

# LAW DAY MOCK TRIAL CASE 1996

## MOCK TRIAL CODE OF PROFESSIONAL CONDUCT

Lawyers in Ontario and in most other jurisdictions are governed by a code of professional conduct which makes certain actions that a lawyer takes subject to disciplinary sanctions by the Law Society of Upper Canada. For example, if a lawyer lies or misrepresents himself or herself to the court, that lawyer could be subjected to disciplinary review and ultimately lose their right to practice law.

The lawyers duty of professionalism, integrity and promoting the administration of justice is a fundamental part of the Mock Trial Tournament. Accordingly what follows is a Mock Trial **Code of Professional Conduct** that will apply to all students, teachers and participants in the Mock Trial Tournament.

It is our ultimate goal that the **Code of Professional Conduct** will assist the participants in the tournament in receiving the full educational benefit of participating in the tournament.

Our experience over the past 12 years is that the participants are extremely enthusiastic about the Tournament. We believe that this enthusiasm is based in part on the competitive element of the Tournament. The competitive element, if left unchecked can lead to a negative experience for some participants. As a result we have implemented the **Code of Professional Conduct**. The Code provides as follows:

**The tournament shall be conducted as an educational exercise first and as a competition second. While winning the tournament is an admirable goal, it is a goal that is secondary to the educational exercise. All students may suffer disappointment but, will have the rewards and benefits of participating in the tournament. Students must be prepared to lose even if it appears to them (and others) that they deserved to win.**

**There shall be no questioning the judges' ruling.**

**All participants are responsible for promoting conduct that is consistent with this code.**

# MOCK TRIAL TOURNAMENT

1996

## I. INTRODUCTION

This year's case is Her Majesty the Queen v. Sam Stolid and the accused is charged with the indictable offence of assault with a weapon. The applicable law is detailed in these materials under the heading "Applicable Law". You may assume for the purposes of this case that the accused's rights under the Canadian Charter of Rights and Freedoms have been fully complied with. The accused has been granted permission to be tried without a jury.

The Ontario Tournament organizers are Michael Martosh of the Municipality of Metropolitan Toronto, Legal Department and Seanna Dumbrell of Smith, Lyons, Torrance, Stevenson & Mayer. The Tournament is administered by the Law Day Committee of the Canadian Bar Association - Ontario. All communications regarding this tournament should be made to Janice Richardson of the Toronto office of the Canadian Bar Association ("CBAO"), at the address listed below. We encourage participants to write to the CBAO with respect to any questions about the form or substance of the Mock Trial problem.

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

Re: Mock Trial Tournament

Fax: (416) 869-1390

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

This year's Kit is being distributed during the month of October, 1995. By October 31, 1995, interested teachers must notify the Fourteenth 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 counsel for the Crown and the Accused. Teams will be assigned their roles on the basis of a coin toss preceding each round of the competition. 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 counsel in inter-school competition are ineligible to compete again in a current tournament. Students who have participated as witnesses may compete again.

### 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. Wednesday, January 31, 1996.** Please note that this deadline is firm, and no exceptions can be made.

### C. Round Two

Round Two consists of 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 regional play-offs will advance to Round Three in Toronto.

Round Two must be completed on either **Thursday, March 28, Friday, March 29 or Saturday, March 30, 1996** and Janice Richardson advised as to the regional winners on or before 4:00 p.m. on **Monday, April 1, 1996.** 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. Keep in mind that school holidays may impose certain scheduling difficulties.

D. Round Three

Round Three consists of the semi-finals in Toronto on the morning of Law Day, April 17, 1996. The four best teams from the regional inter-school competitions will compete in a court room in Toronto before judges of the Ontario Court of Justice.

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. All four teams will receive awards at the Law Day Banquet on the evening of April 17, 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).** There are usually 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 17, 1996) 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.

I. References to Gender

The witnesses may be played by students of either sex. All references in the witness statements to a specific gender may be modified as the particular situation dictates.

### III. FACT SHEETS FOR HIGH SCHOOL MOCK TRIAL TOURNAMENT 1996

This section of the materials contains role descriptions for the accused and the various witnesses. Teachers should make these fact sheets available to the students early in the process and the students should be encouraged to find out as much as possible about the character of the role(s) which they will be representing. Note, however, that **students should NOT deviate from the role descriptions, in a manner that constitutes "unfair deviation" as described below.**

We would ask all participants to remember that the object of the Mock Trial Programme is educational, it evaluates the students' ability to learn the facts, understand the issues raised in the problem and to practice their advocacy skills. These are the considerations being evaluated by the judges. Please remember that the mock trial is an exercise in advocacy; your ability to present a convincing case and to react to situations which you did not anticipate is the essence of the exercise.

We encourage the witnesses to "get into character", whether by way of role playing and/or by way of dressing the part. Although witnesses will attempt to prepare for every possible question that may be asked of them, they must be prepared to respond, on the spot, to questions which were not anticipated. As a result, witnesses must be flexible. On the other hand, if the testimony is not consistent, a Judge may begin to doubt the truth of the statements. Establishing credibility will, therefore, present a challenge to every witness at the trial. In order to carry out the witness role successfully, the two Crown witnesses (Heston Winchester and B.B. Gunn) should meet before trial and work out other details about their characters. Similarly, the two defence witnesses (the accused and J. Letterman) need to work out some details together. Please note, that while we encourage students to develop the characters of the witnesses and to fill in the gaps in their personalities, teams will be penalized for deviating from the fact sheets. For the purposes of the mock trial, the following definition of "unfair deviation" includes, but is not limited to:

- A. Changing relevant facts,
  - b. Refusing to admit, in cross-examination, a fact which is included in a fact sheet,
- and
- c. The addition of any fact, including personal characteristics of a witness,

which might unfairly influence the result of the case.

**The Canadian Bar Association would like all of the participants to be aware that it is the judge, and the judge alone, who is the trier of fact. It is the judge's role to determine whether there has been a deviation from the facts, to determine whether the deviation was "unfair", and to determine whether the deviation affected, in any material way, his/her determination of the case. There will be no specific objections to bring the deviation to the notice of the judge, nor will there be specific penalties for deviations; the existence of, effect of, and penalty for, any deviation, is strictly within the discretion of the judge.**

In your presentation, we would ask all teachers and students, and their advisers, to remember that, in an effort to ensure a "level playing field" for all of this year's participants, you are directed to strictly adhere to the facts and law as given to you; do not add additional facts, do not use case law, case books or any statute law extraneous to the problem. All of the relevant and material facts and law have been provided to you in the materials.

If there are any questions regarding the foregoing, please refer to the Introduction found at Part I of these materials.

## HESTON WINCHESTER

Crown Witness #1

Heston "Charlton" Winchester, a 6'2", 210 lb., 49 year old veteran of the Canadian Army is an outspoken opponent of any type of law curtailing his "inalienable right" to bear arms. Winchester often carries his personally monogrammed, loaded, Luger everywhere he goes and if asked, will tell anyone that he "never leaves home without it". Heston Winchester is not only outraged at the government's proposed bill requiring the registration of all firearms, but he is offended by all supporters of the proposed bill, referring to them as "naive" and "idealistic" and has sworn to do all in his power to have the legislation defeated. His greatest rival, in the town of Gatling, regarding the gun control issue, and a thorn in his side to have the bill defeated, is the accused, Sam Stolid.

Much to his delight, Winchester was asked to be a guest on Gatling's radio station CTOK's weekly "In the Line of Fire" discussion program. "In the Line of Fire" is an hour-long, live radio segment devoted to the debate of current social and political topics. Hosted and moderated by the renowned Guy Smiley, Winchester was invited to participate on the opposite side of the debate from his long time rival, Stolid, on the programme which was to air on September 17, 1995.

Arriving 15 minutes prior to the 8:00 p.m. air time, Winchester entered the studio and settled into his seat, adjusted his head-set and placed his Luger onto the table in front of him. Five feet away, and directly across the table from him, had sat the accused. It will be Winchester's evidence that the accused refused to shake his hand, although Winchester offered it, and it will be Winchester's evidence that the accused glowered at him from the time he entered the studio. At a few minutes to 8:00 the show's host, Guy Smiley, entered the studio, took his place at the table and asked Winchester to remove the gun from the studio. Winchester will admit, in cross-examination, that he "probably" told Smiley not to worry since the Luger was not loaded and, consequently, Smiley did not insist that the Luger be removed. At this point, Smiley was given the cue for the programme to commence and they went on the air.

Smiley introduced the two debaters, outlined their credentials for the audience and the debate began. Exasperated at what he perceived as the accused's stubborn anti-gun position, the following interchange occurred:

Winchester: "What are you REALLY afraid of if handguns are permitted to remain unregistered?"

Accused: Are you for real? What concerns me is the proliferation of violent crimes by people who have easy access to, and no accountability for the registration of, handguns. How would YOU feel if a gun was pointed at YOUR head?

Winchester: Hey buddy, I've seen active combat; where do you think I got this? (pointing to an obvious, ill-healed, three inch-long scar above his right eye). It wouldn't phase me, NOT IN THE LEAST."

It will be Winchester's evidence that the accused jumped up, lunged across the table, knocked over two cups of coffee, grabbed Winchester's Luger and pointed it at his head and said, in a loud and sarcastic voice: "sure you would!". It will also be Winchester's evidence that the accused grinned, and then laughed, as the gun was levelled at his head. Winchester pushed

back from the table and toppled over backward out of his chair. The sound technician quickly cut to a commercial.

Winchester's evidence will be that he stood up, took off the head-set, told the accused "that wasn't funny" and left the studio. In direct examination he will deny that the sound technician, B.B. Gunn, offered to place a call to the police, but will admit, in cross examination, when pressed, that it is possible that the offer was made. He will also state that he proceeded to the Big Salmon Saloon, to have a couple of drinks to calm his nerves, and then went to swear an information before a Justice of the Peace, having the accused charged with assault with a weapon. He will state that an employee of CTOK later returned his gun; the gun was returned in the same condition in which it had been left at the radio station.

During direct examination Winchester will relate that four days earlier, during a nationally televised debate on the same topic, and in an effort to discredit Stolid, he had revealed that the accused had been convicted of manslaughter some 27 years earlier. Winchester feels quite proud of him because this disclosure was the first anyone had heard of the accused's earlier conviction. He feels particularly proud since the anticipated effect of the information was hoped to eliminate his most formidable opponent from the gun control debate and it seems that, even within four days, the disclosure has begun to bear fruit.

Unfortunately, Guy Smiley is unable to give evidence as to what occurred during the debate; he died two days after the programme, and was therefore not able to be interviewed by the police.

## **B. B. GUNN**

Crown Witness #2

B.B. Gunn is an avid hunter who hunts on every available weekend, of every month, during hunting season, whether it for be moose, deer, duck, rabbit or "whatever". As long as he can go hunting, he is happy. Gunn's opinion is that "everyone" should have the unrestricted right, free from government intrusion, to own, carry and use firearms. Self-protection, home safety, target practice and hunting should not be differentiated when it comes to firearm ownership and use; there should be no constraints, save perhaps an age restriction (this will be a reluctant admission made during cross-examination).

In addition to being an avid hunter, Gunn is employed by CTOK as a sound technician and works on "In the Line of Fire" together with the show's producer, J. Letterman. During the airing of "In the Line of Fire", Gunn always sits to Letterman's left, each having a clear view, through a plate glass window, of the "debater's table" which Gunn will describe is five feet square, is usually cluttered with microphones, wires, coffee mugs, a three sided clock found in the centre of the table and with loose paper strewn everywhere. The guests, Heston "Charlton" Winchester and Sam Stolid, sat across from one another, Winchester seated at the side of the table closest to Gunn, and about 15 feet away, directly in front of Gunn's position in the booth. Gunn will testify that he did not pay any attention to the participants of the show prior to its commencement; he was making sure that all of the sound checks had been performed and that all of the audio equipment was ready for "on-air".

He will testify, in direct examination, that he heard the interchange, exactly as described by Winchester, saw Stolid "lunge" to pick up the gun, point it at Winchester, and that he had found the episode amusing at first, but after seeing Winchester topple off his chair, and leave the studio, he will state that he reconsidered whether it was actually funny, or whether it was, in fact, an assault. For that reason, he offered to call the police on Winchester's behalf. Gunn will state that he does not recall whether Winchester responded to the offer and will admit that he did not call the police.

Gunn will deny making the comments attributed to him by Letterman, but will not deny laughing admitting that, in "a perverse sort of a way, and in hindsight, it was rather comical".

In cross examination, Gunn will admit to being arrested, two years previously, for disorderly conduct, at a public march sponsored by G.A.B., where Gunn and fellow members of the town's gun lobby group G.A.G. (Guns are Good) disrupted the accused's address to the assembled townspeople.

Bursting with glee, Gunn will say, if permitted to, that the fallout from Winchester's revelations about Stolid has been more successful than G.A.G. could have ever forecasted; not only did Stolid react in an uncharacteristic way in "assaulting Winchester, on live radio", but he has heard that Stolid's column will probably be cancelled and that it has been rumoured that G.A.B. is thinking of deposing its founder.

He will admit, in cross examination, that he "has no idea" whether the Luger was loaded, that he is uncertain whether the gun was pointed at Winchester's torso or head, and will also admit that it is possible that Winchester was in the process of picking up his coffee mug to take a sip when Stolid raised the Luger at Winchester.

Gunn, in cross examination will admit that he has a gun collection of over 100 ceremonial hand guns, collected from all over the world, in addition to his 8 hunting rifles, none of which are registered. He will advise that all 8 hunting rifles were purchased in the United States and that therefore their ownership cannot be traced by local authorities. All 8 are used to hunt, or for target practice; he uses life-sized dummies on which he has painted faces of local politicians or other people he does not like.

## THE ACCUSED - SAM STOLID

Defence Witness #1

The accused, Sam Stolid, is 52 years old, stands 5'8" tall, weighs 150 lbs. and is responsible for writing "Express Yourself" the daily opinion column in the town of Gatling's daily newspaper, the Gatling Chronicle. She has long been a very respected member of the community, and has been a highly visible, albeit soft-spoken, defender of gun control legislation since her early thirties. She is the founder and driving force behind G.A.B. (Guns Are Bad), the lobby group which has been successful in convincing the government to table its gun control bill. In addition, in her daily newspaper column, she regularly advocates the firearm registration position, and often takes aim at proponents of the right to bear arms, habitually upbraiding Heston Winchester, personally. In person, however, Stolid is quiet, measured, and dignified.

She has been invited to debate the proposed bill on CTOK's "In the Line of Fire" radio debate show with Heston "Charlton" Winchester. Like Winchester, Stolid is keen to take up the debate, not only because of her fervent belief that the proposed gun registration bill is a much-needed piece of legislation, but also as a result of her pleasure in debating the topic with Winchester, for whom Stolid candidly admits she has "no real use for".

Stolid was angry following the television debate with Winchester. In fact, Stolid is very angry as a result of having been publicly discredited on September 13, 1995 by Winchester who had, during a nationally televised debate programme, whilst discussing the merits of the gun registration bill, accused Stolid of hiding the fact that Stolid had been convicted of manslaughter some 27 years earlier while still in her twenties and that she had spent five years in prison for the shooting death of her college roommate.

Stolid will tell us that she has not hidden the issue, "its just that the events took place almost thirty years ago", she has "paid the price" for the conviction, and has not held a gun since the date of the shooting that led to the manslaughter conviction. We will be told by Stolid, in direct examination, that if anyone had ever asked her, she would have discussed it; however, in the nearly thirty years since the conviction, it had never been an issue. Moreover, 15 years ago she had applied for, and received, a full pardon for the manslaughter conviction. Stolid maintains her innocence stating that the shooting was an accident, the death having occurred while she was cleaning her rifle; she will tell the Court that she did not know that the gun was loaded and was unable to pay a lawyer for her defence and had been denied a Legal Aid certificate. Not only that, Stolid is convinced that her "hippie" lifestyle during the late 60's contributed to her lack of credibility almost 30 years earlier. Stolid will state that having spent five years in prison changed her opinion about guns and has caused her to be a proponent of gun control ever since.

On September 17, 1995, Stolid entered the studio five minutes before air-time and took her place in front of the microphone, patiently waiting for "In The Line of Fire" to begin. She will testify that there was a lot on her mind and that she did not see Winchester extend his hand prior to the programme; it may have happened, Stolid really does not recall. In fact she does not remember seeing Winchester in the studio, nor does she recall Smiley's entry either; she was so intent upon the issues to be debated that she will state that she was "lost in thought". All she remembers is Winchester answering "someone" with the remark "Oh, don't worry, it isn't loaded" and then being given the cue that the programme was beginning.

Stolid will recall the verbal exchange with Winchester, and will agree that Winchester's recollection is "substantially correct". Stolid will deny jumping up or lunging across the table; rather she will state that she wanted to add some liveliness to the debate and felt that Winchester was not being entirely truthful when he stated that he would not be "phased" by having a gun pointed at his head. Stolid will state that she reached across the table and picked up the Luger and pointed it at Winchester's coffee mug which she will state Winchester had just picked up; Stolid will also state that she thought that the Luger was only a replica and pointed it towards Winchester merely to test Winchester's outburst of machismo. She will deny pointing the gun at Winchester's head. Stolid will state that only one coffee mug was spilled, the other was in Winchester's hand at the time of the incident.

Stolid will deny grinning and will admit to laughing only after Winchester stood up from the floor, because she had punctured Winchester's self-image. She will deny attempting to assault Winchester, the performance was merely that, a performance meant to embarrass and hopefully enhance the debate; she did not intend Winchester to react in the manner in which he did, although in cross-examination, she will admit that, in retrospect the entire episode is quite amusing. She feels that her point was successfully, if not too successfully, accomplished.

Stolid will state that she heard Gunn offer to call the police and distinctly heard Winchester ask, "what for?". She will admit that she was surprised to have been charged with assault, since Winchester did not want the police to be called, since Stolid thought that the gun was only a replica and, in any case, the gun was not loaded.

In cross examination, Stolid will admit that since the revelation of her conviction, she fears that she will have less credibility within G.A.B., her marriage is "on the rocks"(she never told her spouse about the conviction) and has heard rumours that her opinion column might be cancelled due to the perception of what she terms "shotgun hypocrisy". She is "very concerned" that after almost thirty years as a paradigm in Gatling, the revelation of the old conviction for manslaughter might ruin her valued reputation notwithstanding pardon. Stolid is considering whether or not to pursue a civil claim against Winchester, for the events arising on the evening of the televised debate, and has consulted a lawyer with a view to making that decision.

## **J. LETTERMAN**

Defence Witness #2

J. Letterman, producer of "In the Line of Fire", was sitting next to Gunn, in the glass-walled production booth of CTOK's studio, but did not actually "see" anything on the September 17, 1995 instalment of "In the Line of Fire". She will state, in direct evidence that she had heard the interchange between Stolid and Winchester and thought nothing of it; it "sounded like good natured bantering" and considered Stolid's comments to be a continuation of Stolid's endless chiding of Winchester, of which Letterman was aware, from her regular reading of Stolid's "Express Yourself" opinion column in the Gatling Chronicle.

Although Letterman and Gunn had virtually the same vantage point of the show's participants, Letterman was in the midst of issuing directions to Gunn and was not paying close attention to the goings on in the studio, during the debate, when she heard a loud crashing sound and looked up in time to see Winchester pick him up off the ground and take off the head-set. She will state that Gunn volunteered to call the police on Winchester's behalf, to report an assault, but Letterman does not recall whether Winchester responded; she does recall, however, that there was no call made to the police from the production booth. She watched as Winchester walked out of the studio.

It will be Letterman's evidence that she asked Gunn what had caused Winchester to topple out of the chair. Letterman recalls Gunn's response to be that Letterman had just missed "one of the most mischievous and funniest on-radio pranks that I've ever seen" and then Gunn began to laugh, stating "that was hilarious" and almost fell off his own chair as he described Stolid's pointing of the gun at Winchester's coffee mug. Letterman will attribute Stolid's smile, and subsequent laugh, each of which Letterman witnessed, to the effect of Stolid's prank. She will state that she found it odd that Gunn would find the entire episode hilarious, describe it as a mischievous prank and then offer to make a call to the police on the basis of an assault.

Letterman will tell us that, although she is not a member of G.A.B., she is nevertheless a staunch supporter of the proposed registration of all firearms and has been since the time her own brother was rendered a paraplegic during a foiled robbery attempt. Her brother was shot by a juvenile offender during the robbery attempt and Letterman will tell us, in direct evidence, that the robber had "borrowed" the .22 calibre rifle from his own father's stock of hunting rifles, without first having gained his father's permission.

It will also be Letterman's evidence that Stolid's reputation in town is that of a peaceful, quiet and well-respected person, with a refined sense of humour, and who is passionate about gun-control. Although she did not know Stolid, personally, prior to the September 17th. show, she will state that as a result of their shared interest in the gun-control issue, she regularly follows Stolid's public appearances, avidly reads "Express Yourself" and admires her stance on the issues.

We will learn, in cross-examination, however, that due to an out-of-town family social function, Letterman was unable to watch the previously televised debate between Winchester and the accused, although she had her daughter tape it, but has no idea what transpired and has heard nothing about the revelation of the manslaughter conviction, or its impact upon Stolid's reputation, having her, arrived back into town an hour prior to "In the Line of Fire".

She will also admit, in cross examination, that she will henceforth have a difficult time taking Stolid seriously, not necessarily as a result of Stolid's conviction, but as a result of Stolid's apparent lack of candour and the resultant feeling of being "let down" by the town's most impassioned gun control advocate.

Letterman will state, however, that she did observe Stolid prior to the show going on the air and noticed that Stolid seemed to be "really intense" and deep in thought. She will also testify that after Smiley told Winchester to remove the Luger from the table, Winchester smiled a "Cheshire Cat" smile and stated "It's okay, Guy, the gun's not loaded". Letterman finds this perplexing because she had always heard that Winchester never left home without a loaded gun on his person.

## **IV. THE INDICTMENT**

**ONTARIO COURT (GENERAL DIVISION)**

Canada

Province of Ontario

Judicial District of York

**HER MAJESTY THE QUEEN**

**against**

**SAM STOLID**

**INDICTMENT**

Sam Stolid stands charged:

That, in this town and county, in this province, on or about the 17th. day of September, 1995, Sam Stolid did unlawfully commit an assault with a weapon on the person of Heston Winchester contrary to the provisions of s.267 of the Criminal Code of Canada.

Dated this 1st. day of October, 1995, in this town and in this province.

**AGENT FOR THE ATTORNEY  
GENERAL OF ONTARIO**

## APPLICABLE LAW

Here are the sections of the Criminal Code of Canada which are relevant to the 1996 Mock Trial problem:

### ASSAULT

265.(1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

...

(4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all other evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

...

266. Every one who commits an assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

**ASSAULT WITH A WEAPON OR CAUSING BODILY HARM - Definition of "bodily harm".**

267.(1) Every one who, in committing an assault,

- (a) carries, uses or threatens to use a weapon or an imitation thereof, or
- (b) causes bodily harm to the complainant,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

**A note on character evidence:**

The Crown, as a general rule, may not lead evidence of the accused's *bad character* to prove the guilt of the accused on the crime charged even though the evidence may be relevant on the basis that human behaviour has a tendency to repeat itself. Thus, character evidence which shows only that the accused is the type of person (has the disposition) likely to have committed the offence charged is inadmissible. Therefore, the Crown may not, as a general rule, cross-examine the accused with a view of showing that the accused is a person of bad character, has committed prior crimes, whether proven or not.

The accused may, however, lead evidence of his general good reputation in his community as to a particular trait, although the accused **does not have to** put his character into issue by evidence constituting part of the narrative of events essential to his defence.

While evidence of *good character* elicited by an accused is generally framed in terms of evidence of general reputation as to a particular character trait, the Crown, in reply to the issue opened up by the accused is not limited to rebut that evidence solely by reputation evidence as to that trait, but may prove evidence of general bad character or prior convictions on the principle that an accused's character is indivisible. The Crown may lead evidence of the accused's general bad reputation after the accused has lead evidence of his general good reputation, including the right of the Crown to lead evidence of prior convictions to reply to the accused leading evidence of his good character. However, the Crown may not lead evidence in reply of the personal opinion of witnesses or evidence of specific bad acts unless they constitute similar fact evidence. [acts which are so sufficiently similar or distinctive in "common features" as to the time, place, method of committing a crime, type of victim(s), as to allow the doctrine of similar fact evidence, although the degree of similarity or commonality of features need not reach the level of disclosing a pattern of conduct.] Factors weighing against the admissibility of similar fact evidence include the fact that the similar fact constitutes a more serious offence than the charged offence, or is temporally remote from the current offence.

## V. MOCK TRIAL TOURNAMENT TIME CHART 1996

		Maximum
1.	Call to order, read charge, enter plea, introduction of teams	2 - 3 min
2.	Crown - opening statement	4 min
3.	Crown Witnesses	
	Heston Winchester - direct examination	6 min
	- cross examination	4 min
	B.B. Gunn - direct examination	6 min
	- cross examination	4 min
4.	Defence - opening	4 min
5.	Defence Witnesses	
	Sam Stolid - direct examination	6 min
	- cross examination	4 min
	J. Letterman - direct examination	6 min
	- cross examination	4 min
6.	Summations	
	Defence	5 min
	Crown	5 min
7.	Short Recess at Judge's discretion for deliberation	
8.	Judge - verdict and team assessment	10 - 12 min
9.	Judge - delivery of verdict and team assessment	10 - 12 min

**N.B. FOR THE PURPOSES OF THE MOCK TRIAL PROGRAMME, PLEASE BE ADVISED THAT THERE IS NO RIGHT OF RE-EXAMINATION. SHOULD A JUDGE SUGGEST THAT RE-EXAMINATION WOULD BE A GOOD IDEA, PLEASE ADVISE THE JUDGE THAT THERE IS NO SCOPE FOR IT WITHIN THE CONTEXT OF THE PROBLEM. IT IS ALL COUNSEL'S RESPONSIBILITY TO ADVISE THE COURT IF THE MATTER SHOULD ARISE.**

## **CLERK OF THE COURT 1996**

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:

### **A. Trial Script Summary**

- i. Court clerk escorts judge to bench and calls order.
- ii. Counsel stand to identify themselves (Crown followed by defence).
- iii. Court clerk reads the indictment and accused pleads to charges.
- iv. Crown counsel makes opening statement.
- v. First Crown witness called and sworn in by court clerk.
- vi. Crown examines witness (direct examination).
- vii. Defence examines witness (cross examination).
- viii. Steps 5-7 are repeated for each Crown witness.
- ix. Defence makes opening statement.
- x. Steps 5-7 are repeated for each defence witness with defence conducting direct examination and Crown conducting cross examination.
- xi. Defence presents closing arguments.
- xii. Crown presents closing arguments.
- xiii. Judge leaves.
- xiv. Court adjourns briefly to await return of judge.
- xv. Judge returns and tells the accused that he or she is "guilty" or "not guilty".
- xvi. Judge evaluates teams.
- xvii. Court is adjourned.

The specific duties of the court clerk will now be explained.

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/Madame Justice\_\_\_\_\_presiding".

2. READ THE CHARGES TO THE ACCUSED:

After the Crown and defence lawyers identify themselves, you will read the charge as it is set out in the Indictment. A copy of the Indictment is in these materials. You will stand and say:

1. "Sam Stolid, you stand charged that on or about the 17th day of September, 1995, in the Town of Gatling, in the Province of Ontario, you did unlawfully assault Heston Winchester, with a weapon, contrary to the provisions of s. 237 of the *Criminal Code of Canada*."
2. "How say you to this charge? Do you plead guilty or not guilty?"

3. SWEAR IN THE WITNESSES:

After the accused pleads "not guilty" to the charge, the Crown will begin its case. They will call their first witness to the stand, Heston Winchester. You will be responsible for swearing in Heston Winchester 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 swear that the evidence you are about to give to the court 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?"

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

#### 4. 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 decide on the verdict 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 verdict (guilty or not guilty) as well as which team delivered the best performance. When all is finished, you rise and say:

"All rise, court is adjourned"

#### 5. 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.

