

**OBA LAW DAY ELEMENTARY MOCK TRIAL PROGRAM - OUTLINE FOR  
PARTICIPATING LAWYERS AND TEACHERS - 2008**

Location of Trial:

Dates of Classes:

Start Time:

Teacher:

**OUTLINE CLASS #1**

**1. Introduction**

- Lawyers will identify themselves and why Law Day has created this Elementary Mock Trial program (i.e. to encourage students to understand their legal rights and answer general questions about the legal system).

**2. Introduction to the Charter of Rights and Freedoms:**

- 2008 is the 26<sup>th</sup> anniversary of the adoption of the Canadian Charter of Rights and Freedoms.
- It is sufficient to explain to elementary school students that there is a significant piece of legislation that governs state/police interference with each individual's rights and freedoms and it is the supreme law of Canada with which all other laws in Canada must be in conformity.
- Explain that all Canadians have legal rights that the police and other state actors are required to respect in their investigations. These legal rights are enumerated in sections 7-14 of the Charter and include such protections as the prohibition against unreasonable search and seizure, the right to consult legal counsel upon arrest or detention, the right not to incriminate oneself, and the prohibition on arbitrary detention.
- While our goal is not to provide an extensive overview of the Charter, it is important that students be aware that they do have legally protected rights and freedoms as Canadians.
- Feel free to add more detail if you are comfortable (e.g. why a person may want to consult legal counsel upon arrest or detention or how a person could incriminate them self), but the purpose should be to keep an explanation to a basic, general perspective on the Charter

### 3. Trial Process

- Explain that when a person gets charged with a crime they have a right to a trial.
- At the trial of the person charged with the crime, witnesses will testify as to what they saw this person do or not do and after their testimony a jury will decide whether that person is guilty or not guilty.

#### A. Key Players

- There are various players in the trial process. (ask class to name people who they believe are involved in the trial process and write them down on the board).

#### B. Accused and Police

- The accused is the person who is charged with the crime.
- The role of the police in the trial process is to:
  1. Investigate the crime, and, when they have enough evidence, charge the accused with the crime; and
  2. Act as a witness for the Crown.

#### C. Judge

- The Judge essentially has 2 roles in the trial:
  1. To act as a referee; and,
  2. To explain to the jury what the law is.

#### *Judge as Referee*

- The Judge essentially listens to the questions asked by the lawyers and the answers given by the witnesses to the questions.
- If a lawyer objects to a question asked by another lawyer, the Judge will determine whether or not the witness will be required to answer the question.
- The Judge will also determine what evidence is admissible at trial.
- Not all evidence is admissible. For example, if a Crown Attorney tries to put in a newspaper article about the accused that indicates that the accused is guilty, the Judge would not likely allow that newspaper article to be admitted

as evidence because a newspaper is not permitted to make such a finding and admitting it could cause the accused not to have a fair trial.

### *Judge Instructing the Jury*

- The other role of the trial Judge is to instruct the jury at the end of the trial.
- The Judge instructs the jury as to what the law is and also summarizes the evidence that was heard.
- Therefore, the Judge must review the substantial parts of the evidence and give the jury the theory of the defence so that the jury may appreciate the evidence and how the law is to be applied to the facts as they find them.
- After the Judge instructs the jury, it is the jury that decides whether the accused is guilty or not guilty. However, it is the Judge that decides whether the accused is guilty or not guilty where there is no jury.

### **D. Plea, the Court Clerk and the Bailiff**

- The trial begins with the Court Clerk reading the charge to the accused. This is called the arraignment.
- The accused then either pleads guilty or not guilty.
- also briefly explain the role of the bailiff who administers the oath given by the accused (that the accused shall tell the truth) and assists the Judge in maintaining order in the courtroom.

### **E. Start of the Trial and Role of the Crown**

- The trial starts by the Crown Attorney or Prosecutor making its opening submissions (see below for opening submissions) then subsequently calling its witnesses.
- The Crown Attorney essentially works for the government. Contrary to which you might watch on television shows from the United States, the Crown Attorney in Canada plays little part in initiating criminal prosecutions or in supervising and directing police investigation.
- In fact, the Crown Attorney's prime duty is not to seek a conviction but to present before the Court all available evidence relevant to the alleged crime in order that justice may be done through a fair trial upon the merits.
- The Crown Attorney must act fairly and dispassionately.
- In fact, the Crown is required to disclose to the accused or defence counsel all relevant facts and known witnesses whether or not it shows guilt or innocence.
- The Crown's main role is to determine the truth.

### **F. Witnesses and the Role of the Witnesses**

- As we stated earlier, the Crown starts its case by calling its witnesses. The Crown conducts its examination of its own witnesses. The goal of the Crown is to get his or her witnesses to tell a story about what happened.
- The Defence Attorney is then given an opportunity to cross-examine the Crown's witnesses.
- Cross-examination does not mean that you have to yell or be angry with the witness. The goal is to poke holes in the witnesses' testimony.
- The role of the witness is to answer the questions that are asked of them by the lawyers. They must always do so in a truthful manner and if they do not then they have committed perjury which is a serious offence.
- Explain role of expert witnesses (to give evidence on certain topics or issues that ordinary people do not have the knowledge or expertise to give evidence on).

### **G. Defence of Accused and Defence Lawyer**

- After the Crown presents its case, the Defence will then call its witnesses and the Crown will then have an opportunity to cross-examine the witnesses called by the Defence.
- Most of you have probably seen movies or a television show where a person has been charged with a crime where their defence lawyer "gets them off" by miraculously proving someone else did it. Real life, however, does not work that way. I can assure you that the life of a defence attorney, while very interesting and challenging, is not exactly like what you see on T.V. or in the movies. In fact, you're often defending people who are guilty and who have committed a very serious crime such as murder.
- Many of you also probably think that the defence lawyer is there to "get his or her client off". But that in fact is not the case. The defence attorney's function is to defend his or her client and to make sure that the Crown meets its case.
- It is the lawyer's duty to put the Crown to the most rigorous test. That does not mean that a lawyer can put his client up on the stand knowing that his client is going to lie, but it means that they will test the Crown's case in order to make sure they have proven the accused guilty beyond a reasonable doubt.
- It is a high duty but not easy.

### **H. Opening and Closing Submissions**

#### Opening Submissions of the Crown

- In their opening submissions, the Crown outlines its case to the jury.

- The Crown presents its theory of the case and the version of the facts it will be trying to establish.
- For example, the Crown will state "The evidence will show..." . The opening submission is not the time for the Crown to be arguing the guilt of the accused.

#### Opening Submissions of the Defence

- The Defence's opening statement is similar to the Crown's in format.
- The Defence will outline its theory of the case and the version of the facts it will be trying to establish.

#### Closing Argument of the Crown

- Since in the fact situation we are presented with the Defence is calling witnesses, the Crown will give its closing argument last.
- The Crown will explain the elements of the offence and summarize the evidence they have heard.

#### Closing Argument of the Defence

- Since the Defence is, in the fact situation we are presented with, calling witnesses, the Defence will give its closing argument first.
- The Defence will summarize the evidence and argue that the Crown has not proven the guilt of the accused beyond a reasonable doubt. Beyond a reasonable doubt is the burden of proof that the prosecution must carry in a criminal trial to obtain a guilty verdict. Reasonable doubt is sometimes explained as being convinced "to a moral certainty." The jury must be convinced that the defendant committed each element of the crime before returning a guilty verdict.

### **I. Charge to the Jury and Jury Deliberations**

- Before the jury goes off to deliberate, the Judge will instruct the jury (see notes earlier).
- After the Judge's charge to the jury, the jury must decide if the accused is guilty or not guilty.
- The jury will elect a foreperson to head the jury.
- The decision of the jury must be unanimous (all jurors must agree that the accused is guilty or all jurors must agree that the accused is not guilty).
- Each juror must vote that the accused is guilty or is not guilty.
- If the jury is not unanimous a "mistrial" is declared and the accused is in effect not guilty.

### **J. Sentencing**

- If the accused has been found guilty, the judge decides on the appropriate Sentence (e.g. jail or community service)

### **K. Other Players**

- Explain the role of the press and the sketch artists

### **3. Review of Fact Situation**

- ensure teacher has selected roles for the students.
- Then divide into 4 groups: Jury, Counsel, Witnesses and Others.
- the lawyers present will discuss separately with each group what they should be doing at the trial.

### **OUTLINE CLASS #2**

- conduct trial.
- 1 lawyer is to be the judge.

**LAWYERS – this official *Criminal Code* wording set out below should be provided to the students who will play the lawyers and some time should be spent discussing the elements of the crime that will have to be proved in order for a successful conviction, or have reasonable doubt cast by defence counsel for a successful defence. Recall that the elements of crime include BOTH the ACT (the Actus Reus) and the INTENT (the Mens Rea). It is sometimes best to summarize the below theft provision as “physically took an object with the intent to deprive another of his or her property” and the assault provision as “made physical contact with another person with the intent to impede or move that person”.**

**It may be useful for the lawyers to use the following example of theft to explain the difference between the ACT and the INTENT and why both elements are needed to constitute the offence of theft and/or assault:**

- *Where there is the mens rea, but no actus reus – i.e., the person thinks about stealing something (theft) or pushing someone (assault) but never actually does so;*
- *Where there is the actus reus, but no mens rea – i.e. the person physically takes the object but does not have the intent to deprive the owner of the object – for instance, where the person is given permission to take the object or accidentally takes the object in a pocket (theft); the person*

- physically pushes another out of the way, but did not mean to do so or did so by accident (assault).
- **Where there is both the mens rea and the actus reus – i.e., the person intends to deprive the owner of the object and physically takes it (theft); the person intends to push another person and actually does so (assault).**

**Theft under \$5,000 provisions from *Criminal Code*:**

Theft

**322.** (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

(b) to pledge it or deposit it as security;

(c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

Punishment for theft

**334.** Except where otherwise provided by law, every one who commits theft

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of what is stolen does not exceed five thousand dollars.

**Assault provisions from *Criminal Code*:**

**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.

Application

(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.

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

(a) the application of force to the complainant or to a person other than the complainant;

Consent

(b) threats or fear of the application of force to the complainant or to a person other than the complainant;

(c) fraud; or

(d) the exercise of authority.

Accused's  
belief as to  
consent

(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 the 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

Assault

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.