



For the Judge

Materials for the Judge:

- *The Criminal Justice System*
- *Trial Script*
- *Case Outline*
- *Canada's Criminal Code: What is Theft?*

As the Judge, you have the important role of making sure that the trial is fair. To do this properly, you must remain impartial. This means that you do not favour one side over the other and that you give each side a fair chance to be heard. Judges know a lot about the law and hold a respected position. As such, it is your responsibility to:

- keep order in the court room;
- make sure the lawyers are asking proper questions;
- inform the Jury what their duties are and how the law applies in the case being tried; and
- pass the sentence on the Accused if they are found guilty.

Getting Ready for the Trial

Think about the role that you are playing. What does it feel like to be a Judge. How would a Judge act? What does it mean to be impartial? Read the following notes and consider your duties to help become the part.

Task Outline

1. Review and think about the principles and rules which apply to a trial.
2. Study the *Trial Script* to better understand the steps of the trial.
3. Review the *Case Outline*.
4. Study *Canada's Criminal Code: What is Theft?* as well as the copy of the *Indictment*.
5. Write your charge to the Jury.
6. Study the possible sentences you could give if the Accused is found guilty.

Detailed Task Plan

1. Review and think about the principles and rules which apply to a trial.

Reread and study the handout *The Criminal Justice System*, up to and including Rule 4.

Note the principles and rules of the trial.

- It is more important that an innocent person be free than a guilty person be punished.
- The Accused has a right to a fair trial.
- The Accused is innocent until proven guilty.
- The Judge and Jury must be impartial.
- It is up to the Crown to prove that the Accused is guilty, not the Defence to prove the Accused is innocent.
- The Crown must prove all elements of the crime "beyond a reasonable doubt."
- The Accused has a right to a Defence Lawyer.



2. Study the Trial Script to better understand the steps of the trial.

Knowing the basic steps outlined in the *Trial Script* will help you keep the process running in an orderly manner. Be prepared for the unexpected.

- You should tell people at the trial to act properly if they are not being respectful or courteous.
- You may call a recess during the trial if you need to think about something or would like help from your teacher.
- Review the questions lawyers can ask (Rule 5 in the handout *The Criminal Justice System*.)

3. Review the *Case Outline*.

This is to help you understand, in general, the case to be tried.

4. Study *Canada's Criminal Code: What is Theft?* as well as the copy of the *Indictment*.

The Judge is the authority on the law and is expected to help the Jury understand the law. Understand the charge against the Accused and the law that applies to the offence.

5. Write your charge to the Jury.

In the charge to the Jury, the Judge must tell them everything the Crown must prove to the Jury to find the Accused guilty. Also, the Judge explains how they must make their decision on the verdict. You may use the following model to write your own instructions to the Jury:

Ladies and gentlemen of the Jury, the Case before the court today involves a matter of theft over \$5000. The *Criminal Code* describes this offence as "fraudulently and without colour of right taking ... anything ... with intent to deprive, temporarily or absolutely, the owner ... of the thing ..." In other words, theft is the taking of an object by a person who knows that they have no right to take the thing and who means to keep the object from the owner for any period of time.

In this case before you, the Crown must prove that:

- a home theatre system was taken from Dana Schroeder on June 22;
- the home theatre system belongs to Dana Schroeder;
- the home theatre system was taken by the Accused, Mark Wyler; and
- the Accused intended to take the home theatre system, knowing that it did not belong to him.

Each and every one of these four elements must be established on the facts presented in this case.

As the Jury, it is your job to consider all the evidence and to determine whether or not the Crown has proven that the Accused committed the offence of theft. You must be convinced beyond a reasonable doubt that the evidence proves all of the elements of the offence as I described them to you. This means that the facts which you believe to be true must show that no other sensible explanation exists for the events in question.



For the Judge ...continued

If you decide that the facts show that a home theatre system belonging to Dana Schroeder was taken from her home by the Accused, you must consider whether or not the Accused meant to take the items by theft. You must determine if the facts show that the intention of the Accused was to steal the home theatre system.

In making your decision, you may consider only the evidence that has been presented to you here in court. However, you are free to examine all of these facts and decide which of them to believe. It is your task to determine the truth of the matter based on the facts before you.

It is important for you to remember that the Accused is presumed to be innocent until proven guilty and that the burden of proving the offence lies on the Crown. This means that the Defence does not have to prove anything, while the Crown must establish each element of the offence convincingly, or beyond a reasonable doubt.

If you have a real doubt that any one of the elements has been proven, you must find the Accused not guilty.

If the facts presented in the case convince you that all the elements of theft have been proven, so that you are certain that the Accused committed the offence, you must find the Accused guilty.

6. Study the possible sentences you could give if the Accused is found guilty.

The Defence and the Crown each get a turn to “speak to sentence” if the Jury returns a guilty verdict. The lawyers will tell you facts about the Accused and the crime which will help you come to a decision on an appropriate sentence.

Some of the things which you may consider include the seriousness of the offence (the sentence given in the *Criminal Code* is one clue to this); previous convictions of the Accused; how a conviction could affect the Accused’s future; whether or not the sentence would prevent other people from committing a similar crime or would prevent the Accused from repeating the crime; the Accused’s character and attitude. In general, you should consider what would be in the best interests of both the Accused and the community.

Be sure to refer to the Purposes and Principles of Sentencing Section of the handout *The Criminal Justice System*. Also, check the law to determine whether there is a minimum or maximum sentence given for this offence.

After considering all these, you have the choice of these sentences:

ABSOLUTE DISCHARGE - You may decide that the offender has learned their lesson just from being arrested and brought to trial. In that case, probation, a fine, or a jail term is not necessary. If you grant an absolute discharge, the Accused is not considered to have been convicted of the offence.

CONDITIONAL DISCHARGE - The offender is placed on probation and will not be sentenced further if they obey all the conditions that you set. For example, some conditions could be continuing to attend school or work, reporting regularly to a probation officer, or staying away from certain people or places. If the offender breaks any of the conditions, the sentence can be changed, but if all the conditions are met the discharge



becomes absolute. This means that the offender is not considered to have been convicted.

SUSPENDED SENTENCE OR PROBATION - This sentence is similar in some ways to a conditional discharge because you may impose the same kinds of conditions for probation. However, the offender is convicted which means they have a criminal record.

FINE - You may order the offender to pay a certain amount of money to the court and set a time limit for payment of this fine. The offender may request additional time to pay the fine.

IMPRISONMENT - This is the most serious sentence that you can order. In giving such a sentence, you specify that the offender must go to jail for a certain length of time. The jail term can be up to the maximum given for the offence in the *Criminal Code*.



For the Crown Prosecutor

Materials for the Crown Prosecutor:

- *Trial Script*
- *Case Outline*
- *Indictment (four copies)*
- *Canada's Criminal Code: What is Theft?*
- *Witness Fact Sheet: Dana Schroeder*
- *Witness Fact Sheet: Norman Greene*
- *Witness Fact Sheet: Officer Susan Mackenzie*

As a lawyer for the Crown, you have the task of putting all the facts against the Accused before the court. The Jury can then decide whether or not the law was broken and whether the Accused is the person who committed the crime. Your role requires you to assist the court in finding out the truth about the crime so that the right person is convicted, not necessarily to convict the accused person.

Getting Ready for the Trial

Think about the role that you are playing. What does it feel like to be a Crown Prosecutor. How would a Crown Prosecutor act? Read the following notes and consider your duties to help become the part.

Task Outline

1. Review and think about the duties of a Crown Prosecutor.
2. Study the *Trial Script* to better understand the trial procedure.
3. Review the *Case Outline*.
4. Fill out the *Indictment*.
5. Study *Canada's Criminal Code: What is Theft?* to understand how the law applies to the alleged offence.
6. Read the *Witness Fact Sheets* to decide which people you need to call to the stand to establish the facts of your case. Review each witness's testimony with them.
7. Develop questions to ask your witnesses to bring out their stories and to clarify the Defence witnesses' stories.
8. Prepare a summation to give to the Jury before they decide the verdict.
9. Be prepared to speak to the Judge about the sentence you think the Accused should be given if found guilty.

Detailed Task Plan

1. Review and think about the duties of a Crown Prosecutor

The Crown Prosecutor must satisfy in the minds of the Jury that the Accused is guilty beyond a reasonable doubt. That means there must be no other sensible explanation for what happened other than the Accused committed the crime. You build your case by interviewing witnesses before the trial, examining and cross-examining them during the trial, and summing up your case to the Jury. It is also important to recognise that your job includes ensuring that the Accused gets a fair hearing.



2. Study the *Trial Script* to better understand the trial procedure.

While you read the *Trial Script*, pay special attention to your parts. Later, when you are preparing questions and the summation to the Jury, you will know when to speak.

3. Review the *Case Outline*.

The *Case Outline* will give you a general idea of the facts of the case and what you and the Defence Lawyer believe happened.

4. Fill out the *Indictment*.

An indictment names a criminal offence that the police believe has occurred, the time and date of the alleged offence, and who is alleged to have committed the crime. You have four copies of the *Indictment*. On all copies fill in the name of the Accused, the place where the incident occurred, and the time and date of the events. After you complete these forms and sign them, keep a copy for yourself. Give two copies to the Court Clerk, who will pass along one to the Judge. You will also give one copy of the *Indictment* and a list of witnesses you are calling to the Defence Counsel once you determine what witnesses you will require to build your case.

5. Study *Canada's Criminal Code: What is Theft?* to understand how the law applies to the alleged offence.

Read the handout *Canada's Criminal Code: What is Theft?* As a Crown Prosecutor, you will try to convince the Jury that the facts show that Mark Wyler committed theft. This requires that you prove to the Jury all the elements of theft. You will do this by asking questions of the witnesses so that the facts showing those elements of theft are revealed.

6. Read the *Witness Fact Sheets* to decide which people you need to call to the stand to establish the facts of your case. Review each witness's testimony with her or him.

When you interview the witnesses, get information from them that will help you prove all the elements of the theft. Ask what happened? When? Where? Who was there? What did you see?

Arrange the order in which you call witnesses to the stand so that their testimony tells the story of the events from beginning to end. When building your case, it may be helpful to think of your job as that of a painter. Begin by sketching an outline of what happened, then paint in all the elements of the case. Questions to ask yourself as you build your case can include:

- Are all the elements included?
- Are there any blank areas that need to be considered?
- How will the witnesses reinforce the facts?
- Is the case being presented in the best possible order?

You will want to meet with each witness you call to help understand their stories and formulate the questions you will ask them.



For the Crown Prosecutor ...continued

7. Develop questions to ask your witnesses to bring out their stories and to clarify the Defence witnesses' stories.

Developing good questions is one of the most difficult tasks for lawyers. Be sure to closely consider each witness who will come to the stand and their role in the case as a whole. As well, be aware of the rules surrounding the questions lawyers can ask (review Rule 5 in the handout *The Criminal Justice System*.)

DIRECT EXAMINATION

Your first task at the trial is to question your own witnesses. This is called direct examination. Let each witness tell their own story by asking only general questions such as “Can you tell the court what happened next?”

Make sure that the witness identifies the Accused in court. Ask the witness to point out the person they saw or dealt with. For example:

CROWN: Is the person that you saw with the bicycle in the court today?

WITNESS: Yes.

CROWN: Can you point to that person?

WITNESS: Yes. [Witness points to the ACCUSED.]

CROWN: Let the record show that the witness has identified the Accused as the person they saw.

TIPS FOR EXAMINING CROWN WITNESSES

- Before your witnesses start relating their stories, have them identify themselves by telling their full names and their occupations to the court. Next, confirm the date of the events in question. (For example, ask “Do you recall what happened on August 27th at approximately 9:00pm?”)
- The witnesses should explain how they are connected to the incident. (For example, “I am the police officer who investigated the complaint,” or “I am the person who saw the robbery and called the police.”)
- It is a good idea to ask a question only if you know what the answer will be. That way, you are not surprised with information that may damage your case.
- Do not ask questions about matters that are unimportant or irrelevant (not related to the elements of the offence.) Otherwise, you may face an objection from the Defence Lawyer. Once the witness gives you the facts you need, go on to the next point. Otherwise, you may confuse the Jury with extra information. Remember, you want to make all the facts of your case very clear.

CROSS-EXAMINATION

After the direct examination by Defence Counsel of a Defence witness, you have an opportunity to ask questions of that witness. This is called cross-examination. By asking questions, you try to get information to help your case or to show that the witness is not completely sure of the facts.

For the Crown Prosecutor ...continued



When preparing for cross-examination, think about the case that the Defence is presenting. What evidence do you think will be brought up by the Defence? Make sure your witnesses cover the points that the Defence is likely to raise. Be sure to prepare possible questions for cross-examination in advance. You may ask leading questions during cross-examination.

Cross-examination of a witness is not always necessary. If the witness's evidence is clear and simple, it is best not to ask any questions since this only gives them an opportunity to repeat facts that hurt your case.

TIPS FOR CROSS-EXAMINING DEFENCE WITNESSES

- During the trial, listen carefully and make notes when the Defence witnesses give evidence.
- Be sure to ask questions when the witness contradicts what another witness says.
- Ask for details favourable to your case which the witness may have left out.
- If you think that the witness is not telling the whole story and may have some facts which support your own case and weaken the other, be sure to ask questions to bring out those contradictory facts.
- If you think the witness may not be sure of their facts, seek further clarification. For example, if the witness testifies about seeing the culprit, you could ask if the view was clear, if the witness's eyesight is good, or if it was dark at the time.

8. Prepare a summation to give to the Jury before they decide the verdict.

After all the Crown and Defence witnesses have testified, the lawyers give closing statements to the Jury. The Defence summation is delivered first.

In your closing statement, outline the evidence which was presented in your case and emphasize how these facts prove each element of the crime. Make a draft of your summation before the trial starts. This way, you can add to it or change it as the case proceeds.

9. Be prepared to speak to the Judge about the sentence you think the Accused should be given if found guilty.

The Defence and the Crown each get a turn to "speak to sentence" if the Jury returns a guilty verdict. In your speech, you will tell the Judge facts about the Accused and the crime which will help the Judge come to a decision on an appropriate sentence.

Some of the things which you may consider include the seriousness of the offence (the sentence given in the *Criminal Code* is one clue to this); previous convictions of the Accused; how a conviction could affect the Accused's future; whether or not the sentence would prevent other people from committing a similar crime or would prevent the Accused from repeating the crime; and the Accused's character and attitude. In general, you should consider what would be in the best interests of both the Accused and the community.

Refer to the Purposes and Principles of Sentencing Section of the handout *The Criminal Justice System*. Then check the law to determine whether there is a minimum or maximum sentence given for this offence. Where only a maximum is stated, you may recommend any of the following (up to the maximum sentence provided by that law):



For the Crown Prosecutor ...continued

ABSOLUTE DISCHARGE - You may believe that the offender has learned their lesson just from being arrested and brought to trial. In that case, probation, a fine, or a jail term is not necessary. If the Judge grants an absolute discharge, the Accused is not considered to have been convicted of the offence.

CONDITIONAL DISCHARGE - The offender is placed on probation and will not be sentenced further if they obey all the conditions that you set. For example, some conditions could be continuing to attend school or work, reporting regularly to a probation officer, or staying away from certain people or places. If the offender breaks any of the conditions, the sentence can be changed, but if all the conditions are met the discharge becomes absolute. This means that the offender is not considered to have been convicted.

SUSPENDED SENTENCE OR PROBATION - This sentence is similar in some ways to a conditional discharge because you may impose the same kinds of conditions for probation. However, the offender is convicted which means they have a criminal record.

FINE - The Judge may order the offender to pay a certain amount of money to the court and set a time limit for payment of this fine. The offender may request additional time to pay the fine.

IMPRISONMENT - This is the most serious sentence that can be given. You can recommend that the Accused must go to jail for a certain length of time. The jail term can be up to the maximum given for the offence in the *Criminal Code*.

For the Defence Lawyer



Materials for the Defence Lawyer include:

- *Trial Script*
- *Case Outline*
- *Canada's Criminal Code: What is Theft?*
- *Witness Fact Sheet: Mark Wyler*
- *Witness Fact Sheet: Brad Pelltier*
- *Witness Fact Sheet: Dana Schroeder*
- *Witness Fact Sheet: Norman Greene*
- *Witness Fact Sheet: Officer Susan Mackenzie*

As a Defence Lawyer, you have the task of ensuring that the rights and interests of the Accused are protected. The Defence does not have to prove anything. So your main purpose is to challenge the Crown's evidence wherever possible with the goal of raising reasonable doubt.

Getting Ready for the Trial

Think about the role that you are playing. What does it feel like to be a Defence Lawyer. How would a Defence Lawyer act? Read the following notes and consider your duties to help become the part.

Task Outline

1. Review and think about the duties of a Defence Lawyer.
2. Study the *Trial Script* to better understand the trial procedure.
3. Review the *Case Outline*.
4. Review the *Indictment*.
5. Study *Canada's Criminal Code: What is Theft?* to understand how the law applies to the alleged offence.
6. Check the list of witnesses the Crown is calling and prepare questions to ask them on cross-examination.
7. Read the *Witness Fact Sheets* to decide whether to call any witnesses to the stand. If so, decide which people you want to call to bring the Crown's case into question. Review each witness's testimony with them.
8. Develop questions to ask your witnesses to bring out their stories.
9. Think about the questions the Crown might ask your witnesses and prepare them for their cross-examination.
10. Prepare a summation to give to the Jury before they decide the verdict.
11. Be prepared to speak to the Judge about the sentence you think the Accused should be given if found guilty.

Detailed Task Plan

1. Review and think about the duties of a Defence Lawyer.

The task of a Defence Lawyer is to ensure that the rights and interests of the Accused are protected. The Defence tries to show the Jury that the Crown has not proven that the Accused is guilty. They do this by cross-examining the Crown's witnesses and, if necessary, by calling witnesses.



For the Defence Lawyer ...continued

Because the Accused is presumed to be innocent, the Defence does not have to prove anything. In fact, the Defence does not have to call any witnesses because of the Accused's right to remain silent. However, the Accused may choose to give evidence if they have a defence or information that would help avoid conviction.

2. Study the *Trial Script* to better understand the trial procedure.

While you read the *Trial Script*, pay special attention to your parts. Later, when you are preparing questions and the summation to the Jury, you will know when to speak.

3. Review the *Case Outline*.

The *Case Outline* will give you a general idea of the facts of the case and what you and the Crown Prosecutor believe happened.

4. Review the *Indictment*.

An indictment names a criminal offence that the police believe has occurred, the time and date of the alleged offence, and who is alleged to have committed the crime. Read the completed *Indictment* which you will receive from the Crown Prosecutor.

5. Study *Canada's Criminal Code: What is Theft?* to understand how the law applies to the alleged offence.

Read the handout *Canada's Criminal Code: What is Theft?* The Crown Prosecutor will try to convince the Jury that the facts show that Mark Wyler committed theft. This requires that the Crown prove to the Jury all the elements of theft. As a Defence Lawyer, your purpose is to challenge the Crown's evidence wherever possible with the goal of raising reasonable doubt. If the Jury has doubts about the facts or is unsure that the Crown has proven all the elements of theft, they must find the Accused not guilty. Review the law and the elements of theft. Read carefully the section Defence of Prank.

6. Check the list of witnesses the Crown is calling and prepare questions to ask them on cross-examination.

Developing good questions is one of the most difficult tasks for lawyers. Be sure to closely consider each witness who will come to the stand and their role in the case as a whole. As well, be aware of the rules surrounding the questions lawyers can ask (review Rule 5 in the handout *The Criminal Justice System*.)

Your first task of questioning at the trial is to cross-examine the Crown's witnesses after each has been examined by the Crown Prosecutor. The purpose of this cross-examination is to try to get information which helps your case or which shows that the witness is not completely sure of the facts.

It is a good idea to listen carefully as the Crown witnesses give evidence so that you may question them if witnesses disagree with each other or contradict themselves. You may also question the Crown's witnesses on details you know will be favourable to your case which the Crown might have left out in their direct examination. Ask questions which emphasize any inconsistencies in the witnesses' testimony. You may ask leading questions during cross-examination, but not during examination.

When preparing for cross-examination, think about the case that the Crown is presenting. What evidence do you think will be brought up by the Crown? Be sure to prepare possible questions for cross-examination in advance.



Cross-examination of a witness is not always necessary. If the witness's evidence is clear and simple, it is best not to ask any questions since this only gives them an opportunity to repeat facts that hurt your case.

Tips for Cross-examining Crown Witnesses:

- Be sure to ask questions when the witness contradicts their own testimony or what another witness says.
- If you think that the witness is not telling the whole story and may have some facts which support your own case and weaken the other, be sure to ask questions to bring out those contradictory facts.
- If you think the witness may not be sure of their facts, seek further clarification. For example, if the witness testifies about seeing the culprit, you could ask if the view was clear, if the witness's eyesight is good, or if it was dark at the time.

7. Read the *Witness Fact Sheets* to decide whether to call any witnesses to the stand. If so, decide which people you want to call to bring the Crown's case into question. Review each witness's testimony with them.

Although the Defence never has to prove innocence, it is to the Accused's advantage to produce evidence that raises doubt in the minds of the Jury about the Accused's guilt. Calling witnesses in defence of the Accused may be necessary to raise that doubt. Even though the Accused is not required to take the stand, the Accused may volunteer to do so.

Arrange the order of the Defence witnesses you will call to the stand so that their testimony best tells the story of what happened. When building your case, it may be helpful to think of your job as that of a painter. Begin by sketching an outline of what happened, then paint in all the elements of the case. Questions to ask yourself as you build your case can include:

- Are all the elements of the case included?
- Are there any blank areas that need to be considered?
- How will the witnesses reinforce the facts?
- Is the case being presented in the proper order?

You will want to meet with each witness you call to help understand their stories and formulate the questions you will ask them.

8. Develop questions to ask your witnesses to bring out their stories.

After the Crown has called all its witnesses and closed its case, you may call your witnesses to the stand to give their testimony. This is called direct examination. Let each witness tell their own story and ask only general questions such as "Can you tell the court what happened next?" Be sure to make a list of questions to ask your witnesses.

Tips for Examining Defence Witnesses

- Before your witnesses start relating their stories, have them identify themselves by telling their full names and their occupations to the court. Next, confirm the date of the events in question. (For example, ask "Do you recall what happened on August 27th at approximately 9:00pm?")

The witnesses should explain how they are connected to the incident. (For example, "I am the police officer who investigated the complaint.", or "I am the person who saw the robbery and called the police.")



For the Defence Lawyer ...continued

- It is a good idea to ask a question only if you know what the answer will be. That way, you are not surprised with information that may damage your case. (This is also especially true of cross-examination.)
- Do not ask questions about matters that are unimportant or irrelevant (not related to the elements of the offence.) Otherwise, you may face an objection from the Crown Prosecutor. Once the witness gives you the facts you need, go on to the next point. Otherwise, you may confuse the Jury with extra information. Remember, you want to make all the facts of your case very clear to the Jury.

9. Think about the questions the Crown might ask your witnesses and prepare them for these questions.

Put yourself in the position of the Crown Prosecutor. What questions might they ask to help the Crown's case? Tell your Defence witnesses what you believe the Crown might ask them.

10. Prepare a summation to give to the Jury before they decide the verdict.

After all the Crown and Defence witnesses have testified, the lawyers give closing statements to the Jury. The Defence summation is delivered first.

In your own closing statement, outline the evidence which was presented in your case and emphasize how these facts call into question the evidence put forth by the Crown. Make a draft of your summation before the trial starts. This way, you can add to it or change it as the case proceeds.

11. Be prepared to speak to the Judge about the sentence you think the Accused should be given if found guilty.

If, despite your defence, the Accused is found guilty by the Jury, the Judge will ask both the Defence and the Crown to "speak to sentence." In your speech, you will tell the Judge facts about the Accused and the crime which will help the Judge come to a decision on an appropriate sentence.

Arguing for the best possible sentence under the circumstances is an important element of a Defence Lawyer's role. You will want to stress the Accused's good points. For example, that the Accused is usually responsible and law-abiding, that they feel very sorry about what has happened and would never do such a thing again, that the Accused is in school or has a job, that the crime was not a serious one, or that there were circumstances which partly excuse the Accused's actions. Remember that the Accused has been found guilty, so do not try to argue the case over again or claim that the Accused is actually innocent. Finally, letters of reference from people who know the Accused can help to show the good points of their character.

Refer to the Purposes and Principles of Sentencing Section of the handout *The Criminal Justice System*. Then check the law to determine whether there is a minimum or maximum sentence given for this offence. Where only a maximum sentence is stated, you may recommend any of the following (up to the maximum sentence provided by that law):

ABSOLUTE DISCHARGE - You may argue that the offender has learned their lesson just from being arrested and brought to trial. In that case, probation, a fine, or a jail term is not necessary. If the Judge grants an absolute discharge, the offender is not considered to have been convicted of the offence.

For the Defence Lawyer ...continued



CONDITIONAL DISCHARGE - The offender is placed on probation and will not be sentenced further if they obey all the conditions that are set. For example, some conditions could be continuing to attend school or work, reporting regularly to a probation officer, or staying away from certain people or places. If the offender breaks any of the conditions, the sentence can be changed, but if all the conditions are met the discharge becomes absolute. This means that the offender is not considered to have been convicted.

SUSPENDED SENTENCE OR PROBATION - This sentence is similar in some ways to a conditional discharge because the same kinds of conditions for probation may be imposed. However, the offender is convicted which means they have a criminal record.

FINE - The Judge may order the Accused to pay a certain amount of money to the court and set a time limit for payment of this fine. The offender may request additional time to pay the fine.

IMPRISONMENT - This is the most serious sentence that can be given. You can recommend that the offender must go to jail for a certain length of time. The jail term can be up to the maximum given for the offence in the Criminal Code.



For the Jury Member

Materials for the Jury Member include:

- *Trial Script*

As one of the members of the Jury, you are involved in making a very important decision. It is the responsibility of the Jury to determine from the evidence presented in the case whether the accused person is guilty or not guilty of the offence which they are charged with. The Judge will instruct you about the law that applies to this case. You and your fellow Jurors must decide what the true facts are, and whether or not these facts prove the Crown's case against the Accused beyond a reasonable doubt.

Getting Ready for the Trial

Think about the role you are playing. What does it mean to be impartial? Read the following notes and consider your duties to help become the part.

Task Outline

1. Review and think about the duties of a Juror.
2. Study the *Trial Script* to better understand the trial procedure.

Detailed Task Plan

1. Review and think about the duties of a Juror.

Keep an Open Mind

It is very important that as a Jury member, you remain impartial until the time comes to decide the verdict. In other words, you must not make up your mind about the guilt or innocence of the Accused until you have heard all the evidence presented by the Crown and the Defence.

Listen to the Evidence

During the trial, you must listen very carefully to the testimony given by all of the witnesses. At the conclusion of the Crown and the Defence cases, the Judge will give you the Charge to the Jury. These are important instructions concerning the nature of your duty, the things that you need to consider, and the law which applies to the crime.

Choose a Foreperson

When you and your fellow Jurors retire to the Jury room to decide upon a verdict, your first task is to select a Foreperson. Any one of the Jurors may be chosen to fill this position. The Foreperson will keep the Jury's deliberations orderly, and facilitate discussion and straw votes. They will deliver the verdict to the court on behalf of the Jury once a decision is reached.

Decide on the Verdict

During the deliberations (the process of discussing the evidence and reaching a decision on the verdict) you and the other members of the Jury must decide what the facts of the case really are. You will make this decision based on the evidence presented in court. If some of the evidence shows a disagreement among the witnesses, you will have to determine which witness is more believable or is more likely to be telling the truth.

If the facts that you believe to be true prove every element of the offence beyond a reasonable doubt, you must find the Accused guilty.

For the Jury Member ...continued



If you have reason to doubt any of the facts (if you think that the evidence shows another possible and reasonable explanation) or if you feel that the Crown has not proven a necessary element, you must find the Accused not guilty.

The Jury's verdict must be a unanimous decision. This means that the Jurors all have to agree on the Accused's guilt or innocence. If the Jury cannot come to a unanimous decision, a hung Jury is declared. Normally if this happens, a new trial will have to take place with a new panel of Jurors.

However, for the sake of concluding this mock trial, the teacher may decide that a majority vote be taken after the Jury has had a chance to discuss the issues.

Deliver the Verdict

The Foreperson informs the Clerk once a verdict has been reached. The Judge, on hearing that the decision has been made, will have the Clerk recall the Jurors to the courtroom. Once court is reconvened, the Judge will ask the Foreperson to deliver the verdict. At this point, the Jury's task is complete so the Judge will thank and dismiss the Jurors.

2. Study the *Trial Script* to better understand the trial procedure.

While you read the *Trial Script*, pay special attention to your parts. Only the Foreperson will have a speaking role.



For the Court Clerk

Materials for the Court Clerk include:

- *Trial Script*

In your role as the Court Clerk, you act as an assistant to the Judge by helping to ensure that the trial is run in an orderly fashion. You also make sure that the Judge has everything they need.

Getting Ready for the Trial

Think about the role you are playing. How does it feel to be the Court Clerk? How would a Clerk act? Read the following notes and consider your duties to help become the part.

Task Outline

1. Study the *Trial Script* to become familiar with the trial procedure. Special attention should be given to your own parts so that you know when you have to speak.
2. Practice your parts.
3. The Crown will give you two copies of the *Indictment*. One copy is yours so that you can read the charge to the Accused and the other copy is for you to give to the Judge.
4. Ensure that the Judge has everything they need before the trial begins, such as paper and a pen for taking notes. You should have a pen and paper, too, and a book for the witnesses to swear their oaths.

Duties

Opening, Recessing, and Closing Court

At the beginning of the trial, when the Judge is ready to enter, you call the courtroom to order. This task is also performed after every recess in the trial proceedings.

The Judge will tell you when a recess is to be taken so that you may announce the break to the court.

Your final duty in the trial is to announce the closing of the court on the Judge's instructions.

Reading the Charge

Once the court has been called to order, the Judge will ask you to read the charge to the Accused. This involves reading the information on the *Indictment*, then asking the Accused how they plead to the charge.

Swearing in of the Witnesses

Before each witness gives any evidence in court, they must swear an oath (or promise) to tell the truth. Your job is to read this oath to each witness when they take the stand to testify.



Materials for the Witness include:

- *Trial Script*
- *Witness Fact Sheet* (for your particular role)

You have been called to testify before the court as a witness because you have some important information about the incident which took place. Your evidence concerning the events will help the Jury to decide whether or not the accused person has broken the law.

Getting Ready for the Trial

Think about the role you are playing. How would this person feel and act? How would your character dress and speak? Read the following notes and consider your duties to help become the part.

Task Outline

1. Study your *Witness Fact Sheet* to learn the details of your story.
2. Study the *Trial Script* to better understand the trial procedure.

Detailed Task Plan

1. Study your *Witness Fact Sheet* to learn the details of your story.

Imagine how your character would feel about the incident. The *Witness Fact Sheet* contains the details of your character's part in the events surrounding the incident. You need to become very familiar with your story so that you can answer all the questions that you may have to face in court.

All the lawyers will know your story, but the lawyer who is calling you as their witness may also wish to prepare you for the trial by telling you the questions they will ask you, and suggest questions that they believe their opposing side may ask you.

2. Study the *Trial Script* to better understand the trial procedure.

When you are called to the stand to testify, the Clerk will read you an oath. This is a promise to tell the truth.

During the trial, it is likely that both the Crown and Defence Lawyers will question you about the events surrounding the alleged crime. You are required to answer all their questions, regardless of whether you think that your answer will help or harm the case of the lawyer who called you to the stand.

The questioning by the lawyer who calls you to the stand is known as direct examination. During this, try to tell your story as completely as possible from beginning to end without any help or prompting from the lawyer.

The lawyer from the opposing side will likely also question you. This procedure is called cross-examination. You must answer all these questions clearly and truthfully, but there is no need to do more than respond to the question that is asked. In other words, do not give out more details than are necessary to answer the question properly.