

NOTICE TO MOCK TRIAL PARTICIPANTS

The problem in this year's mock trial is a drinking and driving case. These additional instructions are being provided to assist you in dealing with the roles which must be played.

1. The defence will call an expert witness to assist in countering the intoxilyzer blood alcohol readings. This person is very qualified and the Crown may not wish to challenge his/her qualifications. The Crown and defence teams should discuss this point before commencing the mock trial. If the Crown insists that the person be qualified, the defence should lead evidence of the expert's background. Remembering the time limits of the case, do not spend too long on this.
2. In a real court, the party introducing the expert would call them and lead evidence of their qualifications. The opposing party would then be able to challenge their qualifications. This format will not be used in the mock trial. Instead, each team shall treat questions regarding qualifications as part of their examination in chief or cross-examination.
3. A restaurant receipt has been provided which shows how much alcohol the accused claims to have consumed. This receipt will also be considered by the expert and the expert will base his/her opinion on it. The receipt must be introduced as part of the defence case.
4. A certificate of a qualified technician has been provided as well as a notice to introduce the certificate. It should be introduced as part of the Crown's case. While based on a real certificate, the mock trial certificate is not complete. Do not be concerned with any omissions from it. The certificate is a convenient way for the Crown to prove the blood alcohol content of a person rather than having to call an intoxilyzer technician each and every time. The Notice to Introduce a certificate is a document which simply tells the accused person that the Crown will be relying on the certificate. This is done to ensure the accused knows the case against him/her and is not taken by surprise at the trial.
5. The amounts of alcohol consumed in this case and the breath readings are entirely hypothetical and are used only for the purpose of this educational exercise. Do not assume that they bear any relationship to real test levels.
6. Participants are to assume that the Canadian Charter of Rights and Freedoms has been complied with.
7. In keeping with past mock trials, which were trials in the Superior Court and in which

the students presenting the cases gowned, we will be assuming that the Crown proceeded by indictment in this matter and the accused elected trial by a Superior Court judge sitting alone (no jury). This is being done for educational purposes and it should not be assumed that the Crown would actually proceed by indictment in a case like this.

GOOD LUCK TO ALL!

INDICTMENT

IN THE SUPERIOR COURT OF JUSTICE

CANADA)	HER MAJESTY THE QUEEN
)	
PROVINCE OF ONTARIO)	against
)	
YOURTOWN REGION)	CARMEN LaBIERE

2. CARMEN LaBIERE stands charged that s/he, on or about the 1st day of October in the year 2003, at the City of Yourtown in the Region of Yourtown, did, while her/his ability to operate a motor vehicle was impaired by alcohol, did operate a motor vehicle, contrary to S. 253 (a) of the Criminal Code;
3. CARMEN LaBIERE stands further charged that s/he, on or about the 1st day of October in the year 2003, at the City of Yourtown in the Region of Yourtown, having consumed alcohol in such a quantity that the concentration thereof in her/his blood exceeded eighty milligrammes of alcohol in 100 millilitres of blood, did operate a motor vehicle, contrary to S. 253 (b) of the Criminal Code;

DATED AT YOURTOWN this 5th day of December, 2003.

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Assistant Crown Attorney and
Agent for the Attorney General of Ontario

R. v. CARMEN LaBIERE

Description of Witness

Shelley Teetotal is a forty-year-old supply teacher. Tragically, ten years ago an impaired driver killed his/her grandfather. This caused Shelley to become active in MAID (Mothers Against Impaired Driving). S/he has become a member of the executive of the Yourtown chapter and has lobbied politicians at all levels of government to pass laws to ban persons with any alcohol in their system from driving. S/he has no formal training in determining the effects of alcohol on driving ability.

Anticipated evidence of the Witness

On October 1st, 2003, at around 12:00 midnight, I was driving home from a late meeting of MAID. I am the Yourtown chapter secretary/treasurer.

Directly in front of me I saw a car shifting a bit in its lane. I immediately thought that this could be an impaired driver, although the driving was not too bad when I first saw him/her. I decided to follow the car to be sure and we turned onto a side street. I cannot even remember the name now, but it was in a residential neighbourhood. It had ordinary street lighting and you had to have your lights on to see well. Suddenly the car swerved and at that point I knew the driver had to have been drinking.

I picked up my cell phone and dialed the RAID (Report An Impaired Driver) line. I know this number as it was set up due to the efforts of MAID. I have reported a number of people this way. Impaired Drivers have to be gotten off the road. I have even gone out to drive at night in order to see if there were drinking drivers around. I would report them. This is my duty as a citizen.

The driver swerved back to a straight line and I described what was going on to the dispatcher. I continued to follow the car for about a minute, I would guess. There was a bit of drifting but no lanes are marked on that street. I did not see any reason why the driver would have had to swerve like s/he did, but I was not really looking. I saw the swerve and that made up my mind for me.

As we were approaching a T-intersection, I saw the Yourtown Police vehicle. It activated its emergency lights and the driver pulled over. I was not going to get involved as the police had things in hand. I did get a look at the driver for a few seconds as I went on and s/he looked plastered to me. You can just tell these things. I have done a lot of work at MAID and you get to know.

I probably was a couple of car lengths away from the car and driver when I made my

observations. I certainly had nothing to drink and am very confident of what I saw.

I received a subpoena to come to court and I will be there. This will actually be the first time I will in court. I have called in other impaired drivers, but have never had to testify. I hope that they were all found guilty and taken off the road for a long time.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Crown before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility and reliability are central to this case.

A witness may be in a position to observe carefully, but this is not always the case. Many factors, such as stress, will cause a person to misconstrue something. Or, even the most honest witness can make a mistake.

As well, this witness has a strong motivation for keeping drinking drivers off the road. The defence will likely challenge the witness on this basis. You must be forthright in your testimony, despite your personal views.

R. v. CARMEN LaBIERE

Description of Witness

Sandy Courvoisier is a member of the Yourtown Police Service holding the rank of Constable, first class. S/he has been a police officer for eight years and has worked in the highway traffic unit as well as the public safety unit (which responds to most calls made by persons needing a police officer). Officer Courvoisier has received the usual training that any officer does at the Police College in Aylmer, and has also taken courses in the detection of the symptoms of impaired driving and is presently studying, but has not completed, a course as a qualified intoxilyzer technician.

Anticipated evidence of the Witness

On October 1, 2003, at approximately 11:55 p.m., I was on routine patrol when I received a radio call of a possible impaired driver proceeding eastbound on De Grassi Street near the school. The dispatcher indicated the person was driving a recent model Lexus with licence plate BORR 444. I was only a couple of blocks from the area, so I went to the top of the street and waited. In less than a minute I saw the vehicle and activated my emergency lights. I exited my scout car and pulled the driver over. S/he responded and pulled to the side of the road just ahead of me. I did not see any problems with the driving at that time.

I went to the driver's window and asked several questions and received responses:

17: Good evening, anything to drink tonight?

1: Yes, but that was some time ago at business dinner.

17: May I see your licence, ownership and insurance?

The driver produced these from a billfold, a bit slowly I thought. I asked the driver to step outside the car so I could investigate a bit more easily. The driver did so. That area of the street is pretty well lit (being a T-intersection) and I could see that the driver's eyes were reddened and a bit glassy, plus there seemed to be a slight slurring of speech. I saw no other signs but since the driver had those indicia of impairment plus I had been told of the weaving driving and the sudden movement of the vehicle for no apparent reason, I determined that I had to arrest the driver for impaired driving.

I did so and made a demand for a sample of the driver's breath to be taken at the station. The driver was very co-operative, but seemed a bit nervous. S/he said several times I don't know what

to do officers.

We arrived at the station and I contacted duty counsel for the driver. This took a long time as it seemed the duty counsel were very busy that night and, of course, we had to ensure that the person spoke to a lawyer before taking a breath sample. I also thought this best since the driver said s/he was not sure what to do several times.

At 1:45 a.m. I turned the driver over to Officer Slosch who I know to be a qualified intoxilyzer technician. About one half hour later, the driver was returned to me and I served a Notice of Intention to Introduce a Technician's Certificate as well as a true copy of the certificate I received from P.C. Slosch.

I was floored when I saw the results. They were 140 and 130. Usually, someone like that would be noticeably impaired. If the results had been just around eighty, I have to admit that we may not have proceeded with the charges as the likelihood of conviction would be questionable. Those readings were almost beyond belief.

The driver was released and sent home in a taxi.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Crown before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the Crown to identify certain exhibits. The Crown must prove that you have properly served breath analysis documents on the accused. These documents will be provided in the information package. They will be a Notice of Intention to Introduce a Certificate and a copy of a qualified breath technician's certificate. The breath technician will not need to be called due to the use of these documents. See the Notice to Participants for a description of these documents and why they are used.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

R. v. CARMEN LaBIERE

Description of Witness

Carmen LaBiere is a regional sales manager for the Starr Toy Company. S/he is married, 40, and has two children in high school. Carmen is a social drinker only. S/he has never been arrested before and is very upset about this incident. Carmen is active in several community charities including the Fund for Animal Betterment (FAB) and Generations Against Smokers Pollution (GASP).

Anticipated Evidence of the Witness

On October 1, 2003, I was meeting a business client for dinner. Starr Toy has been very active in the Ontario market and was hoping to expand into the United States. The person I met was the Northwestern States toy buyer for Megamart Corporation, which is based in Boston, Massachusetts. If Starr was able to conclude some contracts with Megamart, we would be able to increase our sales massively. I would personally have received significant compensation (bonuses, commissions and the like) for making these sales.

I met the client at his/her hotel around seven. S/he had a drink at the bar, but I decided to wait until dinner. We went to Chez Jacques, where my company has an expense account and we will take our better or potentially major clients. We had wine with our meal and the discussions about our business went on for several hours. I was not keeping track of my drinking so I cannot say that I had precisely so much. However, everything was itemized on our bill, which I have kept and sent a copy to the accounting department (I was able to get a copy of my part of the bill; accounting kept the customer's part because of confidentiality concerns). The serving staff there is very professional and precise. They will wait for both customers to finish drinks before refilling either, so I am very confident in stating that both the customer and I had exactly the same amount to drink from the bottle of wine. The glasses of wine were served to each of us individually. The meals were also noted on the bill.

One unfortunate thing about the evening was that the customer was a smoker. I do not smoke and am pretty sensitive to smoke. I felt I had no real choice though since we were going after a big, potentially huge, contract and I did not want to alienate the client. S/he was smoking these putrid little cigars that looked about the size of cigarettes. I definitely had a headache after that.

We left the restaurant about 11:30 and the customer went back to his/her hotel. I felt fine and

drove my car. I had just turned a corner and a raccoon ran into my path. I swerved to avoid it and thankfully did not hit it. I was upset by this and could see the animal run off and up a tree. A short while later, I was pulled over by a police officer. S/he asked a few questions and then arrested me for impaired driving. I was stunned by this. I guess I was rambling a bit because I did not know what to do. I was also upset about the raccoon.

I was at the station for a long time and spoke to a duty counsel on the telephone. I did not have a lawyer since I have never been in trouble before. The officer who arrested me took me into a small room where another officer explained that I had to blow into this machine. I did once and then had to wait about twenty minutes. The officer then again directed me to blow into the machine. I did so. S/he wrote up a bunch of papers and gave them to the first officer. The first officer gave me copies. S/he then told me that I had blown way above the legal limit for driving. I was stunned. I felt fine and would not have driven if I had any idea that I was not okay to drive.

I later retained a lawyer and s/he had me go to see Dr. von Quack. I told him/her what I had to drink and eat, provided the receipt and did a duplication test (I had to re-create the evening's drinking at the doctor's office). I am not sure what the results were but the doctor can say so.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the defence before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the defence to identify certain exhibits. The defence will attempt to show that your blood alcohol level was below the legal limit and will try to do this using the restaurant bill showing how much you had to drink. These documents will be provided in the information package.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

R. v. CARMEN LaBIERE

Description of Witness

Dr. Ullrich von Quack received a doctor of medicine degree from the University of Toronto in 1978. S/he did post-doctoral studies and received a Ph.D. in pharmacology in 1982. Since that time, the doctor has been involved in the study of toxins upon the body and has specialized in studying the effects of alcohol toxicities in humans. Dr. von Quack has written, alone or in conjunction with other scientists, over seventy articles dealing with alcohol toxicity. These have been published in prestigious journals, including the New England Journal of Medicine. S/he is presently the Molson professor of pharmaceutical toxicology at the Faculty of Pharmacy at the University of Toronto.

Anticipated Evidence of the Witness

On December 1, 2003 I was introduced to Carmen LaBiere. I did not know this person previously and received a referral from defence counsel. I was asked to conduct a simulation test on the patient to determine the blood alcohol concentration in his/her body.

In order to do so, the patient must not have consumed any alcohol for a period of twenty-four hours. This ensures that there are no lingering effects from previous drinking. I ask the patient to consume the same amount of alcohol over the same time period and eat the same food as was consumed on the day in question. The patient must provide the alcohol and food him or herself.

I then take a variety of readings to determine the blood alcohol concentration of the patient. This is done with an Intoxilyzer 5000C instrument (the same type used by police forces). I verify my work by taking small blood samples and determining the millimoles of blood alcohol which I then convert into a concentration of blood alcohol. My results in testing this patient were quite consistent between the two methods of testing. There was a variation of approximately .005 milligrammes percent between the two methods. I regard these as statistically insignificant.

Based on what the patient states s/he had to drink and eat (as described in a receipt of which I was given a copy), and based on the patient consuming only that, I have determined that the blood alcohol concentration of the patient would be 60 to 70 milligrammes of alcohol in 100 millilitres of blood at the time the driver was stopped by the police.

I would agree that if different amounts of alcohol were consumed, this would affect my calculations. I regard the Intoxilyzer 5000C which is used by police forces in this Province to be a generally reliable and accurate, albeit not infallible, instrument.

I did not detect any notable sign of impairment in the patient during the testing. Based on my tests and examination of the relevant literature, if the patient had a blood alcohol level of 100 or more, this person and indeed any person would be impaired. However, different people will become impaired at different consumption levels, so a person may be impaired at a blood alcohol level of less than 80.

It should be noted that lighter drinkers succumb to the effects of alcohol more readily than heavier drinkers. For example, a social drinker would show signs of impairment and/or be impaired after drinking much less than alcoholic. The heavier use of alcohol results in a greater tolerance of its effects.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the defence before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the defence to identify certain exhibits. The defence will attempt to show that the accused's blood alcohol level was below the legal limit and will try to do this using the restaurant bill showing how much s/he had to drink. These documents will be provided in the information package.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

As an expert, your testimony will be based on materials received. You cannot give evidence concerning the offence itself since you were not present. The effect of your testimony will depend on the acceptance of what the client told you.

Your credibility is central to this case.

CHEZ JACQUES

Guest Receipt: Starr Toy Company

Pour Manger:

Pate Appetizer

Le Biftek

Vegetables

Chocolate Mousse

Les Alcools:

One glass of wine, and one half of a 750 ml. bottle
of wine

Brand: Guiseruill, 1999

Alcohol content: 14.4 % by volume

3 glasses of the Chianti Nipozzano wine

Alcohol content: 12.5 %

MERCI

Jacques Plante Richmondmyst

(Salle fume)

CERTIFICATE OF A QUALIFIED TECHNICIAN

I, Ed Slosh, a person designated by the Solicitor General of Ontario pursuant to subsection 254 (1) of the Criminal Code of Canada as a qualified technician, qualified to operate the approved instrument, an Intoxilyzer 5000C

DO HEREBY CERTIFY THAT:

1. On the 2nd day of October, 2003 at 1:55 a.m. I took a sample of the breath of Carmen LaBiere;
2. On the 2nd day of October, 2003 at 2:15 a.m. I took a sample of the breath of Carmen LaBiere;
3. That the result of the first analysis of the said breath was 140 milligrammes of alcohol in 100 millilitres of blood;
4. That the result of the second analysis of the said breath was 130 milligrammes of alcohol in 100 millilitres of blood;

DATED AT Yourtown this 2nd day of October, 2003.

.....
Notice to Introduce a Certificate of a Qualified Technician

You are hereby notified that it is intended to produce this certificate at your trial.

Dated October 2, 2003

.....
Ed Slosh, Qualified Technician

APPLICABLE LAW

Section 253 of the Criminal Code of Canada provides as follows:

253. Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,
- 1) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
 - 2) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in 100 millilitres of blood.

Section 255 of the Criminal Code provides:

- 255 (1) Every one who commits an offence under section 253 is guilty of an indictable offence or an offence punishable on summary conviction and is liable,
- 1) whether the offence is prosecuted by indictment or punishable on summary conviction, to the following minimum punishment, namely,
 - 1) for a first offence, to a fine of not less than six hundred dollars;
 - 2) for a second offence, to imprisonment for not less than fourteen days;
- and

- 3) for each subsequent offence, to imprisonment for not less than ninety days;
- 2) where the offence is prosecuted by indictment, to imprisonment for a term not exceeding five years; and
- 3) where the offence is punishable on summary conviction, to imprisonment for a term not exceeding six months.

