

## **MOCK TRIAL CODE OF PROFESSIONAL CONDUCT 2011**

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 30 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. Some 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.**

## **ONTARIO TOURNAMENT AND ADDITIONAL RULES**

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.

### **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 any role in a current tournament. Students may participate as a witness one year only and may compete once again as counsel.

### **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 Filippo Conte at the OBA of such intention in writing on or before 4:00 p.m. Friday, February 25, 2011. Please note that this deadline is firm, and no exceptions can be made.**

### **Round Two**

Round Two consists of regional inter-school competitions. There will be eight regions based on the judicial geographical (judicial) regions of Ontario. The competitions will take place at central courthouses for those regions and the Committee will arrange the time, location, judges and format for the regional playoffs while adhering to rules set out herein and will communicate with participating schools in the regions. The winners of the regional play-offs will advance to round three (quarterfinal round) on April 13.

Round two must be completed on either **by Friday, April 8, 2011** and Filippo Conte advised as to the regional winners on or before **4:00 p.m. Friday, April 8, 2011.** 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 for Round three. Keep in mind that school holidays may impose certain scheduling difficulties.

### Round Three

Round Three take place during Law Week and consists of the quarter-finals – where the eight winning regional teams take part in the trials, Wednesday, April 13<sup>th</sup>, in Toronto (in a location to be determined following Round 2). **The Law Day Committee will arrange for the date, location/courthouse and judges. Round Three will require travel arrangements to be made and Filippo Conte will support/make these arrangements in conjunction with the team coach/teacher.** Round Three is directly followed by Round Four – on consecutive days in Toronto. The four best teams will compete in a courtroom in Toronto on the next day before judges of the Ontario Court of Justice and the Superior Court of Justice.

### Round Four

Round Four consists of the semi-final and finals in Toronto on Thursday, April 14<sup>th</sup>, during Law Week. The four teams will compete in a courtroom in Toronto on the morning of Law Day. The two winning teams from the morning semi-finals will compete again before the presiding judges. All final eight teams will receive awards at the Law Day Banquet on the evening of April 14<sup>th</sup>, 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.

### 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. Local Boards of Education might be approached for financial support by teachers if there are transportation or other costs. Limited financial assistance from the Ontario Bar Association may 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.** The Committee recommends seeking sponsorship from local organizations to assist in expenses incurred.

### 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 14th, 2011) or during Law Week (April 11<sup>th</sup> to 15<sup>th</sup>), 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.

### 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.

### 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. However, extreme differences that might impact the spirit of the facts and case may result in a point penalty to the team.

## **FACT SHEETS FOR HIGH SCHOOL MOCK TRIAL TOURNAMENT 2011**

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 (Hildy Johnson and Constable T.R. Devlin) should meet before trial and work out other details about their characters. Similarly, the two defence witnesses (Alex Sebastien, the accused and Dr. Chris Szell) 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 Ontario 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 bringing 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.

### **CLERK/DEPUTY OF THE COURT 2011**

The clerk's and the deputy's jobs are to help the judge run the courtroom. The clerk is responsible for timing the teams. To begin with, you should be familiar with the general trial script summary which is set out below:

#### **Trial Script Summary**

- i. Court deputy escorts judge to Bench and calls order; court clerk formally opens court.
- 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 and Deputy 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:

Court Deputy: "Order, all rise"

Court Clerk: "Oyez, Oyez, Oyez, Anyone having business before the Queen's Justice of the Superior Court of Justice draw near and you shall be heard. Long live the Queen."

### **2. Read the Information to the Accused:**

After the Crown and Defence lawyers have identified themselves, you will read the charge as it is set out in the information. A copy of the information is in these materials. You will stand and say.

1. Alex Sebastien, stands charged that s/he, on or about the 1<sup>st</sup> day of October, 2010 in the City of Yourtown in the Region of Yourtown, did in committing an assault upon Toby Fantasia cause bodily harm to him/her, contrary to the Criminal Code;

How say you to this charge? Do you plead guilty or not guilty?

2. And stands further charged that s/he, on or about the 1<sup>st</sup> day of October, 2010 in the City of Yourtown in the Region of Yourtown, did assault Toby Fantasia, a peace officer engaged in the execution of his/her duty, contrary to the Criminal Code.

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, Hildy Johnson. You will be responsible for swearing in Hildy Johnson 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 to be given by you to this court between our Sovereign Lady the Queen and the accused 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:

Deputy: "All rise"

Clerk: "Court will now adjourn (or recess) for 10 minutes"

When the judge is ready to return, the deputy will call the courtroom back to order and will ask everyone to rise.

Clerk: Court is now resumed, please be seated.

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:

Deputy: "All rise"

Clerk: "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 photocopy some "performance sheets" in case the judge forgets to bring one.

**MOCK TRIAL TOURNAMENT TIME CHART 2011**

1.	Call to order, read charge, enter plea, introduction of teams	2 - 3 min
2.	Crown - opening statement	4 min
3.	Crown Witnesses	
	Hildy Johnson - chief examination	6 min
	- cross-examination	4 min
	Constable T.R. Devlin - chief examination	6 min
	- cross-examination	4 min
4.	Defence opening	4 min
5.	Defence Witnesses	
	Alex Sebastien (accused) - chief examination	6 min
	- cross-examination	4 min
	Dr. Chris Szell - chief 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 PROGRAM, 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.**

*THIS CHART WILL CHANGE WHEN DEALING WITH A TRIAL THAT HAS FRENCH AND ENGLISH COMPETITORS DURING THE SAME TRIAL. PLEASE MAKE SURE THAT THE CLOCK IS STOPPED FOR THE PURPOSE OF THE TRANSLATION AND THEN RESTARTED TO MEET THE ABOVE NOTED TIME REQUIREMENT.*