

A GUIDE TO THE BASICS

ADVANCED MOCK TRIALS



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The Society has several first-class resource materials, including six mock trials that can help you and your group learn more about the courts and justice system in British Columbia and Canada. For more information, contact us or visit our website:

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The Law Courts Education Society

We are a non-profit organization providing educational programs and services about the justice system in British Columbia and Canada. We help the public understand how our justice system works and we also help those people working within the system to better understand the justice-related issues that different people in our community face.

We work in partnership with the Ministry of Attorney General, the Ministry of Education, the Judiciary, the Canadian Bar Association (BC Branch), schools and communities.

With the support of our partners, funders and volunteers, we strive to maintain an accessible justice system for everyone.



Introduction

This guide provides you with all the materials you need to develop your own mock trials. These materials have been prepared for Law 12 classes but would also be useful in the law-related components of Social Studies 11 and Consumer Education.

How to adapt a specific case for a mock trial

A mock trial role play is most dramatic when it involves a judge and jury. For this reason, mock trial scenarios focus on serious, indictable offences. Your specific case would accordingly be based on a serious crime, one that has some degree of ambiguity about the guilt of the accused. You can follow up your initial ideas by reading cases in law reports. Talk to the local courthouse for information about where to locate the relevant reports. You might also want to check out the clippings files at the local library.

After you have developed an idea of the kind of crime you want to pursue, you need to become familiar with the relevant law. An annotated Criminal Code, such as Martin's Annual Criminal Code, would be useful at this point. You can use it to find references to other related cases.

When you've done your research, you will be ready to develop the following student hand-outs:

- 1) **Indictment.** See the sample indictment (Appendix A) and use it as a guide in developing your own indictment.
- 2) **Relevant law.** Photocopy the relevant sections of the Criminal Code so that the students can read them. Include the possible penalties for the crime.
- 3) **Exhibits.** A good mock trial always has some interesting exhibits. If it's a murder case, for example, the police officer could have prepared a diagram of the scene of the crime. Or if the crime involves a weapon, have one included as an exhibit. If it's a drug charge, you will want to have the substances seized from the accused as exhibits. You may need documents: a certificate of analysis for the drugs, for example, or a copy of thumbprints taken from the victim's body.
- 4) **Witness role sheets.** Each witness will need his or her own role sheet. You will probably want two or three for the Crown and two or three witnesses for the defence, so you will have to make up a role sheet for each. The role sheet can be quite brief. You can use the ones in chapter two as examples.
- 5) **Additional, specific material for meeting with witnesses (Crown and defence).** Both Crown counsel and defence counsel will need some additional information about the case so they can develop the details with their witnesses.

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- 6) **Additional, specific material for questioning the witnesses (Crown and defence).** The coordination between counsel and their witnesses and the development of a series of questions is vital to the success of the mock trial. Students find these activities quite difficult, and they will need tips on how to develop their questions about the facts of the specific situation.
- 7) **Strengths and weaknesses of the Crown's case.** Both the Crown and defence counsel will need specific information about the strengths and weaknesses of the Crown's case. Think of four or five strengths and four or five weaknesses.
- 8) **Court Clerk's Minute Sheet** – see the Court Clerk's Minute Sheet (Appendix B) and the sample completed one (Appendix C).
- 9) **Jury Sheet (optional)** – see the Jury Sheet (Appendix D). Many judges prefer that members of the jury do not take notes while court is in session. This is because they feel that the activity may distract jurors from closely examining the witnesses. However, for mock trials the Jury Sheet has been proven to significantly enhance students' learning experience and help them keep better focus on the details of the trial.

Completing the files

A file format is an excellent format to follow in developing a mock trial. In chapter two, we indicate what pieces of general information need to be included in which file. We also indicate what new sections need to be added about your specific case.

Follow the directions at the front of each file to make sure that the files are complete before you hand them to the students. You can use the Quick Photocopying Guide on page 8 to prepare the files for the students.

Choosing the students for the roles

The choice of students can be crucial to the success of the mock trial.

The judge and the lawyers have particularly large roles that demand a fair amount of preparation. The judge should be a confident student who tends to put a lot of thought into matters and who is not reluctant to speak his or her mind.

The lawyers will almost always work better in teams than alone. Therefore, if there are enough students in the class, choose two or even three lawyers for both the Crown and defence teams. The lawyers must make sure that they meet with their witnesses (Crown with Crown witnesses, defence with defence witnesses) in advance so that the witnesses and the lawyers have the same

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understanding of the evidence. The students who are the witnesses will have to "become" the people whose roles they are assuming. Each witness should try to imagine what that person would be like and try to act accordingly. All witnesses require good memories and imaginations to carry out their roles successfully.

The student who acts the role of the court clerk is required to read the indictment aloud, swear in the witnesses, mark the exhibits and take the verdict. He or she should have a loud, clear voice. This student has to follow a schedule so that he or she knows when to speak.

The choice of students for the other roles is not so critical. But obviously the trial will work best if all the students take their roles to heart. If you have too many students for each to have a role, some students can be newspaper or television reporters who will cover the trial, write stories on it, and present these stories to the class. A student who is a good artist can be assigned the job of sketching the courtroom scenes, as no cameras are allowed in real trials.

Another interesting possibility is to have more than one jury hear the case. This can be done using two or three twelve-person juries, or reducing the size of each jury to eight or ten. Comparing jury results adds another element to the trial. If you don't have enough students for the jury, you could ask parents who attend the mock trial to volunteer as jurors. There's lots of room for flexibility.

Meeting with the students

It will be very important for you, the teacher, to meet with every student who has a major role, and to make sure that all students are comfortable with their roles. The better prepared they are, the better the mock trial will work.

Instruct the students that they should not discuss the case with each other except for lawyers and their witnesses. The jury should know nothing about the case before the trial begins. The judge, clerk and sheriffs should not discuss the case with witnesses or lawyers.

There should be a meeting between opposing lawyers so that matters of detail (for example, any factual details agreed upon between lawyers and witnesses) can be passed on to the other side. Remember, the trial is not a forum where surprises in evidence should arise. Rather, the evidence should be agreed upon and the outcome of the case should rest on the strength of that evidence. You'll find that some lawyers will be tempted to raise something that the other side is not expecting, but you should discourage this.

One of the most difficult things for students is questioning. Students assuming the lawyers' roles often have difficulty painting a picture of the story for the jury and audience. It is important that you meet with the lawyers for each side and help them to develop the technique of carefully construct-

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ing an image of their story for the jury and audience. The students may need some advice on where to begin, or a few points on how to develop a complete questioning sequence. On-going teacher feedback on student preparation of questioning strategies is critical to the success of the trial.

The proper setting

The more formal the setting, the more successful the mock trial. If at all possible, try to make arrangements with the local courthouse to use their facilities, preferably for an evening. If the trial can be done in the evening in such a setting, parents and other students can be invited to watch. Most students tend to put more into their roles if they are performing in front of others.

Courtroom gowns add to the formality of the trial. The judge, lawyers and the court clerk should all wear gowns if possible. Ask the help of a lawyer (perhaps a parent of a student in the class) or your local Bar Association to locate gowns for the event.

Timing at the start of the role play

Getting everybody into the courtroom and ready to go can be confusing. A little organization can help.

First of all, have all guests and non-participants ushered into the public seating area by student volunteers.

Have the court clerk enter the court and begin setting up about five minutes prior to the trial. A minute later, the lawyers should make their way to the counsel tables and get their notes arranged. The accused person should be escorted in by a sheriff and placed in the prisoner's dock.

Then the jury should be escorted into the courtroom and taken to the jury box by the sheriff in charge of the jury.

When everyone else is in place and ready to go the judge's sheriff should lead the judge into the courtroom and call "Order in the Court." The trial begins.

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Quick photocopying guide

This is a photocopying guide for a mock trial that has two Crown and two defence lawyers, three witnesses each for Crown and defence, a jury of 12 and three deputy sheriffs.

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CHAPTER ONE: General Information About the Trial

1. General trial script
2. Rules of examination and evidence
3. Trial script summary



General Information About the Trial

General Trial Script

This is an approximate chronology of the trial. The judge is ultimately responsible for the proceedings. Therefore, he or she should follow this guide throughout the trial to ensure that the proper procedure is being followed.

The sheriffs, court clerk, and the lawyers must also be aware of the procedure so they will know when to speak.

OPENING PROCEDURE

The sheriff will open the court by saying, "Order in the Court. All rise." All persons in the court should stand. The judge will then enter the court room and sit at the bench. The sheriff will say, "Supreme Court now in session. Mr./Madam Justice _____ presiding."

The counsel will then identify themselves:

"May it please My lord/My lady, _____ appearing for the Crown."

"May it please My lord/My lady, _____ appearing for the defence."

ARRAIGNMENT

The court clerk will then stand with the indictment in hand, turn towards the judge and wait for the judge to nod or ask for the indictment to be read. The court clerk will ask the prisoner to stand by saying: "(accused) please stand."

Facing the prisoner, the clerk will read the indictment in a loud, clear monotone voice. After reading the charge the clerk will pause and ask: "(accused), having heard the charge read, how do you plead, guilty or not guilty?"

After hearing the reply of the accused, the clerk will then turn to the judge and repeat the plea of the prisoner by saying: "(accused) pleads not guilty (or guilty) My lord/My lady."

The court clerk will now swear in the jury and place the accused in the charge of the jury. At this point in a real trial an order excluding witnesses would normally be made. This is not necessary in our mock trial. (However, the witnesses should remember to stick to their stories and not let any evidence presented by any other witnesses influence their testimony.)

General Information About the Trial

ADDRESS TO THE JURY

At this point the judge addresses the jury, to inform the jury members of their responsibilities.

When the judge's address is finished, court usually has a short adjournment while the jury selects a foreman. This person will be the leader of the jury, and will speak for it. For the mock trial, we will dispense with the election of a foreperson and assume that the person seated in the front row jury seat closest to the judge will be the foreperson.

THE TRIAL

The judge should say: "Does the Crown wish to make an opening statement?"

Now the Crown will make its opening statement in which it will clearly establish its main arguments and outline generally how it will prove its arguments. After concluding his/her opening statement, the Crown will call its first witness by stating: "My Lord/My Lady, the Crown wishes to call (name) to the stand."

As the witnesses are called, they will stand in the witness box until they are sworn in by the clerk. They will then be seated and answer the questions put to them. Note that police officers usually stand while giving evidence although they are permitted to sit if they want to. Also, witnesses should address all their answers to My Lord/My Lady, even though it is the lawyers who are asking the questions.

After the Crown has finished questioning its first witness he/she will say, "No further questions, My Lord/My Lady."

The defence will then proceed to cross-examine the witness and end with, "No further questions, My Lord/My Lady." If the defence has no questions to ask in cross-examination, the defence simply states, "No questions, My Lord/My Lady."

The Crown may re-examine the witness, but only on questions which were raised by the cross-examination.

The Crown counsel may not ask new questions, which they forgot to ask during direct examination.

After examination is finished, the judge will state, "You may step down."

The procedure will continue until the Crown has finished calling all of its witnesses. The defence will then give an opening statement to the jury and proceed with its case by calling its witnesses. Now the above procedure is reversed: the defence conducts direct examination, the Crown cross-examines, then the defence may re-examine (under the same rules).

General Information About the Trial

RECESSES

If the need arises, either side may ask the judge to grant a short recess. If the judge consents, the clerk will announce, "This court stands adjourned for a short recess."

SUMMATIONS TO THE JURY

When both the Crown and the defence have finished calling evidence, they give closing statements to the jury in which they summarize their arguments.

The rule is that if defence does not call witnesses, Crown counsel addresses the jury first, the defence last. If, on the other hand (as in our mock trial) the defence does call witnesses, the defence addresses the jury first, the Crown last.

After both sides have finished addressing the jury, the judge will "charge" the jury. He or she will briefly review the most important evidence and instruct the jury on the law involved in this case.

THE VERDICT

At the end of his/her charge, the judge will direct the jury to leave the courtroom to consider its verdict. At this time the sheriff will call: "Order in Court." The clerk will rise and say, "This Court stands adjourned until the jury returns."

When the jury has reached its verdict, it tells the sheriff, who notifies the judge. The judge then returns to the courtroom while the sheriff again calls, "Order in Court."

After the judge is seated, the jury should return and then the clerk rises, faces the jury and asks: "Members of the jury, have you reached a verdict?" The foreperson will then stand and say, "We have, My Lord/My Lady." The clerk then asks, "Mr./Madam Foreman, what is your verdict?" The foreperson then states the verdict.

(If the accused is charged on several accounts, the clerk will ask, "What is your verdict on count one?" and so on.)

The clerk will then say, "Members of the jury, harken to your verdict as the court doth record it. You find the prisoner _____ (guilty or not guilty). This is your verdict, so say you all? Please stand to confirm your verdict." (Again, if there are several counts, the clerk repeats them.)

After the jury has given its verdict, the judge should thank the jury for having done their civic duty and tell them they are excused but may remain seated to hear the sentence (if they found the accused guilty) if they want to.

General Information About the Trial

SENTENCING

If the jury returns a verdict of not guilty, the judge then says: "(accused) please stand. You have been found not guilty by a jury of your peers. You are free to go. This court stands adjourned."

If a guilty verdict is returned, the judge says: Does the Crown and defence wish to speak to sentencing? Then the judge shall say: "(accused) please stand. You have been found guilty by a jury of your peers. Have you anything to say before sentence is passed upon you?"

The defence and the Crown then speak to sentence.

The judge then announces the sentence and states why the sentence is imposed. The sheriff calls, "Order in Court," and the judge leaves. The trial is over.

Rules of examination

When a witness is called to the witness stand to testify in a trial, he or she is subject to three basic kinds of examination.

1. DIRECT EXAMINATION OR EXAMINATION-IN-CHIEF

This is the first line of questioning and is conducted by the counsel who called the witness to the stand. If a witness is a witness for the Crown, then the Crown counsel conducts the direct examination. If a witness is called for the defence, then the defence counsel conducts the direct examination.

The purpose of direct examination is to allow the witness to tell his/her story so that this evidence is before the court. For example, questions such as "Where were you on the night of July 21st?" or "What did you see?" or "Tell the court what happened," are usually asked during direct examination.

Rules of direct evidence are strict. Counsel must not "lead" witnesses by asking "leading questions." A leading question is one in which the answer is suggested by the question. For example, "Were you on the northeast corner of First and Main Street on July 21st at 10:00 p.m.?" is a leading question and will probably be objected to. The correct question is "Where were you on the night of July 21st at 10:00 p.m.?"

If a leading question is objected to by counsel during direct examination, the judge may choose to disallow the question or ask that it be rephrased.

General Information About the Trial

2. CROSS-EXAMINATION

This is the second line of questioning. It is conducted by the other counsel. Defence counsel cross-examines Crown witnesses and Crown counsel cross-examines defence witnesses.

The purpose of cross-examination is to test the story which a witness told in direct examination. Is it true? Are there inconsistencies in the story? Is the witness' memory of past events as clear as it seems to be?

The rules of cross-examination are considerably more flexible. Leading questions and suggestions are allowed during cross-examination. For example, "You weren't really at the northeast corner of First and Main Street, were you?" or "I suggest to you that you were on the southeast corner of First and Main Street, were you not?" would be allowed.

3. RE-EXAMINATION

This is the third line of questioning. The counsel who conducted the direct examination may re-examine, but only on questions that arose from cross-examination. A new line of questioning cannot be introduced at this stage. If you forgot to ask a question in direct examination, that question may not be asked during re-examination unless it was raised in cross-examination by the other counsel. Be on your guard to ensure that the other counsel does not ask questions during re-examination that should have been asked in direct examination.

Rules of evidence

There are very strict rules of evidence in court. In other words, there are some questions that counsel may not be allowed to ask and some things that witnesses know that they may not tell. The main principles are that a witness may only tell what she/he knows to be true from personal experience, and that which is relevant to the case being heard.

Examples of evidence that is not "admissible" includes:

1. HEARSAY

Generally a witness may only tell what she/he saw or experienced and not what someone else has told him or her was true.

Example: "I saw the blue car hit a red car that was stopped at the stop sign."

– Good evidence, admissible.

"The blue car must have hit the red car that was stopped at the stop sign because that's what my sister told me she saw."

– Inadmissible, hearsay

General Information About the Trial

2. IRRELEVANT AND/OR PREJUDICIAL

Generally, only questions that are relevant to the case may be asked, particularly if irrelevant questions could prejudice the accused. For example, if an accused charged with trafficking in cocaine was asked by Crown counsel during cross-examination if it were true that she or he had failed grade ten three times in a row, the defence could object to the question on the grounds that it was irrelevant and prejudicial to the accused. In other words, that question has nothing to do with whether the accused is guilty or not guilty of trafficking cocaine.

In the case of an objection from you or the other counsel to a question or answer, the judge will hear arguments from both counsel before ruling. On occasion, you may decide to withdraw or rephrase a question before the judge has to rule. But remember, what may seem relevant to you may seem very irrelevant to the other counsel. The judge will listen to both sides and see if some relevance can be established. In borderline cases, the judge may decide on the objection by assessing the effect that an answer to the question might have on an accused's case. If it is highly prejudicial, a greater degree of relevance would have to be established before the judge would allow the question to be asked.

OBJECTIONS

Objections should be used very sparingly. A counsel may not object in order to disrupt the other side's questioning or to prevent a question that may be embarrassing from being asked. Counsel can only object on a point of procedure, such as when the other side is leading a witness during direct examination, or when the other side is introducing new evidence in the re-examination of a witness. Because of time constraints, each side must limit the number of objections raised throughout the trial.



General Information About the Trial

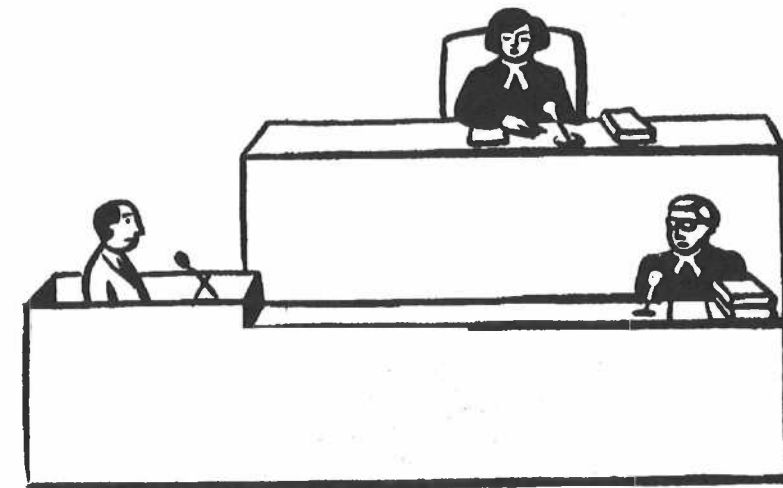
Trial Script Summary

1. The case starts with the sheriff calling: "Order in Court. All rise." Everyone stands. The judge enters and takes his or her seat. Everyone sits down.
2. The court clerk calls the case.
3. The Crown and Defence counsel introduce themselves to the judge.
4. The court clerk reads out the indictment and asks the accused, "How do you plead?"
5. The accused answers, "Not guilty."
6. The judge addresses the jury.
7. The Crown makes an opening statement to the jury.
8. The Crown calls its first witness.
9. The Defence cross-examines the first Crown witness.
Steps 8 and 9 are repeated for each Crown witness.
10. One Crown counsel rises and says, "That concludes the Crown's case, My Lord/My Lady."
11. The Defence begins by making a short opening statement to the jury.
12. The Defence calls its first witness, the accused.
13. The Crown counsel cross-examines the accused.
Steps 12 and 13 are repeated for each defence witness.
14. The Defence counsel makes a closing statement to the jury.
15. The Crown counsel makes a closing statement to the jury.
16. The judge instructs the jury.
17. The jury leaves to decide a verdict.
18. The jury returns.
19. The court clerk asks the jury for the verdict.
20. The foreperson gives the jury's verdict.
21. The judge tells the accused he or she is free to go if the verdict is "not guilty."
22. If the verdict is guilty, Crown counsel and the defence counsel speak to sentence. The judge then sentences the accused.
23. The court clerk says, "Order in Court." Everyone stands. The judge leaves and the trial is over.

CHAPTER TWO: The Roles

These are role sheets that you can use for any mock trial.

In the front of each generic role sheet there is a list of additional information you need to add in order to make a complete file.



Judge's role

When you have finished the charge, the jury leaves the courtroom to deliberate. When they return with the verdict, you must accept it. You may disagree with it, but keep that to yourself. It is the jury's job to determine innocence or guilt.

If the verdict is "not guilty" then you will discharge the accused--he or she will be free to go. If the decision is "guilty", thank the jury, discharge them, and then sentence the accused.

Sentencing is usually the most difficult part of a judge's job. Often the judge will order that a pre-sentence report be prepared by a probation officer before passing sentence. Sentencing could be delayed for several weeks while that report is being prepared. In this trial, however, you would sentence immediately.

In preparation, talk to a local judge or lawyer about the appropriate sentence in these circumstances. There is a section entitled "Sentencing" in this file. Before you pass sentence, ask both counsels (starting with the defence) to speak to sentence. This means they will present their arguments as to what the best sentence would be. Consider their arguments in your decision.

Judge's opening statement

(Note to the judge: use this to construct your opening address to the jury.)

"As members of the jury, you are the judges of the facts of the case, and any inferences to be drawn from the facts. You will be making the final decision as to the guilt or innocence of the accused person on the charges put before you.

"A fundamental principle of our law states that every accused person is presumed to be innocent until the opposite is proven. It is the duty of the prosecution in this case to prove beyond a reasonable doubt that the accused person is guilty as charged. Before you can bring a verdict of guilty, your decision must be based upon logical reasoning and upon the evidence that you accept as proof of the facts leading to that conclusion. If, after considering all the evidence, you feel that you have a reasonable doubt, then you must find the accused person not guilty. On the other hand, if you feel convinced of the guilt of the accused person, then you should convict.

"Many people have difficulty understanding what reasonable doubt means. Basically, it means what it says: it is a doubt for which you can give reasons. When you are deliberating to reach your verdict, you should focus on what you have heard in the courtroom. Don't speculate. Don't make up "what ifs" or "could haves." That is not your job. Your responsibility is to consider what the Crown and the defence place before you and to make your judgment based upon whether the Crown has carefully established its case and whether the defence has established reasonable doubt in your mind.

Judge's role

"During the trial, both the Crown and defence lawyers will make opening statements about their cases to you. When all the evidence has been presented, both lawyers will also make closing summations about their cases. Then, before you go to decide, I will formally "charge" you. In this "charge" I will instruct you on the law as it relates to this case, and you must accept the law as I give it to you.

"At the end of the trial, you will be taken to the jury room. In a real criminal trial, you would all have to arrive at the same conclusion to get a verdict (guilty or not guilty). Your decision would have to be unanimous. If you couldn't agree, then you would be a "hung jury" and the case would be dismissed and another new jury might be started by the Crown. In this trial, because of time limitations, you need only to reach a majority verdict.

"When you return to the courtroom, your foreperson will be asked to present your verdict in court. The foreperson will say either "guilty" or "not guilty" and no reason will be given."

Judge's charge to the jury

After all the evidence has been presented in a trial and the lawyers for both the Crown and the defence have finished their summations to the jury, the judge must "charge" the jury. This means the judge instructs the jury on the law and the evidence. Part of the charge is a general one, and would be used in any case. The other part of the charge is particular to the case being tried. During this second part, the judge sums up the evidence that the jury should consider when deliberating on the guilt or innocence of the accused.

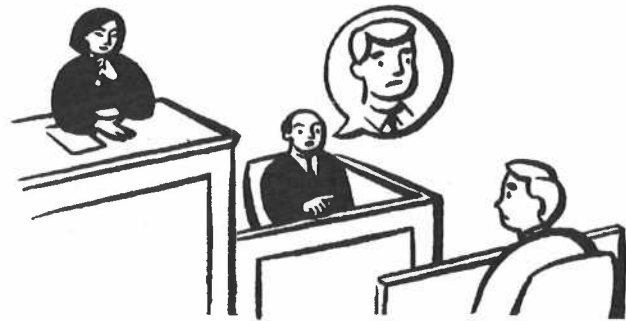
The following "charge" outlines the general section. Take it with you and read it to the jury. You will also be responsible for writing the section that sums up the evidence in this case. You will take that and read it too.

Charge to the Jury:

"Now, Mr/Madame Foreman, ladies and gentlemen of the jury, there are principles on which all juries must be instructed according to the law before they can retire to a jury room to deliberate and arrive at any conclusion, and it is my duty to instruct you on these principles. Now, before going into the facts and the law regarding this particular case, there are general principles on which I must instruct you and which you must take into account when you are considering the verdict and the evidence.

Judge's role

3. You should consider whether this case should be made an example to others. If the offence is a common one in the community, you may decide that the most important consideration should be that the sentence be harsh enough to deter others from committing similar offences.
4. You should take into account the desire of society to help a convicted person rehabilitate himself or herself. What type of sentence will best help the accused reform his or her ways?
5. Your sentence should fit the offence. For example, a robbery conviction is more serious than a theft conviction, and the sentence should reflect this.



Crown counsel's file

To complete this file you need to add:

Basic information about the trial (from Chapter One):

- General trial script
- Rules of examination and evidence
- Trial script summary

Specific case materials:

- Relevant law
- Indictment
- Exhibits
- All witness role sheets (for both Crown and defence)
- Additional material for Meeting with Witnesses
- Additional material for Questioning Witnesses
- Strengths and weaknesses of the Crown's case



Crown counsel's role

Meeting with your witnesses

The success of your presentation depends, in part, on how well you have coordinated your witnesses. It is important that you meet with your witnesses to ensure that they understand their roles.

As you will notice the witness role sheets are only basic outlines. The information contained in them is not sufficient to allow you to question a witness properly. Therefore, you will have to "fill in all the pieces" you need to develop the personal background of each witness.

As Crown counsel, you must meet with the Crown witnesses to develop their background. There are many details that need to be worked out. You must ensure that the evidence of the Crown witnesses does not clash in any way.

It is important that these counsel/witnesses meetings be used to formulate an outline of the types of questions to be asked and the additional information which will be required by the witnesses to answer the questions. Spend some time anticipating what questions will be asked in cross-examination of each witness by the other side. All witnesses need to be ready to answer questions asked in cross-examination without contradicting themselves or their evidence. You should practise some direct and cross-examination questioning techniques with the witnesses for your side before the trial.

The success of the trial depends on how well both Crown and defence counsels have developed their case. Use the basic outline and your sessions with your witnesses to develop as solid a case from your point of view as you can. Avoid using tricks. Do not insert surprises designed to confuse the other lawyers.

Meeting with defence counsel

After you have finished preparing for your case, you should meet with the defence counsel to share with them the additional information which you have developed. You should not tell them about your approach to questioning or any of your major arguments. Rather, in these meetings you should make sure that both sides understand the basic evidence of this case and agree upon it. After your discussion you should not introduce any major changes in your evidence. If you do, you must obtain the agreement of the other side.

Crown counsel's role

Taking notes

It is important that you keep notes. Make a list of all the questions you want to ask Crown witnesses before the case begins. Take your notebook with you when you stand to ask questions and tick off the questions that you ask, one at a time, so you don't forget any. You can also take the witness role sheets with you and cross off information from them as it is heard from the jury. In this way you make sure that nothing is missed. Make sure the answers are clear and understandable before moving on. It's a good idea to have both a blue and a red ink pen with you. Record all questions and answers in blue ink and note any questions you have about those answers in red ink so that you will remember to ask them in cross-examination.

Take your time when questioning witnesses. Remember that the judge is also taking notes, so go slowly enough to allow for this. The thoroughness of your presentation is more important than the speed.

How to organize your notes

Each lawyer has his or her own system of keeping notes during a trial. You should work out whatever system is easiest for you.

The main thing about keeping notes is that you must be able to check back on them very easily and quickly. Therefore, make your writing quite large and legible and don't be afraid to use different colours of ink, etc.

Make sure you have a good supply of paper with you when the trial starts.

The illustration below shows one of the most common systems used by lawyers to keep notes during trials. The page is divided into two columns for questions and answers. Make sure that you identify the witness who is speaking and whether the questions are being asked by the Crown or the defence.

Because you must take notes quickly, just write down the most important words in a question and answer, rather than trying to write the whole thing word for word.

In your summation to the jury you will probably want to refer to your notes and to the testimony given by various witnesses. If you are going to restate the testimony of a witness in closing arguments, make sure that you state the evidence correctly. Also when the other side is restating evidence, consult your notes to make sure that the evidence is being stated correctly.

Crown counsel's role

WITNESS: Officer Mary Smith (Direct Ex)

Questions	Answers
1. how long police officer	1. 8 yrs
2. how long drug squad	2. 5 yrs
3. where were you on July 21st 10:00 p.m.	3. Main St. Mall

The opening statement and closing argument

After the judge has made his or her opening address to the jury you, as Crown counsel, will be required to make an "opening statement" to the jury. The opening statement should be quite brief.

In it, you introduce the case to the jury. You explain what the charge is and outline your "theory" of the case. Your theory briefly indicates what you will be trying to prove through the Crown witnesses. For example, in a drug case you could say that the Crown believes that the accused sold drugs for a profit and that she/he sold them to one of the witnesses on the day in question. In other words, you give a brief outline of your case without going into much detail.

After doing that, tell the jury who your witnesses will be and what their roles are. For example, you can say, "I will be calling a witness whom I expect will tell you that he brought drugs from the accused on the day in question." In this way, the jury will have some idea of who each witness is as you call him or her.

When you have finished your opening statement, call your first witness and begin presenting evidence.

After all the witnesses for both sides have completed their testimony, both lawyers give their closing arguments to the jury. In this case, the defence counsel goes first. The Crown counsel follows.

Make your closing arguments fairly brief, although not as brief as your opening statement. In your closing arguments, you should review the evidence which has been presented by your Crown witnesses and compare it with the evidence of the defence witnesses. Point out the highlights of the evidence which tend to support your theory of the case, and point out problems with the defence's theory of the case.

Crown counsel's role

As Crown counsel, you must be careful during your closing arguments to be fair to the accused. Remember, in theory you have no interest as to whether the accused is convicted or not. You have presented the evidence to the jury. You argue only about whether the evidence supports the Crown theory of the case or not. Do not say such things as, "You must find the accused guilty," or "The Crown has proven beyond a reasonable doubt that the accused is guilty." Tell the jury that they have heard the evidence. Mention that it is up to them to decide if you have proven the case beyond a reasonable doubt.

Questioning the witnesses

One of the hardest things for you to adapt to in your role as counsel will be how to ask questions. From your "Rules of Examination and Evidence" you already know that you may not ask "leading" questions during direct examination, but you may ask these kinds of questions during cross-examination. These are formal rules, but just as important to you is to develop a way to ask questions effectively.

The first thing to remember is that neither the judge nor the jury knows anything about the case until the evidence is presented. Therefore, anything that you want them to know must be brought out through the witnesses by the questions you ask. Don't be afraid to be picky—make sure all the little details come out so that the jury has a complete picture.

When you conduct direct examination of one of your witnesses, take the appropriate witness role sheet to the podium with you and follow it along line by line, and make sure that the jury gets every bit of information which is contained in the role sheet.

For example, suppose you are involved in a drug case and your first witness is a police officer, John Lee. You may examine Officer Lee in this way:

Q. Officer _____, what police force are you with?

A. Local police, My Lord/My Lady.

Q. And for how long have you been a member of that force?

A. _____ years.

Q. What division have you been assigned to?

A. The drug squad, My Lord/My Lady.

Q. And you were employed in that capacity on _____ (date)?

A. Yes, I was.

Crown counsel's role

Notice that nothing is taken for granted. You do not assume that the jury knows who this witness is, what police force he's with, that he works on the drug squad, or anything else. He's a complete stranger to them.

When you are preparing for cross-examination, go over the witness role sheets of the other side's witnesses and think of questions you would like to ask about their stories. Remember, the defence counsel will try his or her best to discredit the Crown witnesses as much as possible. As Crown counsel, you should try to bring into question the defence witnesses' stories and challenge their credibility.

You may also want to introduce exhibits during the trial. In order to do this, you must question the appropriate witness about the exhibits. Supposed you ask the police officer what he found on the accused. Suppose he says he found a bag containing cocaine. Ask the court clerk to produce the exhibit containing the drugs. Ask the officer to identify the bag.

Q. Is this the bag of drugs you found on _____ (the accused).

A. Yes it is, My Lord/My Lady.

Q. How do you know it's the same bag?

A. I placed my initials on it and handed it to the crime laboratory. I see the initials on it now.

Then suppose that the crime laboratory has a certificate of analysis that says that the substance in the bag is cocaine. You want to introduce that certificate of analysis as another exhibit.

Q. Did the crime laboratory give you a certificate of analysis?

A. Yes.

Ask the court clerk for the certificate.

Q. Is this it?

A. Yes it is.

Q. What does it say?

A. (Officer will read the appropriate parts.)

Each exhibit must be introduced in this way. Be thorough and careful. When you ask the court clerk to produce an exhibit, present it to the defence counsel who will indicate the approval of the exhibit.

The golden rule is: If you don't ask it, the jury won't know it.

Crown counsel's role

Speaking to Sentence

If the accused is convicted, you will need to speak to sentence. In doing so, you should make sure that the needs of society are not forgotten. Before the judge passes sentence he or she will ask you to present an argument as to what the best sentence for the accused should be.

In deciding what sentence to impose, the judge must consider several things:

1. The judge must ensure that the punishment fits the person. The judge will ask the defence counsel to tell him/her about the background of the accused. The judge must consider the age, past criminal record, family life and the job status of the accused.
2. The judge's sentence must be fair. Similar offences should get similar kinds of sentences. You should check with a local judge or lawyer to find out what the range of sentences could be for someone convicted of the offence in question. Judge's are expected to apply the law evenly.
3. The judge will consider whether this case should be made an example to others. If the offence is a common one in the community, the judge may feel that the most important consideration should be that the sentence be harsh enough to deter others from committing similar offences.
4. The judge will take into account the desire of society to help a convicted person rehabilitate himself or herself. What type of sentence will help the accused reform his or her ways?
5. The judge will consider the seriousness of the offence when deciding the sentence. For example a robbery conviction is more serious than a theft conviction, and the sentence should reflect this.

Some of the points listed above reflect society's desire to protect itself, punish offenders and deter future offenders. Others reflect a desire of society to help reform the accused. The judge will weigh these considerations and decide which ones should be most important in determining the sentence.

Although you represent the interests of society in general, you are also concerned that the accused, as a member of society, be treated fairly. When speaking to sentence, design your presentation to address those principles listed above which you feel the judge should emphasize in this case.

Defence counsel's file

To complete this file you need to add:

Basic information about the trial (from Chapter One):

- General trial script
- Rules of examination and evidence
- Trial script summary

Specific case materials:

- Relevant law
- Indictment
- Exhibits
- All witness role sheets (both Crown and defence)
- Additional material for Meeting with Witnesses
- Additional material for Questioning Witnesses
- Strengths and weaknesses of the defence's case



Defence counsel's role

Introduction

You are going to be counsel for the defence in this mock trial. This means that you will conduct the defence on behalf of the accused.

HOW DID YOU GET TO BE DEFENCE COUNSEL?

Well, if this case is a typical one, the accused person phoned your office and told you that he or she had been charged with an offence. He or she asked if you would act as counsel. You agreed to take the case. Before any further questioning, you phoned the Crown counsel office and asked to see the file containing the police report on the case. The police report contained the information to which the police officer who arrested the accused will testify. After you read the report, you made an appointment with the accused and heard his or her side of the story.

WHAT IS YOUR JOB?

First of all, remember that you are not the judge. It is not your job to judge whether your client is telling the truth or lying. Even if you suspect that he or she is lying, it is still your duty to put forward the best defence. It is then up to the judge and jury to decide on innocence or guilt. However, as a lawyer you may never call evidence that you know is not true and must never ask a question of a witness when you know the answer will be a lie.

An accused person is presumed innocent until proven guilty beyond a reasonable doubt. That is very important for you as defence counsel. It means that you do not have to prove that your client is innocent. Rather, the Crown counsel must prove the accused is guilty. In order to secure a conviction the Crown must prove all of the elements of a particular charge beyond a reasonable doubt. If you can show that there is a reasonable doubt in the Crown's case, then your client will be found not guilty.

HOW SHOULD YOU CONDUCT THE DEFENCE?

In conducting the defence, you must make some important decisions. Perhaps the most important decision you must make is which witnesses to call for the defence. The hardest decision is usually whether to call the accused to the stand or not. The Crown counsel has no right to call the accused—only the defence may do that. Consider the following in making that decision: if the accused does not testify, then his or her record, if there is one, will not be put in as evidence. Also, your client will not be subject to cross-examination by the Crown counsel. Cross-examination may expose any lies your client is telling or show confusion in his or her story. Either way, your client could look bad in the eyes of the jury. On the other hand, if your client does not testify, then the jury will not hear his or her side of the story and the jury might think that your client has nothing to say in his or her defence.

Defence counsel's role

If much of the defence rests on the accused's word there is no doubt that you will have to call the accused to the stand.

During the trial, you are expected to cross-examine witnesses called by the Crown. You don't have to be kind to Crown witnesses. Your cross-examination of them should be designed to show any weaknesses or inconsistencies in their testimony.

After the Crown has finished calling its witnesses, you may then call your defence witnesses to testify. Before you do this, you should address the jury and briefly state what your defence is going to be.

After all the Crown and defence witnesses have testified, you should then sum up your case and present a concluding argument to the jury. After you've finished, the Crown counsel will also present an argument to the jury.

Preparation

The first thing you should do is read everything in this file.

Read the indictment, the relevant law, and all the role sheets that relate to the case.

Read through the "General Trial Script" so that you know how the trial will be conducted and when you should speak.

Also read through the "Rules of Examination and Evidence" which are provided in this file. When you ask questions, stay within the rules of evidence. If the Crown asks questions or receives answers which you feel fall outside the rules of evidence, then object, stating your reasons, and let the judge rule on those questions.

Prepare a list of questions to ask each witness. These are direct examination questions for the defence, cross-examination questions for the Crown.

Make sure you completely understand the type of defence that you will present. If you don't understand it, then the jury won't.

Defence counsel's role

The approach

Presenting your case is somewhat like painting a picture. Before the trial, imagine yourself as a painter who has to slowly fill in all the pieces of a picture. Start by sketching an outline for the jury and gradually and carefully colour in the various parts of it. Remember: you are starting with a blank canvas. The jury knows nothing about this case. Ask yourself—are all the elements of the picture contained in my question? Are there any blank spots? Do I know which witnesses are going to produce the colour for a certain part of the picture? Am I presenting them in the proper order?

When you have finished this, pretend that you are a juror who knows nothing about this case. Examine your presentation from that perspective and see if it paints an orderly and clear picture.

Preparing your case

One of the best strengths you can have in preparing a case is a thorough understanding of not only your own case but the other side's case as well. Put yourself in the place of the opposing side—what is their theory of the case? Who are they calling as witnesses and why? When you have considered these questions it will be much easier for you to prepare your own case. Methods of case preparation vary from lawyer to lawyer. As this is probably your first case, you might find it helpful to use the following eight steps as an outline for preparing your case.

1. **Examine the indictment.** You need to be clear about the charges against the accused. How many are there? How do they differ from each other? In which ways are they related?
2. **Prepare an outline of the Crown's case.** You need to do this even if you are the defence counsel because you need to have a very clear idea of what the Crown is going to say.

After you have finished reading your file, prepare a detailed outline of the Crown's case against the accused. In it, describe the Crown's theory of this case and then summarize the important evidence that will be presented by each Crown witness.

When you list the evidence of a witness, try to figure out how the Crown will try to use this evidence to prove the charges against your client. In a separate column, list what you see to be the weaknesses of the evidence that each witness will present. This is important. This information will form the basis for defence counsel's cross-examination of each Crown witness. To be prepared for trial, both Crown and defence lawyers should know both strengths and weaknesses of their cases.

Defence counsel's role

Meeting with your witnesses

The success of your presentation depends, in part, on how well you have coordinated your witnesses. It is important that you meet with your witnesses to ensure that they understand their roles.

The witness role sheets are only basic outlines. The information contained in them is not sufficient to allow you to question a witness properly. Therefore, you will have to "fill in all the pieces" you need to develop the personal background of each witness.

As defence counsel, you must meet with the defence witnesses to develop their background. There are many details that need to be worked out. You must ensure that the evidence of the defence witnesses does not clash in any way.

It is important that these counsel/witnesses meetings be used to formulate an outline of the types of questions to be asked, and to develop the additional information your witnesses will need to answer the questions. Spend some time anticipating what questions will be asked in cross-examination of each witness by the other side. All witnesses need to be ready to answer questions asked in cross-examination without contradicting themselves or their evidence. You should practise some direct and cross-examination questioning techniques with the witnesses for your side before the trial.

The success of the trial depends on how well both Crown and defence counsels have developed their case. Use the basic outline and your sessions with witnesses to develop as solid a case from your point of view as you can. Avoid using tricks. Do not insert surprises designed to confuse the other lawyers.

Meeting with Crown counsel

After you have finished preparing for your case, you should meet with the Crown counsel to share with them the additional information that you have developed. You should not tell them about your approach to questioning or any of your major arguments. Rather, in these meetings you should make sure that both sides understand the basic evidence of this case and agree upon it. After your discussion you should not introduce any major changes in your evidence. If you do, you must obtain the agreement of the other side.

Defence counsel's role

Keeping notes

It is important that you keep notes during the trial.

Take your notebook with you when you stand to ask questions and tick off the questions you've asked, one at a time, so you don't forget any.

You can also take the witness role sheets with you and cross off the information from them as it is heard by the jury. In this way you make sure that nothing is missed. Make sure the answers are clear and understandable before moving on. It's a good idea to have both a blue and red ink pen with you. Record all questions and answers in blue ink and note any questions you have about those answers in red ink so that you will remember to ask them in cross-examination.

Take your time when questioning witnesses. Remember that the judge is also taking notes, so go slowly enough to allow for this. The thoroughness of your presentation is more important than the speed.

How to organize your notes

Each lawyer has his or her own system of keeping notes during a trial. You should work out whatever system is easiest for you.

The main thing about keeping notes is that you must be able to check back on them very easily and quickly. Therefore, make your writing quite large and legible and don't be afraid to use different colours of ink, etc.

Make sure you have a good supply of paper with you when the trial starts.

The illustration below shows one of the most common systems used by lawyers to keep notes during trials. The page is divided into two columns for questions and answers. Make sure that you identify the witness who is speaking and whether the Crown or the defence is asking the questions. Because you must take notes quickly, just write down the most important words in a question and answer, rather than trying to write the whole thing word for word.

In your summation to the jury you will probably want to refer to your notes and to the testimony given by various witnesses. If you are going to restate the testimony of a witness in closing arguments, make sure that you state the evidence correctly. Also, when the other side is restating evidence, consult your notes to make sure that the evidence is being stated correctly.

Defence counsel's role

Notice that nothing is taken for granted. You do not assume that the jury knows who this witness is, how she knows the accused, or anything else. She's a complete stranger to them. You have to fill in the details, one by one.

When you are preparing for cross-examination, go over the witness role sheets of the other side's witnesses and think of questions you would like to ask about their stories. Remember, the Crown counsel will try his or her best to discredit the defence witnesses as much as possible. As defence counsel, you should try to bring into question the Crown witnesses' stories and challenge their credibility.

The Crown may want to introduce exhibits during the trial. In order to do this, the Crown counsel must question the appropriate witness about the exhibits. Suppose the Crown counsel wants to ask a Crown witness, a police officer, what she found on the accused. Suppose she says she found a bag containing cocaine. The Crown counsel must ask the court clerk to produce the exhibit containing the drugs, and ask the officer to identify the bag.

The Crown's questions might go like this:

Q. Is this the bag of drugs you found on _____ (the accused)?

A. Yes it is, My Lord/My Lady.

Q. How do you know it's the same bag?

A. I placed my initials on it and handed it to the crime laboratory. I see the initials on it now.

Then suppose that the crime laboratory has a certificate of analysis that says that the substance in the bag is cocaine. The Crown counsel might want to introduce that certificate of analysis as another exhibit.

The Crown would introduce the exhibit like this:

Q. Did the crime laboratory give you a certificate of analysis?

A. Yes.

The Crown counsel asks the court clerk for the certificate.

Q. Is this it?

A. Yes it is.

Q. What does it say?

A. (Officer will read the appropriate parts.)

Each exhibit must be introduced in this way. Make a list of exhibits as they are introduced. After the Crown introduces each exhibit, ask to see it and raise any objections you may have to it.

Defence counsel's role

Speaking to Sentence

If the accused is convicted, you will need to speak to sentence. Before the judge passes sentence he or she will ask you to present an argument as to what the best sentence for the accused should be. As defence counsel, you want the court to treat the accused as leniently as possible, because you are defending your client's interests.

There are three main things you should talk about when speaking to sentence.

1. The background of the accused. You should provide a brief summary of your client's background. Mention family background, schooling, employment and future plans. Stress the client's current responsibilities—does he or she have any dependants, for example?
2. Previous criminal record. If your client has no previous convictions, be sure to emphasize that fact.
3. Circumstances of the offence. Be sure to mention any special circumstances relating to the offence which the judge should consider. In a drug case, for example, it may be relevant to mention that the amount of drugs found on the accused was not large.

In deciding what sentence to impose, the judge must consider several things:

1. The judge must ensure that the punishment fits the person. The judge will ask you to tell him/her about the background of the accused. The judge must consider the age, past criminal record, family life and job status of the accused.
2. The judge's sentence must be fair. Similar offences should get similar kinds of sentences. You should check with a local judge or lawyer to find out what the range of sentences could be for someone convicted of the offence in question. Judges are expected to apply the law evenly.
3. The judge will consider whether this case should be made an example to others. If the offence is a common one in the community, the judge may feel that the most important consideration should be that the sentence be harsh enough to deter others from committing similar offences.
4. The judge will take into account the desire of society to help a convicted person rehabilitate himself or herself. What type of sentence will best help the accused reform?
5. The judge will consider the seriousness of the offence when deciding the sentence. For example, a robbery conviction is more serious than a theft conviction, and the sentence should reflect this.

Defence counsel's role

Some of the points listed above reflect society's desire to protect itself, punish offenders and deter future offenders. Others reflect a desire of society to help reform the accused. The judge will weigh these considerations and decide which ones should be most important in determining the sentence.

Design your presentation to reflect both these considerations and your responsibility to defend your client's interests.

Remember, your presentation will play a large part in determining your client's immediate future.

Dividing the work

You and your partner will divide the work. You could use the following division:

1. Opening statement to the jury. This is a short statement to the jury. It gives them an outline of your case, and tells them which witnesses you are going to call. (Lawyer #1)
2. Cross-examining Crown witness #1. (Lawyer #2)
3. Cross-examining Crown witness #2. (Lawyer #1)
4. Cross-examining Crown witness #3. (Lawyer #2)
5. Questioning Defence witness #1. (Lawyer #1)
6. Questioning Defence witness #2. (Lawyer #2)
7. Questioning Defence witness #3. (Lawyer #1)
8. Closing statement to the jury. This is a short statement telling the jury what the most important evidence is. (Lawyer #2)
9. Speaking to Sentence, if necessary. (Lawyer #1)

The "Trial Script Summary" tells you when each task should be done.



Defence counsel's role

Getting Started

This section gives you some tips on how to begin developing your lines of questioning.

PREPARING QUESTIONS FOR YOUR WITNESSES

1. Review all the witness role sheets and think about what the major arguments will be on each side.
2. Look at the defence witness sheets and make up a list of questions.
 - a) Prepare some questions to show the jury who your witness is.
 - b) Prepare some questions to show the jury what your witness did or saw or heard. Make sure it is clear where your witness was, how it happened or why it happened.
 - c) When you have finished making your list, check the questions to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what you want to prove.

PREPARING QUESTIONS FOR THE CROWN WITNESSES

Your job is to point out to the jury the weaknesses in the stories of the Crown witnesses.

1. Read the stories of the Crown witnesses again.
2. Think of some questions you can ask each person. Try to think of about four or five questions. Practise these questions on your partner to see if they work.

During the trial

1. Introduce yourself to the judge as follows:

"May it please My Lord/My Lady, _____(your name) appearing for the defence."

2. When you call your witnesses, you say:

"My Lord/My Lady, the defence wishes to call _____(name of defence witness) to the stand."

3. End your questions by saying:

"No further questions, My Lord/My Lady."

Court clerk's file

To complete this file you need to add:

Basic information about the trial (from Chapter One):

- General trial script
- Trial script summary

Specific case materials:

- Indictment
- Exhibits
- Minute Sheet

Court clerk's role

You will be the court clerk in this trial. The clerk performs a number of administrative functions. The court clerk is also called "the registrar of the court" and is addressed in court as "Mr. Registrar" or "Madam Registrar."

At the beginning of the trial, it is the court clerk who reads the "indictment" against the accused. A copy of the indictment is included in your file. Note that not all of the indictment is read aloud.

After the indictment has been read to the accused the court clerk should swear in the jury and put the prisoner in the charge of the jury. The jury is sworn in the following way. The court clerk should face the jury and address them saying:

"Members of the jury, do you swear that you shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence, so help you God?"

When the jurors repeat "I do" you then put the accused in the charge of the jury. You do this by, again, facing the jury and saying to them:

Court clerk's file

"Members of the jury, the prisoner stands charged by the name of _____ (accused.) That (then you read the indictment and all the charges in the indictment) upon these charges he/she has been arraigned and upon his/her arraignment has pleaded not guilty to each charge and for his/her trial has put himself/herself upon his/her country, which country you are. Your charge therefore, is to inquire whether he/she is guilty of the offences or any of them, whereof he/she stands charged, or not guilty and to harken to the evidence."

The court clerk swears in each witness who comes to the witness stand. Asking the witness to take the Bible in his or her right hand, in a loud clear voice the clerk then says:

"Do you swear that the evidence you are about to give to the court and jury sworn, between our Sovereign Lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth, so help you God?"

"Please state your name and address."

Today many witnesses choose to affirm instead of taking an oath. The clerk administers an affirmation by saying:

"Do you solemnly affirm that the evidence /same as above/... and nothing but the truth?"

The clerk keeps official notes of the trial on a "minute sheet" which becomes part of the official record of the trial. These notes outline the charge, the plea, the exhibits, the time and proceedings of the trial. A sample minute sheet is included in your file.

Another function of the court clerk is to mark and record exhibits for the trial.

The exhibits should be numbered A, B, C, etc. Check with the Crown counsel to make sure you have all the exhibits and that they are appropriately labelled. The Crown counsel will be introducing the exhibits by questioning witnesses about them. As the Crown counsel asks you for an exhibit, select the appropriate one and hand it to the Crown. When the Crown is finished he or she will hand it back to you and you should mark the exhibit and call out the letter to the judge. For example, say, "Exhibit A, My Lord/My Lady."

As a clerk, you should be very familiar with the "General Trial Script" and be aware of when you speak and what to say.

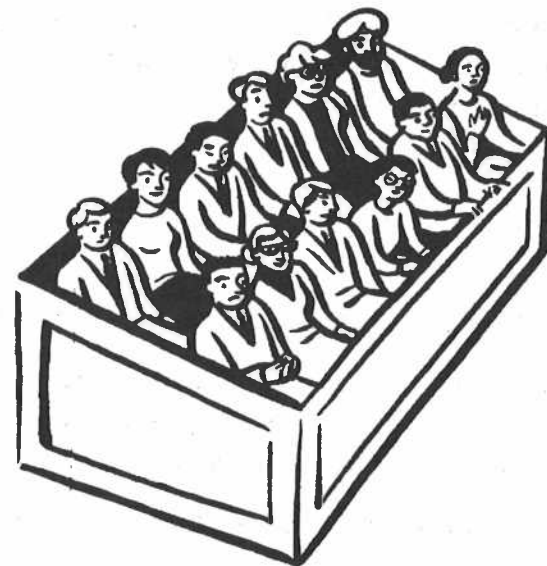
Note your role in the late stages of the trial when the jury has reached a verdict. It is you who asks for and records their verdict.

Jury's file

To complete this file you need to add the following:

Specific case material:

- The Indictment



Jury's role

For the purposes of this mock trial we will not go through the jury selection process. The trial will proceed as though you had been selected as a jury member according to that process.

As members of the jury, you are the judges of the facts of the case and any inferences to be drawn from the facts. You will be making the final decision as to the guilt or innocence of the accused person on the charges put before you.

A fundamental principle of the law states that every accused person is presumed innocent until the opposite is proven. It is the duty of the prosecution in this case to prove beyond a reasonable doubt that the accused person is guilty as charged. Before you can bring in a verdict of guilty, your decision must be based upon logical reasoning and upon the evidence that you accept as proof of the facts leading to that conclusion. If, after considering all the evidence, you feel that you have a reasonable doubt, then you must find the accused person not guilty. On the other hand, if you feel certain, convinced of the guilt of the accused person, then you should convict.

Many people have difficulty understanding what reasonable doubt means. Basically, it means what it says: it is a doubt for which you can give reasons. When you are deliberating to reach your verdict, you should focus on what you have heard in the courtroom. Don't speculate or make up "what ifs" or "could haves." That is not your job. Your responsibility is to consider what the Crown and the defence place before you and to make your judgement based upon whether the Crown has carefully established its case and whether the defence has established reasonable doubt in your mind.

You are entitled to accept the evidence of one witness and reject that of another, and you are entitled to accept part of the evidence of one witness and to reject another part of the evidence of that same witness. You should closely examine all witnesses as they appear before you. Consider their demeanour. Are they honest or evasive, partial or impartial? Had any of them an interest to serve? Consider the evidence of one witness against that of another before you decide on the credibility of a particular witness.

During the trial, both the Crown and the defence lawyers will make opening statements about their cases to you. When all the evidence has been presented, both lawyers will also make closing summations about their cases. Then, before you go to decide, the judge will formally "charge" you. In this "charge," he or she will instruct on the law as it relates to this case, and you must accept the law as the judge gives it to you. Then the judge will also summarize the evidence as he or she sees it. This review of the evidence is the judge's opinion of the relevant facts of the case. It is one opinion, and you can accept or reject it.

Jury's role

where you can be seen by the accused and by all persons present. Next, one of three things will happen: you will be challenged, asked to "stand aside," or selected as a juror for that trial.

If you are challenged, it will be either by the lawyer appearing for the prosecution, called "Crown counsel," or by the lawyer acting for the accused, called "defence counsel" or counsel for the accused. It means whoever challenges you does not wish you to serve on that particular trial. No explanation will be given to you. Counsel is asserting a right given to them in the Criminal code which they do not have to justify. It could be for any number of reasons and should not cause you any concern.

If you are challenged you must return to your seat. Shortly thereafter you will be excused by the judge either from further service or until the day anticipated for selection of the jury panel for the next case.

The Crown also has the right to "stand aside" persons whose names have been called. Again, they needn't offer any explanations for doing so. If you are stood aside, the deputy sheriff will instruct you either to return to your seat or take up another position in the courtroom.

The selection process then will continue until all names on the panel have been called. If 12 names have not been chosen by this time, those persons stood aside will be recalled and either be challenged or selected. Only a limited number of challenges are allowed.

Judge's instructions

Before the Crown presents its case the judge will give the jury preliminary instructions as to its duties, the manner in which the trial will be conducted, the hours of sitting and related details.

The judge probably will emphasize, as he or she will at other times, how essential it is that you do not discuss the case or any aspects of it with any persons (other than your fellow jurors) outside the courtroom. This is very important. The jury must decide the case only on the basis of the evidence and exhibits presented within the courtroom. The jurors' minds must be free from outside influence.

Fees for Jurors

Any person who is selected to serve on a jury panel is entitled to certain fees and expenses, as set out in the Jury Act.

Jury's role

Hours of attendance

Courts normally sit from 10:00 a.m. to 12:30 p.m. and from 2:00 p.m. to 4:00 p.m. These hours, however, may be varied by the judge to meet the demands of the trial.

Normally, while the trial is in progress, jurors are allowed to disperse to go their separate ways during lunch and at the end of the day. However, once a jury has retired at the end of the trial to consider its verdict, the members may not disperse until their deliberations have been concluded. If this process should continue into the night, arrangements will be made to provide the jury with meals and accommodations.

Meals

Jurors must pay for their own meals, except when the jury is deliberating its verdict. Reasonable and necessary hotel or motel bills will be reimbursed on production of receipted accounts.

General

As in every endeavour involving a number of people, delays often can occur. For example, in a criminal trial there may be an unexpected change of plea from "not guilty" to "guilty" which might mean that another case with its witnesses and counsel have to be made available sooner than expected. Such occurrences may test your patience but are unavoidable.

Excerpted from a leaflet prepared by Court Services, Ministry of Attorney General.



Additional Learning Activities

The following pages contain some additional learning activities that can help your students get more out of their mock trial experience. You can choose all or part of the assignments or adapt them to make them relevant to your group of students.

Crown and Defence Counsels

As part of the preparations for the mock trial unit, the following work needs to be completed. Your completed answers should be researched and submitted in good copy (typed or neatly written, with correct spelling).

A. Define/explain the following terms:

1. self-incrimination
2. closing argument
3. cross-examination
4. contempt of court
5. direct examination
6. hearsay
7. evidence
8. leading question
9. circumstantial evidence
10. opening address

B. Answer the following questions in paragraph form.

1. Describe how the adversarial (adversary) system of justice works.
2. Why do you think our system of justice demands proof beyond a reasonable doubt in order to convict an accused person?

C. The following question requires more in-depth explanation. On average, the answer should be 500-750 words in length.

1. Describe in some detail how you prepare for the trial. Include each step you take, how you divide the work up with your co-counsel, and any problems you encounter. Explain the way you intend to argue the case.

Additional Learning Activities

Court Clerk and Sheriffs

As part of the preparations for the mock trial unit, the following work needs to be completed. Your completed answers should be researched and submitted in good copy (typed or neatly written, with correct spelling).

A. Define/explain the following terms:

1. exhibits
2. perjury
3. oath/affirmation
4. indictment
5. direct evidence
6. hearsay
7. evidence of opinion
8. leading question
9. circumstantial evidence
10. arraignment

B. Answer the following questions in paragraph form.

1. Describe how the adversarial (adversary) system of justice works.
2. Describe the role of the court clerk and sheriffs in a Canadian court. What are their responsibilities and what duties must they carry out?
3. Court personnel are either gowned or in uniform. Why do you think this is the case? (Consider the real objectives of the trial and the type of setting desired.)
4. Why do you think our system of justice demands proof beyond a reasonable doubt in order to convict an accused person?

C. The following questions require more in-depth research. On average, the answers should be 250-500 words in length.

1. Research your roles (court clerk or sheriff) in British and American courts. Do they have the same titles and perform the same functions? Describe each and point out any similarities and differences.
2. Research another country that uses a court system (i.e. France) that is not adversarial like ours in Canada. What are the similarities and differences between the Canadian system and the other? Which system do you prefer? Why?

Additional Learning Activities

Jury Members and Journalists

As part of the preparations for the mock trial unit, the following work needs to be completed. Your completed answers should be researched and submitted in good copy (typed or neatly written, with correct spelling).

A. Define/explain the following terms:

1. self-incrimination
2. perjury
3. oath/affirmation
4. contempt of court
5. direct evidence
6. hearsay
7. evidence of opinion
8. leading question
9. circumstantial evidence
10. sequestered

B. Answer the following questions in paragraph form.

1. Describe how the adversarial (adversary) system of justice works.
2. Describe the procedure by which jurors are selected. What is expected of an individual who has been chosen for jury duty.
3. Why do you think our system of justice demands burden of proof beyond a reasonable doubt in order to convict an accused person?

C. The following questions require more in-depth research. On average, the answers should be 250-500 words in length.

1. Research 2 examples of individuals who abused their role as a juror in a jury trial. What did they do? Why were their actions considered wrong? Do you think that their actions threaten the proper function of trial procedure? Why or why not?
2. Research another country that uses a court system that is not adversarial like ours in Canada. What are the similarities and differences between the Canadian system and the other? Which system do you prefer? Why?

Additional Learning Activities

Witnesses

As part of the preparations for the mock trial unit, the following work needs to be completed. Your completed answers should be researched and submitted in good copy (typed or neatly written, with correct spelling).

A. Define/explain the following terms:

1. self-incrimination
2. perjury
3. oath/affirmation
4. contempt of court
5. direct examination
6. hearsay
7. evidence of opinion
8. leading question
9. circumstantial evidence
10. cross-examination

B. Answer the following questions in paragraph form.

1. Describe how the adversarial (adversary) system of justice works.
2. Describe the responsibilities of a witness.
3. Why do you think our system of justice demands proof beyond a reasonable doubt in order to convict an accused person?

C. The following questions require more in-depth research. On average, the answers should be 250-500 words in length.

1. Research 2 examples of individuals who were accused of perjury. What did they do? Why were their actions considered wrong? What effect did this have on the cases they testified for?
2. Research another country that uses a court system (i.e. France) that is not adversarial like ours in Canada. What are the similarities and differences between the Canadian system and the other? Which system do you prefer? Why?

Additional Learning Activities

Summary Assignment – All Roles

You were involved in our mock trial criminal process in some capacity over the past few weeks. Thinking back on your experience, answer the following questions in detail:

1. What have you learned from the experience?
2. Has your involvement in the mock trial affected your view of criminal law and the trial process? If so, how? If not, why?
3. How successful do you think that you were in your role during the trial? Do you think that this influenced the mood of the courtroom, or the outcome of the trial? Explain.

Each answer should be no more than 500 words in length.

Definitions

Definitions

WHO'S WHO IN COURT

Accused

The person the Crown claims has broken criminal law.

Court clerk

The assistant to the judge in the courtroom who swears in witnesses and supervises the exhibits during the trial.

Crown counsel

The lawyer who represents the Crown (the government) and who presents a case to prove that an accused person has broken a criminal law.

Defence counsel

The lawyer who works for the accused and who presents a case to show that the accused is not guilty of breaking a criminal law.

Judge

The court official who works alone or with a jury to decide if someone is guilty or not guilty of breaking the law.

Sheriff

The person who acts as a police officer to maintain security in the court.

Trial witness

A person who gives information during the trial.

Other terms

Charge

A complaint brought by the Crown against someone who is alleged to have broken the law.

Civil law

The area of law which involves individuals who have disagreements or disputes with each other (e.g., marriage, divorce, or compensation for injuries from a car accident).

Criminal law

The area of law which involves charges against individuals for breaking one of the laws of society (e.g., theft or murder).

Cross-examination

The questions lawyers ask a witness for the other side to show weaknesses in the witness' testimony and to obtain additional useful information.

Appendix D – Jury Sheet

Witness #5 _____(Crown/Defense)

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-
-
-
-

Witness #6 _____(Crown/Defense)

-
-
-
-
-

Witness #7 _____(Crown/Defense)

-
-
-
-
-

Arguments: Guilty

Arguments: Not Guilty

Jury Verdict: _____

Your Verdict: _____

Reason for your decision:

Notes

Notes

Notes

Notes



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