. An example would be if no one actually witnessed a theft but shortly thereafter the accused was found in possession of the item taken and the accused fingerprints were found in the store near where the item taken was displayed. Used together with direct evidence or on its own it can lead to a finding of guilt or fault.

Hearsay Evidence: Information that is given to a witness by another person that witness did not see or otherwise experience first-hand is called, "hearsay evidence". It is not admissible in court because the witness does not have personal knowledge of the original event. The evidence may be unreliable and it may be highly prejudicial or damaging to the case of the accused. The truthfulness of the statement cannot be tested by cross-examination as the person who said it is not the person giving the evidence. Sometimes there are exceptions.

Examples of hearsay evidence: A friend told me that the accused admitted to hitting the victim first. Another example is: Mary told me that Joe was the person who stole the car.

Admissibility of Evidence

Opinions: Witnesses cannot give opinions. Witnesses cannot say things that are not based on fact because that would be prejudicial to the accused.

Example of a statement that is not allowed: I think Michael is a dishonest person.

Qualified Opinions: Witnesses can give qualified opinions if they are experts in a particular field such as teaching. A teacher would be qualified to give an opinion about a student's performance.

Example of an opinion that would be allowable: Elise is an exceptional student.

Objections: When either counsel thinks a question is not within the rules of evidence, s/he may stand up and object. The reason for the objection has to be clearly stated to the judge and usually the judge will allow the other counsel to say why s/he thinks the question is allowable. Then the judge will make a ruling on the objection either by saying that the objection is sustained or that it is overruled. If the objection is sustained, the lawyer who is asking the question will have to rephrase the question or abandon it. If the objection is overruled then the lawyer can ask the question again. Practically speaking the jury has already heard the question but it does prevent the question and the answer from becoming part of the evidence. Often the judge will have to tell the jury to disregard the evidence if it is not admissible.

Topic 4: Court Clerk and Sheriff

Court Clerk/Recorder

- Assists the judge
- Takes notes during the trial
- Swears in or affirms the witnesses and asks the witnesses to state their names for the record
- Takes care of the exhibits and keeps them secure
- Tape records the whole trial and keeps a tape log which lists the order of witnesses
- May make transcriptions from this recording
- Works in the Supreme Court, the Provincial Court and the Court of Appeal

Deputy Sheriff

- Transports prisoners from jail to the court in a criminal proceeding
- Takes care of prisoners in the courtroom in a criminal proceeding
- Protects the judge, jury, accused and other court personnel and the public
- Serves court documents
- Summons the panel for jury selection
- Organizes the jury during the selection process
- Looks after the jury once it has been selected

Topic 5: Other People in Court

Accused

The accused is the person the government has charged with breaking the law. He or she is presumed innocent until proven guilty. Sometimes the accused will be a witness

in court and testify on their own behalf. With the help of their lawyer, they will decide if they wish to testify or not.

Witnesses

Role of a Witness

Witnesses are used in civil or criminal trials to give evidence that will assist the judge/jury in making a decision in the case. Witnesses usually make a statement to a police officer or to someone who has an interest in the case. The evidence of the witness is written down in a statement. The lawyers who are conducting the criminal or civil trial decide which witnesses will testify at trial. Those witnesses are compelled to attend court by receiving a subpoena. The subpoena is a formal document that commands the witness to attend court and to bring with them any evidence concerning the case.

Types of Witnesses

Victim/Plaintiff

These are usually the main witnesses. Testifying in court can be a very traumatic experience for these witnesses. Victims of crime have special needs so the government operates victim service programs in many BC communities. Victim service workers can help victims who are going to court by explaining what will happen in court. They can also provide support throughout the court process. For example, they can go to meetings with the police or Crown counsel and attend court with the victim. They also refer the victim to the appropriate services for legal, financial, and emotional help.

Accused/Defendant

This type of witness may testify in his/her own behalf.

Witnesses with Special Knowledge

Witnesses who have knowledge of some of the facts of the case also testify. In a criminal case there is usually more than one person who has witnessed the event or has evidence about some aspect of the case. For example, the police testify in almost all criminal cases. In civil cases such as motor vehicle accidents bystanders may also give evidence.

Expert Witnesses

These witnesses testify about special knowledge they have about the case. Forensics investigators could testify both in criminal and civil cases about such things as reconstructing the scene of an accident or crime and giving evidence on the cause of death or medical conditions. These witnesses have to be qualified to testify as experts.

Before they give their testimony the lawyer who is calling them will introduce their qualifications. The other lawyer in the case has the opportunity to cross-examine them on their qualifications before they give testimony. This could be very important in cases where there are competing experts being presented. The judge makes a ruling as to the qualification of the expert and may limit it to a specific area if necessary. Once qualified, the expert can testify in respect to that area. How much weight or credence that evidence is given is a question of fact to be determined by the judge or jury. Expert witnesses may include police who are dog handlers or fingerprint experts, document examiners, police artists, wiretap or polygraph specialists, forensics experts, medical doctors, psychiatrists, insurance investigators, or private investigators.

Character Witnesses

These witnesses usually testify in the sentencing hearing after a conviction in a criminal trial. These witnesses know the accused very well and can give testimony about the accused's character. They might be family friends, teachers, ministers, doctors, neighbours, work associates, or employers. Perhaps some of these testimonials would be included in the pre-sentence report ordered by the judge prior to sentence being imposed.

Responsibility to Testify

People who witness an action that may become part of a court or legal proceeding have the obligation and duty to testify as to what they saw. Witnesses are a very important part of the court process. Everyone in Canada has the right to a fair trial and that can only be accomplished if the public comes forward to give evidence.

Public Gallery

- Courts are open to the public, because "justice must not only be done, it must be seen to be done"
- Only exception may be in cases of a sensitive nature where the witnesses are young and testifying is difficult for them

Media Gallery

- Where reporters from the newspaper or television take notes of the courts proceedings
- Newspaper or television artists draw court happenings
- Photographs are not allowed nor are tape recorders
- No cameras are permitted unless the judge allows them

ACTIVITIES

Pre-Activity

Have students read *Handout 1: Appointment and Role of Judges* as a homework assignment preceding this lesson.

Activity 1: Judge Rulings

Judges are tasked with making decisions in cases regarding guilt or innocence and regarding sentencing. This activity looks at some of those cases.

Comparing the Sentences of Two Cases

The following cases illustrate the factors judges consider when sentencing a person convicted of a driving-related offence.

Regina vs. Homer

In January 2003, the British Columbia Court of Appeal upheld the sentence of a woman who was convicted of impaired driving causing death. In this case, the woman entered a guilty plea to the charge and was sentenced to three years imprisonment. The impaired driving resulted in the death of a young woman who was walking home from work.

The Court of Appeal case report for *R. vs. Homer* can be found at:
www.courts.gov.bc.ca/jdb-txt/ca/03/00/2003BCCA0015.htm.

R. vs. Khosa and Bhalru

About a month later, two young drivers were each convicted of criminal negligence causing death. The young men were involved in a street race, driving separate vehicles, when one of the vehicles lost control and struck and killed a pedestrian on the sidewalk. The trial judge sentenced each of the men to a conditional sentence for a term of two years less one day, followed by probation for a term of three years. Both men have since been deported to their country of origin, which is India.

The Supreme Court of Canada case report for *R. vs. Khosa and Bhalru* can be found at
www.courts.gov.bc.ca/jdb-txt/sc/03/02/2003BCSC0221.htm.

The sentences in the two cases were quite different and it was this disparity that caught the attention of the media and the public.

You may choose to prepare a summary of the facts and history of the cases yourself or have students perform this task. Afterwards, the following questions can be discussed as a class or, if you have students prepare the summary, you can have students answer these questions as an assignment:

- How is this case different than the street racing case in terms of the state of mind of the accused?
- What factors did the judge use to determine the sentence?
- What does the Court of Appeal say about the capacity of the sentencing judge to determine the facts and assess the social circumstances surrounding the incident?
- Do you think a period of incarceration will accomplish the goals of the justice system to denounce and deter the kind of behaviour that occurred here?
- How important is it to have decisions in similar cases consistent?

Appealing a Case

Regina vs. Kelly Ellard

The second case to be considered on this issue is the recent decision of the Court of Appeal in the case of Kelly Ellard. Ms. Ellard was convicted by a trial court in Victoria in the murder of Reena Virk. The Court of Appeal ordered that Ms. Ellard stand trial again because the Court of Appeal determined that she had not received a fair trial.

Have students read the report of this case. You can find reports of the first trial decision at www.courts.gov.bc.ca/jdb%2Dtxt/sc/00/05/s00%2D0564.htm and the Court of Appeal decision at www.courts.gov.bc.ca/jdb%2Dtxt/ca/03/00/2003bccca0068.htm. In order to follow the facts and issues in this case it is only necessary to read the Court of Appeal's reasons for judgment.

After considering the cases, have the class discuss the following questions:

- The justices in this appeal are critical of both the crown counsel and the trial judge in this case. What is the basis of their criticism?
- Why should it be the duty of the crown to prove a person is guilty of a crime?
- What was the effect of the kind of questioning cited in the case report?
- What should the trial judge have done in the circumstances?
- Should the nature of the crime excuse this kind of questioning?
- Do you think Kelly Ellard got a fair trial?
- Do you think the Court of Appeal has performed a good service in this case to preserve justice from disrepute?

- Do you think that Ms Ellard should have to undergo another trial and what do you think will be the result?

Activity 2: Being a Juror

Have students read *Handout 2: Jury Role and Selection*. They can use this information to complete the questions on *Handout 3: Fact or Opinion? Can You Decide?* These may be given as homework if you are short on time. Go over the answers to *Handout 3: Fact or Opinion* with your class to ensure understanding of the material.

Next, provide students this scenario and ask them the questions that follow it. Students can use this task to test their listening skills and gain an appreciation of how difficult it is to be a jury member (or a judge) in cases.

Scenario

January 2, 1990 was a cold winter's day. The road was extremely icy and visibility was poor. A green Ford Mustang attempted to come to a stop at the stop sign on the corner of Alma and 10th. The car slid through the stop sign and hit a red Toyota Celica. The collision caused a dent to the driver's door of the Celica and a dent to the front of the Mustang. The driver of the Mustang was a female Caucasian approximately 5 feet tall with short light brown hair and brown eyes.



You are a member of a jury. What facts do you remember?

1. What date did the accident occur?
January 2, 1990
2. What were the weather conditions?
Cold winter's day
3. What were the road conditions?
Visibility poor/icy
4. Where did the accident occur?
Corner of Alma and 10th
5. What is the description of the car that slid through the stop sign?
Green Ford Mustang
6. What is the description of the car that was hit?
Red Toyota Celica
7. What damage was done to the Mustang?
Dent to the front

8. What damage was done to the Celica?
Dent to driver's door
9. What is the description of the driver, who slid through the stop sign?
Female Caucasian, 5 feet tall, brown eyes, short light brown hair

Activity 3: Legal Counsel

Have students read *Handout 4: Legal Counsel*. Afterwards, remind students that leading questions are not allowed when a witness is being questioned in direct examination. A short exercise follows that you can read to the students or put on an overhead.

Ask students whether the following are leading questions or not:

1. Where were you on December 11, 200_?
Leading
2. Tell us what you saw.
Not leading
3. Were you at the corner of Fir and Broadway?
Leading
4. Did you see a green truck hit the red car?
Leading
5. What happened next?
Not leading
6. How fast was the car traveling?
Not leading
7. Would you say the car was traveling a 100 km/hour?
Leading
8. Was the traffic light red?
Leading
9. Did the thief have curly hair?
Leading



Ask students in what situations counsel are allowed to ask leading questions? Leading questions are allowed during Cross-examination.

Discuss what an objection is and why counsel object. Make sure the students understand what the judge means when s/he says "sustained" or "overruled" as this idea can be confusing to the students. If the objection has no value then the judge overrules it and counsel can ask the same question again. If the objection is sustained

then the counsel has to ask a different question or rephrase the question so it is within the rules of evidence.

Handout 5: I Object! can be used to give the students some practice making objections. It shows several types of objections the students can make, especially if they are doing a non-scripted trial.

Activity 4: Would You be a Good Witness?

Have students read *Handout 6: Court Clerk and Sheriff as well as Handout 7: Other People in Court* before beginning this activity. At the beginning of the activity, discuss the different types of witnesses with your class. Also ask students what is the difference between a victim witness and someone who saw an incident happen.

Have your school secretary, or someone unknown to the students, come into the classroom unexpectedly. Arrange for that person to either hand you something or for you to give them something while you are teaching an unrelated subject. If your class has a flair for the dramatic and would not be upset, that person could steal your wallet or purse after wandering about the class for a while and then run out. You could yell at the person to stop or ask them why they have your wallet. The person should say or yell, "stay back" to you and make a threatening or pushing motion. This is to establish the threat of force, which would make this scenario a robbery and not just a theft.

Once the person has left the classroom, ask your students to be a good witness by writing down a detailed description of the person and what that person did on *Handout 8: Robbery Suspect Description Form*. This form will need some adjustment to be used for a non-dramatic case.

Discuss their descriptions and the details from their observations. Then ask the person to return to the classroom so that the students can compare their observations with the factual details. Have the person tell the students his/her age, weight and height so that the students can see how close they came to being accurate. Have the person tell the class what words were spoken.

Discussion:

- What are some difficulties in being a good witness?
 - Memory may not be accurate especially concerning details
 - An event may happen unexpectedly and quickly

- The accused person or defendant might be a friend of the witness or a threatening individual
 - The person may be upset by what happened or by what s/he observed
- Why should you be a witness?
 - What would happen if no one stepped forward to testify in court?

Discuss with your students why it is important to be a witness (in a civil or criminal case). Talk about civic duty and responsibility and that in order to convict people or assess damages, evidence has to be presented to the court through witnesses.

The students can have a further opportunity to see how difficult it can be to remember the details when you are a witness. Have the students study the picture (look for *Fire Picture* under resources) for 30 seconds and then answer the questions on *Handout 9: How are Your Powers of Observation?*

Once the students have completed the activity, discuss some of the reasons that people see different things. The reasons would include past experience, perspective, the length of time between observing and relating the observations, and the fact that many witnesses do not make their own notes of what they observed. Compare and contrast this to professional witnesses such as police officers or expert witnesses who do use notes to assist their memories. These witnesses are allowed to refer to their notes in court and often their notes are requested by the opposing counsel for the purposes of fact finding and cross-examination.

Activity 5: Court Personnel in a Trial

Provide students with *Handout 10: People in a Criminal Trial*. This will give students an idea of what a criminal courtroom looks like, the names of the court personnel, and what they do. Ask them to look at it for one minute and then turn it over to fill in the names of people in court.

Next, students will test their knowledge on what they have learned about court personnel by answering the questions on *Handout 11: Court Personnel Roles* and *Handout 12: What Do You Know about Court Personnel?*

RESOURCES

Activity 1: Judge Rulings

Handout 1: Appointment and Rule of Judges

Activity 2: Being a Juror

Handout 2: Jury Role and Selection

Handout 3: Fact or Opinion? Can You Decide?

Activity 3: Legal Counsel

Handout 4: Legal Counsel

Handout 5: I Object!

Activity 4: Would You be a Good Witness?

Handout 6: Court Clerk and Sheriff

Handout 7: Other People in Court

Handout 8: Robbery Suspect Description Form

Handout 9: How are Your Powers of Observation?

Fire Picture

Activity 5: Test Your Knowledge of Court Personnel

Handout 10: People in a Criminal Trial

Handout 11: Court Personnel Roles

Handout 12: What Do You Know about Court Personnel?

ASSESSMENT

Activity 1: Judge Rulings

Comparing the Sentences of Two Cases

If you choose to prepare the summary of the two cases yourself and conduct the discussion as a class, then no formal marking is required. You may, however, grant participation marks for the discussion.

If you get students to prepare the summary and answer the questions by themselves, you can have the students submit these for marks.

Activity 2: Being a Juror

Once students have completed Handout 3: Fact or Opinion? Can You Decide? It can be submitted for marking.

Answer Key: Handout 3: Fact or Opinion? Can You Decide?

- Bad parents have bad kids. *Opinion*
- Jurors cannot ignore the law when deciding a case. *Fact*
- Counselling for children in divorce cases is the best treatment. *Opinion*
- Removing bad influences from children helps them to be good. *Opinion*
- Judges consider victim impact statements when deciding on a sentence. *Fact*
- A person who is 16 should always be raised to adult court. *Opinion*
- A dangerous driver is a person who drives too fast! *Opinion*
- A person who is suing in a civil case is called the "plaintiff." *Fact*

Activity 3: Legal Counsel

This is a group activity so no marking is required. You may, however, grant students participation marks for their contribution to the discussions.

Activity 4: Would You be a Good Witness?

Answers will vary for Handout 8: Robbery Suspect Description Form and Handout 9: How are Your Powers of Observation, but you can mark them for completion if you wish.

Participation marks for the discussion portion of this activity could be given.

Answer Key: Handout 9: How are Your Powers of Observation?

1. The fire occurred on the ground floor. *False*
2. The fire occurred at a building at Fourth and Maple. *False*
3. The fire occurred shortly after three o'clock. *True*
4. The firemen were rescuing a man from the blaze. *False*
5. The policeman was blowing a whistle to hold people back. *False*
6. The butcher was outside his store. *False*
7. The fire truck was hooked up to the fire hydrant. *False*
8. A boy was pulling the rope set up to hold the crowd back. *True*
9. The firemen had already put out the fire. *False*
10. The last name of the jeweler on the ground floor was Adams. *True*
11. There are 10 people in the picture. *False*
12. There was a scooter in front of the bakery. *True*

Activity 5: Court Personnel in a Trial

Once Handout 11: Court Personnel Roles and Handout 12: What Do You Know about Court Personnel? are completed, they can be submitted for marking.

Answer Key: Handout 11: Court Personnel Roles

1. Person who settles legal arguments between the lawyers. *JUDGE*
2. Person who files a Statement of Claim in a civil trial. *PLAINTIFF*
3. Person who swears in the witnesses at trial. *COURT CLERK*
4. Person who tapes all of the information or testimony given by the witnesses in a trial. *COURT CLERK, COURT REPORTER or COURT RECORDER*
5. Person who protects the judge and the jury. *DEPUTY SHERIFF*
6. Person who presents evidence to the court that the government has gathered against the accused. *CROWN COUNSEL*
7. Person who defends the accused and attempts to create a reasonable doubt in the mind of the judge or jury. *DEFENCE COUNSEL*
8. People who listen to the facts of the case and decide whether the accused is not guilty or guilty of the offence. Consists of 12 members. *JURY*
9. Person who gives facts to the court regarding the case. *WITNESS*
10. Person who the government has charged with breaking the law. *ACCUSED*
11. Person who arrests the accused and files charges. *POLICE OFFICER*
12. Person who speaks on behalf of the jury. *JURY FOREPERSON*
13. Person who files a Statement of Defence in a civil trial. *DEFENDANT*

Answer Key: Handout 12: What Do I Know About Court Personnel?

1. Why is it important to have an impartial judge hearing each case?
If the judge is impartial s/he will not take sides and a fair decision will be made.
2. Why is it important that the court clerk take good care of all the exhibits?
The "exhibits" are objects of evidence in the trial and must not be tampered with.
3. Why is it important to tape the proceedings in the courtroom?
So there is no confusion about what was said at trial in case one party wishes to appeal the case.
4. Why does the deputy sheriff sit next to the accused?
So that the accused does not leave the courtroom during the proceedings.
5. What is the significance of the name "Crown counsel"?
"Crown" refers to the fact that the government charges in the name of the Queen (Regina) and Crown is the Queen's representative or lawyer in court.
6. Why is there no Crown counsel in a civil case?
A civil case is between two parties or groups.
7. How many members sit on a criminal jury?
12
8. How many members sit on a civil jury?
8
9. How many jurors in a criminal jury must agree on a guilty verdict before it will be accepted by the court? Is the number any different if they make a finding of not guilty?
All twelve jurors have to agree on the verdict regardless if it is guilty or not guilty.
10. How many jurors must agree on a decision in a civil trial for that decision to be accepted by the court?
Either an unanimous verdict or if the judge orders, 75% of the jurors must agree (6 out of 8).
11. Why is it important to have jurors?
It is important to have an accused tried by a panel of his/her peers.
12. What are the names of the counsel or lawyers in a civil case?
Plaintiff's and defendant's counsel.
13. What would happen if a person lied under oath and was caught?
That person could be charged with the offence of perjury.
14. How do court personnel foster an attitude of respect in the courtroom?
By doing their work in a serious and efficient manner, they add to the formality and serious atmosphere in the court.

ENRICHMENT

Topic 1: Judge

You can watch the videos on www.tryjudging.ca, a website designed and produced by the Public Education Committee of the Canadian Superior Courts Judges Association. There are several scenarios for you to explore and to think critically about.

Topic 2: Jury

1. What do you think would be the hardest part of being on the jury in a civil case? Explain your answer in one short paragraph by using an example.
2. Compare and contrast the jury selection practice in the USA and Canada. Use the Internet to find out how the selection is made and how the lawyers prepare for it in a criminal case in the USA. Do you think it makes any difference to the outcome of the case? Explain why.
3. Draw a diagram that illustrates the jury selection process in Canada. You can do a step-by-step process or you could draw the courtroom and what it looks like when the selection is being made.
4. Why does a judge use a gavel in the USA and not in Canada? Research the topic and do a short oral report for the class.
5. Day in the Life of a Juror: Interview someone who has been on a jury and prepare six questions to ask the juror during the course of your interview. Hand in the questions and answers you received. Prepare a short speech to present to the class about what a juror's day is like.
6. Have students look at a recent high-profile case. Full case reports can be found on the Courts of British Columbia website www.courts.gov.bc.ca. They can then compare the case report to media reports on the same case. They will perform the following:
 - Identify the important sections of a case report
 - Read and critically evaluate media reports of a case
 - Note the difference in purpose and tone between media reports and case reports
 - Recognize the importance of reading a case report before forming an opinion on a case

7. If you are interested in a script of a Criminal Jury Selection Simulation contact the Law Courts Education Society in the following areas.
 - Vancouver Law Courts (604) 660-2919
 - Lower Mainland West (604) 775-2524
 - Lower Mainland East (604) 572-2276
 - Interior Region (Kamloops) (250) 828-4662
 - Interior Region (Kelowna) (250) 470-6965
 - Northern Region (Prince George) (250) 614-2736

Topic 4: Legal Counsel

1. If possible, interview a Crown or defence lawyer or use the notes you took when you had a Crown or defence lawyer as a guest speaker. Prepare a list of questions and answers that could be used as a quiz for the class. Be sure to leave space after each question for the answer, and prepare an answer key for your quiz.
2. Do some research into the types of training lawyers are required to have in order to practice law. Write your results up in a short report to be presented orally to the class. Try to include some specific facts.
3. What is "legal aid"? Write a short report on what it is and who qualifies for it. Do you think the lawyer does a poor job because s/he is being paid by legal aid? Explain your answer.
4. Debate: Ethically it is more difficult to be defence counsel than Crown counsel. In groups of two, prepare to defend this position as defence counsel and to counter it as Crown counsel. Present the debate to the class and ask them to make a decision.

Topic 5: Other People in Court

1. What's It Like to Be a Witness? Set your classroom up like a courtroom and invite someone who has testified at a trial to be your guest speaker. Have the person talk about his/her experience from the "witness stand" in your courtroom (classroom). If you are not able to find a guest then have one of the students act as a witness. You can use one of the scenarios from Criminal or Civil Law. Have the student testify in the classroom. Ask the "witness" questions both on direct and cross-examination. After the demonstration you can ask your guest speaker or the student to comment on the following questions:

- Were you well prepared to testify in the case?
 - Did your evidence affect the outcome of the case or not?
 - How did you feel before and after testifying?
 - What are some of the qualities that you think a good witness needs?
 - How did you feel during the cross-examination?
 - Where did you wait before you gave evidence?
 - Would you be a witness again? Why or why not?
2. Do some research on polygraph evidence to find out what qualifications an expert in that field would need in order to testify. Is this type of evidence admissible in Canadian courts?
 3. Find out how a witness subpoena is issued, who serves the witness subpoenas, and how that is done. What are the consequences if a witness ignores the subpoena? Write a short paragraph about what you have discovered.
 4. Research the witness protection program in Canada. Make a short written or oral report to the class.