

# MOCK TRIAL TOURNAMENT

1992

## I. INTRODUCTION

This year's case is Plainer v. BAPCO. The plaintiff is alleging wrongful dismissal from his/her employment. Wrongful dismissal occurs when an employee is fired without adequate cause. Unless such cause exists, the law requires that the employer either give reasonable notice to the employee that he/she will be terminated or make a payment to the employee in lieu of notice. What is reasonable notice will depend on factors such as the employee's length of service, level of responsibility and future employability. If, for example, the employee is entitled to three months' notice, the employer can either give such notice while continuing to employ the employee or make a termination payment of three month's salary. **The only issue to be determined in this year's case is whether the plaintiff was fired or whether the plaintiff quit his or her job.** The parties have agreed that damages shall be fixed at \$36,000 and no statutory (including Employment Standards Act) or other issues should be argued. No jury notice has been filed. The case will be tried by a single judge.

The Ontario Tournament organizers are Susan Heakes of Blake, Cassels & Graydon, David J. Goodman of Smith, Lyons, Torrance, Stevenson & Mayer and Michael Martosh of the Municipality of Metropolitan Toronto, Legal Department. The Tournament is administered by the Law Day Committee of the Canadian Bar Association - Ontario. All communications regarding this tournament should be with Janice Richardson of the Toronto office of the Canadian Bar Association CBAO. Her address is:

Janice Richardson  
Director of Committees and Meeting Rooms  
Canadian Bar Association - Ontario  
Suite 200  
20 Toronto Street  
Toronto, Ontario  
M5C 2B8

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## II. THIS YEAR'S ONTARIO TOURNAMENT AND ADDITIONAL RULES

This year's Kit is being distributed during the month of November, 1991. By Friday, November 1, 1991, interested teachers must notify the Tenth Annual Ontario High School Mock Trial Tournament Committee of their interest in receiving the Kit. Attempts will be made to arrange for local lawyers to provide assistance to all teachers requiring such

assistance. Attention is drawn to the rules set out in the "Mock Trial Tournament Guide" as well as to the rules herein.

Teams must be prepared to play the role of either the plaintiff or the defence. Teams will be assigned their roles on the basis of a coin toss preceding each round of the competition. The students portraying the witnesses must be familiar with two roles each, so that they can switch depending on the coin toss.

A. Participation and Eligibility

All students on a team must be full-time students at a high school in Ontario. Students who have participated in a past tournament as a team member in inter-school competition are ineligible to compete again in a current tournament.

B. Round One

Round One consists of a local in-school mock trial competition within the teacher's class or between classes within the same school. This will allow the teacher to form the best school team consisting of six students: Four lawyers and two witnesses. At the end of Round One, the school should have selected a team to represent it if it wishes to continue further in the Tournament. At this stage, the teacher may feel that the educational objectives have been met and that he/she does not wish to proceed further. (We would of course encourage all schools to continue to the next round!) Should the teacher wish to continue on to Round Two, he/she must notify Janice Richardson at the CBAO of such intention in writing on or before 4:00 p.m. Monday, February 17, 1992. Please note that this deadline is firm, and no exceptions can be made.

C. Round Two

Round Two consists of four regional inter-school competitions. The geographical boundaries of the regions will be arranged by the Committee following receipt of all notices of intention to proceed to Round Two. The teachers of the participating schools will be responsible for arranging the time, location and format of the regional play-offs, while adhering to the rules set out herein. Assistance will be provided by the Committee where necessary; however, it is expected that teachers and local lawyers will be able to assume responsibility for the Round Two play-offs. It is anticipated that the precise boundaries of each of the north, south, east and west regions may vary from year to year depending on the numbers and locations of schools interested in participating in Round Two. The winners of the four regional play-offs will advance to Round Three in Toronto.

Round Two must be completed by Monday, March 23, 1992 and Janice Richardson advised as to the regional winners on or before 4:00 p.m. on Tuesday, March 24, 1992. We encourage participants to complete Round Two as early as possible. Again, no exceptions will be made with respect to timing. Strict adherence to the deadline will be required in order that the necessary arrangements may be made for travel and accommodations in Toronto for Rounds 3 and 4.

D. Round Three

Round Three consists of the semi-finals in Toronto on the morning of Law Day, Wednesday, April 15, 1992. The four best teams from the regional inter-school competitions will compete in a court room in Toronto before judges of the Provincial Court and the Ontario Court (General Division).

E. Round Four

Round Four consists of the finals in Toronto on the afternoon of Law Day. The two winning teams from the morning semi-finals will compete, again before the presiding judges. These two teams will receive awards at the Law Day Banquet on the evening of April 15, which all four semi-finalist teams are invited to attend along with various local and provincial dignitaries and members of the Ontario judiciary and legal profession. The winning team will take home the Ontario High School Mock Trial Tournament trophy, for the year.

F. Expenses

Schools participating in the Tournament must look after their own expenses in Round One (local in-school competition) and Round Two (regional inter-school competition). Except for transportation to the regional inter-school competitions, there should be no costs associated with Round One and Round Two. Round Two competitions should occur on a Saturday in order to ensure full participation. Local Boards of Education might be approached for financial support by teachers if there are transportation or other costs. Limited financial assistance from the Canadian Bar Association - Ontario will be available for Round Three (semi-finals) and Round Four (finals) for accommodation and transportation, particularly for those schools having to travel some distance to Toronto, but assistance is limited to the six member team (no alternates) and the teacher.

G. Law Day Re-Enactments

It is hoped that teachers whose teams have not reached the semi-finals and finals in Toronto will nevertheless re-enact their mock trials at school assemblies on Law Day, April 15, so that other students and teachers will become aware of the significant benefits of both the mock trial activity and the study of law at the high school level.

H. Inconsistencies in Materials

In the event of any inconsistencies between the Mock Trial Tournament Guide and the Format of Tournament and Specific Case, the Format of Tournament and Specific Case will take precedence and its rules should be observed by all participants.

**\*This is especially important with respect to this year's case which is a civil case rather than an offence under the Criminal Code. As a result, we have prepared a Civil Case**

4.

**Supplement which is attached at the end of these materials. We recommend inserting the supplement in the Tournament Guide replacing pages where indicated.**

### III. FACT SHEETS FOR HIGH SCHOOL MOCK TRIAL TOURNAMENT 1992

This Section of the materials contains the role descriptions for the witnesses. Teachers should make these fact sheets available to students early on in the process and the students should be encouraged to find out as much as possible about the character of the role they represent. In a real trial of this nature, there would be many more witnesses, who could be examined and cross-examined at length. In the tournament format, there are two witnesses each for the plaintiff and the defence and time for examination and cross-examination is limited. Accordingly, the evidence presented in this case is necessarily abridged and condensed to meet the needs of the tournament.

In order to carry out the "witness" role successfully, the two plaintiff witnesses (Pat C. Plainer and Chris Bitter) should meet before trial to work out other details about their characters. Similarly, the two defence witnesses (Robin A. Bitious and Les Goodheart) need to work out some details together. All of the relevant facts are contained in the witness fact sheets and any fact included in a fact sheet is considered "admissible evidence" for the purpose of the trial. **Please Note: While we encourage students to develop the characters of the witnesses and to elaborate on their personalities, teams will be penalized for unfair deviation from the fact sheets. "Unfair deviation" includes, but is not limited to changing relevant facts, the refusal to admit a fact which is included in a fact sheet when asked about it in cross-examination, and the addition of any fact including personal characteristics of a witness which might unfairly influence the result of the case.**

Although witnesses will attempt to prepare for every possible question that may be asked of them, they must also be prepared to respond, on the spot, to questions which were not anticipated. Witnesses must be flexible. On the other hand, if the testimony is not consistent, the Judge may begin to doubt the truth of the statements. Establishing credibility will present a challenge to every witness in this trial.

A. WITNESSES FOR THE PLAINTIFF

PAT C. PLAINER, Plaintiff Witness #1

Pat Plainer is a 24 year old graduate of the University of Ontario, with an undergraduate degree in environmental science. Pat was hired during a campus recruitment drive by Big American Petroleum Co. ("BAPCO"). Pat was interviewed by Robin Bitious, who is the vice-president of BAPCO.

Pat is an enthusiastic environmentalist and has belonged to a number of outspoken and highly visible environmental protection groups. His/her evidence will be that he/she accepted the position with BAPCO in order to assist them in cleaning up various projects. His/her salary at BAPCO was \$40,000.00 per year plus company benefits.

After working for BAPCO for one year, Pat began to experience difficulties, which continued for the next two years of his/her employment. Pat felt that he/she was being treated harshly as a result of his/her continued involvement with various environmental protection groups. Pat was seen on television picketing a nuclear facility and was told by Robin that this was "unacceptable".

On April 12, 1991, Pat received a memo from Robin. A copy of the memo will be introduced as Exhibit "A". Pat went to Robin's office at 5:00 p.m. that day. Pat and Robin were the only individuals present in the room. Pat's evidence will be that Robin had a little too much to drink and was speaking very loudly. Pat will say that Robin made derogatory comments about Pat's political activities and stated his/her concern that Pat was not doing his/her job. Pat admits that Pat defended himself/herself vigorously and yelled back at Robin. Pat cannot remember the contents of the discussion, but does recall that near the end of the meeting, Robin advised Pat that "we will have to fire you". Pat cannot remember what his/her response was exactly, but thinks he/she may have said "you can't fire me, and I'll never quit".

On cross-examination, Pat will admit that two weeks before the meeting with Robin, he/she had lunch with Les Goodheart, president of the Canadian League for Environmental Action Now ("CLEAN"). Les wanted to offer Pat a job. Pat advised Les that he/she was happy with BAPCO but had some reservations. Pat did not make any reference to going to graduate school. At the end of the meeting, Pat advised Les that he/she would think about the offer.

Almost immediately after Pat left BAPCO, Pat became employed with CLEAN. Pat's salary at CLEAN was \$30,000 per year. After four months, Pat left CLEAN to form a competitive environmental protection group, The Canadian League for Environmental Action Now Or Never ("CLEANON"), along with a former colleague from BAPCO, Chris Bitter. CLEAN and CLEANON are fiercely competitive and have divergent philosophies on various environmental issues. Pat admits that business at CLEANON is not very good.

**CHRIS BITTER, Plaintiff Witness #2**

Chris Bitter is a forty-five year old university graduate. Chris has a doctoral degree in biology from the University of Southern Ontario. Dr. Bitter was employed as a biologist with BAPCO for ten years until his/her dismissal on August 15, 1991. Dr. Bitter worked closely with Pat and they frequently socialized together.

Chris and Pat frequently discussed how unhappy they were at BAPCO. Pat mentioned that he/she wanted to continue with her education and go to graduate school.

Chris will testify that he/she saw Pat and Robin enter into Robin's office on April 12th at approximately 5:00 p.m. They were chatting in a friendly manner when they went into the office. Robin then closed the door. Chris overheard the conversation. The conversation was loud, but Chris had a difficult time distinguishing words. Chris will testify that he/she saw Pat come out of Robin's office crying and very upset.

On August 15, 1991, Chris was asked to meet with Robin on a Friday afternoon. Chris will testify that Robin's breath smelled of whisky. Robin fired Chris, allegedly for incompetence. Chris is engaged in a wrongful dismissal action against BAPCO and admits he/she is very angry with BAPCO.

Chris is presently working with Pat and CLEANON and is extremely happy working there, although he/she does not share Pat's radical views. Chris will admit that Pat frequently gets involved in political activities during traditional office hours.

**B. WITNESSES FOR THE DEFENDANT****ROBIN A. BITIOUS, Defence Witness #1**

Robin Bitious is the vice-president of BAPCO and has held that position for three years. Robin has worked for BAPCO for twenty years and has risen through the ranks of the company. Robin is a dedicated employee of BAPCO and believes that the environmental protection concerns raised by Pat and others are "silly".

Robin hired Pat during campus recruitment and has taken responsibility for Pat's career.

Robin was very concerned about Pat's political involvement interfering with his/her job. Robin criticized Pat on a number of occasions about Pat's use of office facilities and his/her working hours in pursuit of his/her environmental concerns. Robin was going to tell Pat to stop "or else". On April 10, 1991, Robin sent Pat a memo (Exhibit "A"). Robin will testify that on April 10, his/her intention was to have a "firm" discussion with Pat.

Robin will admit under cross-examination that on April 12, 1991, Robin had lunch with the president of BAPCO. The president advised Robin that he/she was very concerned about reports about BAPCO employees who were involved in environmental protection protests. The president suggested that if Robin could not control his/her employees, Robin would "have to leave BAPCO". Robin will admit that he/she consumed two martinis at this lunch, but will state that this alcohol consumption did not affect him/her.

Robin's recollection of the April 12 meeting is that Robin advised Pat that the political activities he/she was engaged in during office hours were interfering with job performance. Robin advised Pat that he/she was very concerned that Pat was not doing his/her job well and was not sufficiently concerned about project costs. Robin will admit that the meeting got out of hand and both individuals were yelling at each other. Robin denies having told Pat that he/she was fired. Robin will testify that Pat said "we will have to fire you if you cannot improve your job performance". Robin recalls that Pat said "you can't fire me because I quit".

Robin will testify that on August 15, 1991, he/she fired Chris for incompetence. Robin denies that he/she had anything to drink before firing Chris.

Robin was contacted by Les Goodheart, the vice-president of CLEAN, two weeks before trial and advised of Les' evidence. Robin is surprised that Les would choose to testify.

Under cross-examination, Robin will admit saying Pat's picketing was "unacceptable" but that he/she was picketing during office hours.

Robin will also admit during cross-examination that he/she called Pat a "green radical".



LES GOODHEART, Defence Witness #2

Les is the president of the Canadian League for Environmental Action Now ("CLEAN"). Les has been involved in environmental protection issues for the past five years and founded CLEAN four years ago. Les does not have any university education.

Les had heard that Pat was unhappy with his/her job at BAPCO, but Les cannot remember who told him/her this. Les telephoned Pat and arranged a luncheon meeting on March 25, 1991. During lunch, Les attempted to convince Pat to work with CLEAN as a consultant. The consultant's one year contract was for \$30,000. Les stated that Pat expressed concerns about BAPCO's acceptance of his/her political activities. Pat expressed interest in working with CLEAN on a full-time basis, but was concerned about the significant reduction in salary. Pat agreed to make a decision within the next week. Les did not hear from Pat for three weeks, at which time Pat advised Les that he/she could no longer work with BAPCO and was now ready to work for CLEAN.

Pat worked for CLEAN for four months. There were no problems and Les was very happy with the work which Pat performed.

Les was very upset when Pat left CLEAN. Les felt betrayed and angry. According to Les, the competitor environmental protection group established by Pat and Chris, CLEANON, uses all of CLEAN's ideas and is going after the same sources of funding. Les is considering legal action against Pat.

11.

EXHIBIT A

MEMORANDUM

TO: Pat C. Plainer  
FROM: Robin A. Bitious  
DATE: April 10, 1991

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Would you kindly meet me at my office at 5:00 p.m. on April 12th. There are a number of important matters which I would like to discuss with you.

RAB:aa

C. STATEMENT OF CLAIM

Court File No:

**ONTARIO COURT (GENERAL DIVISION)**

B E T W E E N:

PAT C. PLAINER

Plaintiff

- and -

BIG AMERICAN PETROLEUM CO.

Defendant

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO

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YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

**TO: BIG AMERICAN PETROLEUM CO.**

**CLAIM**

1. The plaintiff claims as follows:

(a) the sum of \$50,000 for the wrongful termination of his/her employment;

(b) pre-judgment and post-judgment interest; and

(c) his/her costs of bringing these proceedings.

2. The plaintiff is an individual residing in the City of Mockville in the Province of Ontario.

3. The defendant is a corporation incorporated pursuant to the laws of the Province of Ontario.

4. At all material times since April 1988, the plaintiff was employed by the defendant on a full-time basis.

5. The plaintiff was hired by the defendant to assist it in cleaning up various projects.

6. At the time of his/her dismissal the plaintiff received a salary of \$40,000 per year.

7. Throughout the period of his/her employment, the plaintiff faithfully and diligently performed his/her duties on behalf of the defendant and proved himself/herself to be a valuable and reliable employee.

8. On April 12, 1991, the plaintiff was summarily dismissed from the defendant's employ.

9. The plaintiff's summary dismissal was without just cause, proper notice or an appropriate payment in lieu of notice. The plaintiff received the minimum entitlement of notice of severance under the Employment Standards Act. The plaintiff therefore pleads that he/she is entitled to damages for wrongful dismissal.

DATE: September 27, 1991

D. STATEMENT OF DEFENCE

Court File No:

**ONTARIO COURT (GENERAL DIVISION)**

B E T W E E N:

PAT C. PLAINER

Plaintiff

- and -

BIG AMERICAN PETROLEUM CO.

Defendant

**STATEMENT OF DEFENCE**

1. The defendant admits the allegations contained in paragraphs 2, 3, 4, 5 and 6 of the statement of claim.
2. The defendant denies the allegations contained in paragraphs 7, 8 and 9 of the statement of claim.
3. The defendant pleads that it employed the plaintiff as an environmental officer. The plaintiff's responsibilities included assisting in the environmental administration of several petroleum projects in Canada. In addition to ensuring compliance with environmental legislation, the plaintiff was responsible for maintaining the defendant's positive corporate image.
4. The defendant denies that the plaintiff faithfully and diligently performed his/her duties on behalf of the defendant and proved himself/herself to be a valuable and reliable employee as alleged in paragraph 7 of the statement of claim. In fact, during his/her employment with the defendant, the plaintiff continually and consistently neglected and refused to perform essential duties of employment. In particular, the plaintiff continually failed to promote the overall environmental corporate image of the defendant.

5. The defendant denies that the plaintiff's employment was terminated. The defendant states that the plaintiff voluntarily quit his/her job.

6. For these reasons the defendant denies that the plaintiff is entitled to the relief claimed in the statement of claim or to any relief and therefore asks that this action be dismissed with costs.

October 7, 1991

#### IV. ENTERING EXHIBITS

Counsel may want to introduce the memo as an exhibit during the trial. In order to do this, counsel will question the appropriate witness about the exhibit involved. These questions will be asked in this case of either Robin A. Bitious or Pat C. Plainer.

Introducing Memo through Pat C. Plainer.

Q. Is this the memo that you received on April 12, 1991?

A. Yes, this is the memo.

Introducing Memo through Robin A. Bitious.

Q. Did you write this memo?

A. Yes.

Q. Did you send the memo to Pat C. Plainer on April 10, 1991?

A. Yes

The Court Clerk will mark and record exhibits for the trial. In this trial there is one exhibit:

1. Memo from Pat C. Plainer to Robin A. Bitious, dated April 10, 1991.

#### V. APPLICABLE LAW

This year's case involves an employee alleging that he/she was wrongfully dismissed. Wrongful dismissal is a breach of employment contract. The law recognizes that an employee is entitled to reasonable notice from his/her employer before the employment is terminated without cause. For example an employee who steals from his employer may be dismissed without notice. Stealing is considered cause for dismissal. In the present case, cause is not at issue. If the plaintiff quit, he/she left the job voluntarily and is not entitled to compensation. If the plaintiff was fired then he/she is entitled to damages. The damages reflect the amount of notice to which the plaintiff would have been entitled. For the purpose of this case the parties have agreed that if the court finds that the plaintiff was fired then he/she is entitled to payment in lieu of notice of \$36,000. As a result, damages are not an issue.

**The only issue in this case is whether Pat C. Plainer quit or was fired.** In employment law there are many legal concepts which could come to bear on a given situation including the doctrine of constructive dismissal. These concepts are not relevant for the purposes of this Mock Trial.

#### VI. MOCK TRIAL TOURNAMENT TIME CHART 1991

Maximum

1.	Call to order	2-3 min.	
2.	Plaintiff - opening statement		3.5-5 min.
3.	Plaintiff Witnesses		
	Pat C. Plainer - direct examination		5-6 min.
	- cross examination		5-6 min.
	Chris Bitter - direct examination		5-6 min.
	- cross examination		5-6 min.
4.	Defence - opening statement		3.5-5 min.
5.	Defence Witnesses		
	Robin A. Bitious - direct examination		5-6 min.
	- cross-examination		5-6 min.
	Les Goodheart - direct examination		5-6 min.
	- cross-examination		5-6 min.
6.	Summations		
	Defence		3.5-5 min.
	Plaintiff		3.5-5 min.
7.	Judge - decision and team assessment		10-12 min.
8.	Judge - delivery of verdict and team assessment		10-12 min.

## VII. CLERK OF THE COURT

The clerk's job is to help the judge run the courtroom. To begin with, you should be familiar with the general trial script summary which is set out below:

### Trial Script Summary

1. Court clerk escorts judge to bench and calls order.
2. Counsel stand to identify themselves (plaintiff followed by defence).
3. Plaintiff's counsel makes opening statement.
4. First plaintiff witness called and sworn in by court clerk.
5. Plaintiff examines witness (direct examination).
6. Defence examines witness (cross examination).
7. Steps 4-6 are repeated for each plaintiff witness.

8. Defence makes opening statement.
9. Steps 4-6 are repeated for each defence witness with defence conducting direct examination and plaintiff conducting cross examination.
10. Defence presents closing arguments.
11. Plaintiff presents closing arguments.
12. Judge leaves.
13. Court adjourns briefly to await return of judge.
14. Judge returns and gives decision.
15. Judge evaluates teams.
16. Court is adjourned.

1. ANNOUNCE THE OPENING OF COURT

When all participants have taken their places, you will usher in the judge and announce:

"All rise, this court is now in session."

It is also good to introduce the judge, by saying, "Mr. Justice/Madam Justice presiding".

2. SWEAR IN THE WITNESS

The plaintiff will call their first witness to the stand, Pat C. Plainer. You will be responsible for swearing in Pat C. Plainer and all subsequent witnesses.

One way of doing this is to approach the witness with a book (bible) for him/her to swear on. You then say:

"Will you state your name to the court please?"

After the name is given, the oath is given:

"Do you promise to tell the truth as you know it concerning this matter?"

or

"Do you solemnly affirm to ... etc."  
(For those who object to swearing an oath to God.)

3. ANNOUNCE ADJOURNMENTS AND THE CLOSING OF COURT

After the closing arguments have been made by both sides, the judge will adjourn for 10-12 minutes to make a decision and prepare the team evaluation. When ready to adjourn, you will rise and say:

"All rise, court will now adjourn (or recess) for 10 minutes."

When the judge is ready to return, you will call the courtroom back to order as you did at the beginning of the trial:

"All rise, this court is now in session."

The judge will then announce the decision for the plaintiff or defendant as well as which team delivered the best performance. When all is finished, you rise and say:

"All rise, court is adjourned."

#### 4. MISCELLANEOUS DUTIES

There may be other jobs which you can perform for the judge, such as providing pens and paper, and a glass of water. It might also be wise to xerox some "performance sheets" in case the judge forgets to bring one.

**NOTE: For the semi-final and final mock trials in Toronto, actual court personnel will be available to act as clerk of the court.**

## VIII. Civil Case Supplement

The 1991/92 version of the mock trial competition involves a civil litigation case which differs in certain basic ways from the criminal case rules which appear in the standard Tournament Guide. We have, therefore, outlined in the following supplement the major differences between the two and would ask that the participants in this year's competition pay close attention to these amendments and to the Tournament Guide, including the Glossary which follows.

### GLOSSARY

1. **Balance of probabilities:** the plaintiff must prove his/her claim on the balance of probabilities. This means that the judge must be convinced that the weight of evidence is in the plaintiff's favour. The judge need not be convinced "beyond a reasonable doubt", as in a criminal case.
2. **Claim:** a legal demand; an action at law which merits a right to judicial relief which is enforceable in the courts.
3. **Cause of action:** the facts that give a plaintiff the right to judicial relief. A legally accepted reason for suing.
4. **Counsel:** lawyer, advocate, barrister, solicitor, attorney.
5. **Defendant:** the party to a lawsuit against whom relief or recovery is sought. The person defending or denying a claim.
6. **Parties:** the parties in a civil proceeding are the plaintiff and defendant. The parties in a criminal proceeding are the crown and the accused.
7. **Plaintiff:** the party who commences an action or claim seeking relief through the courts.
8. **Pleadings:** the statement of claim and statement of defence in an action.
9. **Statement of claim:** a written document prepared by or on behalf of a plaintiff setting out the facts, supporting the cause of action.
10. **Statement of defence:** a document prepared by or on behalf of a defendant denying the plaintiff's claim(s) and setting out the relevant facts according to the defendant. Facts alleged by the plaintiff and accepted by the defendant are formally admitted in a statement of defence.

### **What is the difference between a civil case and a criminal case?**

Civil litigation involves a plaintiff seeking the recovery of money from a defendant whom the plaintiff alleges has wrongfully caused that loss. In order to recover, the Court must find that the defendant's action is wrong but the Court need not find it to be a criminal act. For example, A contracts with B to buy B's pen at a price of \$10.00 and then A refuses to go ahead with the purchase. A is in breach of contract and B would be entitled to recover money from A. However, A will not have committed a crime. Civil litigation is about compensation.

Criminal litigation involves punishment for acts which are crimes. A crime can be defined by statutes such as the Criminal Code or other federal and provincial statutes. In a criminal case, counsel for the Crown represents the state's interest in ensuring that justice is done and the accused is represented by his/her own counsel. In a civil case, there is no public or state interest. Rather, civil litigation involves a dispute between two private parties who are represented by counsel of their choice.

### **General Amendments to the Mock Trial Tournament Guide**

Wherever the following terms appear, please replace:

- (i) "Crown prosecutor" or "crown prosecution" with "plaintiff's counsel";
- (ii) "defence counsel" with "defendant's counsel";
- (iii) "crown witness" with "plaintiff's witness";
- (iv) "defence witness" with "defendant's witness";
- (v) "verdict" with "decision".

### **Specific Amendments to the Mock Trial Tournament Guide**

1. Page 6, topic IV: Guidelines for Teachers: please replace paragraph 4 with the following:
  4. Because the mock trial is a civil lawsuit, it may be necessary to give the students some background information about civil lawsuits in general and basic trial principles. A visit to the local court house will help students learn about courtroom decorum and layout.
2. Please replace items 1, 2 and 3 in the sequence chart listed on page 6 with the following:
  1. Call to order.
3. Please replace page 9 in its entirety with the following:

### **Trial Script Summary**

1. Court Clerk escorts judge to bench and calls order.
  2. Counsel stand to identify themselves (plaintiff's counsel followed by defendant's counsel).
  3. Plaintiff's counsel makes opening statement.
  4. First witness for the plaintiff called and sworn in by court clerk.
  5. Plaintiff examines first witness (direct examination).
  6. Defendant's counsel examines plaintiff's witness (cross-examination).
  7. Steps 4 to 6 are repeated for the next plaintiff's witness.
  8. Defendant's counsel makes opening statement.
  9. Steps 4 to 6 are repeated for each witness of the defendant with defendant's counsel conducting direct examination of its own witnesses and counsel for the plaintiff conducting cross-examinations.
  10. Defendant's counsel presents closing argument.
  11. Plaintiff's counsel presents closing argument.
  12. Judge leaves.
  13. Court adjourns briefly to await return of the judge.
  14. Judge returns and informs the parties of the decision and gives his/her brief reasons.
  15. Judge evaluates teams.
  16. Court is adjourned.
4. With respect to the Sample Courtroom Layout please note that:
- "Defence Table" becomes "Defendant's Counsel's Table"; and "Prosecution Table" becomes "Plaintiff's Counsel's Table", respectively.

5. Please also note that the parties will either sit with their respective lawyer or remain in the audience.
6. On page 12, please replace the last paragraph in the left-hand column with the following paragraph:

The decision of the judge in the mock trial enactment is two-fold: one, to render a decision on the trial; and two, to determine which team advances in a single elimination tournament and which team is eliminated. For example, a judge may find the plaintiff to have proved its case on a balance of probabilities but may feel that the defendant's team did the better job or vice-versa, or that the decision and the team performance both favour one side.

7. Please replace the words "Crown team" and "defence team" in the Performance Rating Sheet found in Appendix A of the Tournament Guide with the following terms:  
  
"Plaintiff's team" and "defendant's team"
8. Please replace Appendix C of the Tournament Guide with the following, in its entirety:

## **APPENDIX C**

### **Duties and Strategy Notes**

The following material will help all the team members understand their duties in the mock trial enactment. The notes also suggest ways, or strategies, to help ensure those duties are carried out.

#### **So you are Counsel**

##### **Duties:**

Counsel must represent his/her client's interest to the best of his/her abilities within the confines of the law. It is counsel's job to convince the trial judge of his/her client's version of the facts on a balance of probabilities.

##### **Strategy notes:**

How to be counsel for a mock trial:

1. BEFORE YOU BEGIN, you will need to think about the following ideas:

Who are you?

When you play one of the roles in a mock trial, you need to know as much as you can about who that character is. Imagine what it feels like to be counsel. What would counsel

wear into court? How would she/he walk into the courtroom? How would she/he speak? What kind of language would she/he use?

There are many ways to study your role. You may find someone who is a lawyer to tell you what it is like. Practice your role. Try to BE that role.

What is important in a trial?

You must convince the judge that your client's version of the evidence is more convincing and compelling than that of your opponent's client and therefore merits the remedy you have requested from the court.

What happens in a trial?

A trial is a formal event. Your teacher has materials which outline the correct steps for holding a trial. Make sure you know what the steps are and why they happen before you begin the trial.

## 2. PREPARE YOUR CASE.

You must read the pleadings and the Fact Sheets. The statement of claim and witness statements will tell you the facts you must prove and from them you must determine which witnesses will be necessary to prove the various facts required to support your case. In addition, you should consider what facts your opponent may be using to refute your use.

Talk to the witnesses and find out the following information:

What happened?  
Where did it happen?  
When did it happen (date and time)?  
Who said what?

Remember that you have to prove your case on a balance of probabilities.

When you interview your witnesses, practice asking questions so that they relax and are able to tell you their account of the fact situation. Remember that you may not ask them any leading questions in direct examination during the trial.

## 3. PLAN WHAT INFORMATION YOU NEED TO PROVE YOUR CASE.

Decide which witnesses you will call.

Decide in what order you will be calling your witnesses. Try to start at the beginning of the incident and continue to the end.

4. PLAN HOW TO GET YOUR INFORMATION INTO COURT.

Opening statement

(i) Purpose: to inform the judge of the nature of the case and to acquaint the court with the essential facts. Argument, discussion of law or objections are not permitted by opposing counsel.

(ii) Include:

Your name and your colleague's name.

Opponent's name and counsel.

The facts and circumstances that lead to the claim.

Conclusion.

(iii) Avoid:

Too much detail: It will only tire and confuse the judge.

Argument: It violates the function of the opening and you risk rebuke from the bench.

Anticipating the defence: It is improper and might result in a mistrial.

Walking or pacing: It distracts and irritates judges.

Lawyers must follow rules of evidence so that a fair trial ensues. You must plan your strategy within these rules.

No leading questions of the witnesses during direct examination; a witness must tell what happened without any prompting. You may ask your witness what happened, but you must not ask questions which give away what answers you want.

For example:

Correct

Incorrect

Tell us what you saw.

Did you see the green truck hit the red truck?

What happened next?

Did he hit him then?

How fast was the car  
was travelling at 100

Would you say the car travelling?

km/hour?

No hearsay:

You may only ask your witness about those things which she/he saw or experienced. A witness may not talk about things she/he has been told by someone else.

Correct

Incorrect

I saw five cats in  
kitchen. Smith has five cats.

Joan told me Mrs. Mrs. Smith's

No opinion:

You may not ask your witness' opinion about things other than common knowledge unless she/he is an expert in the field.

For example, an average citizen can give an opinion about the speed of a car or the height of a person. But only an expert, an auto mechanic for example, could give an opinion about the condition of the brake linings in a car.

If you plan to enter exhibits you should ensure they are entered properly. Exhibits must be entered according to the following procedure:

A witness must identify the item.

The witness must tell the court what her/his connection with the item is.

Then the witness must tell what connection the item has with the lawsuit (that is, is it a letter that was sent between any of the parties involved in the lawsuit?).

The witness must account for how the exhibit has been handled since it was found.

Once the witness has shown the item's connection to the case and to him/her, the lawyer asks that the item be entered as an exhibit.

The judge asks if there are any objections.

If there are no objections, the item is given to the clerk.

The clerk puts a label on the item, the date and EXHIBIT 1 (2,3, etc.) are put on a label.

The clerk then shows the item to the judge.

The clerk keeps the item on the table.

**NOTE: A pleading is not a proper exhibit.**

5. ANTICIPATE YOUR OPPOSITION.

Once you have prepared your case, you should spend time thinking about the other counsel's case. Place yourself in your opponent's shoes and ask yourself what points she/he will try to make. How does the plaintiff's version of the facts differ from the defendant's version? How will you refute these allegations? Which witnesses can testify to which facts.

Be ready to question your opponent's witnesses on the points where they disagree with the evidence of your witnesses. This questioning is called cross-examination.

- (i) In cross-examination you may ask leading questions of witnesses called by the other lawyer. Your job in cross-examination is to show any biases, mistakes, contradictions in the witness testimony and to bring out further evidence concerning the case. Therefore, you will ask questions to pinpoint specific information which you want made clear, such as:

Who was in the room during any conversation?  
What was the sobriety of any of the witnesses?

Be careful not to harass the witness because that will only confuse the witness and may influence the judge against you or your case.

- (ii) Never ask a question unless you know what the answer is. You may receive a statement that defeats your case.

Each lawyer has a responsibility to see that the evidence is presented correctly. Thus, if you think the other lawyer is not following the rules of evidence, you should object to the questions. For example, you may make the following objections:

"Objection, Your Honour. The question is irrelevant."

"Objection, Your Honour. That evidence is hearsay." (Recounting of someone else's experiences.)

"Objection, Your Honour. Counsel is asking for an opinion this witness is not qualified to give."

"Objection, Your Honour. Counsel is leading the witness." (Asking questions improperly.)

"Objection, Your Honour. Counsel is harassing the witness." (Pursuing a point unnecessarily in cross-examination).

Once counsel objects to a question, the judge stops the examination and may ask the examining counsel to ask why she/he is pursuing that line of questioning. The judge then makes a decision as to whether the objection is to be overruled or sustained. If the

objection is overruled, the examining lawyer may continue; if it is sustained the question must be withdrawn. At the trial the judge's word is final.

6. PREPARE YOUR SUMMATION.

Be sure you tell the judge how you have proven your case.

**So you are the WITNESS, THE PLAINTIFF, or the DEFENDANT**

**Duties:**

The plaintiff, defendant and witnesses are the people who have seen or experienced the events giving rise to the cause of action.

Their task is to answer the lawyers' questions. They must answer clearly and truthfully so that the judge can understand what really happened.

**Strategy Notes:**

How to be a plaintiff, defendant and/or a witness in a Mock Trial.

1. BEFORE YOU BEGIN, you will need to think about the following ideas:

Who are you?

When you play one of roles in a mock trial, you need to know as much as you can about WHO that character is. Imagine what it feels like to be a plaintiff, defendant or witness. What would a plaintiff, defendant or witness wear into court? How would she/he walk into the courtroom? How would she/he speak? What kind of language would she/he use?

There are many ways to study your role. You may find someone who has been a plaintiff, defendant or a witness in a civil trial to tell you what it is like. Practice your role. Try to BE that role.

What is important in a trial?

Remember that it is up to the plaintiff's counsel to prove the plaintiff's case beyond on a balance of probabilities. It is then up to defendant's counsel to refute those facts and allegations and then to put forth the defendant's case.

What happens in a trial?

A trial is a formal event. Your teacher has materials which outline the correct steps for holding a trial. Make sure you know what the steps are and why they happen, before you begin the trial.

2. BEING INTERVIEWED BY THE LAWYERS.

Read the fact sheets, the statement of claim and the statement of defence.

Tell the lawyer who interviews you what happened and how you became involved. Do not tell anyone else. They will hear what you have to say in court. If you find that there are details you must add, speak to your teacher about them first.

3. AT THE TRIAL.

You should remember that a witness gives information not only through the words she/he says but also through manners, clothes and attitude. Your dress and manner should reflect the character you want to show.

During the trial, answer the lawyers' questions as honestly as possible. A witness evidence is the only information a judge has about what happened.

Tell your story to the court as clearly and completely as you can, without prompting.

After you give your evidence, you will be cross-examined by the lawyer representing the other side.

The lawyer will ask questions about parts of your evidence. Answer her/his questions clearly but as briefly as possible.

If a lawyer asks you a question which you cannot answer tell her/him that you do not know, or that do not remember.

**Please refer to Appendix D, administrative checklist at the back of the original Mock Trial Tournament Guide. It does not need amendment.**